Birmingham Airport Authority

Request for Proposal
Quick Turn Around Facility Financing

Release Date: November 28, 2018
Response Date: December 14, 2018 by 1:00pm
1. Purpose of the Request for Proposal

The Birmingham Airport Authority (the “Authority”) is providing this Request for Proposals (the “RFP”) to qualified financial institutions (“Respondents”) interested in providing a loan of up to $10,000,000 for the construction of the Quick Turn Around Facility (“QTA”) for rental car companies operating at the Airport.

BHM is one of the state’s busiest airports with approximately two million seven hundred thousand (2.7) million passengers per year. BHM provides flights within the United States. Additional information about BHM Airport and BAA is available at www.flybirmingham.com.

The Airport is often a visitor’s first impression of the regions. The BAA has completed significant upgrades and a terminal modernization which has greatly increased and enhanced the revenue and customer satisfaction.

IT IS IMPERATIVE THAT ALL PROPOSERS READ, REVIEW AND UNDERSTAND THIS RFP AND ALL EXHIBITS AND ATTACHMENTS. YOUR ATTENTION IS SPECIFICALLY DIRECTED TO THE DRAFT TERM SHEET ATTACHED. SPECIFIC TERMS AND CONDITIONS OF THE AGREEMENT TO BE AWARDED UNDER THIS RFP ARE CONTAINED THEREIN.

2. Project Overview

The QTA facility is scheduled to begin construction on or about January 31, 2019 and to be completed by March 31, 2020. The total project is estimated at $43,000,000, of which approximately $12 million has been spent-to-date on design and land acquisition. The project will be funded with a combination of cash collected from rental car Customer Facility Charges (“CFC”) funds and proceeds from the loan. The CFC is paid by the rental car companies at a daily rate for each rental car transaction day. The loan will be secured by the CFC funds collected by the Authority.

A list of the rental car companies contractually obligated to pay the CFC is attached along with a summary of collections of CFC’s from inception of the charge to date as Exhibit 2. Attached as Exhibit 3 is a form of agreement executed by each rental car company.

3. Response Overview

Respondents must submit a term sheet and provide information detailing the following:

- Interest rate
- Fees
- Other terms and conditions

A sample term sheet accompanies this document. Additionally, Respondents should provide the identity and relevant experience of the individuals who will interact with the Authority regarding the financing.
4. Schedule and Delivery of Proposals

4.1. Submission Details

Submissions must be delivered as shown below no later than 1:00 p.m. CDT on December 14, 2018. Late submissions will not be evaluated. The estimated date of award for this contract is January 23, 2019. Please send one (1) electronic copy via e-mail (in Adobe PDF format) to the Authority:

Birmingham Airport Authority
Attn: Mani Iyer, Interim Director of Finance
miyer@flybirmingham.com

Additionally, please send one (1) electronic copy via e-mail (in Adobe PDF format) to the Authority’s Municipal Advisor:

Goodloe White       Michael Stone
goodloe@pwco.com       michael@pwco.com

Once a Proposal is opened, the name of the Proposer and the price Proposal becomes public. All other information in the Proposal does not become public until BAA has completed its evaluation and ranked the responses, which typically occurs when the staff memo recommending award is mailed (or emailed) to the appropriate committee. Therefore, most Proposal information does not become public until after the BAA staff’s memo recommending award is mailed (or emailed) to the appropriate BAA committee. After BAA has completed its evaluation and ranked the responses, the evaluative data (data created or maintained by BAA as part of the evaluation process) and the Proposal information becomes public. The Authority does not warrant or guarantee that a public information suit will not be successful.

A statement by a Proposer that his or her data is copyrighted or otherwise protected does not prevent public access to the data contained in the response at such time that the data would otherwise become public.

Prior to the mailing of the staff memo recommending award, Proposers cannot look at Proposals submitted by other Proposers or data created by BAA as part of the selection process. During that process, members of the Review Team as approved by BAA, BAA staff, BAA Board of Directors, and outside advisors who have signed confidentiality Agreements may be informed of the data in the Proposals and may view the Proposals. Also, prior to the mailing of the staff memo, Proposers may discuss the Proposals with the BAA Board of Directors, but the BAA Board of Directors are not able to reveal the contents of the other Proposals.

In the public Board of Directors meetings of the BAA, Directors are able to discuss any trade secret information submitted in the Proposals to the extent reasonably necessary to conduct the business at hand. That data, however, retains its classification as private or nonpublic. If all
responses to a request for Proposals are rejected by the Commission prior to completion of the evaluation process and ranking, all Proposal data, other than that which was made public at the time of Proposal opening, remains private or nonpublic until a re-solicitation of the Proposals results in “completion of the selection process” or a determination is made to abandon the process. If the rejection occurs after “completion of the selection process,” the data remains public. If a re-solicitation of Proposals does not occur within one year of the Proposal opening date, the remaining data then becomes public. In order to facilitate the treatment of this data, please identify the items in your Proposal that are not public.

4.2. Prohibited Contacts

From the release date of this RFP until a contract is awarded, parties that intend to submit, or have submitted, a proposal are prohibited from communicating with any member of the Board or staff of the Authority regarding this RFP or the underlying transactions except to submit questions to the Municipal Advisor in the manner specified below. This prohibition extends to any third parties who might contact a member of the Board or Authority staff on behalf of a respondent to this RFP. Parties found to be violating this provision are subject to disqualification by the Authority.

