

ARIZONA SUPREME COURT

STATE OF ARIZONA, ex rel.)	Supreme Court No. CV-20-0019-SA
MARK BRNOVICH, Attorney)	
General)	
Petitioner)	
)	
v.)	
)	
CITY OF PHOENIX, Arizona)	
Respondent.)	
_____)	

**AMICUS BRIEF OF
PHOENIX-MESA GATEWAY AIRPORT AUTHORITY AND THE
ARIZONA AIRPORTS ASSOCIATION
Filed with the Consent of All Parties**

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INTRODUCTION

This case presents an issue of vital interest to the 67 public use airports in Arizona: Whether the fees that airports charge to service providers for the right to make commercial use of airport property are subject to Arizona Constitution article IX, § 25 (“Section 25”). The Attorney General has opined that the City of Phoenix’s Transportation Network Company (“TNC”) Fee “very likely” violates Section 25 and seeks a ruling from this Court confirming that opinion.¹

Phoenix-Mesa Gateway Airport Authority (“Gateway Airport”) and the Arizona Airports Association (“AzAA”) (collectively, “Arizona Airports Amici”) join with the City of Phoenix to urge this Court to reject the Attorney General’s position and confirm that Section 25 does not apply to access fees, user fees, or similar fees and charges that airports charge to commercial entities for the right to use airport property. In assessing such fees and charges, airport proprietors are acting in the same proprietary capacity as does any property owner when charging rents, license fees, access fees, or similar charges to those wishing to use their property.

¹ All parties have consented in writing to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no person, other than the *amici curiae*, its members, or their counsel, contributed money that was intended to fund the preparation or submission of this brief. AzAA notes that the City of Phoenix is a member of AzAA but that it did not make any special contributions for the preparation of this brief.

The funds raised by an airport's fees and charges are used *only* to cover the operating and capital costs of the airport and may not, as a matter of federal law, be used for any non-airport purpose. Such charges are an exercise of proprietary power, granted and protected by Arizona Constitution article XIII, § 5. Nothing in the plain language of Section 25, or the legislative history of Proposition 126, supports the view that Section 25 applies to fees that local governments, as airport proprietors, charge for the right to use airport property.

The Arizona Airports Amici submit this brief pursuant to Rule 16 to provide more background and context for why and how airports exercise their proprietary powers, including the federal laws that effectively require that airports charge user fees to fund airport operating and capital needs. Fundamentally, the Arizona Airports Amici urge this Court to recognize the critical distinction between (1) user and access fees charged by airport proprietors in their proprietary capacity to cover airport operating and capital costs, which are *not* subject to Section 25, and (2) sales taxes, privilege taxes, and similar transaction-based taxes and fees imposed on the privilege of providing services in the State in order to raise general government revenue, which *are* subject to Section 25.

By making that distinction clear, the Court would fully implement the purpose of Section 25 by limiting the ability of state and local governments to increase the tax burden on service providers *and* to fully implement the purpose of article XIII,

§ 5, by preserving the proprietary authority of airport operators to assess user and access fees on commercial users of airport property in order to pay airport operating and capital costs. Adopting the Attorney General's position, however, would jeopardize the ability of airport proprietors to cover necessary expenses and continue to provide the level of access to air travel Arizonans expect. Accordingly, the Court should deny the Attorney General's request and confirm the proprietary authority of airports to meet airport expenses by establishing appropriate fees and charges for the use of airport property.

INTEREST OF THE AMICI

Gateway Airport is owned and operated by the Phoenix-Mesa Gateway Airport Authority, a joint powers authority pursuant to Ariz. Rev. Stat. §§ 28-8521, *et seq.* The current members of the Authority are the Town of Gilbert, the City of Mesa, the Town of Queen Creek, the Gila River Indian Community, the City of Phoenix, and the City of Apache Junction. The Authority has the broad power to operate Gateway Airport and assess rents, fees, and other charges as needed to operate the Airport. A.R.S. § 28-8527. The Authority does not have any authority to impose taxes or impose fees or charges unrelated to the Airport.

Gateway Airport is located on the site of former Williams Air Force Base in Mesa, Arizona and provides commercial passenger service and general aviation service to residents of the Phoenix-Mesa area. As detailed below, Gateway Airport

charges license and other user fees to entities that use Gateway Airport, including TNCs, such as Uber and Lyft. Gateway Airport depends on the revenue generated by those access and user fees to pay its operating and capital costs.

AzAA was formed in 1979 to bring together the representatives of public and private airports and others interested in the general benefits of aviation, in order to provide information, expertise and support to all those in Arizona's aviation industry. AzAA has approximately 300 members. AzAA's airport members represent the full range of airport types in Arizona, from large commercial service airports like Phoenix Sky Harbor and Tucson International, to small general aviation airports serving tribal and rural communities. All of the Arizona airports that offer scheduled commercial passenger service are AzAA members, including Gateway Airport. AzAA members charge a variety of rents, access fees, and user fees to airport users to fund airport operating and capital costs, including user fees for TNCs.

The Arizona Airports Amici have a profound interest in this case because the direct and indirect consequences of finding that the City of Phoenix's TNC Fee at Phoenix Sky Harbor International Airport is subject to Section 25 presents a fundamental threat to the way that publicly owned airports fund their operating and capital needs. Gateway Airport charges a similar TNC fee, as do other AzAA members. Moreover, Arizona airports commonly charge user fees to service providers who use airport property. Those fees are for the express and limited

purpose of covering the operating and capital costs of each airport. Indeed, other than limited grant funds from the FAA and ADOT, charging users for the use of airport property and resources is the *only* way airport proprietors can raise enough revenue to pay the operating and capital costs of their airport.

By conflating the TNC Fee, and by extension similar airport user and access fees, with the kind of sales taxes on services addressed by Section 25, as the Attorney General requests, airport proprietors would be deprived of the ability to adequately fund the operation and improvement of their airports. AzAA and Gateway Airport submit this brief pursuant to Rule 16 to explain to the Court the broader context of how airports fund their operations in order to highlight that the TNC Fee at issue in this case, and by extension the kinds of user and access fees Arizona airports use to fund their operating and capital costs, are permitted by article XIII, § 5 as part of airports' proprietary authority to charge fees for the use of airport property and are not, in any event, subject to Section 25 under its plain language.

ARGUMENT

I. ARIZONA CONSTITUTION ARTICLE XIII, § 5 GRANTS LOCAL GOVERNMENTS THE AUTHORITY TO EXERCISE PROPRIETARY POWERS TO THE SAME EXTENT AS A PRIVATE ENTITY, INCLUDING CHARGING FOR THE USE OF PROPERTY, LIKE THE TNC FEE

The Arizona Constitution empowers local governments to engage in the same proprietary activities as a private corporation:

Every municipal corporation within this state shall have the right to engage in any business or enterprise which may be engaged in by a person, firm, or corporation by virtue of a franchise from said municipal corporation.

Article XIII, § 5. Among the proprietary powers granted by article XIII, § 5 is the power to charge a fee for the use of property or services provided by the proprietary entity. *E.g., Tucson v. Sims*, 39 Ariz. 168, 177 (1931) (affirming power of municipal water company to charge market rates for water sold beyond municipal borders); *see also Local 266, Int’l Bhd. of Elec. Workers, A.F. of L. v. Salt River Project Agric. Improvement & Power Dist.*, 78 Ariz. 30, 39 (1954) (“We have held that when a government entity functions in a proprietary nature that it should be permitted to perform it in a manner as efficiently as would a private person.”).

A. Airports Are Proprietary Enterprises That Exercise Their Proprietary Powers To Charge User Fees To Fund Airport Operating And Capital Needs

Airports are proprietary enterprises operated by public entities. *See Phx. Newspapers, Inc. v. Tucson Airport Auth.*, 842 F. Supp. 381, 385 (D. Ariz. 1993). The need to preserve airport operators’ proprietary power to charge airport users appropriate fees is enshrined in federal law. The City of Phoenix and Amici Airports Council International – North America, American Association of Airport Executives, and Airlines for America (collectively, “Aviation Amici”) have explained in detail the federal legal framework that defines and limits how airport

proprietors may finance their operations, and it is unnecessary to repeat that discussion here. It is important, however, to emphasize three critical points:

First, airport proprietors have an obligation to be as financially self-sufficient as possible and to raise enough money from rents, fees, and other charges on airport users to cover airport operating and capital needs. 49 U.S.C. § 47107(a)(13). Local budget realities limit the ability of local governments to subsidize airports from non-airport sources. Moreover, many airports, including Gateway Airport, are independent authorities or entities with no taxing authority and no means of raising revenue other than through rents, fees, and charges on airport users.²

Second, all revenues raised by an airport proprietor must be spent for airport purposes, and only airport purposes, which are generally defined as the operating and capital expenses of the airport. *Id.* §§ 47107(b), 47133(a). Federal law imposes specific restrictions on the ability of airport proprietors to transfer funds to other government entities for non-airport purposes. *Id.* § 47107(k)(2). Importantly for

² Airports can supplement operating revenue with limited FAA grants for specific capital projects. 49 U.S.C. § 47107. Similar grants from the Arizona Department of Transportation are also available for specific projects. *See Airport Capital Improvement Program*, Ariz. Dep't of Transp., <https://azdot.gov/planning/airport-development/development-and-planning/airport-capital-improvement-program> (last visited Feb. 27, 2020). Some commercial passenger service airports may impose a Passenger Facility Charge, which is limited by statute to no more than \$4.50 per enplaning passenger, and that revenue may be spent only on specific airport projects as allowed by federal law. 49 U.S.C. § 40117.

this case, federal law requires airport proprietors to use fees and charges like the TNC Fee exclusively for airport purposes by prohibiting airport proprietors from “levy[ing] or collect[ing] a tax, fee, or charge . . . exclusively upon any business located at a commercial service airport or operating as a permittee of such airport *other than a tax, fee, or charge wholly utilized for airport or aeronautical purposes.*” *Id.* § 40116(d)(2)(A)(iv) (emphasis added).

Third, the FAA requires that airport proprietors charge non-aeronautical entities, such as ground transportation providers, fair market value for their use of airport facilities. Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696, 7721 (Feb. 16, 1999) (“[T]he FAA interprets the self-sustaining assurance to require that the airport receive fair market value for the provision of nonaeronautical facilities and services, to the extent practicable considering the circumstances at the airport.”).

In order to ensure that airports can meet those obligations, Congress has been careful to preserve the proprietary powers of airport operators to charge rents and other user fees and charges even while it simultaneously limited state and local governmental powers with respect to airlines and airport proprietors. For example, in 1979, Congress enacted the Airline Deregulation Act, which preempted state and local governments from passing laws that “related to a price, route, or service of an air carrier” 49 U.S.C. § 41713(b)(1). But, Congress expressly preserved the

authority of state and local governments to “carry[] out [their] proprietary powers and rights” with respect to the operation of airports. *Id.* § 41713(b)(3); *see also id.* § 40116(d)(2)(A)(iv) (preserving power to charge user fees to non-aeronautical users if proceeds are used for airport purposes).

This legal framework makes airports the functional financial equivalent of a private corporation that must cover its expenses by selling its product or services. That is particularly true for airports like Gateway Airport that lack any independent taxation authority and have no source of revenue other than revenues generated from airport operations. Depriving airport proprietors of the ability to generate revenue from commercial use of airport property would deprive them of the ability to generate the funds needed to operate and maintain the airport, and to support the hundreds of thousands of Arizona jobs that depend on airports and the economic activity they generate. More fundamentally, depriving airport operators of the proprietary power to charge user fees would deny airports the proprietary powers granted in article XIII, § 5.

B. Like Any Property Owner, Airports Charge Access And User Fees For The Use Of Airport Property

Article XIII, § 5 guarantees local governments the same rights and powers to own and operate an enterprise as any private entity. A private entity can own and operate an airport and charge users for the right to use that airport. Similarly, a private entity can impose charges on individuals and businesses that use that entity’s

property, or a private entity may condition the use of its land or property on the payment of a fee and other limitations. For example, private property owners, such as commercial real estate developers, rent their property to tenants, enter into exclusive and non-exclusive license agreements for the use of their property, charge for easements over their property, and otherwise charge others for the right to make use of their property for commercial services, including service providers.

Because private entities can charge for the use of property, article XIII, § 5 preserves those same powers for government entities that operate airports in a proprietary capacity. The TNC Fee at issue in this case, and similar user fees that airport proprietors charge airport users for the use of airport property are an exercise of proprietary authority permitted by article XIII, § 5.

