



# JEFFERSON COUNTY, TEXAS

## PURCHASING DIVISION

1149 Pearl Street – First Floor  
Beaumont, Texas 77701  
409-835-8593

### ADDENDUM TO BID

Bid Number: IFB 09-061KJS

Bid Title: Automobile Rental Concessions

Bid Due: March 30, 2009

Addendum No.: 3

Issued (Date): March 13, 2009

**TO BIDDER:** This Addendum is an integral part of the bid package under consideration by you as a Bidder in connection with the subject matter herein identified. Jefferson County deems all sealed bids to have been proffered in recognition and consideration of the entire bid package – **including all addenda.** For purposes of clarification, **receipt of this present Addendum by a Bidder should be evidenced by returning it (signed) as part of the Bidder’s sealed bid proposal.** If the Bid Proposal has already been received by the Jefferson County Purchasing Department, Bidder should return this addendum in a separate sealed envelope, clearly marked with the Bid Title, Bid Number, and Opening Date and Time, as stated above.

Reason for Issuance of this addendum:

Clarification of IFB 09-061/KJS Sample Concession Agreement

**The information included herein is hereby incorporated into the documents of this present Bid matter and supersedes any conflicting documents or portion thereof previously issued.**

Receipt of this Addendum is hereby acknowledged by the undersigned Bidder:

ATTEST:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Authorized Signature (Bidder)

\_\_\_\_\_  
Title of Person Signing Above

\_\_\_\_\_  
Typed Name of Business or Individual

Approved by \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Address

**EXHIBIT A  
SAMPLE CONTRACT  
ACTUAL TERMS WILL BE NEGOTIATED UPON AWARD**

THE STATE OF TEXAS   )  
   )  
COUNTY OF JEFFERSON   )  
   )  
EXHIBIT A  
CONCESSION AGREEMENT

This Concession Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between Jefferson County, a political subdivision of the State of Texas (hereinafter referred to as "County") and \_\_\_\_\_ authorized to do business in the State of Texas (hereinafter called "Concessionaire"). The contract commences on the date of beneficial occupancy (DBO) as determined by the Airport manager and shall expire at the end of the month following thirty-six (36) months after the commencement date. The Airport Manager will provide confirmation of the date of beneficial occupancy to the concessionaire in writing no less than thirty (30) days prior to such date of beneficial occupancy. For the sake of other provisions contained herein, contract year shall refer to each twelve (12) month period beginning on DBO (or a subsequent anniversary date).

**WITNESSETH**

WHEREAS, County is the owner of the Southeast Texas Regional Airport, (hereinafter called "Airport") and, WHEREAS, Concessionaire is one of the four successful bidders,

NOW, THEREFORE, the parties for and in consideration of their mutual promises and covenants agrees as follows:

**ARTICLE I  
TERM**

The contract commences \_\_\_\_\_, 2009 and terminates April 30, 2012.

**ARTICLE II  
CONCESSION RIGHTS GRANTED**

County grants to Concessionaire the right to operate the concession at the Airport as shown in Exhibits "D" and "E". This concession shall be one of four similar concessions.

Concessionaire shall not use, operate or permit to be installed coin operated vending machines of any type or for any purpose within the concession areas. This concession is for an automobile rental business.

Concessionaire in its efforts to comply with the requirements applicable to its customers under the Payment Card Industry Data Security Standard, shall under no circumstances be required to use any network other than its own private network, to ensure that its customers' credit card information is not compromised.

**ARTICLE III  
PREMISES**

Concessionaire is authorized to occupy for the term of this contract and for the operation of the concession, the following areas:

(a) Counter and Administrative Area: One of four (4) Counter and administrative areas, consisting of approximately 192 square feet each, as shown on Exhibit D.

(b) Parking Areas: Concessionaire shall have the right to the exclusive use of the parking area for 36 spaces each as designated on Exhibit E, and described in section 8.1 of the IFB, attached hereto.

**ARTICLE IV  
EXCLUSIVE CONCESSIONS**

Concessionaire shall use the areas for purposes of providing rental car service or taking reservations for such services at other locations where automobile rental services are furnished by Concessionaire. Incident thereto, Concessionaire shall be entitled to sell personal accident insurance.

**ARTICLE V  
FEES, CHARGES AND RENTAL**

As consideration for County granting the concession rights hereinabove set forth, Concessionaire shall pay to County, on a monthly basis, 10% of the monthly gross revenue received by Concessionaire for the operation of the concession under this agreement but in no event shall the annual payment be less than \$20,000.00 or the minimum guarantee of \$\_\_\_\_\_ the 1st year, \$\_\_\_\_\_ 2nd year, \$\_\_\_\_\_ 3rd year, whichever is greater.