4.3. Questions regarding this RFP

All questions regarding this RFP must be submitted to the Authority’s Interim Director of Finance (contact information shown above). Questions must be in writing and submitted via email, sufficiently in advance of the deadline for delivery of proposals to provide the Authority’s Interim Director of Finance time to develop an answer to the question. A question received less than one (1) full business day prior to the proposal deadline may not be acknowledged. Questions and answers will be published via email to all entities receiving the RFP.

5. Selection Process

The Authority will evaluate each proposal based on the responses to the proposal requirements set forth in Section 4 above and will select the firm(s) whose proposal(s) demonstrates clear capability to best fulfill the purposes of the RFP in a cost-effective manner. The Authority must be satisfied with the credit strength of the financial institution and will consider capital levels, credit ratings and/or track record by company and personnel. The Authority reserves the right to reject any or all submissions for any reason, to waive any irregularity, or to request additional information. The Board of Directors will make the final decision of who will be awarded the contract. A telephone interview may be part of the evaluation process. Bids cannot be withdrawn for a period of one hundred eighty (180) days.

6. Available Information

The Official Statements with respect to the 2003-A Bonds, 2007 Bond, and 2010 Bonds, together with the Authority’s audited financial statements for the years ended June 30, 2009 through 2017, and certain other disclosures, may be found at www.emma.msrb.org.
7. **Requirements for Submission**

- The financial institution must provide background information regarding their business, length of time in business, and the rating that they currently have obtained.
- Term Sheet (attached).
- Acknowledgement of RFP Provisions provided.

Please note that all information submitted could be subject to a public records request so the Authority cannot commit to keeping submissions confidential.

8. **Scoring Criteria**

<table>
<thead>
<tr>
<th>Category</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Rate</td>
<td>40</td>
</tr>
<tr>
<td>Fees</td>
<td>35</td>
</tr>
<tr>
<td>Other Terms and Conditions</td>
<td>25</td>
</tr>
</tbody>
</table>
### Sample Term Sheet

**Facility:** Up to $10,000,000 Loan ("Facility" or the "Loan"), the repayment shall be evidenced by a limited obligation debt instrument of the Borrower.

**Borrower:** Birmingham Airport Authority ("BAA" or "Borrower")

**Purpose**

The Facility will be used for construction of a Quick Turn Around (QTA) Facility to be used by rental car concessionaires at the Birmingham-Shuttlesworth International Airport.

**Security:** 1st priority security interest in Customer Facility Charges (CFC) collected from rental car companies.

**Draws:** The Authority shall have the right but not the obligation to draw under the loan as necessary to pay for construction of the Facility.

**Interest Rate:** Identify reference rate and credit spread for a floating rate loan.

**Term:**

The loan will be interest only with interest on the outstanding balance payable monthly on the 1st day of each month through December 31, 2021. Thereafter interest will be paid semi-annually and principal annually with final payment due on December 31, 2024.

**Prepayment:** The loan may be prepaid without penalty at any time.

**Other Fees (if applicable):**

**Additional Requirements (if applicable):**
Facility:  

______________________________

______________________________

Borrower: Birmingham Airport Authority ("BAA" or "Borrower")

Purpose: The Facility will be used for construction of a Quick Turn Around (QTA) Facility to be used by rental car concessionaires at the Birmingham-Shuttlesworth International Airport.

Security:  

______________________________

______________________________

Draws:  

______________________________

______________________________

Interest Rate:  

______________________________

______________________________

Term:  

______________________________

______________________________

Prepayment:  

______________________________

______________________________

Other Fees  
(if applicable):  

______________________________

______________________________

Additional Requirements (if applicable):  

______________________________

______________________________
I ACKNOWLEDGE THAT I HAVE READ THE ENTIRETY OF THE RFP AND AM PROVIDING THIS PROPOSAL RESPONSE.

__________________________________
Signed

__________________________________
Date
EXHIBIT 1

TITLE VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the non-discrimination provisions of the following statutes and authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).
Exhibit 2: Rental Car Companies and Collections

<table>
<thead>
<tr>
<th>CAR RENTAL</th>
<th>COLLECTIONS TO-DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>AVIS CAR &amp; TRUCK RENTALS, INC</td>
<td>3,663,856</td>
</tr>
<tr>
<td>PAYLESS RENT-A-CAR (CJR RENTALS LLC)</td>
<td>444,270</td>
</tr>
<tr>
<td>BUDGET RENT- A- CAR (ADAMSON)</td>
<td>1,414,355</td>
</tr>
<tr>
<td>DOLLAR/THRIFTY (GREAT LAKES LLC)</td>
<td>2,200,286</td>
</tr>
<tr>
<td>HERTZ CORPORATION</td>
<td>6,616,285</td>
</tr>
<tr>
<td>NATIONAL CAR RENTAL (ENTERPRISE)</td>
<td>12,806,375</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>27,145,427</strong></td>
</tr>
</tbody>
</table>

Note: Collections through October 2018.
Exhibit 3: Form of Rental Car Agreement
June 27, 2013

Charles McClellan
Avis Rent-A-Car
5500 Airline Drive
Birmingham, AL 35212

Dear Mr. McClellan:

Enclosed is the fully executed copy of the Auto Rental Concession Agreement between Avis Rent-A-Car and the Birmingham Airport Authority. This agreement was approved by the Airport Authority Board on June 24, 2013.

