

<p style="text-align: center;">City of Visalia Agenda Item Transmittal</p>
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Meeting Date: 5/1/2017

<p>Agenda Item Number (Assigned by City Clerk): 8.</p>

Agenda Item Wording: Second reading and adoption of Ordinance No. 2017-04 authorizing the lease of approximately 864 square feet of counter and office space in the Terminal Building at the Visalia Municipal Airport to Enterprise Rent A Car for \$1,090.60 per month, adjusted annually based on the California Consumer Price Index, for the purpose of expanding their existing car and truck rental operations.

Deadline for Action: 5/1/2017

Submitting Department: Administration

<p>Contact Name and Phone Number: Mario Cifuentez, 4480 - Mario.Cifuentez@visalia.city</p>

Department Recommendation: Staff recommends that the City Council approve this second reading and adoption of the attached ordinance authorizing the City Manager to execute a new concession agreement for a portion of the Air Terminal at the Visalia Airport. The new lease agreement will include an initial two (2) year term with four (4) additional options of 2 years each for a total term of ten (10) years, at an initial lease rate of \$1,090.60 per month, adjusted annually by the California CPI.

Summary: This concession agreement will replace the existing agreement between Enterprise Rent a Car and the City of Visalia. The original concession agreement began in 2014 and covered approximately 140 square feet of counter space and some lobby seating in the Air Terminal. With the departure of commercial air service at the Visalia Airport in 2016, Enterprise representatives met with Airport staff to look at ways to expand their operation and separate their Truck Rental from their Car rental at the airport. This agreement will provide for more counter space and over 600 square feet of lobby space for them to add office areas. Additionally, this agreement also allows for Enterprise to have access to 9,000 square feet of common use parking area located behind the Terminal and adjacent to the vehicle wash rack.

This concession agreement will allow them to add office space and separate their car rental operation from the Truck rentals, which are run by two separate managers and staff.

Background Discussion: At the time that Seaport Airlines pulled out, Enterprise Rent a Car was operating a car rental counter, but they had limited space available due to the amount of TSA screening equipment in the lobby area of the terminal. With the departure of the airline

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came the de-federalization of the airport and removal of all screening equipment. This left the old lobby area open for other uses. Enterprise was looking for additional space to expand their Truck Rental operation and the lobby area works well for the modular office model that they like to use.

Fiscal Impact: This new concession agreement will provide \$7,027.20 in additional revenue to the Airport Enterprise fund during the first year and will be adjusted by the CPI each year thereafter.

Prior Council Action: April 17, 2017, Council approved the Introduction of Ordinance No. 2017-04 authorizing the lease of approximately 864 square feet of counter and office space in the Terminal Building at the Visalia Municipal Airport to Enterprise Rent A Car.

Other: N/A.

Committee/Commission Review and Action: N/A.

Alternatives: Not approve the new agreement and risk losing both operations to a larger facility off airport.

Attachments: Proposed Ordinance, Proposed Concession Agreement, Floor plan of lobby use and Aerial of Parking Area.

Recommended Motion (and Alternative Motions if expected):

Move to approve the second reading and adoption of Ordinance No. 2017-04 authorizing the lease of approximately 864 square feet of counter and office space in the Terminal Building at the Visalia Municipal Airport to Enterprise Rent A Car for \$1,090.60 per month, adjusted annually based on the California Consumer Price Index, for the purpose of expanding their existing car and truck rental operations.

Copies of this report have been provided to: N/A.

Environmental Assessment Status

CEQA Review: N/A.

ORDINANCE NO. 2017-04

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF VISALIA**

**AUTHORIZING THE LEASE OF CERTAIN REAL PROPERTY AT THE
VISALIA MUNICIPAL AIRPORT TO ENTERPRISE RENT A CAR
THROUGH A CONCESSION AGREEMENT.**

WHEREAS, the City of Visalia owns and operates certain real property commonly referred to as the Visalia Municipal Airport; and

WHEREAS, the City of Visalia desires to lease a portion of said real property inside the Air Terminal to a commercial car rental agency for the purpose of maintaining and operating separate Car and Truck Rental offices at the Visalia Municipal Airport; and

WHEREAS, Enterprise Rent A Car, is a longtime tenant of the Visalia Municipal Airport and desires to expand their operation; and

WHEREAS, the City of Visalia and Enterprise Rent A Car desire to enter into a lease agreement for said real property; and

WHEREAS, the said real property is approximately 864 square feet of floor and counter space located in the Air Terminal Building.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF VISALIA:

Section 1. The City Manager of the City of Visalia be, and is hereby authorized to execute on behalf of the City of Visalia, that certain Concession Agreement by and between the City of Visalia as Lessor and Enterprise Rent A Car as Lessee, dated April 1, 2017, which is hereby approved and the City Manager of the City of Visalia is hereby authorized to execute the same on behalf of the City of Visalia.