Airport proprietors raise revenue by charging users for the use of airport property based on the burden imposed by that user and the benefit to that user of the airport. These user fees have been in effect for decades, and airports adopt new fees as new types of entities make use of airport property. *E.g. Alamo Rent-A-Car v. Sarasota-Manatee Airport Auth.*, 825 F.2d 367 (11th Cir. 1987) (affirming newly adopted user fee to off-airport rental car companies). Common user fees include:

- Building and ground rents or other charges for the use of airport facilities such as terminal space, hangars, and other airport property;
- Rent and other charges to concessionaires such as restaurants, gift shops, and other entities providing goods and services to airport patrons;
- Landing fees paid by aircraft operators;

- Fuel flowage fees paid by the commercial entities that sell aviation fuel;
- Fees for taxis, hotel and courtesy shuttles, TNCs, limousines, off-airport rental companies, and other ground transportation providers;
- Tie-down fees for the use of aircraft parking spots; and
- Parking fees for automobile parking.

Different airports use different mixes of these, and similar, fees and charges based on the nature of operations at each airport, the financial needs of each airport, and the strategic goals of each airport. For example, Gateway Airport does not charge traditional rent for airline use of terminal space, but charges airlines a per-flight fee, based on their actual use of the terminal. Regardless of the mix of fees and charges employed, however, airport proprietors set their fees and charges in a manner designed to cover the operating and capital needs of the airport and to distribute the burden of those fees equitably among airport users.

Airports charge those fees specifically for the right to use airport property, in the same way that the owner of a commercial shopping center charges tenants and licensees for the right to conduct business on its property. Like the permit agreement between the City of Phoenix and TNCs, the Terminal Ground Transportation License Agreement between Gateway Airport and all ground transportation providers establishes that the license fee is based on the use of Gateway Airport property:

WHEREAS, PMGAA has the right to lease, license and grant the use of property and facilities on the Airport and

has full power and authority to enter into this Agreement in respect thereof; and

WHEREAS, PMGAA desires Licensee's services as the operator of a commercial [ground transportation] business from and in proximity to the Airport's airline passenger terminal ("Terminal"), is willing to make space available for use by Licensee in connection therewith, and has deemed Licensee qualified to perform said services, and Licensee desires to perform and provide said services;

The License therefore

grants to Licensee, for the term and under the conditions herein provided, a non-exclusive and revocable right to enter upon and use the Airport (pursuant to the provisions of SECTION 30 herein) for the privilege and purpose of conducting its business as a commercial [ground transportation] provider from the Terminal

(Appendix at 31)

By their express terms, the fees Gateway Airport and other airport proprietors charge TNCs and other ground transportation providers, as well as other airport users, are license fees for the use of airport property. More fundamentally, those license fees are an exercise of proprietary power protected by Article XIII, 5.

C. Section 25 Does Not Limit The Powers Granted In Article XIII, § 5

As a matter of constitutional construction, the Court must seek to harmonize Section 25 and article XIII, § 5 to avoid apparent conflict. *State ex rel. Nelson v. Jordan*, 104 Ariz. 193, 196 (1969) ("[W]here . . . separate parts of a constitution are seemingly in conflict, it is the duty of the court to harmonize both so that the constitution is a consistent workable whole."). That task is readily accomplished by

recognizing that Section 25 does not apply to fees assessed when a government is acting in its proprietary capacity.

First, nothing on the face of Section 25 purports to limit the scope of article XIII, § 5. Section 25, and Proposition 126 as a whole, is utterly silent regarding proprietary powers, or the ability to charge rents, license fees, or other fees for the use of property. Section 25 merely limits the authority of government entities to impose or increase the specified taxes or transaction-based fees on service providers.

To be clear, the Arizona Airports Amici understand that if a local government with taxing authority were to adopt a city-wide tax on, for example, the sale of delivery services, that tax would appear to be subject to Section 25, even if it applied to companies making deliveries to an airport. In that instance, the local government would be exercising its governmental taxing power. But, when a local government acts in its proprietary capacity to assess an access or user fee as a condition of using airport property, it is acting within the scope of article XIII, § 5 and not within the scope of Section 25. Nothing in Section 25, or Proposition 126, suggest that Section 25 applies to the kinds of access or user fees at issue here, which are akin to the same kinds of charges private property owners impose.

Second, it is clear that the voters did not intend Section 25 to limit the authority granted in article XIII, § 5. There is no language in Section 25 that refers, directly or indirectly, to article XIII, § 5. Moreover, the authors of Proposition 126,

and the voters who approved it, knew how to assure that Section 25 would limit other constitutional authority: Section 3 of Proposition 126 specifically provides that Section 25 *does* limit the powers granted in Arizona Constitution article IX, § 6.³ The decision to limit one grant of constitutional authority but not any other demonstrates that Section 25 was not intended to limit, or even apply to, actions of a proprietary nature, such as the TNC Fee and other user fees adopted by airports, that are permitted by article XIII, § 5.

Third, recognizing that Section 25 preserves the ability of governments to charge user and access fees when acting in a proprietary capacity is consistent with the clear intent of Section 25: to limit governments' future taxation power for general revenue raising purposes. *See* Appendix to Response to Petition for Special Action Vol. 1 ("Response App.") at 27-28 (Ariz. 2018 General Election Publicity Pamphlet).

A user fee or access fee to recover costs associated with providing a specific facility does not raise the kinds of concerns of runaway taxation or runaway government in general that underlaid the voters' approval of Section 25. There is simply no evidence that the voters intended to change the long-enshrined

³ Arizona Constitution article IX, § 6 authorizes local governments to impose certain taxes, assessments, and special taxes. It does not address the kinds of proprietary fees at issue in this case, and is not material to the determination of this case.

constitutional authority for governments to act in a proprietary capacity with fewer limitations than when acting in a governmental capacity.

II. THE TNC FEE IS NOT A TAX OR OTHER TRANSACTION-BASED FEE FOR THE PRIVILEGE TO ENGAGE IN A SERVICE SUBJECT TO SECTION 25

The City of Phoenix and other amici have made comprehensive arguments in defense of the TNC Fee at issue in this case, and by extension similar fees charged to other airport users. To supplement those arguments, the Arizona Airports Amici will focus on an overarching error in the Attorney General’s analysis: his failure to follow this Court’s decision in *Saban Rent-a-Car LLC v. Arizona Department of Revenue*, which requires a careful analysis of the circumstances or events which trigger the application of a specific tax to determine if the tax or charge is covered by the relevant constitutional provision. 246 Ariz. 89, 99 ¶ 39 (2019).

The Attorney General did not engage in that careful analysis. Instead, he relied on a broad reading of Section 25, and in particular of the term “transaction-based,” to apply Section 25 to *any* fee that applies to *any* event, so long as it connected in some way with a transaction between a service provider and its customer. But that logic has been foreclosed by *Saban* and, further, the Attorney General’s reading is inconsistent with the actual language of Section 25 and the stated intent of its proponents.

A. Because the TNC Fee Is Triggered By The Use Of Property And Not A Sale Of A Service, Section 25 Does Not Apply

In *Saban*, the Petitioner argued that the phrase “relating to [the] . . . operation or use of vehicles” in a constitutional provision prohibiting diversion of auto registration fees and fuel taxes for use of highways for non-roadway purposes encompassed a surcharge on car rentals. *Id.* at 95 ¶ 20. The Court of Appeals held, and the Respondents agreed, that the anti-diversion provision was limited to “a tax or fee that is a prerequisite to, or triggered by, the legal operation or use of a vehicle” on public roads. *Id.* at 96-97 ¶ 27. Based on a careful examination of the history and purpose of the provision, the Court affirmed the narrower construction of “related to” adopted by the Court of Appeals and urged by the respondents. In reaching that holding, the Court recognized a rule of construction that is critical to the proper resolution of this case: that even a term that on its face is broad on its face, such as “related to,” must be construed precisely in view of the circumstances that “trigger” the payment of the tax or charge at issue. *Id.* at 97-98 ¶¶ 32-34.

Applying that principle, the Court in *Saban* construed the anti-diversion provision precisely to limit its scope to the kinds of road user fees and taxes that were levied specifically as a precondition to using public roads. As a result, a kind of general privilege tax (car rental surcharge) on car rental income was held *not* to be the kind of road user fee covered by the anti-diversion provision because the

surcharge was triggered by the act of renting a car, not imposed as a condition of using roads.

That careful and precise approach is consistent with how Arizona courts have long considered whether constitutional restrictions of the power of taxation apply to a specific government charge. *See Biggs v. Betlach*, 243 Ariz. 256, 260-61 ¶¶ 18-24 (2017) (applying three-part test from *May v. McNally*, 203 Ariz. 425, 430-31 ¶ 24 (2002), to determine whether an assessment on hospitals was a tax or a fee); *see also Jachimek v. State*, 205 Ariz. 632, 636-37 ¶¶ 13-22 (App. 2003) (same, regarding a fee for pawnbrokers filing required forms with police). The focus of the analysis in all of these cases is on whether the circumstances that trigger payment of the charge at issue fall within the intended purpose of the constitutional provision.

Applying *Saban* to determine whether Section 25 applies to the TNC Fee, therefore, requires the Court to consider whether the circumstances that trigger payment of the TNC Fee are the same circumstances that would trigger the payment of a “transaction-based . . . fee” for the sale of services to which Section 25 applies. The Attorney General did not perform that analysis. Importantly, the Attorney General did not consider that the City of Phoenix’s express intent in adopting the TNC Fee was to condition use of airport property on the payment of an appropriate fee to help defray the operating and capital costs of the airport. The intent was not to impose a tax or fee on the privilege of providing a service, and certainly not to

raise revenue that can be used for purposes unrelated to the use of airport property. Careful analysis of the language and intent of Section 25, and the plain facts of the TNC Fee, make clear that the TNC Fee falls outside the scope of Section 25 because Section 25 applies to charges that are triggered by the sale of services and the TNC Fee is triggered by the use of property, which are not covered by Section 25.

B. The Plain Language of Section 25 Excludes User and Access Fees Like the City of Phoenix’s TNC Fee

The plain language of Section 25 makes manifest that Section 25 does not apply to user and access fees like the TNC Fee. In determining the meaning of a constitutional provision, the Court’s objective is to “effectuate the electorate’s intent in adopting [the constitutional provision]” based initially, if possible, on the plain language of the provision. *Saban*, 246 Ariz. at 95 ¶ 21. The Court will not apply “fine semantic or grammatical distinctions” or similar “legalistic” parsing that “may lead us to results quite different from the objectives which the framers intended to accomplish.” *Id.* (quoting *United States v. Superior Court*, 144 Ariz. 265, 275-76 (1985)).

However, “Constitutions, meant to endure, must be interpreted with an eye to syntax, history, initial principle, and extension of fundamental purpose.” *Id.* (quoting *Superior Court*, 144 Ariz. at 275-76). In so doing, a court “must, if possible, give effect to every word, not merely select words.” *State v. Burbey*, 243 Ariz. 145, 147 ¶ 10 (2017). More specifically, the interpretative canon “[n]oscitur

a sociis—a word’s meaning cannot be determined in isolation, but must be drawn from the context in which it is used—is appropriate when several terms are associated in a context suggesting the terms have some quality in common.” *City of Surprise v. Ariz. Corp. Comm’n*, 246 Ariz. 206, 211 ¶ 13 (2019).

The voters identified precisely the kinds of taxes covered by Section 25: “sales tax, transaction privilege tax, luxury tax, excise tax, use tax, or any other transaction-based tax, fee, stamp requirement or assessment.” Ariz. Const. art. IX, § 25. The first half of the list identifies specific *taxes* covered by Section 25. The second half of the list is a catch-all provision intended to assure that nothing else like the items listed in the first half was inadvertently omitted.

The key to understanding the second half of the list is that each item is limited by the term “transaction-based.” Understood in the context of the list of taxes set forth in the first half of the list, it is clear that the term “transaction-based” refers to the transaction between a service provider and its customer – here the TNC and its passenger. To be sure, that was meant to apply broadly to any tax or fee based on such transactions, such as a gross receipts tax or a transaction recording fee. But, it is equally clear that the triggering event is the transaction between the service provider and its customer.

Here, the TNC Fee, as with similar airport user fees, is triggered by the use of airport property. As discussed above, the agreement assessing a user fee on TNCs

and other ground transportation providers is a license authorizing the use of the airport proprietor's real property. Section 25 does not mention, and does not apply to, licenses or similar charges for the use of property. Accordingly, the TNC Fee and similar airport user fees are not the kind of "transaction-based . . . fee" that is intended to be subject to Section 25.

Service providers may choose to pass these user fees on to their customers or the providers may subsume such fees in flat-rates or in their overhead. Any choice to pass on user fees to customers does not convert a fee based on use of airport property into a fee based on the service provider-customer transaction. *See Saban*, 246 Ariz. at 98 ¶ 33 ("Like the surcharge, the transaction privilege tax could be passed on to car rental customers, yet the tax was not considered a road-user tax and did not fall within the provision.")