Please contact me or Diane Gillam should you have questions.

Sincerely,

[Signature]

Mary Mindingall,
Sr. VP Finance and Administration

Enclosures(s)
AUTO RENTAL CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT made and entered into as of the 11th day of July, 2005 and amended as of April 1, 2013 by and between the BIRMINGHAM AIRPORT AUTHORITY, a public corporation, its successors and assigns (hereinafter referred to as ("Authority"), and Car & Truck RENTALS, Inc., d/b/a AVIS Rent A Car an Alabama Corporation (hereinafter called "Concessionaire"),

WITNESSETH

WHEREAS, the Authority operates the Birmingham-Shuttlesworth International Airport, located in Birmingham, Alabama hereinafter called the "Airport"; and

WHEREAS, the Authority desires to have automobile rental services available at the Airport and Concessionaire desires to furnish said service and facilities for use in connection therewith; and WHEREAS, both the Authority and the Concessionaire have expressed an interest in constructing a new rental car facility for the expressed purpose of providing rental car services at the Airport; and

WHEREAS, in conjunction with the execution of this Agreement the Authority will impose a Customer Facility Charge ("CFC") to be collected and remitted by the Concessionaire, the proceeds from which will be applied to the costs of the new rental car facility on Airport property, to consist of a Quick Turn Around ("QTA") facility for joint use by Concessionaire and other rental car concessionaires operating at the Airport; and

NOW, THEREFORE, in consideration of these premises and of the mutual covenants hereinafter contained, the parties hereto agree for themselves, their successors and assigns, as follows:

1. OPERATING RIGHTS: The Authority hereby grants to Concessionaire, subject to the terms and conditions hereinafter contained the right to conduct and operate an automobile rental concession at the Airport for the purpose aforesaid. This shall be construed to be a nonexclusive concession and the Authority shall have the right to deal with and perfect arrangements with any other individual, firm or corporation for engaging in like activity at the Airport, provided, however, that no such arrangement shall contain any financial terms or conditions, which are more favorable to such other concessionaire than those granted to Concessionaire herein, including by way of enumeration but not by way of limitation the same calculation methodology for the guaranteed annual minimum, concession fee, space and rental rates.

Provided further, that notwithstanding anything herein contained, The Authority may make such reasonable distinctions with respect to the assignment and allocation of rental counter space and ready car and check-in areas as justified by the different operational requirements of the respective automobile rental business transacted by each Concessionaire.
2. **PREMISES:** The Authority hereby further grants to Concessionaire the right to use and occupy Ready/Return spaces in the Parking Garage and counter and office space in the Parking Garage. The Authority agrees to restrict the use of such spaces to Concessionaire by signs or other appropriate means. The Authority intends to design, plan, finance, and construct a QTA facility for joint use by Concessionaire and other rental car concessionaires operating at the Airport, to clean and prepare rental automobiles for use by customers, and to temporarily store rental automobiles when not parked in the Ready/Return Area in the Parking Garage. Concessionaire agrees to cooperate with the Authority in the designing, planning, financing, and constructing of the QTA, and to jointly occupy the QTA when it opens for use, together with the other rental car concessionaires operating at the Airport. Concessionaire further agrees to enter into a separate facilities lease effective as of the Date of Beneficial Occupancy of the QTA. Concessionaire agrees to continue paying to the Authority the rent due under its existing separate lease for its individual service facilities until the Date of Beneficial Occupancy of the QTA.

If prior to the start of construction of the QTA, the estimated cost to design and construct the QTA increases more than 150% of the original project estimate, the Concessionaires may request the project be cancelled or revised to lower the estimated design and construction costs. If after reviewing available options the Authority determines that it is in the best interest of the parties to cancel or revise the QTA, the Authority may cancel the project or identify one or more strategies to revise it provided that the revisions result in cost that are less than 150% of the original project estimate. If the project is canceled by the Authority the collection of CFC revenues will be discontinued if and when CFC revenues are collected in an amount sufficient to pay any and all obligations incurred by the Authority on behalf of the QTA project. Any and all CFC revenues collected but not spent will be held by the Authority to be used for the improvement of existing rental car facilities and/or the development of a revised project.

3. **USE AND TERM:** The premises described herein shall be used by Concessionaire only for the purposes of providing automobile rental services at the Airport, and for such other services as are reasonably necessary and incidental to its operations of a car rental business; provided that as to such other services, Concessionaire shall first obtain the written permission of the CEO/President of the Authority.

TO HAVE AND TO HOLD the rights granted herein and the premises with the appurtenances thereto, effective April 1, 2013 and expiring at midnight March 31, 2018:

4. **CONCESSION FEES:**

(a) Concessionaire agrees to pay to the Authority for the rights and privileges granted herein a Minimum Annual Guarantee ("MAG") or ten percent (10%) of Concessionaire's Gross Revenues hereinafter defined (the "Privilege Fee"), whichever is greater, and to provide, to the Authority no later than on or before the twentieth (20th) day of March in advance of each contract year beginning April, a Contract Bond in an amount equivalent to no less than forty percent (40%) of the MAG for the subsequent contract year.
(b) For the first contract year under this Agreement, Concessionaire’s MAG shall be set at eighty five percent (85%) of Concessionaire’s Privilege Fee for the twelve (12) calendar months immediately preceding the month prior to the start of the first contract year. Beginning in the second contract year, Concessionaire’s MAG shall equal eighty five percent (85%) of Concessionaire’s Privilege Fee for the prior contract year.