(a) During the contract, the term "gross revenue" shall mean the sums derived from time and mileage charges, after discounts, for the rental of automobiles hereunder without regard to the manner in which, or place in which, Concessionaire has received the order for the automobile and regardless as to whether the cars are returned to the airport or some other location; provided, however, "gross revenue" shall only include that portion of time and mileage charges which are actually credited to Concessionaire's Southeast Texas Regional Airport Operation for the rental of "foreign vehicles" at and from said Airport. "Foreign vehicles" are vehicles not assigned to (1) Concessionaire's Beaumont/Port Arthur fleet, or (2) in the case of Concessionaire which also operates rental car service at the City of Houston Airport, Concessionaire's Houston zone fleet. "Gross revenue" shall not include the amount of any Federal, State or Municipal sales or other similar taxes separately stated and collected from customers of Concessionaire now or hereinafter levied or imposed, nor any sums received as insurance or otherwise for damage to automobiles or other property of Concessionaire, or for loss, conversion or abandonment of such automobile, nor amounts paid by customers of Concessionaire separately billed as additional charges for waiver by Concessionaire of its rights to recover from customers for damages to the vehicles rented or as refueling reimbursement charges, nor any sums received by reason of Concessionaire's disposal of capital assets and/or trade fixtures. The Concessionaire shall have the right to conduct part of its operations on a credit basis provided, however, the risk of such operation shall be borne solely by the Concessionaire. The Concessionaire, for the purpose of its rentals, shall report both cash and credit of its monthly gross revenue statement.

(b) A charge for 192 square feet of counter and administrative space, at the rate of \$24.00 per square foot per annum and charge of \$275.00 per month for the parking space

shown on Exhibit E, and \$100.00 per month if a designated overflow parking lot is requested., as shown in Exhibits D and E, attached hereto.

(c) Rentals are payable on or before the 20<sup>th</sup> day following the end of each calendar month, throughout the term of this agreement. Concessionaire shall furnish the County a report for Concessionaire's gross revenue during the preceding calendar month, and shall simultaneously pay County 10% of gross revenue. At the close of the contract year, if the minimum guarantee has not been paid, the difference between what has been paid and the minimum guarantee shall be paid. In the event, at the close of the calendar year, the concessionaire has made annual payments in excess of the concession fees required during said calendar year, the concessionaire shall be entitled to a refund or credit towards future fees incurred in the amount of the excess. Such refund or credit shall be due to the concessionaire no later than thirty (30) days after concessionaire's written notice to the County of such excess.

All past due rentals and fees shall bear interest at the rate of 18 percent per annum from the date on which the same is due, until paid.

(d) All reports of gross revenue and payment of sum due shall be delivered to the Airport Manager at the address provided in Article XX, or to any person or to any other place as may be hereinafter designated, in writing, by the County.

#### **ARTICLE VI ABATEMENT OF MAG**

If during the term of this agreement, the number of deplaning passengers for any two consecutive months is less than 85% of the number of deplaning passengers for the corresponding two months of the immediate preceding contract year or of the first contract year a portion of the MAG shall be abated. The amount of the abatement during those months shall be equal to one-twelfth of the Minimum Annual Guarantee for each of those months. During the period of abatement, rental car companies will pay 10% of revenue earned based upon the actual activity. The MAG abatement will cease in the first month that the number of deplaning passengers equals or exceeds 85% of deplaning passengers for the corresponding two months of the immediate preceding contract year or of the first contract year.

#### **ARTICLE VII ENTRY BY CONCESSIONAIRE**

Concessionaire shall keep his area in good repair and operating condition at its sole cost and expense. Title to all furniture, furnishings, removable fixtures and supplies shall at all times, during the term of this agreement, remain in Concessionaire. Upon the expiration or termination of this agreement, Concessionaire shall remove from the concession area removable property belonging to the Concessionaire within 10 days. Concessionaire shall repair all damage done to the concession area resulting from the removal of such property.

#### **ARTICLE VIII SERVICE STANDARDS**

Concessionaire agrees:

(a) To furnish good, prompt, and efficient service, adequate to meet all reasonable demands for automobile rental services at the airport on a fair and reasonable basis.

(b) Concessionaire may install, as a facility hereunder, in the premises or at such other place as the parties may agree, a direct line telephone to the office of the nearest office of Concessionaire for the purpose of supplying automobile rental service to airport patrons during periods when other automobile rental facilities are closed.

(c) Personnel performing services hereunder shall be uniformed, neat and courteous; and Concessionaire shall require its agents, servants or employees to conduct business in a business-like manner and shall not solicit business outside the space assigned except through the use of signs constructed and maintained in accordance with this agreement. Personnel shall park personal vehicles in the Employee Lot or the Concessionaires Lot only.