The Attorney General attempts to shoehorn the TNC Fee into the "transaction-based" category by focusing on the fact that the TNC Fee only applies if the TNC driver picks up or drops off a customer. Pet. for Special Action at 18-19 (Jan. 21, 2020). In his view, therefore, the nexus between the TNC Fee and Section 25 is that the TNC Fee applies while the TNC driver is providing a service to a customer. That is too vague, and contrary to *Saban's* requirement to consider the triggering circumstances of the tax or fee at issue, which here is the use of airport property.

The reference to a passenger pick-up or drop-off is simply a means of ensuring that the TNC has made sufficient use of airport curb space to trigger the need to pay a fee. Indeed, a TNC could give a passenger a free trip, meaning there would be no transaction at all, and still have to pay the TNC Fee. Moreover, the TNC Fee is not tied to price the TNC charges its customer. Tying the TNC Fee to a passenger drop-off or pick-up does not render it a “transaction-based . . . fee; it rather ensures that the TNC Fee remains tied to the TNC’s actual’s use of the airport roadways, curb, and infrastructure that the airport proprietor provides and maintains.⁴ The TNC Fee is a charge for using airport property that Section 25 does not cover.

C. The Intent of Voters Expressed in the Publicity Pamphlet Demonstrates that Section 25 Does Not Apply to User or Access Fees Like the City of Phoenix’s TNC Fee

In determining the scope of a constitutional provision adopted by proposition, it is appropriate to consider the arguments in favor of the proposition set forth in the 2018 General Election Publicity Pamphlet (“Publicity Pamphlet”). *Saban*, 246 Ariz.

⁴ Airports use different technology to measure curb use by different ground transportation providers. For example, some airports use sensors similar to an EZ-Pass to detect when vehicles enter designated passenger pick-up or drop-off curb zones, and assess the user fee based on physical presence in that area. TNCs prefer not to install the transponders, which requires a different way to determine when a TNC must pay the TNC fee. Some airports use what is called a “geofence”, which is triggered when a TNC driver, with the TNC App on, enters the airport, and rely on the TNC to self-report which trips resulted in a passenger pick-up or drop-off. The key to all of these fees, however, is that they are triggered by the use of airport curb space, not a specific transaction between the TNC and its customer.

at 93, 96, 97-98, 99 ¶¶ 12, 25, 30-32, 38 (discussing arguments in publicity pamphlet as evidence of voters' intent); *Jett v. City of Tucson*, 180 Ariz. 115, 119 (1994) (same). The arguments and statements made by proponents of Proposition 126 in the Publicity Pamphlet demonstrate that their concern was new and increased taxes on service providers, and the corresponding impact on the price of those services. There is no indication that the voters were at all concerned about user fees or similar charges to which service providers may be subject for the use of specific property.

The numerous statements of support for Proposition 126 contain no references to user fees, access fees, or indeed to any kind of fee at all. The clear intent expressed in the Publicity Pamphlet was to prevent the proliferation of new "sales taxes" on services and "a new service tax." Response App. 1 at 27-28. The lead argument in favor of Proposition 126 refers *only* to "sales taxes" and ends with the argument that "a sales tax on services is a bad idea for all Arizonans." *Id.* at 27. There is simply nothing to suggest that the voters were concerned with, or intended to address, the payment of user fees charged by airports acting in a proprietary capacity.

Nor is there any indication that the voters intended to limit the ability of governmental property owners from assessing fees for the use of government property from which the user derives a distinct benefit. The voters were focused on preventing the unlimited taxation of service providers in order to fund the general government. *Id.* Plainly, user and access fees like the TNC Fee are nothing like

that, particularly because such fees are tied to the use of airport property in order to cover airport costs, and revenues from those fees may be used *only* for airport purposes. *Supra* at 7-9.⁵

Nothing in the TNC Fee implicates the other concerns articulated by the proponents of Proposition 126. Proponents wanted to prevent “regressive and inequitable taxes.” *See* Response App. 1 at 24 (providing text of Proposition 126, Section 2(d)). Of particular concern in the Publicity Pamphlet were fears that new taxes would not be used as promised and would be used to fund more expansion of government. *Id.* at 31 (comments of Walter Spawr and Nicole LaSlavic). However, as discussed above, airport revenue, including user fees on ground transportation providers such as the TNC Fee, *must by law* be used *only* for airport purposes. *Supra* at 7-9. Thus, airport user fees cannot be used to fund general government growth and are subject to federal oversight and standards of reasonableness and fair market value.

⁵ Moreover, airport fees in general, and ground access fees in particular, are subject to constitutional limits that assure that such fees are reasonable and do not impose an undue burden. *See, e.g., Alamo Rent-A-Car, Inc. v. City of Palm Springs*, 955 F.2d 30 (9th Cir. 1992) (considering Commerce Clause challenge to off-airport rental car fee); *Alamo Rent-A-Car v. Sarasota-Manatee Airport Auth.*, 906 F.2d 516 (11th Cir. 1990) (same); *Alamo Rent-A-Car v. Sarasota-Manatee Airport Auth.*, 825 F.2d 367 (11th Cir. 1987) (considering Equal Protection challenge to off-airport rental car fee).

Conversely, applying Section 25 to the TNC Fee has the potential to *cause* the very things proponents sought to prevent. For example, if applied to the TNC Fee and similar user fees on service providers, Section 25 would force airport proprietors to consider increasing fees and charges on airport users that do not sell services, such as private aircraft owners and airport concessionaires like restaurants and gift shops. The result, perversely, would be that that sub-group of airport users would subsidize the operations of commercial service providers, with the very regressive results that the proponents of Proposition 126 sought to avoid.

Similarly, one of the purposes of Proposition 126 is to minimize the tax burden on service providers in order to preserve jobs and allow service businesses to thrive. *E.g.*, Response App. 1 at 29 (comments of Lori Doerfler and D. Patrick Lewis). Applying Section 25 to the TNC Fee would have the opposite result, including impairing the financial viability of other businesses.

For example, a small business owner who operates a restaurant as a concessionaire at Sky Harbor recently testified against legislation that would limit the ability of airports to charge user fees to TNCs. She explained that an increase in her rent to replace lost TNC Fee revenue would place her business in jeopardy because of the low margins and competitive environment of her business. Audio recording: *Ariz. House Comm. on Regulatory Affairs Meeting*, 54th Leg., 2d Reg. Sess. (Ariz. Feb. 17, 2020) (testimony of Joya Keyser-Clark regarding HB 2817,

beginning at minute 1:14:18/2:57:27).⁶ Reducing profits and jeopardizing small businesses is the opposite of what the proponents of Proposition 126 intended.

More broadly, adopting the Attorney General's position on Section 25 could have severe, unforeseen economic consequences. Airports are important economic engines for the communities they serve, and the State as a whole. A 2013 study by the Arizona Department of Transportation estimated that the aviation industry accounted, directly and indirectly, for 408,625 jobs in Arizona, generated over \$21 billion in payroll, and provided almost \$58 billion in total economic impact. Ariz. Dep't of Transp., *Economic Impact of Aviation in Arizona, Statewide Report* at 2 (2013).⁷ The 12 Arizona airports offering scheduled passenger service, including Gateway Airport and Phoenix Sky Harbor Airport, are responsible, directly and indirectly, for over 125,000 jobs, \$6.8 billion in payroll, and over \$20 billion in total economic impact. *Id.* at 6.

A study by Gateway Airport based on 2013 operations shows that over 2,000 people are employed at the airport, reflecting over \$118 million in payroll. When that economic activity is combined with spending by travelers using Gateway

⁶ Available at http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=23845.

⁷ Available at https://azdot.gov/sites/default/files/2019/05/az_aviation_impact_study_final_web.pdf.

Airport and the secondary effects of that economic activity, Gateway Airport generated over \$1.3 billion in total economic activity, including over \$392 million in payroll and over 10,000 jobs. Phoenix-Mesa Gateway Airport, *Economic Impact Analysis: Fiscal Year 2013* at 1 (Sept. 2013).⁸

The ability of airport proprietors to build, maintain, and improve airport facilities to support that activity in a safe manner depends, in turn, on their ability to generate revenues from airport operations to fund the operating and capital needs of the airport. As discussed above, there is no other source of revenue to pay the operating and capital costs of airports. Without the ability to charge airport users appropriate user fees for the use of, and access to, airports, airport proprietors would be unable to generate the revenue necessary to maintain their airports, with devastating results to the traveling public, to the economy of the communities served by airports, and, by extension, to the State itself. That potential degradation in airport infrastructure would harm the very service providers Proposition 126 was intended to protect by impairing the ability of airport proprietors to maintain and improve the airport facilities upon which their business depends.

⁸ Available at <https://www.gatewayairport.com/documents/documentlibrary/reports/economic%20impact%20study%20final%20100313.pdf?Uniquefier=NtM2XHb6DP>.

CONCLUSION

For the foregoing reasons, the Arizona Airports Amici respectfully request that the Court find that the City of Phoenix's TNC Fee does not violate Arizona Constitution Article IX, Section 25.

March 3, 2020

Respectfully Submitted

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APPENDIX



Phoenix-Mesa Gateway Airport Authority

Terminal Ground Transportation
License Agreement

with

[Click here to enter text.](#)

Effective Date: [Click here to enter a date.](#)

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Phoenix-Mesa Gateway Airport Authority
**TERMINAL GROUND TRANSPORTATION
LICENSE AGREEMENT**

This non-exclusive TERMINAL GROUND TRANSPORTATION LICENSE AGREEMENT (the "Agreement") is made and entered into this FIRST (1st) day of Choose an item.<YEAR> ("Effective Date"), by and between the **PHOENIX-MESA GATEWAY AIRPORT AUTHORITY**, a joint powers airport authority authorized and existing under the laws of the State of Arizona ("PMGAA"), and Click here to enter text. Choose an item., Click here to enter text. Choose an item. ("Licensee"). PMGAA and Licensee may be referred to jointly as "Parties," and each separately as a "Party."

WITNESSETH:

WHEREAS, PMGAA is the owner and operator of the Phoenix-Mesa Gateway Airport, an airport and airfield property generally located at the intersection of Ray Road and Sossaman Road, City of Mesa, Maricopa County, Arizona ("Airport"); and

WHEREAS, PMGAA has the right to lease, license and grant the use of property and facilities on the Airport and has full power and authority to enter into this Agreement in respect thereof; and

WHEREAS, PMGAA desires Licensee's services as the operator of a commercial Choose an item. business from and in proximity to the Airport's airline passenger terminal ("Terminal"), is willing to make space available for use by Licensee in connection therewith, and has deemed Licensee qualified to perform said services, and Licensee desires to perform and provide said services;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, the Parties do hereby undertake, promise and agree, each for itself and its successors and assigns, as follows:

1. AGREEMENT

1.1. General.

1.1.1. PMGAA hereby grants to Licensee, for the term and under the conditions herein provided, a non-exclusive and revocable right to enter upon and use the Airport (pursuant to the provisions of SECTION 30 herein) for the privilege and purpose of conducting its business as a commercial Choose an item. provider from the Terminal located at 6033 S. Sossaman Road, Mesa, Arizona, as it presently exists or may subsequently be expanded, and, specifically, from the specified passenger pickup location depicted in **EXHIBIT A** which is attached hereto and made a part hereof.

1.1.2. In return for the privileges and rights herein granted, Licensee shall provide Choose an item. from the Terminal SEVEN (7) days per week, 365-days per year, and/or as dictated by airline flight schedule(s) and public demand for such services. At a minimum, Licensee shall ensure passengers are picked up at and depart from the designated Terminal pickup location within THIRTY (30) minutes of his/her/their arrival at the specified passenger pickup location. When ADA-compliant vehicles are necessary, passenger wait times shall be limited to THIRTY (30) minutes.

1.1.3. Licensee shall not engage in any other commercial revenue producing activity at the Airport that is in addition to or materially differs from the activity set forth in SECTIONS 1.1.1 and 1.1.2 hereinabove without first applying for and receiving written approval for such activity from PMGAA. In the event Licensee engages in any such other commercial revenue producing activity prior to obtaining such written approval, without waiver or limitation of any other remedies of PMGAA at law or equity, Licensee hereby agrees to

immediately cease said activity upon notice from PMGAA, and remit to PMGAA the sum equal to TWENTY PERCENT (20%) of Licensee's gross billings for such unauthorized activity, plus any expenses incurred by PMGAA in the course of any audit conducted for any or all of Licensee's activities.