(c) The MAG hereunder shall be apportioned on a monthly basis and shall be paid monthly on or before the twentieth (20th) business day of each calendar month. Concessionaire shall furnish the Authority on or before the twentieth (20th) business day of each month a certified Statement of Gross Revenues for the immediately preceding month and simultaneously shall pay, in addition to one-twelfth (1/12th) of MAG, an additional ten-percent (10%) of any amount, if any, by which gross revenue exceeds one-twelfth (1/12th) of MAG.

(d) Concessionaire shall pay monthly for counter and office space in the Parking Garage, a sum equivalent to one-twelfth (1/12th) of an annual square footage charge calculated as follows: 484 Square feet $76.40/square foot/annum = $36,977.60/annum = $3,081.47 payable per month, on or before the first (1st) day of each month in advance. Square footage rates for each contract year payment calculation are as follows:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1</td>
<td>$76.40</td>
</tr>
<tr>
<td>Year 2</td>
<td>$80.22</td>
</tr>
<tr>
<td>Year 3</td>
<td>$84.24</td>
</tr>
<tr>
<td>Year 4</td>
<td>$88.46</td>
</tr>
<tr>
<td>Year 5</td>
<td>$92.89</td>
</tr>
</tbody>
</table>

(e) For the first contract year, Concessionaire shall pay monthly for Ready/Return spaces as follows: 77 Spaces @ $76.40/space/month = $70,593.00/annum = $5,882.80 payable per month, on or before the first (1st) day of each month in advance. Beginning with the second contract year, and each contract year thereafter for the remainder of the term of this Agreement, the President/CEO may reallocate Ready/Return spaces if one or more concessionaire’s Market Share as of the end of the prior contract year had increased by a minimum of five percent (5%), or if two or more concessionaires’ Market Share had increased by a minimum of two and one-half percent (2½%) each, cumulatively from the beginning of the term of the Agreement. Each concessionaire’s Market Share shall be calculated as that concessionaire’s Gross Receipts for any given contract year divided by the total Gross Receipts reported by all concessionaires for that contract year. If the CEO/President determines that such a reallocation is warranted, the President/CEO shall give ninety (90) calendar days prior written notice of a reallocation.
Space rates for each contract year payment calculation are as follows:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$76.40</td>
</tr>
<tr>
<td>2</td>
<td>$80.22</td>
</tr>
<tr>
<td>3</td>
<td>$84.24</td>
</tr>
<tr>
<td>4</td>
<td>$88.46</td>
</tr>
<tr>
<td>5</td>
<td>$92.89</td>
</tr>
</tbody>
</table>

(f) In the event Concessionaire shall use and occupy the premises for the purposes set forth herein for a portion of a month or year, Concessionaire shall make a pro rata adjustment in any of the payments due pursuant to this Agreement.

5 GROSS REVENUES: Gross Revenues as used herein shall mean all revenues derived by the Concessionaire from or in connection with operations on the Premises or elsewhere at or near the Airport, from any source whatsoever, including, but not limited to the rental of Automobiles at the Airport (regardless of where the order originated or where the exchange of vehicles occurs),

(a) For purposes of clarification and not limitation, Gross Revenues shall include all sums derived from (i) charges for time, mileage, and service, (ii) the sale (whether prepaid or collected upon the return of the vehicle) of gasoline, (iii) the provision of any insurance (including loss damage waiver fees) (iv) charges from cellular telephone rentals and any revenues received from cellular phone vendors, (v) sale or rental of child restraint seats, recreational equipment and gear, and any other amenity, (vi) any add-on fees such as concession fees and contract fees, and (vii) all service charges, surcharges, intercity fees, drop-off charges, and all other charges of every description imposed on customers for cash, credit, exchange, or otherwise.

(b) There shall be no deduction or offset against Gross Revenues for such things as, without limitation, travel agency commissions, credits or refunds to customers for out-of-pocket purchases of gas, oil, emergency services, or un-refunded deposits. Only the following items may be excluded from Gross Revenues:

i. Sums recovered by Concessionaire for damage to, or for loss, abandonment or conversion of Automobiles or other property of the Concessionaire;

ii. Credits and refunds to customers for sales made on the Premises;

iii. Amounts received for separately stated federal, state or local sales and privilege taxes imposed upon or passed through to the Concessionaire's customers, which are collected by Concessionaire and paid by the Concessionaire to the appropriate taxing authority; and
iv. CFC collections.

(c) All authorized charges and items of accounts receivable shall be treated hereunder the same as cash receipts and Concessionaire shall not be entitled to any rebates or refunds by reason of non-collection thereof except as herein before set forth. Concessionaire shall not cause or allow to be diverted any of its automobile rental business at the Airport to any other location or in any manner to avoid or reduce its gross revenue on which the percentage fee is computed.