(d) Concessionaire shall keep or cause to be kept true, accurate and complete records of business conduct hereunder. Concessionaire agrees that the County shall have the right through its duly appointed auditor to examine such records upon prior written notice of not less than five (5) business days for determining the accuracy of such reports. Concessionaire shall keep duplicate invoices of all transactions.

(e) Concessionaire shall pay when due all expenses in connection with the use of the premises hereunder, including without limitation, taxes, permit fees, license fees, and assessments lawfully levied or assessed upon the premises for improvements at any time.

(f) Concessionaire shall keep the premises and all furniture, fixtures, and equipment installed thereon in good order, condition, and repair, reasonable wear and tear and damage by fire and other casualty expected.

## **ARTICLE IX PROHIBITED ACTS**

Concessionaire shall not:

(a) Commit or allow nuisance in its area or at the airport.

(b) Cause or permit to be caused any unusual, noxious, or objectionable smokes, gases, vapors, fumes or odors.

(c) Use the concession area or any part thereof for sleeping purposes.

(d) Interfere with the effectiveness or accessibility of utility heating, ventilating or air-conditioning systems, or interfere with the access and passage to the concession areas where the public area is adjacent thereto.

## **ARTICLE X NON-LIABILITY OF COUNTY**

The County shall not be liable for any acts or omissions of Concessionaire or an independent contractor. Nor shall the County be liable for any loss of or damage to any personal property, fixtures, or equipment of Concessionaire installed or stored at the airport.

Concessionaire covenants and agrees to hold County free and harmless from loss from each and every claim and demand of whatever nature, made on behalf of or by any third person or persons, for any wrongful act or omission on the part of the Lessee, his agents, servant, officers, directors, and employees, and from all loss and damages to any third person or persons by reason of such acts or omissions.

**ARTICLE XI  
UNAUTHORIZED SOLICITATION**

County hereby agrees that it shall protect the rights granted to Concessionaire under this agreement and shall take whatever steps are lawfully allowed to prevent the solicitation or transaction of automobile rental business at the airport by any person or organization other than Concessionaire or other automobile rental concessionaire who have entered into similar agreements with this County. County will not allow a non-concessionaire to install a direct telephone line in competition with Concessionaire.

**ARTICLE XII  
MOST FAVORED NATIONS**

In the event that any contract granted by the County to any other automobile rental operator shall contain any terms and conditions more favorable to such operator than the terms and conditions herein described (other than the number and location of allocated parking spaces and the location of the concession area, etc.), then, at the option of the Concessionaire, this agreement shall be amended to include such more favorable terms and any offsetting burdens that may be imposed on any such other Concessionaire. The intent of this provision is to ensure that Concessionaire will be able to compete on terms as equal as possible with all other automobile rental operators and to ensure that no other Concessionaire shall enjoy any rights or privileges more favorable to such Concessionaire than those enjoyed by the Concessionaire herein.

**ARTICLE XIII  
INSURANCE**

Concessionaire shall obtain public liability insurance for personal injury/death growing out of any one accident or other cause in the minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000) for one (1) person and Three Hundred Thousand and No/100 Dollars (\$300,000) for two (2) or more persons; and in addition, shall provide property damage liability insurance in a minimum sum of Three Hundred Thousand and No/100 Dollars (\$300,000) for property damage growing out of any accident or other cause. Concessionaire shall maintain the insurance with insurance underwriters authorized to do business in the State of Texas satisfactory to the County. All policies shall name County, its officer, servant, agents, and employees as additional insured. Concessionaire shall furnish County with a certificate from the insurance carrier showing such insurance to be in full force and effect or shall deposit with County copies of said policies. Each policy or certificate shall contain a provision that written notice of cancellation or any other material change in the policy by the insured shall be delivered to County, thirty (30) days in advance of the effective date thereof.

Statutory, and Bodily Injury by Accident: \$100,000 each employee. Bodily Injury by Disease: \$500,000 policy limit \$100,000 each employee. Jefferson County shall be named as "additional insured" on workers' compensation policy.

**ARTICLE XIV  
TERMINATION BY COUNTY**

County shall have the right upon ten (10) days prior written notice to Concessionaire to cancel this agreement in its entirety, upon or after the happening of one or more of the following events, if said event shall then be continuing.

(a) Concessionaire shall voluntarily abandon and discontinue its automobile rental service at the airport for a period of thirty (30) consecutive days.

(b) Concessionaire shall fail to pay the fees or other money payments required by instrument and such failure shall not be remedied within thirty (30) days following receipt by Concessionaire of written demand from County to do so.

(c) Concessionaire shall default in fulfilling any of the terms, covenants or conditions to be fulfilled by it hereunder and shall fail to commence with due diligence the remedying of said default within thirty (30) days following receipt by Concessionaire of written demand from County to do so.