Section 2. This ordinance shall go into effect thirty (30) days after its passage.

**CONCESSION AGREEMENT
VISALIA MUNICIPAL AIRPORT
AUTO RENTAL CONCESSION**

THIS CONCESSION AGREEMENT ("Agreement") made and entered into this _____ day of _____, 2017, by and between the CITY OF VISALIA, a Municipal Corporation of the State of California, hereinafter referred to as "CITY" and Enterprise Rent-a-car Company of Sacramento, LLC, a Delaware limited liability company hereinafter referred to as "CONCESSIONAIRE",

WITNESSETH:

WHEREAS CITY owns and operates the airport known as Visalia Municipal Airport located in Tulare County, California, hereinafter referred to as "Airport"; and

WHEREAS automobile rental services at the Airport are essential for proper accommodation of passengers arriving at and departing from the Airport; and

WHEREAS CITY desires to make said service available at the Airport, and CONCESSIONAIRE is qualified, ready and able to perform or see to the performance for said services, and to furnish or see to the furnishing of facilities for use in connection therewith:

NOW THEREFORE, in consideration of the mutual agreements of the parties hereto, as hereinafter set forth,

IT IS AGREED between the parties hereto as follows:

1. PREMISES

CITY hereby agrees to provide CONCESSIONAIRE an area of not less than one hundred forty (140) square feet for counter space and seven hundred and twenty-four (724) square feet of office space, within that portion of the terminal building at the Airport shown on Exhibit "A" attached hereto and incorporated by reference. CONCESSIONAIRE shall also have the right to utilize additional automobile storage space, not to exceed nine thousand nine

hundred (9,900) square feet, within the area shown on Exhibit "B" attached hereto and incorporated by reference.

2. TERM

The term of this Agreement shall be for a period of two (2) years commencing on April 1, 2017, and terminating on March 31, 2019 and four (4) separate and successive options to extend this Agreement for two (2) year periods; provided however, that CONCESSIONAIRE may terminate this Agreement, without cause, upon providing written notice to the other party, at least ninety (90) days in advance of such early termination date. The first Renewal Term will commence upon the expiration of the Initial Term. Each successive Renewal Term will commence upon the expiration of the previously exercised Renewal Term.

The first Renewal Option may be exercised by written notice from Tenant to Landlord given not later than 3 months prior to the expiration of the Initial Term. Subsequent Renewal Options may be exercised by written notice from Tenant to Landlord given not later than 3 months prior to the expiration of the previously exercised Renewal Term. No Renewal Option will lapse until Landlord notifies Tenant in writing that Tenant has failed to timely exercise such Renewal Option and Tenant fails to exercise such Renewal Option for 10 days following receipt of Landlord's notice.

Each Renewal Term will be upon the same terms and conditions as during the Initial Term, except as otherwise provided.

As used in this Lease, "Term" means both the Initial Term and, to the extent Renewal Options have been exercised, the Renewal Terms, unless the context clearly requires otherwise.

3. USE OF PREMISES

- A.** CONCESSIONAIRE shall have the right and obligation to use said premises for the purpose of providing automobile and Commercial Truck rental service at the Airport, and for the purpose of arranging for such services for persons using the Airport and in the local community.
- B.** CONCESSIONAIRE shall not cause or permit any act or thing to be done upon the premises which constitutes a nuisance, or which may disturb the quiet enjoyment of CITY, or any tenant of CITY on adjacent or neighboring property. CONCESSIONAIRE further agrees, that they will abate, or otherwise remedy said nuisance, within 72 hours from receiving written notice from the CITY. In the event CONCESSIONAIRE has not (a) taken corrective action within 72 hours, or (b) filed an appeal with the Airport Manager of the CITY of Visalia within 72 hours, then CITY may enter and abate said nuisance. Such abatement shall be at the expense of CONCESSIONAIRE, without any liability or cost whatsoever to CITY for monetary loss, or loss of anticipated profits of CONCESSIONAIRE or others. Said appeal to the Airport Manager must be made in writing and be received by the Airport Manager of the CITY of Visalia, 9501 Airport Drive, Visalia, California 93277, within 72 hours after CONCESSIONAIRE received notice of said nuisance.

4. NON-EXCLUSIVE RIGHT

This Agreement shall not be construed to grant an exclusive Concession, and CITY shall have the right to deal with other individuals, firms, or corporations, for engaging in the same or other types of activity at the Airport. CITY shall not grant to any individual, firm, or corporation other than CONCESSIONAIRE, an automobile rental concession on terms or

conditions more favorable in any respect than those herein granted CONCESSIONAIRE, except schedule of payments set forth in Paragraph #5, which may vary between concessionaires due to CITY's awarding Concession Agreements on a bid basis.

