



[SAMPLE AGREEMENT]

DISPLAY ADVERTISING CONCESSION AGREEMENT

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Introduction (pg. 1)

Article I. Definitions & Interpretations (pg. 2)

- 101. DEFINITIONS
- 102. INTERPRETATIONS

Article II. Premises (pg. 8)

- 201. PREMISES
- 202. RESERVATIONS
- 203. ACCESS
- 204. PREMISES ADJUSTMENTS
- 205. STORAGE, CLOSET, OFFICE, & EMPLOYEE BREAKROOM SPACE

Article III. Concession Rights (pg. 10)

- 301. RIGHTS
- 302. LIMITATION OF RIGHTS

Article IV. Concession Term (pg. 10)

- 401. TERM
- 402. SURRENDER OF POSSESSION
- 403. HOLDOVER PROVISION

Article V. Fees & Rentals (pg. 11)

- 501. GENERAL
- 502. CONCESSION FEES
- 503. PAYMENT
- 504. REPORTS
- 505. UNPAID FEES
- 506. PERFORMANCE & PAYMENT BOND
- 507. PROMPT PAYMENT OF TAXES & FEES
- 508. ACCOUNTING RECORDS & REPORTS
- 509. RIGHT TO AUDIT
- 510. ADDITIONAL FEES, CHARGES & RENTALS
- 511. NOTICE, PLACE & MANNER OF PAYMENT
- 512. COLLECTION OF ADVERTISING FEES
- 513. RADIO ADVERTISING

Article VI. Concessionaire's Operations (pg. 16)

- 601. STANDARDS OF SERVICE
- 602. HOURS OF OPERATION
- 603. PROMOTION
- 604. PERSONNEL
- 605. ONSET OF SERVICE
- 606. PRICING
- 607. MANAGER
- 608. CONFLICTS
- 609. RECORD KEEPING
- 610. TRANSITION PERIOD
- 611. OPERATION
- 612. COMMUNICATION
- 613. CUSTOMER COMPLAINTS
- 614. DELIVERIES
- 615. OPERATIONAL AUDIT
- 616. ENTERTAINMENT SYSTEMS/WIRELESS DATA

Article VII. Improvements & Alterations (pg. 22)

- 701. CONSTRUCTION BY CONCESSIONAIRE
- 702. INITIAL MINIMUM INVESTMENT
- 703. MID-TERM REINVESTMENT
- 704. PREPARATION OF PLANS & SPECIFICATIONS
- 705. CONTRACTOR'S LIABILITY INSURANCE
- 706. PERFORMANCE & PAYMENT BONDS
- 707. MECHANICS' & MATERIALMEN'S LIENS
- 708. CERTIFICATE OF COMPLETION
- 709. SIGNS

- 710. TITLE TO IMPROVEMENTS, EQUIPMENT & REMOVABLE FIXTURES

Article VIII. Use of Premises (pg. 26)

- 801. COMPLIANCE WITH LAWS & REGULATIONS
- 802. USE
- 803. RIGHT TO ENTER, INSPECT & MAKE REPAIRS
- 804. UTILITIES
- 805. INTERFERENCE WITH AIRPORT UTILITIES
- 806. INTERFERENCE TO AIR NAVIGATION

Article IX. Insurance, Damage, & Indemnification (pg. 29)

- 901. INSURANCE
- 902. CONCESSIONAIRE ACTIONS AFFECTING INSURANCE
- 903. DAMAGE TO PREMISES
- 904. INDEMINFICATION
- 905. CITY NOT LIABLE

Article X. Assignment & Subcontracting (pg. 38)

- 1001. ASSIGNMENT & SUBCONTRACTING

Article XI. Termination of Agreement in Entirety (pg. 39)

- 1101. CITY'S RIGHT TO TERMINATE
- 1102. CONCESSIONAIRE'S RIGHT TO TERMINATE
- 1103. PROCEDURES FOR TERMINATION
- 1104. RIGHTS CUMULATIVE