(d) Within ninety (90) days after the end of each contract year during the term of this Agreement, Concessionaire shall furnish to the Authority a Statement of Gross Revenues, certified by an accountant, and shall simultaneously pay to the Authority the amount, if any, due to the Authority hereunder for such preceding contract year or part thereof over and above the amount theretofore paid. If Concessionaire shall have paid to the Authority during the preceding contract year an amount in excess of that due under 4(a) above, the Authority may issue a credit to Concessionaire for said excess against future payments, or may issue a refund to Concessionaire, if the overpayment relates to the last contract year of the Agreement, and Concessionaire will not continue operating at the Airport.

(e) Concessionaire shall keep full and accurate books and records showing all of its said activity hereunder, including but not limited to daily deposit reconciliations, copies of all rental contracts, and other records related to Gross Revenue. Such books and records shall be made available in the Birmingham area and maintained in accordance with generally accepted accounting principles unless otherwise agreed to by the Authority. In the event books and records are not in the Birmingham area, Concessionaire shall be fully responsible for all travel expenses of the Authority’s auditors. The Authority shall have the right, through its representatives, at all reasonable times, to inspect Concessionaire’s books and records, with a minimum of twenty-four (24) hours advance notice. Concessionaire agrees that all such records and instruments will be made available to the Authority for at least a three (3) year period following the end of each contract year of the Agreement.

(f) Should any examination, inspection, and/or audit of Concessionaire’s books and records by the Authority disclose an underpayment by Concessionaire in excess of two (2%) percent of the total Privilege Fee due, Concessionaire shall promptly pay the Authority the amount of such underpayment and shall reimburse the Authority for all costs incurred in the conduct of such examination, inspection, and/or audit. In the event that the Authority deems it necessary to utilize the services of legal counsel in connection with collecting the reimbursement for such examination, inspection, and/or audit, then Concessionaire shall reimburse the Authority for all costs, reasonable fees, and expenses.
(g) Upon the request of the Authority, Concessionaire shall furnish monthly to the President/CEO of the Authority a written report which shall contain detailed information of all business and transactions of Concessionaire under this Agreement for the preceding business month. Such reports shall be on a form approved by the President/CEO and shall show each separate transaction with sufficient detail to indicate the amount of the charge.

6. CUSTOMER FACILITY CHARGE: Concessionaire must collect from customers entering into each motor vehicle rental agreement with the Concessionaire and remit to the Authority a CFC for each Transaction Day. A Transaction Day is defined herein as each 24-hour period or portion thereof commencing at the time of rental of a motor vehicle by a customer of the Concessionaire. However, if the same rental car is rented to more than one customer within such continuous twenty-four (24) hour period, then each such rental shall be calculated as a “Transaction Day,” except that a partial day that is a grace period of no more than two (2) hours after the last 24-hour day booked shall not be considered a Transaction Day.

(a) The CFC shall be collected and remitted to the Authority for each Transaction day from each customer that rents or otherwise enters into a similar arrangement for the use of a vehicle from Concessionaire (a) at the Airport or (b) at an off-Airport location operated by Concessionaire for customers picked up at the Airport by or on behalf of Concessionaire regardless of location of such off-Airport rental car facility.

(b) The CFC must be shown as a separate line item on the Concessionaire’s motor vehicle rental agreement, identified as a “Customer Facility Charge.” Concessionaire agrees that it will not refer to the CFC in its motor vehicle rental agreement or otherwise as an Authority or Airport charge or tax. The amount of the CFC collected and remitted by Concessionaire for each Transaction Day must be the same amount as the CFC collected and remitted by the other concessionaires pursuant to their respective concession agreements, which will be established and amended from time to time by the President/CEO.

(c) On the first but not later than the twentieth (20th) day of each calendar month during the Term of this Agreement, Concessionaire must remit to the Authority the CFCs collected by Concessionaire during the immediately preceding calendar month. Concessionaire also agrees to furnish to the President/CEO, in a form acceptable to the Authority on the first but not later than the fifteenth (15th) day of each calendar month during the term of this Agreement, a true and correct statement of the CFCs collected by Concessionaire for the preceding calendar month signed by an Authorized Company Representative, together with all supporting documents and information reasonably requested by the Authority. Concessionaire must maintain such books and records as will be sufficient
to document the collection by Concessionaire and the remittance to the Authority of all CFCs required to be collected pursuant to this Agreement. Concessionaire agrees to give the Authority access during reasonable hours to such books and records.

(d) The CFCs collected by Concessionaire must be accounted for separately in Concessionaire’s accounting records. The CFCs collected by Concessionaire may be deposited into Concessionaire’s bank account that also contains other funds held by Concessionaire, but the CFCs collected and so deposited must be segregated in Concessionaire’s accounting records. The CFCs collected by Concessionaire will be regarded as trust funds held by Concessionaire as an agent, for the beneficial interest of the Authority. All CFCs collected and held by Concessionaire are property in which Concessionaire holds only a possessory interest and not an equitable interest or ownership.

(e) Concessionaire also agrees to provide, in writing, to the Authority by not later than sixty (60) days following the end of each calendar year, the information listed below. Such information must be provided by Concessionaire to the authority with the following certification by an Authorized Representative of the Concessionaire: “To the best of my knowledge, the information contained herein provided by Concessionaire to the Authority is complete and accurate.”

i. Concessionaire’s Transaction Days per calendar month for the preceding 12-calendar month period beginning on each April 1 and ending on each subsequent March 31 (a "Concessionaire Reporting Period") and;

ii. The total amount of the CFC collections each calendar month remitted by Concessionaire to the Authority during the Concessionaire Reporting Period.