1.2. **Definitions.** For purposes of this Agreement, the following terms and definitions shall be applicable herein:

Driver shall mean any person who drives and/or operates a ground transportation provider vehicle on the Airport pursuant to this Agreement.

Ground Transportation Provider shall mean the PMGAA-authorized provision of pre-arranged and contracted ground transportation services to arriving Airport Terminal passengers from the designated passenger pickup location depicted in **EXHIBIT A** using a commercial ground transportation motor vehicle, as defined herein. Ground Transportation Providers shall also be permitted to make drop-offs at the Airport.

Mini-bus means any motor vehicle with a designated seating capacity between fifteen (15) and twenty-three (23) passengers that is authorized to provide shared ride ground transportation services from the Airport Terminal.

Safety Regulations means the provisions of A.R.S. Title 28, Chapter 14, as amended, and any applicable rules and regulations promulgated thereunder by the Motor Vehicle Division of the State of Arizona Department of Transportation and the PMGAA Executive Director or his/her designee.

Scheduled means a ground transportation motor vehicle picking up a passenger or passengers at the Airport Terminal on a pre-arranged, contract basis.

Courtesy Vehicle means any form of ground transportation provided by or through any business located off the Airport, including hotels, parking facilities, rental car companies, corporations, shopping centers and attractions, as a service to its employees, customers or other users, regardless of whether the passenger pays a direct fee for the service.

Shared Ride Services means the non-exclusive use of a ground transportation motor vehicle, either a van or mini-bus, by two or more unrelated passengers, being transported to separate, pre-determined destinations, or destinations agreed upon by the passenger(s) and Driver. This definition shall not include TNCs or TNC Vehicles.

Transportation Network Company Motor Vehicle (TNC Vehicles) shall mean a motor vehicle with a seating capacity not exceeding eight passenger(s), including the Driver, that is authorized by a transportation network company, and that is used by a transportation network Driver to provide transportation network services.

Transportation Network Company (TNC) shall mean an entity that has been issued a permit by the state of Arizona, that operates in the state of Arizona, that uses a digital network or software application to connect passenger(s) to transportation network services provided by transportation networks, and that may but is not deemed to own, operate or control a personal motor vehicle of a transportation network Driver.

Limousine means a motor vehicle without a meter that includes a converted chassis and a seating capacity between seven (7) and fourteen (14) passengers, excluding the Driver.

Livery Vehicle or Livery means a motor vehicle without a meter that provides seating for not less than three (3) passengers, excluding the Driver. Such vehicles are considered to include Lincoln Town Cars and similar full-size luxury vehicles and are registered as a Livery vehicle with the Arizona Department of Transportation.

Shared Ride Van (Shuttle) means any commercial motor vehicle with a designated seating capacity between six (6) and sixteen (16) passengers that is authorized to provide shared ride ground transportation services from the Airport Terminal. This definition shall not include TNC Vehicles.

Unscheduled means a ground transportation motor vehicle picking up a passenger or passengers at the Airport on other than a prearranged basis.

1.3. Licensee's Acknowledgement. By entering into this Agreement, Licensee acknowledges and agrees that:

1.3.1. PMGAA may enter into similar agreements with other Licensees for services similar to those provided hereunder and under similar terms; provided, however, that PMGAA shall not grant to any other individual or entity a similar concession under terms and conditions substantially different from or more favorable than those granted to Licensee, and provided that such third-party activities do not require or materially interfere with Licensee's permitted activities at and on the Airport.

1.3.2. This Agreement is subject to requirements of the U.S. Department of Transportation regulations, 49 CFR Part 23, as amended. Licensee agrees that it will not discriminate against any business owner or individual because of the owner's or individual's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract or subcontract, purchase or lease agreement or other agreement covered by 49 CFR Part 23. Licensee further agrees to include such prior statement in any subsequent agreement or contract covered by 49 CFR Part 23 that it enters, when required, and cause those businesses and/or individuals to similarly include the statements in further agreements.

1.3.3. Its obligations to pay fees and all other charges due and owing under the terms hereof shall, except as otherwise provided herein, be absolute and unconditional, and shall not be affected by any circumstances whatsoever, including, without limitation: (i) any set-off, counterclaim, recoupment, defense or other right which Licensee may have against PMGAA or the United States of America or anyone else for any reason whatsoever; (ii) any liens, encumbrances or rights of others with respect to Licensee's business; (iii) the invalidity or unenforceability or lack of due authorization or other infirmity of this Agreement or any lack of right, power or authority of PMGAA or Licensee to enter into this Agreement; (iv) any insolvency, bankruptcy, reorganization or similar proceedings by or against Licensee, or any other person; or (v) any other cause, whether similar or dissimilar to the foregoing, any future or present law notwithstanding, it being the intention of the Parties hereto that all fees and charges being payable by Licensee hereunder shall continue to be payable in all events and in the manner and at the times provided herein.

a. Courtesy/Shuttle/Shared Ride Services; Curb area at the designated passenger pickup location is designated for multiple functions and is provided to Licensee on a space-available basis only. As a result of this limited space, Licensee's Drivers shall only be permitted to occupy such space for a maximum duration of THIRTY (30) minutes and only to satisfy a scheduled arriving passenger contract requirement. Under no circumstances shall any Licensee Driver be permitted to park within the designated passenger pickup location without a passenger contract commitment, or solicit passengers therefrom or elsewhere within the Terminal area.

b. Limousine/Sedan/Livery; In providing said services, Licensee's Drivers shall park in the Terminal's hourly (or short-term) lot; except, however, that Drivers of over-sized limousines shall be required to park in the Terminal Cell Phone Lot due to space and maneuvering area limitations in the hourly lot. Drivers parking within the Terminal's hourly (or short-term) lot shall pay the appropriate PMGAA fee. There is no charge for parking in the Terminal Cell Phone Lot. Licensee's Drivers, when parked within the Terminal's hourly (or short-term) lot, shall be permitted to enter the Terminal baggage claim area to meet and greet their customers. Alternatively, Drivers shall be permitted to greet their customer(s) curbside in proximity to the Terminal baggage claim area, but only after receiving notification the customer has arrived and is physically awaiting pickup. At no time, shall any Driver be permitted to leave his or her vehicle unattended (meaning not

out of said Driver's direct line of sight) at any Terminal curbside passenger pickup and drop off location. At no time, shall any Driver wait for a passenger arrival while parked curbside, or in a "No Waiting" zone, even if the vehicle is attended. Curbside locations are restricted to passenger loading and unloading only.

c. Transportation Network Companies ("TNC"); in providing said services, Licensee's Drivers shall park in the designated staging area depicted in **EXHIBIT A**. Drivers parking within the Terminal's hourly (or short-term) lot shall pay the appropriate PMGAA fee. Licensee's Drivers shall be permitted to greet their customer(s) curbside at the designated pick up location depicted in **EXHIBIT A**, but only after receiving notice via the TNC electronic application, that the customer has arrived and is physically awaiting at the designated pickup curb line. At no time, shall any Driver be permitted to leave his or her vehicle unattended (meaning not out of said Driver's direct line of sight) at any Terminal curbside passenger pickup and drop off location. At no time, shall any Driver wait for a passenger arrival while parked curbside, or in a "No Waiting" zone, even if the vehicle is attended. Curbside locations are restricted to passenger loading and unloading only.

2. TERM

2.1. The term of this Agreement shall commence on the Effective Date and terminate on DECEMBER 31, 20__ ("Term"), unless sooner terminated as provided herein. Provided Licensee is not then in default of this Agreement and Licensee provides thirty (30) days prior written notice to PMGAA of its intent to enter into the Renewal Term (unless PMGAA has waived such notice in writing) this Agreement may continue on a year-to-year basis beginning the FIRST (1st) day of JANUARY (each additional year a "Renewal Term") provided;

2.2. This Agreement shall terminate upon: (i) the end of the Term, including any Amendments thereto; or (ii) earlier termination pursuant to the provisions of this Agreement.

3. FEES

Licensee to initial the appropriate fee option below:

3.1. Annual Permit Fee for Courtesy/Shuttle/Shared Ride Services

3.1.1. For and in consideration of the privilege and authorization herein granted, Licensee shall pay to PMGAA a non-refundable annual permit fee for each van and/or mini-bus registered in the amount of THREE HUNDRED TWENTY DOLLARS (\$320.00), plus any applicable City of Mesa taxes in advance on or before the Effective Date and each TWELVE (12) month anniversary thereafter. The Annual Fee is subject to increase, not to exceed TEN percent (10%) per year. Any vehicle placed in service for less than a full payment year shall be assessed a portion of such fee, retroactive to the first day of the month in which the vehicle was placed in service. Only registered Shared Ride Services vehicles shall be permitted to operate from the Airport Terminal.

3.1.2. Licensee's refusal or failure to pay all annual permit fees on or before the Effective Date (and on or before each 12-month anniversary of the Effective Date thereafter if the Term is extended as provided herein), shall be subject to a delinquent account fee equal to TEN PERCENT (10%) of the amount owed (the "Delinquent Account Fee"). Such refusal or failure to pay said annual permit fees, or any Delinquent Account Fees, shall be considered a breach of this Agreement and subject Licensee's privileges hereunder to immediate suspension and/or termination.

3.2. Annual Permit Fee for (Sedan/Limousine/Livery).

3.2.1. For and in consideration of the privilege and authorization herein granted, Licensee shall pay to PMGAA a non-refundable annual permit fee for each registered limousine and/or livery vehicle in the amount of TWO HUNDRED TWENTY DOLLARS (\$220.00), plus any applicable City of Mesa taxes in advance on or before the Effective Date and each TWELVE (12) month anniversary thereafter. Any vehicle placed in service for less than a full payment year shall be assessed a portion of such fee, retroactive to the first day of the month in which the vehicle was placed in service. Only registered limousines and/or livery vehicles shall be permitted to operate from the Airport Terminal.

3.2.2. Licensee's refusal or failure to pay all annual permit fees on or before the Effective Date (and on or before each 12-month anniversary of the Effective Date thereafter if the Term is extended as provided herein), shall be subject to a delinquent account fee equal to TEN PERCENT (10%) of the amount owed (the "Delinquent Account Fee"). Such refusal or failure to pay said annual permit fees, or any Delinquent Account Fees, shall be considered a breach of this Agreement and subject Licensee's privileges hereunder to immediate suspension and/or termination.

3.3. Per Trip Fee with Airport approved GPS tracking/reporting application

3.3.1. For and in consideration of the privilege and authorization herein granted, Licensee shall pay to PMGAA a trip fee for each ground transportation provider vehicle trip to the Airport in the amount of TWO DOLLARS AND 00/100 (\$2.00), plus any applicable City of Mesa taxes. A trip is each time a ground transportation provider vehicle enters Airport property and makes one or more stops to pick up one or more passengers or to drop off one or more passengers. Fees shall be paid on or before the TWENTIETH (20th) day following the last day of the preceding calendar month (the Trip Fee Due Date). Per Trip Fee is subject to increase at the discretion of PMGAA.

3.3.2. Licensee's refusal or failure to pay trip fees on or before the Trip Fee Due Date shall be subject to a delinquent account fee equal to TEN PERCENT (10%) of the amount owed (the "Delinquent Account Fee"). Such refusal or failure to pay said trip fees or any Delinquent Account Fees, if not cured within 15 days of written notice thereof from PMGAA, shall be considered a breach of this Agreement and subject Licensee's privileges hereunder to immediate suspension and/or termination.

3.4. Taxes. In the event any governmental authority shall impose a tax or imposition based upon any payments or any other sums paid or owing hereunder or the receipt of such payments by PMGAA, then, Licensee shall pay such amounts to PMGAA at the same time and in addition to payments hereunder, which amounts may include, but are not limited to, any or all rental, transaction privilege, sales, excise or other similar tax except income taxes. Licensee's obligation to pay such amounts together with any interest thereon and/or penalties therefor, shall survive the termination of this Agreement.

3.5. Payments – All Fees. All payments of the fees and charges specified in SECTIONS 3.1 and 3.2 herein shall be tendered in lawful currency of the United States, either by cash, check or electronic transfer, and shall be free from all claims or setoffs of any kind against PMGAA. Cash payments shall be delivered personally to the Phoenix-Mesa Gateway Airport Business Development Department, 5835 S. Sossaman Road, Mesa, Arizona 85212-0614, while payments by company check may be mailed and made payable to the Phoenix-Mesa Gateway Airport Authority at the above address. If paying via electronic transfer, Licensee shall provide the Business Development Department a written accounting (email acceptable) of what such transfer pertains to immediately upon remittance.

3.6. Survival. Licensee's obligation to pay all amounts herein stated, together with any interest thereon and/or penalties therefor, shall survive the termination of this Agreement.