Article XII. ACDBE Participation (pg. 41)

- 1201. COMPLIANCE

Article XIII. Liquidated Damages (pg. 43)

- 1301. LIQUIDATED DAMAGES
- 1302. CONTINUING OPERATIONS

Article XIV. Compliance with Environmental Laws (pg. 44)

- 1401. COMPLIANCE WITH ENVIRONMENTAL LAWS

Article XV. Miscellaneous Provisions (pg. 47)

- 1501. NOTICE
- 1502. NON-DISCRIMINATION & AFFIRMATIVE ACTION PROGRAM
- 1503. FAA NON-DISCRIMINATION
- 1504. NO PERSONAL LIABILITY
- 1505. FORCE MAJEURE
- 1506. SUCCESSORS & ASSIGNS
- 1507. QUIET ENJOYMENT
- 1508. OPERATIONS & MAINTENANCE OF THE AIRPORT
- 1509. TITLE TO THE SITE
- 1510. AGREEMENTS WITH THE UNITED STATES OF AMERICA
- 1511. MODIFICATIONS FOR GRANTING FAA FUNDS
- 1512. GOVERNING LAW & FORUM SELECTION
- 1513. HEADINGS
- 1514. AMENDMENTS
- 1515. PREVIOUS AGREEMENTS
- 1516. REQUIRED APPROVALS
- 1517. WAIVERS
- 1518. INVALID PROVISIONS
- 1519. ENTIRE AGREEMENT
- 1520. NOT A LEASE
- 1521. ADVERTISING
- 1522. CONFLICTS BETWEEN TENANTS
- 1523. PREVAILING WAGE
- 1524. AMERICANS WITH DISABILITIES ACT
- 1525. TIME IS OF THE ESSENCE
- 1526. ACKNOWLEDGEMENT OF TERMS &

TABLE OF CONTENTS

CONDITIONS

- 1527. SECURITY PLAN & FACILITIES
- 1528. LIVING WAGE COMPLIANCE PROVISIONS
- 1529. SURVIVAL OF WARRANTIES
- 1530. CITY'S RIGHT & REMEDIES ARE
CUMMULATIVE

1531. EXHIBITS

Signatures (pg. 59)

Exhibit A. Premises

Exhibit B. Living Wage Adjustment Bulletin

ST. LOUIS LAMBERT INTERNATIONAL AIRPORT
CONCESSION AGREEMENT
(Display Advertising)

THIS AGREEMENT, made and entered into as of the ____ day of _____ 2022, by and between the CITY OF ST. LOUIS (“City”), a municipal corporation of the State of Missouri and XXXX (“Concessionaire”), a corporation organized and existing under the laws of the State of XXXX.

WITNESSETH, THAT:

WHEREAS, the City now owns, operates and maintains an international airport known as “St. Louis Lambert International Airport” (“Airport”), located in the County of St. Louis, Missouri;

WHEREAS, a “Concession,” as that term is defined in 49 C.F.R Part 23.3, at the Airport is a valuable accommodation of the public;

WHEREAS, the City has determined that it is in the public’s best interest for the following objectives to be met in the provision of a Display Advertising Concession:

- Provide a first-class Display Advertising Program that meets or exceeds Airport user needs and adds value to other Airport and airline services;
 - Upgrade and maintain the Premises by the addition and installation of New Improvements and the upgrade or removal of Existing Equipment in ways which optimize advertising effectiveness and revenue generation, creatively utilizing both static and digital components of the Premises to drive revenue and enhance the customer experience;
 - Maintain and manage the Airport Network Programming Service (ANPS) in the airline gate-hold and other approved areas;
 - Provide a high level of service at prices that are attractive to airport advertisers and competitive with prices found in comparable U.S. airports;
 - Provide excellent customer service to advertisers and airport users by operating the Display Advertising Concession with well-trained, efficient, courteous and pleasant staff; and
- Renovate the automated Reservation Center Phone Board (RCPB) system to deliver and operate a first-class RCPB system for use by arriving passengers wishing to arrange lodging, ground transportation, and other local needs;
- Be responsive to the Federal Aviation Administration (“FAA”) and City goals for Airport