7. EXCEPTIONS TO GRANT TO CONCESSIONAIRE: The Grant by the Authority to Concessionaire for the use of any of the premises referred to above is subject to the following exceptions:

(a) All rights which the United States of America, the State of Alabama, or any agency of either, may have or may exercise in regard to said Airport, including the premises hereinabove referred to, embodied in any deeds or contracts entered into by the Authority and the United States of America, the State of Alabama, or any agency of either, or contained in any statutes or laws existing or hereafter contained in any statutes or laws enacted by Congress of the Alabama State Legislature;

(b) The right of the Authority to discontinue operation of an Airport upon the present Airport property; and
(c) To any existing or necessary easements for radar lines, conduits or power lines, sanitary or storm sewers, or other purposes upon or across said premises or any part thereof.

8. CONCESSIONAIRE’S RIGHTS: During the term hereof, Concessionaire shall have the Authority hereby given to Concessionaire the following rights:

(a) The right, at Concessionaire's sole expense, to install and thereafter to operate and maintain illuminating and non-illuminating signs advertising Concessionaire's business at it counter space; provided such signs shall be constructed and installed only after same shall have been approved by the President/CEO of the Authority, such approval not to be unreasonably withheld, as to size, character, content, style and type, prior to construction and installation. The use of signs to advertise rates is prohibited.

(b) The right, at Concessionaire's sole expense, to erect upon the premises such building, fixtures, structures, additions and improvements as are required in connection with Concessionaire's operations hereunder, and to install therein and thereon such equipment and facilities as Concessionaire deems necessary or desirable; provided, however, that no such building, fixture, structure, addition or improvement shall be installed by Concessionaire without prior written approval of the Authority, such approval not to be unreasonably withheld. Concessionaire shall submit the general plan, location, design and character of any such building, fixture, structure, addition or improvement to the Authority for its approval prior to the installation or construction thereof.

(c) The right upon any termination of this Agreement, to remove items installed in or upon the premises at the Airport by Concessionaire pursuant to this Agreement.

(d) The right to the joint use with others of roads and driveways useful in the conduct, operation and maintenance of Concessionaire's right hereunder.

9. CONCESSIONAIRE’S OBLIGATIONS: Concessionaire hereby covenants and agrees:

(a) To furnish prompt and efficient service, adequate to meet all reasonable demands for automobile rental service at the Airport, on a fair and reasonable basis, and to charge prices for such service in accordance with its usual standards, on a basis substantially similar to that charged by it for similar services at airports of comparable size within the same general areas.

(b) To maintain its automobiles at its sole expense in good operative order, free from known mechanical defects and in a clean, neat and attractive condition, inside and outside. Automobiles used in its operation shall be not more than two (2) model years old.
(c) To keep the facilities provided hereunder open during hours of commercial scheduled flights unless permission to do otherwise is agreed upon between the Concessionaire and the President/CEO of the Authority.

(d) That its personnel performing services hereunder shall be neat, clean and courteous. Concessionaire shall not permit its agents, servants or employees to conduct themselves in a loud, boisterous, offensive, noisy or objectionable manner, not to solicit business outside the space assigned, except through the use of signs constructed and maintained in accordance with this Agreement.

(e) That it shall abide by all reasonable rules and regulations which are now or are from time to time promulgated by the Authority concerning management, operation or use of the Airport.

(f) That it will meet all expenses in connection with the use of the premises hereunder and the rights and privileges herein granted, including but without limiting the same by reason of enumeration, taxes, permit fees, license fees and assessments lawfully levied and assessed upon the leased premises, and that it will secure such permits and licenses in the manner required by law.

(g) That it will operate and maintain any improvements or installations constructed pursuant to the terms of this Agreement, as well as the leased premises made available to it, in good order, condition and repair, and upon termination of this Agreement, will deliver up the premises to the Authority in good order, condition and repair, reasonable wear and tear and damage by fire, howsoever caused, riot and civil commotion and other casualty except unless due to Concessionaire's negligence or that of its officers, agents, employees or invitees.

(h) Concessionaire shall not park its cars on said Airport in any space or location except upon property assigned to it pursuant to this Agreement, or property, which might be agreed upon by the parties hereto in a supplemental agreement.

(i) Concessionaire shall not use any of the premises assigned to it as provided in this contract for storage or parking of any cars except those used by it in the performance of its obligations granted or imposed by this Agreement.

(j) There shall be no solicitation or advertising by Concessionaires, its agents, servants or employees, other than as may be authorized by the Authority for drive-it-yourself business at any location upon the Airport, except the premises which are specifically designated or assigned to Concessionaire in the Terminal Building under this Agreement, it being understood and agreed that a breach by Concessionaire of this provision shall at the option of the Authority, acting by and through its Board of Directors, in itself work a cancellation of this Concession Agreement, and that Concessionaire will after three (3) day notice in writing of such cancellation vacate said premises and deliver possession thereof to the Authority.
(k) Concessionaire shall not cause, permit or allow any nuisance to be created or exist upon the premises leased hereby. No gasoline or other combustible materials or matter shall be stored at any place thereupon, other than in strict compliance with all applicable ordinances and codes of the Authority, City of Birmingham and all applicable State of Federal laws; nor in any event without the written consent of the President/CEO of the Authority or other designee.