5. RENT

As monetary consideration for the use of the premises and the rights and privileges herein granted by the CITY, CONCESSIONAIRE agrees to pay to CITY the following:

- A.** One Thousand Ninety and 60/100 dollars (\$1,090.60) per month on or before the first day of each calendar month during the Term, and prorated for the fractional portion of any month.
- B.** Commencing April 1, 2018, and annually thereafter (including Renewal Terms, if exercised), Rent shall be adjusted based upon the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), U. S. City Average, All Items (1982-84 = 100) as established by the U. S. Department of Labor, Bureau of Labor Statistics, or similar successor index (the "CPI"). Rent for each year shall be determined by multiplying the Rent for the preceding year by a fraction, the numerator of which is the CPI for the month of March of the year for which such adjustment is being made, and the denominator of which is the CPI for the month March of the preceding twelve-month period. Provided, however, in no event shall the Rent as adjusted hereby for any Lease year be less than one hundred one percent (101%) or greater than one hundred three percent (103%) of the Rent for the preceding year.
- C.** All sums due under this Agreement shall be paid in person or delivered to the CITY of Visalia at the office of Airport Administration, 9501 Airport Drive, Visalia,

California 93277, or mailed in accordance to the procedures for giving notice specified in Paragraph 21.

6. INSTALLATION OF SIGNS

During the term of this Agreement, CONCESSIONAIRE shall have, the following rights in regards to the installation and removal of signs:

- A.** CONCESSIONAIRE may install, operate and maintain advertising signs on the premises occupied by CONCESSIONAIRE, and at such other place(s) at the Airport as may be mutually agreed upon by CITY and CONCESSIONAIRE. Any signs installed, operated and maintained by CONCESSIONAIRE will be CONCESSIONAIRE's sole financial responsibility. Prior to installation of any signs, CONCESSIONAIRE shall obtain the written approval of CITY as to the sign's size, design and location, and the CONCESSIONAIRE shall obtain any and all necessary permits in compliance with the CITY of Visalia Municipal Code, Title 17, Chapter 17.48. CONCESSIONAIRE is expressly prohibited from installing any signs on the Airport advertising CONCESSIONAIRE's auto rental rates.
- B.** Upon the Agreement's termination, CONCESSIONAIRE shall remove all signs within 60 days. If CONCESSIONAIRE refuses, or fails to remove any signs, CITY may remove any or all such signs at the sole expense of CONCESSIONAIRE. Said costs shall be paid to CITY within thirty (30) days of CITY sending written notice to CONCESSIONAIRE.

7. AUTOMOBILE PARKING

During the term of this Agreement, the CONCESSIONAIRE shall have the following rights in regards to automobile parking:

- A.** The right to joint use of roads and driveways useful in the conduct, operation and maintenance of CONCESSIONAIRE's concession.
- B.** The right to utilize, parking spaces within the Visalia Municipal Airport parking lot, as depicted on Exhibit "B", which is attached and made a part by this reference. . The Airport Manager may adjust annually the number of parking spaces available to CONCESSIONAIRE, so long as CONCESSIONAIRE's operations are not substantially altered, but in no event shall the number of spaces be less than sixteen (16) spaces.
- C.** If during the term of this Agreement CITY has need for the designated parking area, then it shall be the responsibility of the Airport Manager to assign a new area, which shall be reasonably convenient to the Terminal Building for the pick-up and return by customers of rental cars.
- D.** CITY and CONCESSIONAIRE agree and understand that in the event CONCESSIONAIRE does not see to it that its Trucks & Automobiles are parked and stored only in the spaces designated by the Airport Manager of the CITY, or if CONCESSIONAIRE attempts to store additional Trucks & Automobiles at the Airport over and above the number authorized under this Agreement, such automobiles will be cited for parking violation and/or impounded, all at the expense of CONCESSIONAIRE, or CITY may terminate this Agreement in accordance with Paragraph 23 hereof.

8. STANDARDS OF SERVICE BY CONCESSIONAIRE

CONCESSIONAIRE shall be responsible for the following:

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- A. All employees and other personnel, who perform work for the CONCESSIONAIRE, shall be neat and clean in appearance, and courteous to all persons. The CONCESSIONAIRE shall not permit any of its employees to conduct business in an offensive or objectionable manner.
- B. CONCESSIONAIRE shall adopt the Visalia Municipal Airport Rules and Regulations. They shall be enforced by CONCESSIONAIRE on behalf of the Visalia Municipal Airport. Such rules and regulations are set forth in Exhibit "C" and incorporated by reference into this Agreement. Any changes or modifications to the Rules and Regulations in Exhibit "C" may be changed only with the written consent of CITY.
- C. CONCESSIONAIRE shall pay all its expenses in connection with the use of the Airport and all the rights and privileges granted, in this Agreement, including, but not limited to business taxes, possessory interest fees, and license fees, levied or assessed upon the leased premises or structures and improvements at any time situated upon the Airport. CONCESSIONAIRE shall secure all necessary permits and licenses at his/her sole expense.
- D. CONCESSIONAIRE shall maintain all areas and improvements made to the area in good order, condition, and repair. When this Agreement is terminated, the CONCESSIONAIRE will vacate the premises leaving them in good order, condition and repair.
- E. To furnish good, 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 area.