4. **PASSENGER TRANSACTIONS**

4.1. Fares. Licensee shall ensure Drivers furnish passengers a fare receipt (paper or electronic) and may, upon PMGAA request, be required to provide a copy (paper or electronic) of such receipt to PMGAA as a validation of the passenger fare/pricing schedule being employed. Such receipts shall state the name of the Driver, the ground transportation company name, the amount of the fare, the amount paid by the passenger(s) (excluding tips) and the date and time of the transaction. Non-paying passengers (other than co-passengers of a paying passenger) shall not be permitted to ride in Licensee's vehicles, except for Licensee's supervisors and PMGAA officials conducting inspections and/or training.

4.2. Credit (and Debit) Cards.

4.2.1. Each van or mini-bus providing service under this Agreement shall have electronic credit (and debit) card transaction equipment installed and operating therein to accept credit and debit card transactions as payment for fares or process payment through the use of an electronic application. Licensee and its Drivers

shall not charge passengers any fees associated with processing credit and debit card payments, and shall, at a minimum, accept credit and debit cards from the following issuers: American Express, MasterCard and Visa.

4.2.2. Licensee is responsible for compliance with Payment Card Industry Data Security Standards for all credit (and debit) card transactions conducted for services provided under this Agreement

4.3. Lost and Found Passenger Property.

4.3.1. Licensee shall make a reasonable attempt to recover, identify and return lost items to passengers. When not possible to return an item, Licensee shall:

a. Identify and tag the item, and note the date, route and trip number or location where the item was found, and the name of the person submitting the item.

b. Maintain a log of lost and found items.

4.3.2. The above Section 4.3.1 shall not apply to any Licensee that has established internal procedures for handling and returning lost items to passengers, and such procedures have been approved by PMGAA.

4.3.3. Licensee shall take measures to protect any personally identifying information on lost items, such as identification cards, credit cards, etc.

5. FLEET See EXHIBIT B

6. STAFF AND DRIVERS

6.1. General. To the extent applicable under Arizona Revised Statutes (ARS) §41-4401, as amended, Licensee warrants compliance with all federal immigration laws and regulations that relate to Licensee's employees. Licensee's breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and may result in its termination by PMGAA. PMGAA retains the legal right to randomly inspect the papers and records of any employee operating under this Agreement to ensure Licensee is complying with the above-mentioned warranty.

6.2. General Manager. Licensee shall designate a General Manager or managing supervisor during the Term of this Agreement who shall:

6.2.1. Serve as Licensee's primary contact for PMGAA staff.

6.2.2. Be responsible for Licensee's compliance with all contractual obligations under this Agreement.

6.2.3. Attend all Notice of Violation (NOV) hearings.

6.2.4. Be available during regular business hours (local Phoenix area time).

6.2.5. Respond to PMGAA inquiries within one business day.

6.2.6. Provide response to PMGAA inquiries involving accidents, labor issues and other critical matters, within one business day regardless of the time of day such an event occurs.

6.3. Drivers.

6.3.1. General.

a. Licensee shall ensure that all Drivers operating under this Agreement operate pursuant to the terms of this Agreement, notwithstanding the legal relationship entered into by and between Licensee and the Driver. Any material breach of the terms and conditions of this Agreement by any Driver that is not cured to the satisfaction of PMGAA within 30 days of written notice thereof from PMGAA to Licensee shall subject the Agreement to termination in whole or in part with cause, at the sole election of PMGAA. In the event that PMGAA reasonably determines that such material breach to be of an exigent nature (meaning that PMGAA reasonably believes that the safety or security of persons and/or property at the Airport is at risk or has

sustained damage), Licensee shall have five (5) business days from the date Licensee received written notice to cure same.

b. Licensee shall prevent any Driver from conducting pick-ups and drop-offs at the Airport upon a determination by Licensee's supervisor or PMGAA staff that the individual has been assigned for duty for which he or she is unqualified for suitability or security reasons, or is found to be otherwise unfit for the performance of duties. PMGAA may request the removal of any Driver determined to be unqualified for service at the Airport, and Licensee shall bear full financial responsibility for costs when Driver removal or replacement is necessary, as determined by the Executive Director.

6.3.2. Driver Photo Identification Media. Prior to operating any vehicle providing service under this Agreement, Licensee shall issue each Driver photo identification media (which may be in digital form) that shall validate such Driver's authorization to provide Choose an item. services thereunder. Drivers shall provide their photo identification media upon request from a passenger, Airport Staff, or law enforcement officer.

6.3.3. Base Qualifications. By issuing photo identification media to a Driver, Licensee certifies to PMGAA that such Driver meets the following qualifications:

a. The Driver holds a valid and appropriate Driver's license issued by a State, which license is not suspended or revoked, and, is qualified and not disqualified to operate a Choose an item. vehicle under this Agreement pursuant to Federal Motor Carrier Safety Regulations, Part 391, Subpart B, as amended, and in accordance with applicable provisions of CFR Title 49 adopted by the Arizona Department of Transportation Motor Vehicle Division as published in Arizona Administrative Code as R-17-4-435, and as the same may be amended from time to time.

b. The Driver is a legal resident of the United States, and has undergone a background check consistent with the Federal Motor Carrier Safety Regulations and Arizona Revised Statute requirements. TNC Drivers must only have satisfied the background check requirements provided in Arizona Revised Statute Section §§ 28-9507; 28-955, *et seq.*, and any other applicable local, state or federal rules or statutes.

7. RULES AND REGULATIONS; SAFETY STANDARDS

7.1. Licensee shall at all times comply with all Federal, State and local laws, ordinances, rules, and regulations which are applicable to its operations at and on the Airport, or the operation, management, maintenance, or administration of the Airport, including all laws, ordinances, rules and regulations adopted after the Effective Date. Licensee shall at all times comply with the Airport Rules and Regulations, as applicable and as the same may be amended from time to time at PMGAA's sole and absolute discretion. A link to the Airport Rules and Regulations and Airport Minimum Standards is attached hereto as **EXHIBIT C**. Licensee also shall display to PMGAA any permits, licenses, or other evidence of compliance with laws upon request.

7.2. Licensee shall comply with all vehicle and Driver safety standards, as provided in A.R.S. Title 28, Chapter 14, and any applicable rules or regulations adopted by the Arizona Motor Vehicle Division and/or PMGAA during the Term of this Agreement.

8. AMERICANS WITH DISABILITIES ACT (ADA)

Unless Licensee demonstrates that exigent circumstances exist that prevent compliance, a Licensee must provide ground transportation to customers protected by the ADA, or if unable to do so, make alternative arrangements for the customer to be picked up by accessible transportation within thirty minutes after learning of the customer's needs.

9. ADVERTISING STANDARDS

9.1. Vehicles providing service under this Agreement shall not display any advertising copy that:

9.1.1. Is false, misleading or deceptive.

9.1.2. Relates to an illegal activity.

9.1.3. Reflects explicit sexual or obscene material, or material harmful to minors, as defined in A.R.S. Title 13, Chapter 35, as amended.

9.1.4. Advertises alcohol, tobacco and/or anti-social behavior.

9.1.5. Includes language that is obscene, vulgar, profane or scatological.

9.1.6. Relates to instruments, devices, items, products or paraphernalia designed for use in connection with sexual activity.

9.2. Licensee shall comply with any PMGAA request to remove any advertising PMGAA deems to be inappropriate.

10. RECORDS AND AUDITING

10.1. Licensee Records.

10.1.1. With respect to its operations at and on the Airport, Licensee shall maintain true and accurate records, books and data at Licensee's primary business office, or upon written PMGAA request, shall be made available for audit at the Airport, within TEN (10) business days after such request. PMGAA and its authorized representatives shall have the right, upon reasonable written request and no more than once per calendar year, at reasonable times and during business hours to inspect and examine solely those records, books and other data as required to verify compliance with this Agreement.

10.1.2. All records pertaining to this Agreement shall be kept for a period of THREE (3) years following the expiration or earlier termination of this Agreement. Licensee shall use either reasonable efforts to work towards maintaining such books and records in accordance with generally accepted accounting principles (GAAP), or shall actually maintain in accordance with GAAP, unless otherwise agreed to by the PMGAA.

10.2. Licensee Monthly Report. License shall submit a monthly report that includes the information below. Said reports shall be provided to PMGAA's Business Development Department no later than the 20th day of the month following the month in which Licensee's activities under this Agreement took place.

10.2.1. Number of trips made to and from the Airport each day.

10.2.2. Total Airport passenger counts on a daily, weekly and monthly basis.

10.2.3. Accident reports (in form and substance as agreed between Licensee and PMGAA) involving any Ground Transportation Provider Vehicles, operating at the Airport Terminal, for accidents that occur on Airport property.

10.2.4. The report shall include the number of Airport passenger complaints and/or comments (specifically related to the Airport) received in any given month, unless Licensee has a complaint resolution process that is approved by PMGAA.

10.3. PMGAA Audit Authority. PMGAA or its authorized representatives shall have the right, upon reasonable written request and no more than once per calendar year, to audit solely those records of Licensee relating to billings and payments reported and paid hereunder, and any other activity by Licensee on the Airport during the TWELVE (12) consecutive month period preceding the date of such audit. If PMGAA finds or determines that a discrepancy exists for the period of the audit, Licensee shall promptly pay the cost and expense of PMGAA's audit. For purposes of this Agreement, a "discrepancy" shall mean one where audited billings exceed reported billings by TWO PERCENT (2%) or more. The amount of any such deficiency established by such audit shall be conclusive and binding upon the Parties and shall be paid by Licensee no later than TEN (10) business days from the billing date.

11. DAMAGE AND INSPECTIONS

11.1. Damage to Airport Property.

11.1.1. Licensee shall, at Licensee's own expense, be fully responsible for all damages to Airport property caused by the negligence or willful misconduct of Drivers operating under this Agreement, except to the extent caused by the negligence or willful misconduct of PMGAA or its employees, officers, directors,

representatives or agents, whereby an Arizona court of competent jurisdiction has rendered a non-appealable decision that such damage to Airport property was caused by PMGAA and/or its employees. If Licensee fails to reimburse PMGAA for damage caused to PMGAA, Licensee's authorization to operate under this Agreement may be suspended or terminated, at the election of PMGAA, until PMGAA has been fully compensated, to PMGAA's complete satisfaction.

11.1.2. Should greater than FIFTY PERCENT (50%) of the Terminal be rendered untenable by fire or other casualty, such that commercial airline schedules are similarly diminished, and PMGAA either cannot or elects to not complete restorative action within a reasonable period of time, Licensee shall have the option to terminate this Agreement.

11.2. Inspections. PMGAA, its authorized employees, agents, contractors, subcontractors and other representatives shall have the right, but not the obligation, at all reasonable times, to inspect Licensee's vehicles during regular business hours (or at any time in case of an emergency) to ascertain the condition of said vehicles and to determine Licensee's compliance with the terms of this Agreement. The right of inspection shall impose on PMGAA no duty to inspect and shall impart no liability upon PMGAA for failure to inspect.

12. LIQUIDATED DAMAGES

12.1. Unless cured to the satisfaction of PMGAA within 15 days of written notice thereof to Licensee, PMGAA reserves the right, in the case of violation of the terms of this Agreement, to temporarily suspend, deny or permanently revoke Licensee's operating privileges, including those pertaining to any Licensee vehicle, employee, franchisee, owner-operator, contractor or Driver found to be in violation of any safety, customer service, vehicle condition and/or cleanliness or regulatory provision of the Arizona Department of Transportation or this Agreement; and to impose the following fines, which Driver or Licensee (as applicable) agrees to pay, on a per observed, per violation basis:

Violation	Description	Amount
V-1	Operating a vehicle not registered for service in accordance with this Agreement	\$100.00
V-2	Soliciting, scooping or hawking passengers anywhere in proximity to the Terminal	\$100.00
V-3	Operating an unsafe vehicle and/or one that violates the motor vehicle safety standards specified herein	\$100.00
V-4	Displaying inappropriate Driver conduct (e.g., being discourteous or rude, arguing, engaging in physical fighting or loud, boisterous verbal disputes, sleeping or smoking (cigarettes, cigars or electronic cigarettes, etc.), in a vehicle, etc.)	\$100.00
V-5	Allowing passenger wait times to exceed those specified in SECTION 1.1.2 herein	\$100.00
V-6	Failing to accept a credit (or debit) card for payment	\$100.00
V-7	Failing to comply with insurance requirements required by this Agreement	\$100.00

V-8	Failing to properly display Licensee's Driver photo identification media upon request	\$100.00
V-9	Failing to transport a service animal or comply with applicable ADA requirements	\$100.00
V-10	Failing to report damage to Airport property	\$100.00
V-11	Parking within or at the passenger pickup curb area without a pre-arranged contract.	\$100.00
V-12	Exceeding the maximum parking time of THIRTY (30) minutes at the passenger pickup location, unless the occupied space is not required by other authorized vehicles/users.	\$100.00

12.2. Licensee agrees all of the violations listed in SECTION 12.1 above shall result in PMGAA incurring damages that are impractical or impossible to determine. Licensee agrees the above monetary assessments are reasonable approximations of such damages.