Concession Disadvantaged Business Enterprise (“**ACDBE**”) participation in concessions;

- Be responsive to the Federal Aviation Administration (“**FAA**”), Homeland Security Administration (“**TSA**”) and Airport regulations as well as City ordinances and goals for ACDBE participation; and
- Endeavor to include local participation in the solicitation for and provision of the Advertising Program.

The order of these objectives should not be construed as an indication of their relative merit as viewed by the City.

WHEREAS, the City has advertised and received proposals for the non-exclusive right to manage and operate a Display Advertising Concession at the Airport, and by this selection process the City has determined that the Concessionaire is a qualified and responsive proposer that submitted a proposal deemed most advantageous to the City for the development, management and operation of a Display Advertising Concession at the Airport, and best meets the City’s objectives..

NOW, THEREFORE, for and in consideration of the payments, promises and the mutual covenants and agreements herein contained and other valuable considerations, the City and the Concessionaire agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATIONS

SECTION 101. DEFINITIONS. The following words and phrases have the following meanings:

“**Advertising Category**” means the type of advertisement as it relates to the Percentage Fee and may include, but not be limited to, the types of advertising set out below in the definition of Advertising Program , and as set out in Article V.

“**Advertising Program**” means, but is not limited to, static, digital, video, and promotional advertising platforms that deliver advertiser and brand messages to Airport passengers on behalf of clients throughout the Premises.

“**Agreement**” means this concession contract for and any amendments thereto, duly approved by the City.

“**Airport**” means St. Louis Lambert International Airport®, together with any additions, improvements, or enlargements made from time to time, which is owned by the City and is operated for the City by the Airport Authority of the City of St. Louis, a department of the City

“**Airport Concession Disadvantaged Business Enterprise (ACDBE)**” means a concession that is a for-profit small business concern:

- That is at least 51% owned by one or more individuals who are both socially and economically disadvantaged; or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and
- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

“Airport Network Programming Service” or **“ANPS”** means continuous audio and video programming packages consisting of news, information, advertising and promotional time, specifically designed for Airport broadcasting and providing to the Airport local insertion capability and time slots for public service announcements and advertising.

“Airport Properties Division” means the division of the Authority responsible for administering all tenant, permittee, agent, concessionaire, and other space at the Airport that shall be the Concessionaire’s point of contact with the Airport on all issues related to this RFP or the contract resulting thereof.

“ANPS Operator” means the entity responsible for the operation, installation, maintenance, and management of the ANPS as designated by the Concessionaire and approved by the Director.

“Authority” means the Airport Authority of The City of St. Louis, the City department responsible for managing and operating the Airport.

“Build-Out Period” means the first two (2) Contract Years of this Agreement.

“City” as stated in the preamble hereof.

“Commencement Date” means the first day of the Term of this Agreement, as provided for in Section 401.

“Concession” as stated in the preamble hereof.

“Concessionaire” as stated in the preamble hereof.

“Concession Fee(s)” means the payments due to the City as described in Section 502.

“Concession Period” means seven (7) Contract Years term of the Agreement.

“Contract Year” means a twelve (12) consecutive month period commencing on the first day of the Concession Period, and each twelve (12) month period thereafter during the Term of this Agreement (see Article IV).

“Days” or **“days”** means consecutive calendar days unless otherwise expressly provided herein.

“Digital Advertising” means advertising that is displayed on any digital medium such as televisions, video stripes, or other forms of electronic displays to include the ANPS.