(l) The Authority agrees to furnish utilities, air conditioning and heat within the Terminal Building to the extent and of the kind as is ordinary and customarily furnished to other concessionaires having space within the Terminal Building. The Authority for the Terminal Building or ready car areas utilized by Concessionaire will not provide janitorial and cleaning services. Concessionaire shall pay all cost for water, sewer service charges, sewer taxes, lights, heat, electricity and/or gas used on the premises assigned or designated for use of Concessionaire as provided herein, outside the Terminal Building.

(m) Concessionaire agrees to cooperate with the Authority in the planning, designing, funding, and construction of a Rental Car Facility.

10. PROVISIONS FOR CANCELLATION BY THE AUTHORITY:
Concessionaire agrees that if:

(a) It fails or refuses to pay rentals, commission, percentages, charges, annual minimums or other sums due the Authority as provided herein;

(b) It fails to collect and remit the revenues generated from the Authority imposing a CFC from all eligible customers at the rate established from time to time by the Authority; or

(c) It violates any of the covenants, terms or conditions not otherwise specifically mentioned herein; or

(d) It fails or refuses to conform substantially to and abide by the reasonable rules and regulations of the City governing the conduct and operation of the Airport; or

(e) It fails or refuses to obey and Federal, State or Municipal laws, or the rules and regulations of the Transportation Security Administration, Federal Aviation Administration and/or any other State, Municipal or Federal Office, Board, Commission, Department or Agency having jurisdiction over the Airport; or

(f) It is adjudged a bankrupt, or voluntarily files in any court a petition for an arrangement or debtor's relief of any kind, or if a receiver is appointed for its property, or any part thereof; or

(g) If any one or more of said defaults or breaches occurs as set forth in (e)
above, the Authority may at its election terminate this Agreement by ten (10) day notice in writing; but as to (a) through (d), inclusive, the Authority must give thirty (30) days written notice to Concessionaire to correct said breach or default, and should said Concessionaire fail to correct said default or make substantial progress with regard thereto, in said thirty-day period, the Authority may at its election terminate this Agreement on giving ten (10) days written notice. Such termination shall be effective upon expiration of said period of ten (10) days, and the Authority shall have the right to immediately re-enter and repossess said premises, and Concessionaire shall voluntarily surrender and deliver up same to the Authority.

11. CONCESSIONAIRE'S RIGHT OF TERMINATION AND/OR SUSPENSION: Concessionaire shall have the right upon written notice to the Authority, to terminate this Agreement upon the happening of one or more of the following events, if said event or events are then continuing:

(a) The issuance by any court of apparent competent jurisdiction of an injunction, order or decree preventing or restraining the use by Concessionaire of all or any substantial part of the premises used and occupied by Concessionaire hereunder, or preventing or restraining the use of all or a part of the airport for normal Airport purposes, which use by Concessionaire is necessary for its operations on the airport and which injunction, order or decree remains in force for a period of at least ninety (90) days.

(b) If the Authority defaults in any of the terms, covenants or conditions under this Agreement and fails to cure the default or make substantial progress with regard thereto within thirty (30) days following receipt of written demand from Concessionaire to do so.

(c) If the Concessionaire is unable to conduct its business at the Airport in substantially the same manner and to substantially the same extent as theretofore conducted, for a period of at least ninety (90) days, because of (i) any law, or (ii) rule, order, judgment, decree, regulation or other action or non-action of any governmental authority having jurisdiction thereof.

(d) If all or a material part of the Airport facility is destroyed.

(e) If the United States Government or any of its agencies occupy the Airport or any substantial part thereof to such an extent as to materially interfere with Concessionaire's operations for a period of at least ninety (90) days.

(f) If a majority of scheduled air traffic serving the Airport as of the commencement of the term of this Agreement shall no longer operate from the Airport of if for any reason the number of passengers deplaning on scheduled airline flights at the Airport during any period of thirty (30)
consecutive days, shall be less than sixty-five percent (65%) of the number of such deplaning passengers in the same period during the preceding calendar year.

(g) If the operation of Concessionaire's car rental business at the Airport through no fault of its own is affected by shortages or other disruptions and the supply of automobiles, gasoline, or other goods necessary for the operation thereof, and which results in a material diminution in Concessionaire's gross revenues hereunder for a period of at least thirty (30) days.

Provided, that in the event of the happening of any of the events set forth above, the Concessionaire shall have the option to continue to conduct its business hereunder with an abatement of the minimum guarantee for the period of time the condition continues to exist. During the period of the abatement, Concessionaire will continue to pay to the Authority the ten percent (10%) concession fee and the Authority will return to Concessionaire a just proportion of any minimum guarantee payment which may have been prepaid. No breach by the Authority, its successors or assigns of any agreement herein contained shall give rise to a cause of action against the Authority for damages, but Concessionaire shall have only the right to specific performance, mandamus or such other similar relief with regard to any breach or threatened breach hereunder; or at Concessionaire's option, after giving a thirty (30) day notice in writing to the Authority to correct such breach, the Authority having failed to correct same in such period of time, Concessionaire may terminate this Agreement by giving ten (10) days additional notice in writing of its election to terminate this Agreement if the Authority shall have failed to correct same or be in the process of making an attempt in good faith to correct same before the expiration of said ten (10) day period.