12.3. PMGAA will notify Licensee, in writing, of the time, place and nature of a violation (a "Notice of Violation" or "NOV"), as well as any facts PMGAA has to substantiate the violation. Licensee shall respond within TEN (10) calendar days of the date PMGAA mailed the NOV to Licensee, and Licensee's response shall be reviewed by the PMGAA Director of Operations and Maintenance who may, at his or her sole discretion, uphold or reverse the violation. Licensee's failure to respond in the time specified hereinabove shall be deemed an admission that the violation occurred.

12.4. All sums payable by Licensee to PMGAA under this SECTION shall be due and payable within THIRTY (30) calendar days after the Notice of Violation was mailed (if no appeal is undertaken), or after a written decision upholding the violation has been mailed. All sums unpaid after such THIRTY (30) days shall be considered delinquent and shall be subject to a Delinquent Account Fee equal to TEN PERCENT (10%) of the amount due. If Licensee refuses to pay any sum due under this SECTION, including any Delinquent Account Fee, PMGAA may suspend this Agreement until payment in full is received, or terminate the Agreement for default.

13. [RESERVED]

14. FAILURE TO COMPLY

If any services performed hereunder or equipment provided hereunder are not in conformity with the requirements of this Agreement, in addition to other available remedies, PMGAA shall have the right to require Licensee to immediately take all necessary steps to ensure future performance of the services in conformity with such requirements.

15. INDEMNIFICATION

To the fullest extent permitted by law, Licensee hereby agrees to defend, indemnify and hold harmless PMGAA and its members, elected or appointed officials, agents, contractors, subcontractors, boards, commissions and employees (hereinafter referred to collectively as the "PMGAA" for purposes of this SECTION) from any and all claims, causes of action, liability, suits, litigation (including reasonable attorney's fees and other costs of investigation and litigation), actions, losses, damages or claims of any nature whatsoever which arise out of or in connection with (i) any accident, injury or damages occurring at or on the Airport, or (ii) any negligent act or omission or willful misconduct of Licensee or its Drivers, agents, employees, contractors, or subcontractors (hereinafter referred to collectively as "Licensee" for purposes of this

SECTION) in connection with Licensee's operations hereunder and which result directly or indirectly in the injury to or death of any persons or the damage to or loss of any property, or (iii) the failure of Licensee to comply with any provisions of this Agreement. This indemnification shall exclude responsibility for any consequential damages and for claims arising by reason of the negligent or wrongful act of PMGAA or its employees, contractors or agents, where such consequential damages and claims are determined by a court of competent jurisdiction to have arisen solely as a result of PMGAA or its employees, contractors or agents (excluding Licensee as an employee, contractor or agent).

16. INSURANCE

16.1. Coverage Required. Licensee shall at all times and prior to the Effective Date, at its sole expense, maintain in effect the insurance coverage set forth below, including delivering a certificate of insurance for each policy to PMGAA; and shall continue to provide such certificates throughout the Term of this contract:

16.1.1. *Commercial General Liability* insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate covering third party bodily injury and property damage liabilities.

16.1.2. *Commercial Automobile Liability* insurance must comply with all statutory insurance requirements applicable to its operation and to maintain motor vehicle combined single limit liability insurance, including uninsured motorist coverage covering each vehicle operating at the Airport pursuant to this Agreement in the minimum amounts required under state law.

16.1.3. *Workers' Compensation* insurance, providing AZ State statutory benefits, for Licensee's employees operating at or on the Airport, and *Employer's Liability* insurance in the amount of \$500,000. Sole Proprietors with no employees may opt out of the Work Comp requirement by providing PMGAA with signed Workers' Compensation Waiver Form as allowed by the State of Arizona A.R.S.23.961(1).

16.2. Form.

16.2.1. Each insurance policy obtained pursuant to this SECTION, except for *Workers' Compensation* and *Employer's Liability* policies, shall: (i) name PMGAA as an additional insured on a primary and non-contributory basis via endorsement; (ii) contain a provision that written notice of cancellation shall be given to PMGAA not less than THIRTY (30) calendar days before such cancellation takes effect (TEN (10) days in case of non-payment of premium) via blanket endorsement; (iii) all policies, including Work Comp, shall contain a waiver of subrogation in favor of PMGAA, where allowed by law, via blanket endorsement.

16.2.2. Licensee shall not permit any insurance policy to be cancelled without PMGAA's written consent unless equivalent replacement policies are issued with no lapse in coverage. All policies shall be obtained from insurance companies eligible to issue insurance policies in the State of Arizona and possessing a rating of at least A - VII or higher from the A.M. Best Company, or an equivalent rating approved by PMGAA.

17. INDEPENDENT CONTRACTOR STATUS; EMPLOYMENT DISCLAIMER

17.1. The Parties agree Licensee is providing services under this Agreement on a part-time and/or temporary basis, and that the relationship created by this Agreement is that of independent contractor. Neither Licensee nor any of Licensee's Drivers, agents, employees or servants shall be deemed to be Drivers, agents, employees or servants of PMGAA. PMGAA is interested only in the results obtained under this Agreement. The manner, means and mode of completing the same are under the sole control of Licensee. This agreement does not imply under any circumstances that an employer/employee relationship exists between PMGAA and Independent Contractor. Independent Contractors is not eligible for employee benefits, including workers compensation coverage, from PMGAA.

17.2. This Agreement is not intended to constitute, create, give rise to or otherwise recognize a joint venture, partnership, affiliation, subsidiary, agency or other formal business entity, association or organization

of any kind whatsoever, and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement. The Parties agree that no individual performing under this Agreement on behalf of Licensee shall be considered a PMGAA employee, and that no rights of PMGAA Civil Service, PMGAA retirement or PMGAA personnel rules shall accrue to such individual. Licensee shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, other employee benefits and all taxes and premiums appurtenant thereto, concerning Licensee employees and shall save and hold harmless PMGAA with respect thereto.

18. CONFIDENTIALITY, PUBLIC RECORDS

18.1. All data, including personal identifying information, financial account information or other personal information collected, obtained or transmitted to either party in connection with this Agreement shall be protected and secured in accordance with federal, state and local laws. Licensee shall also comply with any PMGAA policy implemented relating to protecting or securing such data. The obligations of Licensee under this SECTION shall survive termination of this Agreement.

18.2. Licensee agrees the requirements of this SECTION shall be incorporated into all subcontracts entered into by Licensee, as they may affect or are related to this Agreement. It is further agreed that a violation of this SECTION shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this SECTION may result in immediate termination of this Agreement without notice.

18.3. Licensee may request specific documents provided to PMGAA be treated as confidential or proprietary (collectively "confidential"), provided that the Licensee clearly labels the documents "confidential." PMGAA will notify Licensee of any public records request to view the documents or any portion of the documents marked "confidential." Licensee will have seven (7) calendar days from the date such notice is received to obtain a court order enjoining release of the documents marked confidential. If Licensee does not provide PMGAA with a court order enjoining release of the documents, PMGAA will make the documents requested available for inspection as required under the public records law seven (7) calendar days after the written notice to Licensee is received.

19. CONTACTS WITH THIRD PARTIES

Except, as necessary for Licensee to communicate with third parties that are passengers and Licensee's Drivers, Licensee shall not contact third parties to provide any information in connection to the services provided under this Agreement without prior written consent of PMGAA. Should Licensee be contacted by any person requesting information or requiring testimony relative to the services Licensee is providing under this Agreement or any other prior or existing Agreement with PMGAA, Licensee shall promptly inform PMGAA and shall not disclose such information or give such testimony without written consent from PMGAA or a court order. The obligations of Licensee or any Licensee subcontractor under this SECTION shall survive termination of this Agreement. Licensee agrees that the requirements of this SECTION shall be incorporated into all subcontracts entered into by Licensee that are or may be related to this Agreement. It is further agreed that a violation of this SECTION shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this SECTION also may result in immediate termination of this Agreement without notice.

20. DBE/MBE/WBE/SBE UTILIZATION

PMGAA extends to each individual, firm, vendor, supplier, contractor, subcontractor and licensee an equal economic opportunity to compete for PMGAA business and strongly encourages voluntary utilization of disadvantaged and/or minority-owned, woman-owned and small businesses to reflect both the industry and community ethnic composition. The use of such businesses is encouraged whenever practical.

21. COMPLIANCE WITH LAWS; SUPPLEMENTAL TERMS AND CONDITIONS

Licensee, its Drivers, agents, employees, invitees, subcontractors and independent contractors shall comply with all directions, rules, regulations and operating procedures of PMGAA in effect or hereinafter promulgated, and shall observe and obey all ordinances of the City of Mesa, as well as all federal and state statutes and regulations governing the use of the Airport and Licensee's business activities thereon, including the specific requirements of this SECTION. If a subsequently enacted law imposes substantial additional costs on Licensee, a request for amendment may be submitted to PMGAA.

21.1. Legal Worker Requirements. Licensee warrants and agrees that to the extent applicable under A.R.S. §41-4401, as amended, Licensee will comply with all federal immigration laws and regulations that relate to Licensee's employees, including the E-verify requirements under ARS §23-214(A), as amended. Licensee's breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and may result in its termination by PMGAA. PMGAA retains the legal right to randomly inspect the papers and records of any employee who works under this Agreement to ensure Licensee is complying with the above-mentioned warranty.

21.2. Conflict of Interest. Licensee acknowledges that the provisions of A.R.S. §38-511, as amended are incorporated into this Agreement. Licensee further acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure this Agreement upon a promise of a commission, percentage, brokerage or contingent fee, and that no member of PMGAA or employee thereof has any financial interest in Licensee's business firm. For breach of violation of this warranty, PMGAA shall have the right to annul this Agreement without liability, including any such commission, percentage, brokerage or contingent fee.

21.3. Scrutinized Business Operations. Licensee certifies that, pursuant to ARS §§35-391.06 and 35-393.06, as amended, it does not have a scrutinized business operation in Sudan or Iran. For purposes of this SECTION, the term "scrutinized business operations" shall have the meanings set forth in ARS §§ 35-391 and 35-393, as applicable. If PMGAA determines that Licensee submitted a false certification, PMGAA may impose remedies as provided by law, including termination of this Agreement.

21.4. Nondiscrimination.

21.4.1. Licensee shall furnish its services to all Airport passengers and the general public on a fair, equal and not unjustly discriminatory basis.

21.4.2. Licensee shall charge fair, reasonable and not unjustly discriminatory prices for its services; except that, Licensee may be allowed to offer reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume or frequent purchasers. Non-compliance with this requirement shall be considered a material breach of this Agreement for which PMGAA shall have the right to terminate this Agreement and any estate created herewith, without liability therefor; or, at the election of PMGAA or the United States, either or both of which shall have the right to judicially enforce said requirement.

21.4.3. Licensee warrants that no person shall, on the grounds of race, creed, color, national origin, sex, age or disability, be excluded from participating in any activity conducted at or from the Airport, or otherwise be excluded from the benefits offered by Licensee to the general public. Licensee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

22. CIVIL RIGHTS – TITLE VI ASSURANCES

During the performance of this contract, the Licensee, for itself, its assignees, and successors in interest agrees as follows:

22.1. Compliance with Regulations: The Licensee (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

22.2. Nondiscrimination: The Licensee, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Licensee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

22.3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Licensee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Licensee of the Licensee's obligations under this contract and the Non-discrimination Acts and Authorities on the grounds of race, color, or national origin.

22.4. Information and Reports: The Licensee will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Licensee is in the exclusive possession of another who fails or refuses to furnish the information, the Licensee will so certify to the sponsor or the Federal Aviation Administration as appropriate and will set forth what efforts it has made to obtain the information.

22.5. Sanctions for Non-compliance: In the event of a Licensee's non-compliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

22.5.1.1. withholding payments to the Licensee under the contract until the Licensee complies; and/or

22.5.1.2. cancelling, terminating, or suspending a contract, in whole or in part.

22.6. Incorporation of Provisions: The Licensee will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Licensee will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, that if the Licensee becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Licensee may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Licensee may request the United States to enter into the litigation to protect the interests of the United States.