In the event of any such cancellation or termination of this agreement by County for any reason specified above, Concessionaire shall have ten (10) days within which to remove all trade fixtures and personal property installed in or upon the demised premises by Concessionaire.

## **ARTICLE XV TERMINATION BY CONCESSIONAIRE**

Concessionaire shall have the right, upon written notice to County, to terminate or suspend this agreement upon the happening of one or more of the following events, if said event or events shall then be continuing:

(a) The issuance by any court of competent jurisdiction of a permanent injunction, order, or decree preventing or restraining the use by Concessionaire of all or part thereof which may be used by Concessionaire and which is necessary for Concessionaire's operation on the airport.

(b) County shall default in fulfilling of the terms, covenants or conditions to be fulfilled by it under this agreement and shall fail to cure said default within thirty (30) days following receipt of written demand from Concessionaire to do so.

(c) All or a material part of the airport or airport facilities shall be destroyed by fire, explosion, earthquake, or casualty, or acts of God or the public enemy.

(d) The United States Government or any of its agencies shall occupy the airport or any substantial part thereof to such an extent as to interfere materially with Concessionaire's operations for a period of thirty (30) consecutive days or more.

## **ARTICLE XVI VIEW OF CONCESSION**

County will not obstruct the view of the public to Concessionaire's counter area.

## **ARTICLE XVII ASSIGNMENT AND SUBLETTING**

It is expressly agreed and understood that no assignments or subletting of duties or rights under this agreement may be accomplished without prior written consent and approval of the County. Assignment of duties or rights without written approval and County consent will only be allowed if such assignment is to an affiliate of Concessionaire's Parent Company (operating as an affiliate at the time of this agreement).

**ARTICLE XVIII  
APPROVAL**

Concessionaire has examined and approved the facilities Concessionaire will occupy.

**ARTICLE XIX  
LAWS OF TEXAS APPLY**

Concession agreement and every question arising hereunder shall be constructed and determined according to the laws of Texas.

**ARTICLE XX  
REMEDIES**

Remedies are non-exclusive. All remedies provided in this agreement shall be deemed cumulative and additional and not in lieu of or exclusive to each other or of any other remedy available to the parties at law or in equity.

**ARTICLE XXI  
NOTICES**

Notices under this agreement shall be delivered to the Southeast Texas Regional Airport Manager at 4875 Parker Drive, Beaumont, Texas 77705 and the Concessionaire at

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**ARTICLE XXII  
FORCE MAJEURE**

In computing the time within which either party is obligated to cure any default as required by this agreement, there shall be excluded all delays due to strikes, lockouts, acts of God, massive civil disobedience, the public enemy or by order of direction or other interference by any municipal, state, federal or other governmental department, board or commission having jurisdiction, or other causes beyond Concessionaire's control.

**ARTICLE XXIII  
WAIVER**

Any waiver of any breach of covenants herein contained to be kept and performed by Concessionaire or County shall not be deemed or considered as a continuing waiver and shall not be operated to bar or prevent Concessionaire or County from declaring a forfeiture for any succeeding breach either of the same, or a different condition or covenant.

**ARTICLE XXIV  
NON-DISCRIMINATION**

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted



contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

**ARTICLE XXV  
AFFIRMATIVE ACTION PROGRAM**

The Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR, Part 152, Subpart E. The Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Concessionaire assures that it will require that its covered sub-organizations provide assurance to the County that they similarly will undertake affirmative action programs and that they will require assurance from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

**ARTICLE XXVI  
GOOD FAITH EFFORTS**

During the term herein, concessionaire agrees to make good faith efforts to achieve the County's goals related to DBE, MBE and WBE participation in concessionaire's concession, contracting and purchasing activities under this agreement. The County hereby agrees that in approving a concessionaire's own DBE, MBE and WBE Program, the County avers that the concessionaire is in compliance with the County's goals contained herein, subject only to the concessionaire's compliance with its own DBE, MBE and WBE program. Concessionaire further agrees to make good faith efforts to maintain the DBE, MBE and WBE status certification eligibility of those DBE, MBE and WBE firms associated with its accepted DBE, MBE and WBE policy. For the purpose of this Article, "good faith efforts" are defined as proactive initiatives that, given all relevant factors, concessionaire might reasonably be expected to actively pursue in connection with its contracting and procurement activities in an attempt to meet the DBE, MBE and WBE goals pursuant to this agreement."

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized officers the day and year first above written.

JEFFERSON COUNTY, TEXAS LESSOR

ATTEST:

By: \_\_\_\_\_  
Ron Walker., County Judge

\_\_\_\_\_  
Carolyn Guidry, County Clerk

LESSEE

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