- F.** That rental automobiles made available shall be maintained at CONCESSIONAIRE's sole expense in good, operative order, free from known mechanical defects and in clean, neat, and attractive condition inside and outside.
- G.** That the facilities to be provided by CONCESSIONAIRE for the purpose of providing automobile rental service shall remain open for such periods during each day and such days during each week as may be necessary to meet reasonable demands for said services. CONCESSIONAIRE may install as a facility in the premises to it, or at such other places as the parties may agree upon, a direct line telephone for the purpose of supplying automobile rental service to Airport patrons during periods when other automobile facilities are closed.

9. NONDISCRIMINATION

CONCESSIONAIRE shall observe and comply with the following provisions:

- A.** While operating at the Airport and in observing all of the terms and conditions pursuant to this Agreement, and in furnishing its accommodations and/or services, CONCESSIONAIRE shall not discriminate or allow discrimination against any person or class of persons by reason of race, color, creed, sex, or national origin in any manner prohibited by federal or state statutes.
- B.** CONCESSIONAIRE may make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- C.** Noncompliance with (a) and (b) above shall constitute material breach, and CITY shall have the right to terminate this Agreement without any liability, or CITY shall, in the alternative, have the right to judicially enforce (a) and (b), above.

- D.** CONCESSIONAIRE agrees that it shall insert the above three conditions of (a), (b), and (c) above in any Agreement, contract, sub Agreement, etc., by which CONCESSIONAIRE grants a right or privilege to any person, firm or corporation to render accommodation and/or services to the public at the Airport.
- E.** CONCESSIONAIRE shall have the right of appeal of a noncompliance complaint if CONCESSIONAIRE believes the complaint to be unjust or unfair, and to cure the alleged noncompliance following notification.

10. REGULATIONS - CONCESSIONAIRE shall not conduct, or allow to be conducted upon the Demised Premises, any dangerous or hazardous activities, or any activities considered to be a nuisance to the airport or its tenants and neighbors, and CONCESSIONAIRE agrees to abide by all applicable F.A.A. and U.S. Government rules and regulations, including, but not limited to the following:

- A.** The CONCESSIONAIRE for himself, his heirs, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Leased Premises, as described in Paragraph 1 herein, for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the CONCESSIONAIRE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted programs of the Department of Transportation and as said Regulations may be amended.

B. The CONCESSIONAIRE for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. No person on the grounds of race, color, sex, age or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of said facilities; and

2. That in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, age or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and

3. That the CONCESSIONAIRE shall use the Demised Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted programs of the Department of Transportation, and as said Regulations may be amended.

C. It is understood and agreed that nothing contained herein shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

D. CONCESSIONAIRE agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided, that CONCESSIONAIRE may make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

E. The CITY reserves the right (but shall not be obligated to CONCESSIONAIRE) to maintain and keep in repair the landing area of the airport and all publicly owned

facilities of the airport, together with the right to direct and control all activities of the CONCESSIONAIRE in this regard.

F. The CITY reserves the right to further develop or improve the landing area and all publicly owned air navigation facilities of the airport as it sees fit, regardless of the desires or views of the CONCESSIONAIRE, and without interference or hindrance.

G. The CITY reserves the right to take any action it considers necessary to protect aerial approaches of the airport against obstructions, together with the right to prevent CONCESSIONAIRE from erecting, or permitting to be erected, any building or other structure on the airport which in the opinion of the CITY would limit the usefulness of the airport or constitute a hazard to aircraft.

H. During the time of war or national emergency the CITY shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly owned air navigation facilities and/or other areas or facilities of the airport. If any such agreement is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.

I. It is understood and agreed that the rights granted by this Agreement will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the airport.

J. There is hereby reserved to the CITY, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for passage of aircraft in the airspace above the surface of the Demised Premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on or about the airport.

K. The Agreement shall become subordinate to provisions of any existing or future agreement between the CITY and the United States of America, or any agency thereof relative to the operation, development, or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the airport.

11. CURRENT AND FUTURE AIRPORT REGULATIONS - This Agreement and all rights conferred thereby shall at all times be subject to current and future regulations governing any and all activities at the Visalia Municipal Airport to the same extent that such current and future regulations govern the activities of all persons using the facilities of the Visalia Municipal Airport and occupying structures thereon.