22.7. The Lessee for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the lessee will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

23. CIVIL RIGHTS – TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this contract, the Licensee, for itself, its assignees, and successors in interest agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- 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);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- 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 Nondiscrimination 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 nondiscrimination 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.*).

24. ENVIRONMENTAL COMPLIANCE.

Licensee shall, at Licensee's own expense, comply with all present and hereinafter enacted environmental laws, rules and regulations and any amendments thereto, affecting or applying to Licensee's operations and activities at or on the Airport.

25. AIRPORT SECURITY

PMGAA has implemented an Airport Security Plan ("Security Plan") in a form acceptable to the Transportation Security Administration pursuant to 49 CFR Parts 1540 and 1542, and 14 CFR Part 139. Licensee shall at all times comply with PMGAA Operations Department Security Directives, security bulletins, or verbal notifications existing now or in the future. Licensee shall immediately correct physical or procedural deficiencies which are contrary to PMGAA Operations Department security directives, security bulletins or verbal notifications existing now or in the future.

26. TAXES, LICENSES AND PERMITS

Licensee shall pay all taxes and assessments that may be levied or charged upon its property, equipment and activity hereunder, and shall secure and comply with all licenses and permits required by PMGAA or any other governmental authority exercising jurisdiction over its business or activities. Licensee shall also pay any taxes or assessments levied upon PMGAA as a result of Licensee conducting its business under the authority of this Agreement.

27. NON-ASSIGNABILITY

27.1. Licensee shall have no power to assign its rights and obligations under this Agreement without the prior written consent of the PMGAA Executive Director, which shall not be unreasonably withheld. Any attempt to assign this Agreement without such prior written consent shall be void.

27.2. Licensee's, [Click here to enter text.](#), [Click here to enter text.](#), will serve as Licensee's primary representative in the execution of this Agreement.

28. NOTICES

28.1. Notices required under this Agreement shall be in writing and delivered personally or by registered or certified mail, postage prepaid, addressed as follows:

TO PMGAA: Phoenix-Mesa Gateway Airport Authority
Attn.: Business Development Department
5835 S. Sossaman Road
Mesa, Arizona 85212-0919
Telephone: (480) 988-7535

TO LICENSEE: [Click here to enter text.](#)

Attn.: [Click here to enter text.](#)
[Click here to enter text.](#)
[Click here to enter text.](#)
[Click here to enter text.](#)
[Click here to enter text.](#)

28.2. Notice by certified or registered mail in the manner described above shall be deemed effective the day after its deposit in the mail.

29. NON-WAIVER

PMGAA's right to revoke this Agreement shall be absolute. Any election by PMGAA to not enforce any provision of this Agreement, or any failure by PMGAA to exercise any of the remedies allowed PMGAA under this Agreement, shall not operate as a waiver by PMGAA of any of its rights under this Agreement or at law or equity.

30. APPLICABLE LAW

The laws of the State of Arizona, including its conflicts of law provisions, shall govern the matters set forth in this Agreement. Venue of any action brought under this Lease shall, at the option of PMGAA, lie in Maricopa County, Arizona.

31. PRIOR PERMITS

Upon execution hereof, this Agreement shall supersede and cancel any prior agreement(s) between PMGAA and Licensee with respect to Licensee's ground transportation business activities at or on the Airport, or from the Terminal, governed hereby. Licensee shall not construe PMGAA's execution of this Agreement as a waiver of any prior indebtedness or obligation to PMGAA under any prior agreement or license, nor does PMGAA waive any claim or cause of action arising therefrom.

32. CANCELLATION PROVISIONS

32.1. PMGAA's Right of Cancellation. Except as may be otherwise provided herein, PMGAA shall have the right to cancel or terminate this Agreement in its entirety immediately if Licensee commits any one or more of the hereinafter listed events of default and does not cure such default within THIRTY (30) calendar days of PMGAA's written notice thereof. Upon receiving notice of such termination, Licensee shall immediately cease its operations at and on the Airport and remove all of its employees and personal property therefrom.

32.1.1. With Cause.

a. If Licensee shall fail to pay any fee or other amount due from Licensee hereunder or as a result of any other agreement executed between the Parties.

b. Solely for purposes of this SECTION 30.1.1 b., if Licensee shall neglect or fail to perform, keep or observe any other terms, covenants or conditions herein contained and if such neglect or failure shall continue for a period of THIRTY (30) calendar days after delivery by PMGAA to Licensee of a written notice of such default; provided, however, if a cure of the default reasonably requires more than THIRTY (30) calendar days to complete, then the time to cure shall be extended so long as the cure is being diligently pursued.

c. The occurrence of any act that deprives Licensee of the rights, licenses, permits and authorizations necessary for the proper and lawful conduct of the Licensee's business operations at and on the Airport, and from the Terminal.

d. Excessive liquidated damages and/or complaints against Licensee by Airport passengers and the general public.

e. The filing, by Licensee, of a voluntary petition in bankruptcy; or its adjudication as a bankruptcy pursuant to an action filed against it; or the taking of its assets by a court under any Federal reorganization act; or the appointment of a receiver for its assets; or the occurrence of a general assignment or attempted assignment for the benefit of creditors.

f. The filing of any mechanic's, materialmen's or other lien or any kind against the Licensee because of any act or omission of Licensee which lien is not discharged, by bonding or otherwise, within THIRTY (30) calendar days of receipt of actual notice thereof by Licensee.

g. Existence, for a period in excess of TEN (10) calendar days, of any strike, lockout, work stoppage or other dispute between Licensee and its employees, Drivers, contractors or subcontractors which,

in the opinion of PMGAA, interferes with the operation of the Airport, or endangers or inconveniences users of Airport facilities.

h. If Licensee shall discontinue or abandon its operations at the Airport for any 24-hour period, exclusive of periods when no commercial airline flight arrivals are scheduled or planned.

i. For violation of any laws, ordinances, regulations or provisions of this Agreement, PMGAA reserves the right to terminate this Agreement immediately when such action is considered by the PMGAA Executive Director, at his or her sole and absolute discretion, to be in the best interest of Airport passengers and the general public.

32.1.2. Without Cause. PMGAA may terminate this Agreement without cause upon THIRTY (30) days advance written notice to Licensee. In the event of termination without cause, Licensee shall be entitled solely to a pro-rata refund of any fee herein paid.

32.1.3. Temporary Suspension. As provided herein, PMGAA may suspend this Agreement for Licensee's failure to perform in accordance with the terms, covenants and conditions of this Agreement.

32.2. Licensee's Right of Cancellation. Except as otherwise provided herein, Licensee shall have the right to terminate this Agreement in its entirety upon THIRTY (30) calendar days advance written notice to PMGAA if one or more of the following events of default are committed by PMGAA:

32.2.1. The issuance by any court of competent jurisdiction of any injunction preventing or restraining the use of the Airport in such a manner as to substantially restrict Licensee from conducting its business activities at and on the Airport and from the Terminal, which injunction is not caused by any act or omission of Licensee and such injunction remains in force for at least SIXTY (60) consecutive calendar days.

32.2.2. If Licensee is deprived of the use of all or a major portion of the Airport or Terminal for THIRTY (30) consecutive calendar days or more, subject to the relocation or other applicable renovation provision provided for herein.

32.2.3. The assumption by the United States Government and the authorized agencies thereof, or any other governmental agency, of the operation, control or use of Airport facilities, including the Terminal, or any substantial part or parts thereof in such a manner as to substantially restrict the conduct of Licensee's business thereto for a period of THIRTY (30) calendar days or more.

32.2.4. A material breach by PMGAA of any of the terms and covenants or conditions within this Agreement. In the event of such a breach, Licensee shall have available all rights and remedies provided at law or in equity, subject to the terms and conditions of this Agreement; provided, however, Licensee may not exercise any such right or remedy unless Licensee has notified PMGAA by written notice of such alleged default, and PMGAA has not cured such default within a THIRTY (30) calendar day period subsequent to receipt of such notice or, in the event such alleged default is of such a nature that it cannot be reasonably cured within such THIRTY (30) day period, PMGAA has failed to cure such alleged default with all due diligence. Notwithstanding anything to the contrary in this Agreement, in no event shall Licensee be entitled to terminate this Agreement or abate or offset any fees or other payments to be made by Licensee hereunder.

32.2.5. Without Cause. Licensee may terminate this Agreement without cause upon THIRTY (30) days advance written notice to PMGAA.

33. PROFESSIONAL COMPETENCY.

33.1. Qualifications. Licensee represents that it is familiar with the nature and extent of this Agreement, the services and any conditions that may affect its performance thereunder. Licensee further represents that it is fully experienced and properly qualified, compliant with all applicable license requirements and is equipped, organized and financed to perform such services.

33.2. Level of Care and Skill.

33.2.1. Services provided by Licensee shall be performed in a manner consistent with that level of care and skill ordinarily exercised by members of Licensee's profession currently practicing in the same industry under similar conditions.

33.2.2. Acceptance or approval by PMGAA of Licensee's work shall in no way relieve Licensee of liability to PMGAA for damages suffered or incurred arising from Licensee's failure to adhere to the aforesaid standard of professional competence.

34. FORCE MAJEURE

Licensee shall not be responsible or liable for, or deemed to be in breach hereof because of any delay in the performance of its obligations hereunder to the extent caused by circumstances beyond its control, without its fault or negligence, and that could not have been prevented by the exercise of due diligence, including, but not limited to, fires, natural disasters, riots, wars, unavoidable and unforeseeable site conditions, failure of PMGAA to provide data within PMGAA's possession or to make necessary decisions or provide necessary comments in connection with any required reports prepared by Licensee in connection with the services and the unforeseeable inability to obtain necessary site access, authorization, permits, licenses, certifications and approvals (such causes hereafter call "Force Majeure").

35. RELEASE OF INFORMATION

Licensee shall not publish, release, disclose or announce to any member of the public, press, official body or any other third party: any documentation or the contents thereof, without the prior written consent of PMGAA, except as may be required by law.

36. WAIVER OF CLAIMS FOR ANTICIPATED PROFITS

Licensee waives any claims against PMGAA and its officers, officials, agents and employees for the loss of anticipated profits caused by any suit or proceeding, directly or indirectly, involving any part of this Agreement.

37. CONTINUATION DURING DISPUTE

37.1. Licensee agrees as a condition of this Agreement that in the event of any dispute between the Parties, provided no Notice of Termination has been given to PMGAA, and if it is feasible under the terms of this Agreement, each Party shall continue to perform the obligations not related to the dispute required of it during the resolution of such dispute, unless enjoined or prohibited by a court of competent jurisdiction.

37.2. Failure or delay by either Party to exercise any right, power or privilege specified in or appurtenant to this Agreement shall not be deemed a waiver thereof.

38. THIRD PARTY BENEFICIARY CLAUSE

The Parties expressly agree that this Agreement is not intended by any of its provisions to create of the public or any member thereof a third-party beneficiary, nor to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

39. CORPORATE AUTHORIZATION

In executing this Agreement, Licensee represents and warrants to PMGAA that if Licensee is a corporation, Licensee has obtained and been granted the full right, power and authority to enter into this

Agreement and that Licensee is a validly and lawfully organized entity in good standing in its state of organization, as well as in Arizona and in any state in which Licensee conducts business.

40. MISCELLANEOUS

40.1. Personal Liability. No member of PMGAA or employee or agent of either Party shall be charged personally or held contractually liable by or to the other Party under any term or provision of this Agreement because of any breach thereof or because of its execution or attempted execution.

40.2. No Waiver. No provision of this Agreement may be waived or modified except by a written instrument signed by the Party against whom such waiver or modification is sought.

40.3. Non-Waiver of Rights. No waiver or default by PMGAA of any of the terms, conditions, covenants or agreements hereof to be performed, kept or observed by Licensee shall be construed or act as a waiver of any subsequent default of any of the terms, covenants, conditions or agreements herein contained to be performed, kept or observed by Licensee, and PMGAA shall not be restricted from later enforcing any of the terms and conditions of this Agreement.

40.4. Amendment. This Agreement may be amended only by a written instrument executed by the Parties, except that fleet listing at **EXHIBIT B** may be updated at any time, upon mutual agreement of the Parties, without formal amendment but shall, upon said mutual agreement, become a valid **EXHIBIT B** replacement to this Agreement thereafter.

40.5. Cancellation. The Parties hereto acknowledge and agree that this Agreement may be cancelled pursuant to the provisions of ARS § 38-511, as amended.

40.6. Invalid Provisions. Should any provision of this Agreement or any application thereof shall be held invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, unless one or both Parties would be substantially and materially prejudiced.

40.7. Litigation Expenses. In the event of litigation between PMGAA and Licensee, the prevailing Party shall be entitled to recover its attorneys' fees and all costs and expenses of litigation, including witness fees, expert witness fees, and court costs.