12. INDEMNITY AND LIABILITY INSURANCE: Concessionaire shall protect, defend and hold the Authority and its officers, directors, agents and employees completely harmless from and against any and all liabilities, losses, suits, claims judgments, fines or demands arising by reason of investigation and defense thereof (including, but not limited to, reasonable attorneys' fees, court costs and expert fees), of any nature whatsoever arising out of or incident to this Agreement, the use or occupancy of the Airport or the acts or omissions of Concessionaire's officers, agents, employees, contractors, subcontractors, licensees, or invitees, regardless of whether the injury, death or damage is caused by the negligence of the Concessionaire. The Authority shall give to Concessionaire prompt and reasonable notice of any such claims or actions. The provisions of this Article shall survive the expiration or early termination of this Agreement.

Furthermore, Concessionaire will, at all times during the term of this Agreement, keep the leased premises insured with a company authorized to do business in the State of Alabama, insuring Concessionaire, City and the Authority, as insured therein, in amounts specified in subparagraphs (a) (b) and (c) below, and against loss or damage from such causes as are customarily insured against, for similar facilities. Concessionaire shall furnish the President/CEO of the Authority with proper certification that such insurance is in force and that the Authority has been added as an additional insured. Concessionaire shall also furnish additional certifications whenever any material change is made in such insurance. Said
additional certification shall be supplied not less than twenty (20) days prior to any such change. All such insurance policies shall provide that the insurers shall provide that the insurers shall give the Authority thirty (30) days advance notice of any such cancellation thereof. Without limiting the generality of the foregoing, Concessionaire will obtain and maintain in effect the following amounts and types of insurance:

(a) Worker's compensation insurance covering all employees of Concessionaire to the extent required by law;

(b) Comprehensive general liability insurance against liability for bodily injury to or death of persons and from damage to or loss of property occurring on or about the leased premises or in any way related to the condition or operation of the leased premises, and including, but not limited to, products and operation liability and contractual liability, in an amount of not less than a single limit of $2,000,000 any one occurrence; and

(c) Automobile liability insurance against liability for bodily injury to or death of persons and for damage to or loss of property occurring as a result of operation of any vehicles owned or leased by Concessionaire, in an amount of not less than a single limit of $2,000,000 any one occurrence.

13. NOTICE OF CLAIMS: The Authority agrees to notify the Concessionaire in writing as soon as practicable of any claim, demand or action arising out of an occurrence allegedly covered hereunder of which the Authority has knowledge, and to cooperate with Concessionaire or its agents in the investigation, settlement and/or defense thereof.

14. PROTECTION OF RIGHTS: The Authority hereby covenants and agrees to take all appropriate action within its authority to protect the rights and privileges demised and granted to the automobile rental Concessionaire or concessionaires under this and similar agreements. The Authority agrees to take reasonable steps in cooperation with Concessionaire to prevent the unauthorized solicitation or transaction of automobile rental business at the Airport.

15. LIMITATION ON RIGHT TO ASSIGN OR SUBLET: Any and all obligations of Concessionaire hereunder may be fulfilled or discharged either by Concessionaire or by a licensee member of Concessionaire's system duly appointed thereto by Concessionaire, subject to the approval of the Authority and evidenced by a written agreement between the Authority and Licensee and any and all privileges and benefits granted pursuant to this Agreement shall be enjoyed by such approved Licensee; provided, however, that notwithstanding the method of operation employed by Concessionaire thereunder, Concessionaire shall continue always to remain directly liable to the Authority for the performance of all terms and conditions of this Agreement. Except as hereinabove set out, the premises may not be sublet, in whole or in part, and Concessionaire shall not assign this Agreement without prior written consent of the Authority, nor permit any transfer by operation of law of Concessionaire's interest created hereby other than by merger or consolidation.
16. **NOTICES:** Any notice or other communication one to the other pursuant hereto shall be deemed validly given, served or delivered, upon deposit in the United State Mail, Certified, Return Receipt Requested, proper postage and fees prepaid and addressed as follows:

President/CEO  
Birmingham Airport Authority  
5900 Airport Highway  
Birmingham, AL 35212

17. **NON-WAIVER:** Any waiver of any breach or covenant herein by Concessionaire or the Authority is not deemed or considered as a continuing waiver and shall not operate to bar or prevent Concessionaire or the Authority from declaring a forfeiture for any succeeding breach of either the same or a different condition or covenant.

18. **DISADVANTAGED BUSINESS ENTERPRISE PROGRAM:** Concessionaire agrees that it will comply with FAA's CFR 49, Part 23, and the Authority's Disadvantaged Business Enterprise Program and applicable laws and regulations.

19. **NON-DISCRIMINATION:** Concessionaire hereby covenants and agrees that in the use, operation and occupancy of the demised premises it will not on the grounds of race, color or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by law and agrees to comply and operate in accordance with all the non-discrimination requirements of 49 CFR 21 and Executive Order 11246.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in multiple, each copy to be considered originals by their duly authorized officers, and their respective seals to be hereunto affixed on this the 24th day of June 2013.

BIRMINGHAM AIRPORT AUTHORITY
A Public Corporation

By: [Signature]

Its: [Signature]

CAR & TRUCK RENTAL, INC.
dba
AVIS RENTA A CAR

By: [Signature]

Its: [Signature]