“Director” means the Director of Airports of the City or the person performing the functions of that office, as authorized by the City’s Mayor, or that person authorized by the Director of Airports to act for or on behalf of the Director of Airports with respect to any particular matter under this Agreement, and incorporates the granting of approval requirements of Section 1516 hereof.

“Display Advertising Concession” means a business that provides advertising displays or messages to the traveling public, Airport employees, and other Airport users on a **non-exclusive** basis on the Airport.

“Environmental Laws” mean all applicable federal, state, and local statutes, ordinances, regulations, rules, laws, permits, Environmental Permits, permit conditions, and orders relating to the generation, emission, discharge, release, use, storage, transportation, or disposal of pollutants, contaminants, Hazardous Materials, wastes, hazardous substances, or chemicals or the preservation or regulation of the environment or natural resources including, without limitation, the Clean Air Act, 42 U.S.C. §7401 *et seq.*; the Clean Water Act, 33 U.S.C. §1251 *et seq.*, and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. §1401 *et seq.*; the Noise Control Act, 42 U.S.C. §4901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. §651 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, as amended by the Hazardous and Solid Waste, Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. §300f *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right- to-Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Hazardous Material Transportation Act, 49 U.S.C. §5101 *et seq.*; the Endangered Species Act, 16 U.S.C. §1531 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §4321 *et seq.*; the Toxic Substance Control Act, 15 U.S.C. §2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. §2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, U.S.C. §10101 *et seq.*, as such statutes and laws may be amended from time to time, all regulations, rules, executive orders, policies and instructions pertaining to and lawfully promulgated pursuant to such statute or law as they now exist or may be amended from time to time.

“Environmental Permits” means any and all permits, licenses, approvals, authorizations, consents, or registrations required by Environmental Laws, whether federal, state or local, and any duly filed environmental covenants or land use restrictions applicable to the Airport or the Premises.

“Existing Improvements” means, without limitation all equipment, fixtures and related installations, and improvements including all appurtenances thereto existing within the Premises as of the Commencement Date and owned by the City.

“Federal Aviation Administration” or **“FAA”** means the Federal Aviation Administration created under the Federal Aviation Act of 1958, as amended, or any successor agency thereto.

“Good Faith Efforts” means efforts to achieve an ACDBE goal or other requirement that, by their scope, intensity, and appropriateness to this objective, can reasonably be expected to meet the program requirement.

“Gross Receipts” means the total revenues from all sources and all types at this Airport under the Agreement performed by Concessionaire, its subcontractors, subsidiaries, associated companies or otherwise, regardless of the point of origin or delivery of the order. Concessionaire is not entitled to any and all revenues derived from Airport’s locally inserted advertising on the Airport Network Programming Service. Only the following may be excluded or deducted, as the case may be, from Gross Receipts:

- federal, state, county and municipal sales taxes or other sales taxes separately stated and collected from customers;
- cash or credit refunds given to customers for unperformed services purchased at the Airport;
- client agency fees;
- any amount paid by advertisers in connection with design, fabrication or installation of any advertiser’s specialty or custom display/graphics (including without limitation, the printing distributing or maintaining of any advertiser’s brochures) or with the design fabrication, installation or ongoing service of any new media technologies (including without limitation, the programming and maintenance charges for computer-operated, LCDs, video or interactive or motion displays;
- sale or trade-in value of any equipment or fixtures that were sold or transferred from the Premises provided the sale or transfer was approved for removal by the Director and the equipment or fixture was owned by Concessionaire;
- actual charges for utility costs (including telephone, data, and electrical) billed to advertisers on the RCPBs.

“Hazardous Materials” means friable asbestos or asbestos-containing materials, polychlorinated biphenyls (“PCB’s”), petroleum, or crude oil or any fraction or derivative thereof, natural gas, source material, special nuclear material, byproducts, pesticides, hazardous waste, toxic substance, or any material defined or treated as hazardous substance, regulated special waste, pollutant or contaminant (or comparable term) under any of the Environmental Laws. The City and Concessionaire stipulate and agree the existence and definition of Hazardous materials shall be construed herein in accordance with all applicable federal, state, City or local laws, statutes or regulations relating to the protection of human health or the environment.