40.8. Headings. The headings contained herein are for convenience in reference only and are not intended to define or limit the scope of this Agreement or any term thereof.

40.9. Approvals, Consents and Notices. All approvals, consents and notices called for in this Agreement shall be in writing, signed by the appropriate party, and may not be established solely by oral testimony.

40.10. Entire Agreement. This Agreement, including exhibits attached hereto at the time of its execution, constitutes the entire Agreement between the Parties hereto.

41. INCORPORATION OF RECITALS

The recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

FOR PMGAA:

**PHOENIX-MESA GATEWAY AIRPORT
AUTHORITY**, an Arizona joint powers airport authority

By: _____
J. Brian O'Neill, A.A.E.
Executive Director/CEO

STATE OF ARIZONA

County of Maricopa

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this ____ day of _____, 201__,
by J. Brian O'Neill, in capacity as the Executive Director/CEO of the Phoenix-Mesa Gateway Airport
Authority.

Notary Public

My Commission Expires: _____

Terminal Ground Transportation (Choose an item.) License Agreement
(Click here to enter text.) Click here to enter a date.

FOR LICENSEE:

Click here to enter text., Choose an item. Click here to enter text. Click here to enter text.

By:

Click here to enter text., Click here to enter text.

STATE OF Click here to enter text.

County of Click here to enter text.

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this ____ day of _____, 201__,
by Click here to enter text., in Choose an item. capacity as Click here to enter text. of Click here to enter text.

Notary Public

My Commission Expires: _____

EXHIBIT A

Depiction of Staging Areas, Queuing and Pickup Locations for All Ground Transportation Providers

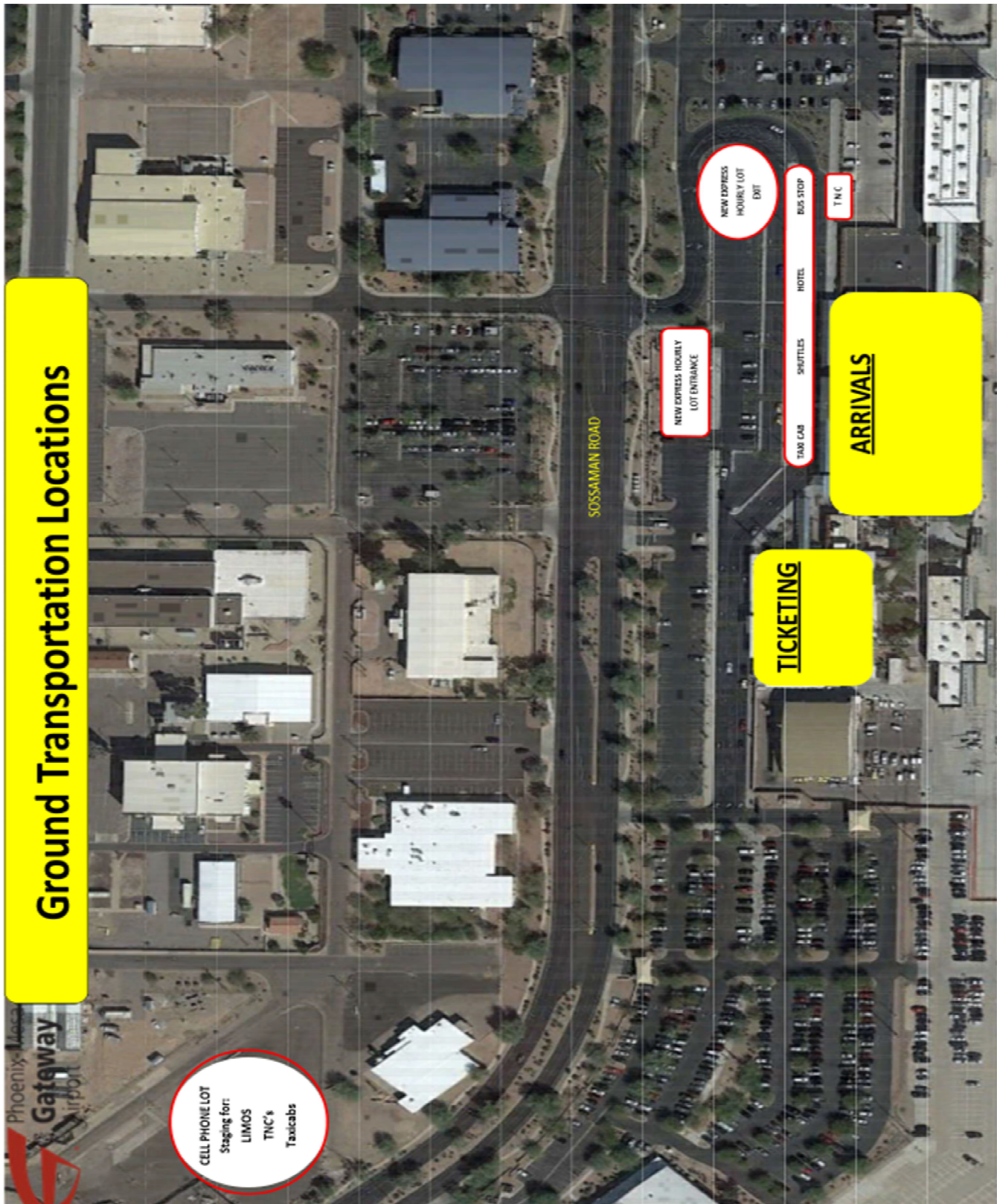


EXHIBIT B

Shared Ride Van and Mini-bus Fleet Requirement

5.1. Fleet Requirements.

5.1.1. All vehicles operated by Licensee under this Agreement must meet all motor vehicle safety standards, as set forth in applicable federal, state and local laws, including Federal Motor Carrier Safety Standards, and be listed in **EXHIBIT B** prior to the Effective Date. Licensee shall, thereafter, register and pay fees for any vehicles added, replaced or substituted after the Effective Date before such added, replaced or substituted vehicles are permitted to operate from the Airport Terminal. Subsequent to any such addition, replacement or substitution of a vehicle, the Parties shall execute a new **EXHIBIT B** that shall replace that previously specified in the Agreement.

5.1.2. At least FIVE PERCENT (5%) of Licensee's vehicles specified in **EXHIBIT B** and authorized to operate from the Airport Terminal must be ADA compliant and wheelchair accessible, with a minimum of THREE (3) doors for ingress and egress and ONE (1) forward-facing wheelchair position with securement. Such vehicles shall be specifically annotated as such in the **EXHIBIT B** listing.

5.2. Fleet Specifications. All vehicles providing Shared Ride Services under this Agreement shall:

5.2.1. Be inspected by an Airport Business Development Staff Member and have a properly installed Phoenix-Mesa Gateway Airport window decal. Window decals are issued upon completion of an inspection, payment of all fees and taxes, and proof of current documentation to include insurance certificates.

5.2.2. Display the proper decals required to operate as a livery vehicle in the State of Arizona.

5.2.3. Prominently display TWO (2) Licensee-issued Driver identification cards, ONE (1) on the vehicle dashboard and One (1) inside the passenger compartment where it shall be readily available for passenger view.

5.2.4. Have a properly installed and maintained air conditioning system to provide sufficient passenger comfort at all times. Air conditioners shall be operable at all times when outside air temperatures reach 85-degrees Fahrenheit, or upon passenger request. Heaters shall be operable upon passenger request and shall sufficiently heat the interior of vehicles.

5.1.1. Be structurally sound and maintained in accordance with A.R.S. Title 28, as amended, free of any exterior sheet metal damage, maintained in a damage-free and clean condition, free of oxidation or rust of paint, and free of road dust, mud and grime. Wheel covers shall be mounted on all wheels at all times, when vehicles are not otherwise equipped with decorative aluminum wheels. If such decorative wheels are installed on a vehicle, all wheels shall be the same type and design.

5.1.2. Have interiors and exteriors in clean condition, free from foreign matter and offensive odors. There must be no litter inside any shared ride vehicle, and the upholstery must be kept clean, intact and free of rips and tears. Drivers shall inspect the cleanliness of each vehicle at the beginning of each service day, and sweep/vacuum the interior, remove all trash and turn in any lost passenger items to Licensee (for transfer to PMGAA, as required by SECTION 4.3 herein) prior to commencement of each new passenger service contract.

5.1.3. Comply with the Smoke Free Arizona Act, as set forth in A.R.S. §§ 36-601.01 et seq., as amended.

EXHIBIT B

Sedan/Livery/Limousine Vehicle Requirement

5.1. Fleet Requirements. All limousines and livery vehicles operated by Licensee under this Agreement must meet all motor vehicle safety standards, as set forth in applicable federal, state and local laws, including Federal Motor Carrier Safety Standards, and be listed in **EXHIBIT B**. Licensee shall, thereafter, register and pay fees, as appropriate, for any vehicles added, replaced or substituted after the Effective Date before such added, replaced or substituted vehicles are permitted to operate from the Airport Terminal. Subsequent to any such addition, replacement or substitution of a vehicle, the Parties shall execute a new **EXHIBIT B** that shall replace that previously included in this Agreement.

5.2. Fleet Specifications. All limousines/livery vehicles providing services under this Agreement shall:

5.2.1. Be inspected by an Airport Business Development Staff Member and have a properly installed Phoenix-Mesa Gateway Airport window decal. Window decals are issued upon completion of an inspection, payment of all fees and taxes, and proof of current documentation to include insurance certificates.

5.1.1. Have a properly installed and maintained air conditioning system to provide sufficient passenger comfort at all times. Air conditioners shall be operable at all times when outside air temperatures reach 85-degrees Fahrenheit, or upon passenger request. Heaters shall be operable upon passenger request and shall sufficiently heat the interior of vehicles.

5.1.2. Be structurally sound and maintained in accordance with A.R.S. Title 28, as amended, free of any exterior sheet metal damage, maintained in a damage-free and clean condition, free of oxidation or rust of paint, and free of road dust, mud and grime. Wheel covers shall be mounted on all wheels at all times, when vehicles are not otherwise equipped with decorative aluminum wheels. If such decorative wheels are installed on a vehicle, all wheels shall be the same type and design.

5.1.3. Have interiors and exteriors in clean condition, free from foreign matter and offensive odors. There must be no litter inside a limousine, and the upholstery must be kept clean, intact and free of rips and tears. Drivers shall inspect the cleanliness of each limousine at the beginning of each service day, and sweep/vacuum the interior, remove all trash and turn in any lost passenger items to Licensee (for transfer to PMGAA, as required by SECTION 4.3 herein) prior to commencement of each new passenger service contract.

5.1.4. Comply with the Smoke Free Arizona Act, as set forth in A.R.S. §§ 36-601.01 et seq., as amended.

EXHIBIT B

Transportation Network Company Vehicle Requirement

5.1. Fleet Requirements. All TNC vehicles operated by Licensee under this Agreement must meet all motor vehicle safety standards, as set forth in applicable federal, state and local laws.

5.2. Fleet Specifications. All TNC vehicles providing services under this Agreement shall:

5.2.1. Have a properly installed and maintained air conditioning system to provide sufficient passenger comfort at all times. Air conditioners shall be operable at all times when outside air temperatures reach 85-degrees Fahrenheit, or upon passenger request. Heaters shall be operable upon passenger request and shall sufficiently heat the interior of vehicles.

5.2.2. Be structurally sound and maintained in accordance with A.R.S. Title 28, as amended, free of any exterior sheet metal damage, maintained in a damage-free and clean condition, free of oxidation or rust of paint, and free of road dust, mud and grime. Wheel covers shall be mounted on all wheels at all times, when vehicles are not otherwise equipped with decorative aluminum wheels. If such decorative wheels are installed on a vehicle, all wheels shall be the same type and design.

5.2.3. Have interiors and exteriors in clean condition, free from foreign matter and offensive odors. There must be no litter inside a vehicle, and the upholstery must be kept clean, intact and free of rips and tears. Drivers shall inspect the cleanliness of their vehicle at the beginning of each service day, and sweep/vacuum the interior, remove all trash and turn in any lost passenger items to Licensee (for transfer to PMGAA, as required by SECTION 4.3 herein) prior to commencement of each new passenger service contract.

Terminal Ground Transportation (Choose an item.) License Agreement
(Click here to enter text.) Click here to enter a date.

EXHIBIT C
Airport Rules and Regulations and Minimum Standards

http://www.gatewayairport.com/documents/documentlibrary/board%20policies/rules%20and%20regulations_16-53.pdf?Uniqueifier=JTaLz3CpRx

<http://www.gatewayairport.com/Documents/DocumentLibrary/Board%20Policies/Airport%20Minimum%20Standards.pdf>