12. NEGATION OF PARTNERSHIP

The CITY shall not become or be deemed to be a partner or joint venturer with the CONCESSIONAIRE other than the relationship of a landlord and a tenant. The CONCESSIONAIRE shall not be considered an agent, an officer, or an employee of the CITY.

13. INSURANCE; LIABILITY

CONCESSIONAIRE, in order to protect CITY its agents, officers, and employees against all claims and liability for death, injury, loss, and damage as a result of CONCESSIONAIRE's (a) use and operations on the demised premises or in connection therewith, or (b) construction or removal of any improvements on the demised premises or in connection therewith, shall secure and maintain in force during the entire term of this Agreement and covering all of CONCESSIONAIRE's operations and activities on the demised premises a commercial general liability policy (bodily injury and property damage) in the amount

of not less than ONE MILLION DOLLARS (\$1,000,000) Combined Single Limit Bodily Injury and Property Damage with a liable insurance carrier authorized to do such general liability insurance business in the State of California. Providing further that said policy of insurance shall expressly name the CITY of Visalia, its agents, officers and employees as additional insured. Said insurance shall not be subject to cancellation or materially changed without thirty (30) days prior written notice to CITY. Within ten (10) days from the date of this Agreement, CONCESSIONAIRE shall file with the Airport Manager of the CITY of Visalia a Certificate of Insurance evidencing that the hereinabove mentioned general liability provisions have been complied with, and setting forth that CITY, its agents, officers, and employees are named as additional insureds. CONCESSIONAIRE shall also, without cost to CITY, obtain and maintain during the term hereof automobile liability insurance. Said automobile liability insurance shall provide liability limits of not less than ONE MILLION DOLLARS (\$1,000,000) for personal injury to or death of any one person in any one occurrence. ONE MILLION DOLLARS (\$1,000,000) for personal injury to or death of two or more persons in any one occurrence, and ONE MILLION DOLLARS (\$1,000,000) for damage to property in any one occurrence in the alternative, ONE MILLION DOLLARS (\$1,000,000) Combined Single Limit of Bodily Injury and Property Damage. CONCESSIONAIRE shall, upon written request, provide to CITY certificates evidencing all such automobile liability insurance. CITY agrees to notify CONCESSIONAIRE in writing as soon as practicable of any claim, demand, or action arising out of an occurrence covered hereunder which CITY has knowledge.

14. INSURANCE GENERAL REQUIREMENT

All insurance required by the express provisions of this Agreement shall be carried only through responsible insurance companies. These insurance companies must be licensed to do

business in the State of California. All such policies shall be nonassessable and shall contain language to the effect that:

- A.** Any loss shall be payable notwithstanding any act or negligence of the CITY that may cause a forfeiture of the insurance,
- B.** The insurer waives the right of subrogation against the CITY and against the CITY's agents and representatives for negligent acts arising out of the CONCESSIONAIRE's operation(s),
- C.** The policies are primary and noncontributing with any insurance that may be carried by the CITY,
- D.** They cannot be canceled or materially changed except after a thirty (30) days written notice by the insurer of the CITY or the CITY's designated representative, and
- E.** The CITY shall be named as and additional insured in the CONCESSIONAIRE's insurance policy/policies covering this Agreement. CONCESSIONAIRE shall furnish the CITY with certificates representing all insurance required pursuant to this Agreement. The CONCESSIONAIRE may provide by a blanket insurance, covering the premises and any other location/locations, provided it is acceptable to all mortgagees. In the manner provided by this Concession Agreement, the CONCESSIONAIRE shall deliver to the CITY, certificates of all insurance policies required by this Agreement, together with evidence of payment of the required insurance policy/policies, which are satisfactory to the CITY, within the following time limits:
 - (1) Within thirty (30) days after this Agreement's execution, the insurance policy/policies required shall be filed with the CITY.

(2) CONCESSIONAIRE shall notify the CITY at least thirty (30) days prior to any renewal, replacement and/or termination of the existing policy/policies.

If CONCESSIONAIRE fails, or refuses, to procure, or to maintain the insurance as required by this Agreement, or fails or refuses to furnish the CITY with the required proof of procurement and its effective date, the CITY shall have the right, to procure and maintain the required insurance. The premiums, that are paid by the CITY, shall be treated as added rent due from the CONCESSIONAIRE with the interest, commencing from the first date of the notice at the rate of eighteen (18) per cent per year. The premiums shall be paid on the first day of the month following the date on which the premiums were paid, and shall state the amounts paid and the names of the insurer or insurers.