“Insured Parties” means St. Charles County, Missouri; St. Clair County, Illinois; St. Louis County, Missouri; the City of St. Louis, Missouri, and its Board of Aldermen and Airport Commission; and their respective officers, officials, representatives, employees, and agents.

“Indemnified Parties” means St. Charles County, Missouri; St. Clair County, Illinois; St. Louis County, Missouri; the City of St. Louis, Missouri, and its Board of Aldermen and Airport Commission; and their respective officers, officials, representatives, employees, and agents.

“Minimum Annual Guarantee” or **“MAG”** as stated in Article V, Section 502 hereof.

“Missouri Regional Certification Committee” or **“MRCC”** means the Unified Certification Program established by U.S. Department of Transportation to oversee the Unified Certification Process for the state of Missouri. Principal agencies are: Missouri Department of Transportation, City of Kansas City, Missouri, Kansas City Area Transportation Authority, City of St. Louis, St. Louis Metropolitan area, and the Authority.

“New Improvements” means, without limitation, all improvements, modifications, installations, construction, equipment, and fixtures built, installed, constructed, or erected during the Term of this Agreement by the Concessionaire or sublessees, and forming a part of and which are permanently affixed or attached to any portion of Airport’s real property or Existing Improvements within the Premises.

“Percentage Fee” means the designated percentage of the Concessionaire’s Gross Receipts payable to the City, as set out in Article V.

“Premises” means a location or locations described in Article II, and shown on EXHIBIT A, that has or have been designated by the City for the sale of Concessionaire’s services or for other uses provided specifically herein, together with all Existing Improvements thereon.

“Provisions” means the terms, covenants, conditions, warranties, and specifications of this Agreement.

“Refurbishment” means to upgrade the Premises and return the Premises to original condition or the conversion of display advertising units to new concepts, including modernization/redesign by replacement of furnishings, fixtures and finishes and construction of Improvements.

“Refurbishment Costs” mean costs incurred to upgrade the Premises and return the Premises to original condition or convert display advertising units to new concepts, including modernization/redesign by replacement of furnishings, fixtures and finishes and construction of Improvements, costs of architectural design and engineering fees, outside project management, installation and preparation of all assets for their intended use, general contractors, sub-contractors, franchise fees, taxes, permits, insurance and construction bonds; but excluding the costs of interest during construction and the internal costs of Concessionaire’s employees.

“Remediation Costs” means any reasonable losses, expenses, or costs incurred by the City in connection with environmental remediation: (i) required by the appropriate governmental agency responsible for enforcing applicable Environmental Laws or Environmental Permits, and/or (ii) attributable to Hazardous Materials left on City property in excess of applicable remediation standards derived by the U.S. Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, the Missouri Department of Natural Resources or other governmental

health agency as appropriate for commercial property, safe for occupational exposure or Airport use or which are in violation of Environmental Laws or Environmental Permits, and caused by, or arising out of Lessee's operations or activities at the Premises or the Lessee's use of the City's property. Remediation Costs include reasonable investigation and evaluation costs, costs to implement institutional controls or restrictive covenants, sampling and analysis costs, reporting costs, planning and design costs, consultant and contractor costs, labor costs, equipment costs, construction costs, access costs, disposal costs, transportation costs, reasonable administrative costs, reasonable attorneys' fees and other legal fees and litigation expenses, permit fees and costs, monitoring costs, oversight and inspection costs, claims, demands, causes of action, suits, judgments, damages, compensation, debts, costs, expenses, losses, penalties, fines, stipulated penalties, punitive damages, and other similar liabilities caused by or arising out of Lessee's handling, use, storage, release, disposal, generation, emission or discharge of Hazardous Materials at the Airport including the Premises.