15. INDEMNIFICATION

The CONCESSIONAIRE agrees to and shall protect, indemnify and hold harmless the CITY and all officers, agents, representatives and employees of the CITY, from any and all liability, claims, or damages of whatsoever kind or character, including attorney's fees and costs of all types incurred in defense of any of said parties, from any claims or liability arising directly or indirectly out of the acts or omissions of the CONCESSIONAIRE, the CONCESSIONAIRE's independent contractors, employees, representatives, agents, invitees and/or sublessee of the CONCESSIONAIRE. The indemnification and hold harmless provisions of this Agreement shall remain in full force and effect regardless of whether or not there shall be insurance policies covering and applicable to such damages, claims, and/or liability. CONCESSIONAIRE agrees to indemnify and protect CITY against any and all liabilities, claims, demands, damages, or injuries to any person or property arising from the performance of this contract whether such liabilities, claims, demands, damages, or injuries result from the negligence of CITY, CITY'S

agents, or employees, or otherwise, EXCEPT for liability, claims or damages arising out of the sole active negligence or sole active misconduct on the part of the CITY.

16. BANKRUPTCY

In addition to any and all remedies available to it, the CITY may, at its option after written notification to the CONCESSIONAIRE, terminate this Agreement, and all rights and interest of CONCESSIONAIRE, and all other persons pursuant to this Agreement, if one of the following conditions occurs:

- A.** CONCESSIONAIRE files a voluntary bankruptcy petition;
- B.** CONCESSIONAIRE is adjudged a bankrupt in any involuntary bankruptcy proceeding;
- C.** Any voluntary or involuntary proceeding for the reorganization of the CONCESSIONAIRE is instituted and not vacated within ninety (90) days by anyone other than the CITY under any of the provisions of the bankruptcy laws of the United States; or
- D.** A receiver or judicial trustee or custodian shall be appointed for the CONCESSIONAIRE, or any lien or any writ of attachment, garnishment, or execution shall be levied upon any of the CONCESSIONAIRE's rights or interests under this Agreement by operation of law.

17. INTERFERENCE WITH OPERATIONS

The CITY shall have the right after prior written notice to the CONCESSIONAIRE to terminate, or suspend this Agreement, if one of the following occurs:

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- A. The United States Government or any of its agencies occupies the CITY of Visalia Municipal Airport, or any substantial part of the Airport as to materially interfere with the CONCESSIONAIRE's operations;
- B. The Visalia Municipal Airport or its facilities, are destroyed by fire, or some other causes as to shut down operations; or
- C. CONCESSIONAIRE's operations are materially interfered with for any reasons, other than that caused by CONCESSIONAIRE, for more than fifteen (15) days.

If the CITY terminates this Agreement pursuant to one of the above conditions occurring, the CITY's obligations under this Agreement will be extinguished. At the sole option of the CITY, the CITY may decide in the alternative that it will waive its right to terminate, and suspend the Agreement for the periods of such disability. In the event that the CITY suspends the Agreement in lieu of termination, the minimum guarantee payment shall not be required of CONCESSIONAIRE from the period of the date of notification by CITY of the suspension of the Agreement, until normal operations are restored. The CITY shall return to the CONCESSIONAIRE a just portion of any minimum guarantee payment which may have been paid in advance for a month, or portion of a month which falls within the disability period.

18. ASSIGNMENT AND SUBLETTING

If the CONCESSIONAIRE employs an agent or a licensee member to perform the obligations pursuant to this Agreement, the CONCESSIONAIRE shall be directly liable to the CITY for an agent or licensee's performance of all terms and conditions of this Agreement. The agent and/or licensee of the CONCESSIONAIRE shall have all the same privileges extended to the CONCESSIONAIRE pursuant to this Agreement. Except as hereinabove set out in this Agreement, the premises may not be sublet in whole or part. The CONCESSIONAIRE shall not assign this Agreement without prior written consent of the CITY. Except if there is a merger or

a consolidation, the CONCESSIONAIRE shall not permit any transfer by the operation of law of the CONCESSIONAIRE's interest created by this Agreement without the CITY's prior written consent.

19. NOTICES - As used in this Agreement, “notice” includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, and appointment. No notice of the exercise of any option or election is required unless the provision giving the election or option expressly requires notice. Unless the provision of this Agreement on rent or other payment direct otherwise, rent or other payment shall be sent in the manner provided for giving notice.

A. Writing. All Notices must be in writing, provided that no writing other than the check or other instruments representing the payment itself need accompany the payment.