"Removable Fixtures" means all furnishings, equipment, personal property, and proprietary fixtures installed or placed by the Concessionaire within the Premises that are not permanently affixed to any wall, floor, or ceiling within the Premises or Existing Improvements, and identified and listed by Concessionaire on its Removable Fixtures list approved by the Director, as provided for in Section 710 of this Agreement.

"Reservation Center Phone Board" or **"RCPB"** means that portion of the Premises designed to accommodate passengers' needs for arranging pick-up or lodging by use of advertising displays, auto-dial telephones, TTY Machines, and other useful information.

"Rules and Regulations" means those lawful, reasonable, and not unjustly discriminatory rules and regulations, including ordinances and operating directives, promulgated by the Airport Director, the Airport Commission, or the City from time to time for the orderly operation of the Airport.

"Static Advertising" means advertising that is displayed on any static medium such as backlit dioramas, tension fabric displays, column wraps, window clings, or other forms of displays to include specialty and associate-manned displays.

"Term" means the entire term of this Agreement (see Article IV).

"Transportation Security Administration" or **"TSA"** means the Transportation Security Administration created under the Aviation and Transportation Security Act of 2001, as amended, or any successor agency thereto.

"TTY Machine" means a device that lets people who are deaf, hard of hearing, or speech-impaired use the telephone to communicate, by allowing them to type messages back and forth to one another instead of talking and listening.

SECTION 102. INTERPRETATIONS. References in the text of this Agreement to articles, sections, paragraphs, or exhibits pertain to articles, sections, paragraphs, or exhibits of this Agreement, unless otherwise specified.

1. The terms “hereby,” “herein,” “hereof,” “hereto,” “hereunder,” and any similar terms used in this Agreement refer to this Agreement.
2. Words importing persons include firms, associations, partnerships, trusts, corporations, and other legal entities, including public bodies, as well as natural persons.
3. Any headings preceding the text of the articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, are solely for convenience of reference and do not constitute a part of this Agreement, nor do they affect its meaning, construction, or effect.
4. Words importing the singular include the plural and vice versa. Words of any gender are deemed to include correlative words of the other gender.
5. The term “**including**” is be construed to mean “including without limitation,” unless otherwise expressly indicated.
6. All references to number of days mean calendar days.
7. Words used in the present tense include the future.

ARTICLE II PREMISES

SECTION 201. PREMISES. City hereby permits the Concessionaire to install, maintain and operate at the locations on Airport property including the Airport Terminals and Concourses in accordance with rights granted under Section 301 entitled “Rights”, as described in **Exhibit A**, “Premises”, attached hereto and made a part hereof. The rights granted in Section 301 hereof must only be exercised within the Premises.

The Director has the right to add, substitute, relocate or delete portions of the Premises upon reasonable notice to the Concessionaire. The City will not be liable or responsible for any loss whatsoever, including without limitation, any inconvenience or loss by the Concessionaire of work time, profit or business, actual, incidental, consequential or special damages resulting from any changes to the Premises. In the event that the Premises are relocated or deleted Concessionaire will be reimbursed the Unamortized Investment of the relocated or deleted Premises. In addition, the City will make good faith efforts to find replacement space that is of equal size and value as that of the reclaimed Premises. If replacement space is not located and developed by Concessionaire the MAG will be proportionately reduced, based upon the percentage of Gross Receipts of the Premises compared to the total Gross Receipts generated throughout the Airport during the prior twelve (12) month period, to reflect the loss of the Premises.

Concessionaire accepts the Premises “**AS IS**” with no warranties or representations of any kind, expressed or implied, either oral or written, made by the City or any of its officers, employees,

agents or representatives. City without limitation expressly disclaims and negates as to the Premises any implied or expressed warranty for a particular purpose and any expressed or implied warranty with the respect to the Premises or any portion thereof and the use or condition of the Premises.

SECTION 202. RESERVATIONS. The grant of lease hereunder is subject to the following reservations and conditions:

- A. Concessionaire will not exercise the rights granted by this Agreement to Concessionaire in such a way as to interfere with or adversely affect the use, operation, maintenance, expansion or development of the Airport, or with the operation of other tenants or users of the Airport.
- B. The City reserves for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause or allow in said airspace such noise, vibration, fumes, dust, fuel particles, illuminations, interference with television, radio or any other type of transmission and other effects as may be caused in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on or about the Airport.
- C. The City reserves the right to grant utility and maintenance rights-of-way to itself and other over, under, through, across or on the Premises provided that such use will not substantially or materially interfere with Concessionaire's use of the Premises, and provided further that such reservation or grant of rights does not directly result in additional cost or expense to Concessionaire.
- D. The City reserves the right (but will not be obligated to Concessionaire) to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Concessionaire in this regard.
- E. The City reserves the right to further develop or improve the landing area and all publicly-owned air navigation facilities of the Airport as City in its sole and absolute discretion as it sees fit, regardless of the desires or views of the Concessionaire, and without interference or hindrance of any kind.
- F. The City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Concessionaire from erecting, or permitting to be erected, any building or other structure on the Premises or the Airport which sole and absolute opinion of the City would limit the usefulness of the Airport, adversely effects the operations of the Airport or constitute a hazard to aircraft or air navigation.
- G. During the time of war or national emergency the City will have the right to enter into an agreement with the Government of the United States of America ("**U.S. Government**") for use of part of all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the Airport including the Premises and the rights granted herein. If any such agreement is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the agreement with the U.S. Government, will be suspended immediately upon receipt written notice from the City.

- H. This Agreement will become subordinate to provisions of any existing or future agreement between the City and the United States of America or any agency thereof relative to the operation, expansion, improvement, development, or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the operation, expansion, improvement, development or maintenance of the Airport.
- I. The City reserves all gas, oil and mineral rights in and under the soil; provided, however, that the City, in the exercise of such rights, does not substantially or materially interfere with the surface of the soil or with Concessionaire's use of improvements thereon.

SECTION 203. ACCESS. Subject to the Provisions of this Agreement hereof, Concessionaire has the right of free access, ingress to and egress from the Premises for Concessionaire's employees, agents, guests, patrons, licensees and invitees.

SECTION 204. PREMISES ADJUSTMENTS. If Premises are increased, reduced or changed as provided for in Section 201 of this Agreement, revised exhibits may be substituted for those herein without the necessity to amend this Agreement, which substitution will be made by Notice to Concessionaire from the Director on behalf of the City.

SECTION 205. STORAGE, CLOSET, OFFICE & EMPLOYEE BREAKROOM SPACE. Storage space, closet space, Concessionaire employee break room space and office space are **NOT** included in or provided for as part of this Agreement. If such space is required by the Concessionaire, the Concessionaire will be required to execute a separate agreement for any such space.

ARTICLE III CONCESSION RIGHTS

SECTION 301. RIGHTS. City hereby grants to Concessionaire, subject to and in accordance with all the Provisions of this Agreement, the **non-exclusive** right, license and privilege, and Concessionaire hereby assumes the obligation to design, construct, operate, manage, market and maintain a Display Advertising Concession within the Premises. The following activities are inclusive of these rights:

The right to negotiate and execute advertising contracts with interested advertisers and install, operate, and maintain advertisements within the Premises only, including Static, Digital, and specialty advertising displays, the Reservation Center Phone Boards and the Airport Network Programming Service.