B. Delivery. Notice is considered given either (a) when delivered in person to the recipient named as below, or (b) on the date shown on the return receipt after deposit in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage and postal charges prepaid, addressed by name and address to the party or persons intended as follows:

Notice to CITY: City of Visalia
City Clerk
707 W. Acequia
Visalia, CA 93291

Copy to: City of Visalia

Airport Manager
9501 Airport Drive
Visalia, CA 93277

Notice to CONCESSIONAIRE: Enterprise Rent-a-car
General Manager/Vice President
199 N. Sunrise Ave
Roseville, CA 95661

Copy to: Enterprise Rent-a-car
Corporate Real Estate Dept.
600 Corporate Park Drive
St. Louis, MO 63105

C. Change of recipient or address. Either party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

D. Recipient named. Each recipient named must be an individual person. If more than one recipient is named, delivery of notice to any one such recipient is sufficient. If none of the recipients named in the latest designation of recipient is available for delivery in person, and if the notice addressed by mail to each recipient named in the latest designation of recipient is returned to the sender undelivered, notice shall be sufficient if sent by mail as above to the party as named in this Agreement, unless the name or identity of the party has changed as

permitted in this Agreement and proper notice of the change has been given, in which event the notice shall be sufficient if sent by mail as above to the party named in the latest designating party, and the notice is considered given when the first attempt to give notice was properly made.

20. NATIONAL EMERGENCY

In the event of any national emergency, where there is a curtailment, either by executive decree or legislative action, of the use of motor vehicles or airplanes by the general public, or a limitation of the supply of fuel available for general use, then the minimum guarantee provided for in Paragraph Five (5) shall not be required of the CONCESSIONAIRE for the period of that particular emergency.

21. BREACH BY CONCESSIONAIRE/TERMINATION

In the event of a breach by the CONCESSIONAIRE of any terms or conditions of this Agreement, except the nuisance provisions contained in Paragraph Three (3), and the breach is not cured within thirty (30) days after prior written notice has been given to the CONCESSIONAIRE by the CITY, the Agreement and privileges granted hereunder, shall be terminated, CONCESSIONAIRE shall immediately surrender possession of the premises granted by this Agreement.

22. ATTORNEY'S FEES

In the event that the CITY has to resort to legal action to enforce any of the provisions or to obtain restitution pursuant to this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees to be paid by the unsuccessful party as fixed by the Court.

23. DAMAGES

If CONCESSIONAIRE breaches this Agreement and/or abandons the premises before the expiration of its term, CITY shall have the right to recover damages from CONCESSIONAIRE as provided by the California Civil Code section 1951.2. The damages, that CITY may recover, shall include the value at the time of the award of the amount of unpaid rent for the balance of the term if this exceeds the amount of rental loss for the same period of time, and CONCESSIONAIRE proves that the rental loss could have been reasonably avoided. This clause shall not be construed to limit any right or remedy which CITY may become entitled to by reason of the action(s) or failure(s) to act by CONCESSIONAIRE.

24. WAIVER OF BREACH

The waiver by the CITY of any breach by the CONCESSIONAIRE of any provision of this Agreement shall not be deemed to be a waiver of such other provisions of this Agreement, or a waiver of any other prior or subsequent breach.

25. CORPORATE AUTHORITY

If the CONCESSIONAIRE is a corporation, each individual executing this Agreement on behalf of the corporation represents and warrants that he is duly authorized to execute and deliver this Agreement on behalf of the corporation, and that this Agreement is binding upon the corporation in accordance with its terms. Within thirty (30) days after the execution of this Agreement, the CONCESSIONAIRE shall deliver to the CITY a certified copy of a Resolution of the Board of Directors of the corporation authorizing or ratifying the execution of this Agreement.

26. APPLICABLE LAW

The CITY and the CONCESSIONAIRE shall be bound by the laws of the State of California in regards to all aspects of this Agreement.

27. VENUE

If either the CONCESSIONAIRE or the CITY initiates an action to enforce the terms of this Agreement, the parties agree that the venue shall be in the County of Tulare, State of California.

28. INCORPORATION OF PRIOR AGREEMENTS AND AMENDMENTS

This Agreement and the exhibits referenced and incorporated herein contain all the agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Agreement may be modified only in writing and shall be signed by the CITY and the CONCESSIONAIRE.

29. AGENT OF SERVICE OF PROCESS

If CONCESSIONAIRE is a foreign corporation, CONCESSIONAIRE shall file and shall keep on file with the CITY a designation of natural person residing in the State of California, giving name, residence and business address of it's agent for the purpose of service of process in any Court action between CONCESSIONAIRE and CITY arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process or other papers in any such action shall constitute valid service upon CONCESSIONAIRE; and it is further expressly agreed, covenanted and stipulated that if for any reason service of such process upon such agent is not possible, then in such event CONCESSIONAIRE may be personally served with such process out of this State, or may be served in any other manner provided by the statutes of the State of California, and that such service shall constitute valid service upon shall

constitute valid service upon CONCESSIONAIRE. It is further expressly agreed that CONCESSIONAIRE is amenable to the process so served, submits to the jurisdiction the Court so acquired, and waives any and all objection and protests thereto.

30. SEVERABILITY

The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provisions of this Agreement.

31. TIME IS OF THE ESSENCE

Time is hereby expressly declared to be of the essence of each and every provision of this Agreement, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

32. POSSESSORY INTEREST

The CONCESSIONAIRE recognizes and understands that this Concession Agreement may create a possessory interest subject to property taxation, and that the CONCESSIONAIRE may be subject to the payment of property taxes levied on such interest.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their respective and duly authorized officers, as of the day and year first above written.

ENTERPRISE RENT-A-CAR

Dated: _____, 2017

by: _____

Name _____

Title _____

CITY OF VISALIA

Dated: _____, 2017

by: _____
Michael Olmos, City Manager

Dated: _____, 2017

by: _____
Charlotte Dunn, Risk Management

Dated: _____, 2017

by: _____
Kenneth J. Richardson, City Attorney

Exhibit "A"
Description Demised Premises

Exhibit "B"
Description Vehicle Parking Area

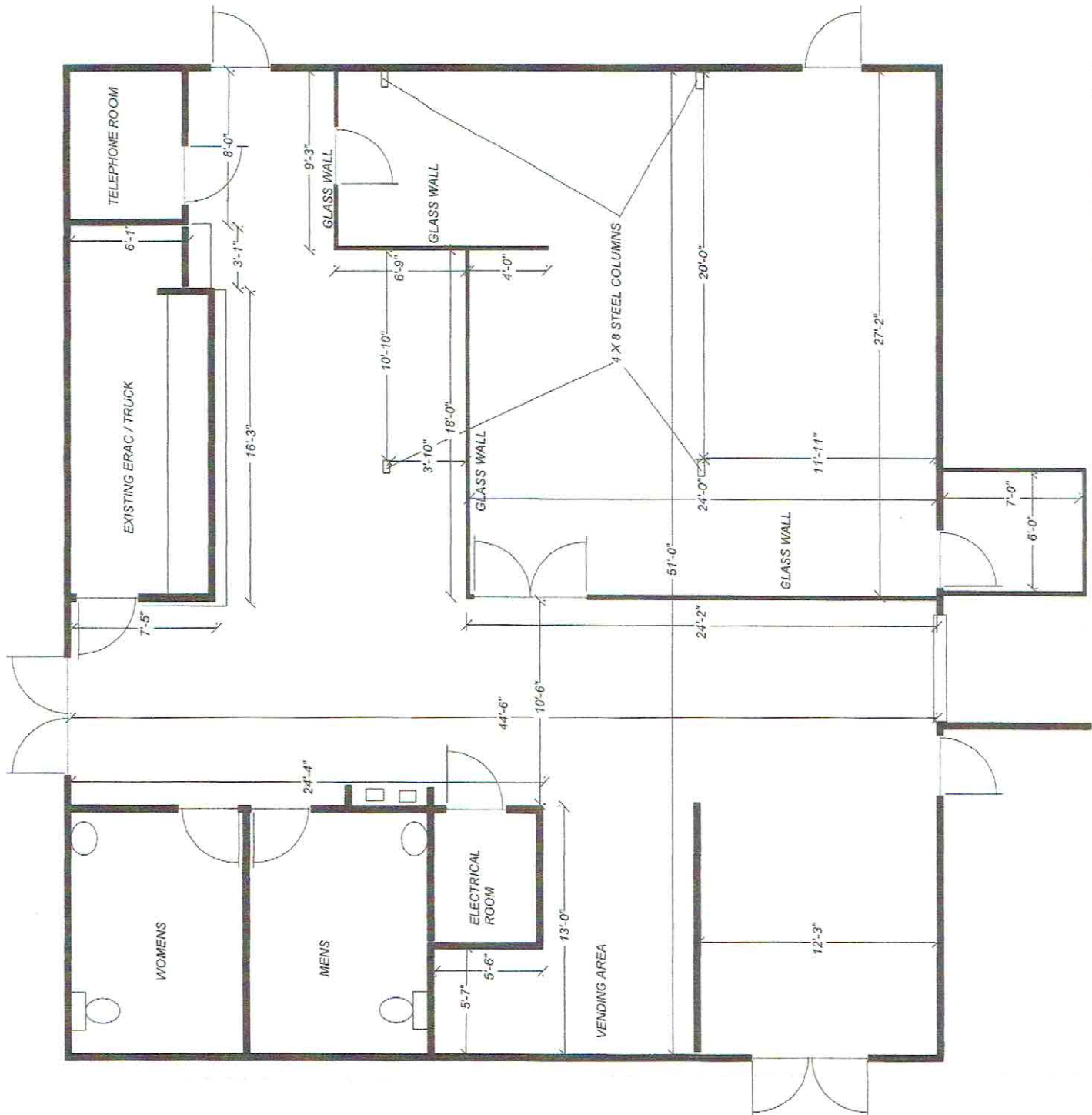


Exhibit "B"

Wash Rack

Terminal Building

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