SECTION 302. LIMITATION OF RIGHTS. Concessionaire is not granted the right to perform any services or offer for sale any products, or engage in any other business or commercial activity on the Airport that is not specifically granted under this Agreement. The Director reserves the right to require the immediate removal of any and all advertising copy deemed to be objectionable at the Director's sole discretion and without justification. All advertising contracts must be approved as to form by the Director. Staffed displays will only be permitted if specifically requested and approved by the Director. With the consent of the Director, Concessionaire will be permitted to install display advertising operations within airline clubs or concession premises in the Airport provided it has

executed an agreement to do so with the appropriate airline or tenant that operates the club or concession. With the written consent of the Director, Concessionaire will be permitted to change the approved ANPS Operator

This Agreement grants no real or implied rights to any concession privileges at or on the Airport other than in the designated areas. The use of areas not specifically included in Exhibit A may be approved for a limited time and must be approved in advance and in writing by the Director (see Section 1516 entitled "Required Approvals").

SECTION 303. PRODUCT RIGHTS. The City reserves the right to enter into any marketing revenue producing agreements which grant exclusive advertising/sponsorship rights for certain products, brands or services ("**official brands**") at the Airport. *To the extent permitted by law*, Concessionaire shall not sell, serve, advertise, promote or display at the Airport within or outside its Premises any products, brands or services that compete with designated official brands. If the City enters into any marketing revenue producing concession agreement, Concessionaire will agree to sell, advertise, feature, promote and display the official brand or brands covered under the advertising/sponsorship agreement and no others within the same product category, in accordance with the Provisions of this Agreement. The above will not require Concessionaire to change any of its corporate supply agreements or violate the terms of any of its franchise, procurement and/or license agreements.

ARTICLE IV CONCESSION TERM

SECTION 401. TERM. The Term of this Agreement consists of Seven (7) Contract Years as written below, unless sooner terminated in accordance with other Provisions of this Agreement:

Commencement Date:

Expiration Date:

SECTION 402. SURRENDER OF POSSESSION. No notice to quit possession at the expiration date of the Term of this Agreement will be necessary. Concessionaire covenants and agrees that at the expiration date of the Term of this Agreement, or at the earlier termination hereof, it will peaceably surrender possession of the Premises, in a clean, sanitary, and good condition as that existing at the time of Concessionaire's initial entry upon the Premises under this Agreement, reasonable wear and tear (taking into account the New Improvements, repair and maintenance required to be done by Concessionaire), acts of God, and other casualties excepted, and the City will have the right to take possession of the Premises with or without due process of law (see Section 201 entitled "Premises" and Section 710 entitled "Title to Improvements, Equipment and Removable Fixtures").

SECTION 403. HOLDOVER PROVISION. If Concessionaire does, with the prior written approval of the Director, holdover after the expiration of the Term of this Agreement, the resulting tenancy will, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-

month basis. During such month-to-month tenancy, Concessionaire shall pay to City the same Concession Fees as stated for Contract Year Seven (7) and other fees and charges as set forth herein, unless different fees are agreed upon in writing by the Director on behalf of the City and the Concessionaire, and both parties will be bound by all the Provisions of this Agreement.

ARTICLE V
FEES AND RENTALS

SECTION 501. GENERAL. Concessionaire, for and in consideration of the rights and privileges granted herein, agrees to pay the Concession Fees and other fees and charges as set forth in this Agreement including, without limitation, in Sections 502, 503, 504, 505, 507, 509, 510, Section 701.B, the utilities described in Section 804 and the liquidated damages described in Article XIII, *without demand*, during the Term of this Agreement.

SECTION 502. CONCESSION FEES. During each Contract Year or portion thereof, the Concessionaire agrees to pay to City a sum (the “**Concession Fees**”) equal to the greater of: the Minimum Annual Guarantee (MAG) as set forth in Section 502.A below; or the aggregate of the applicable Percentage Fees for each Advertising Category as set forth in Section 502.B below which will be applied to the Gross Receipts of Concessionaire for each Contract Year or portion thereof.

TO BE DETERMINED THROUGH RFP PROCESS

- A. For Contract Years One (1) through Eight (8) during the Concession Period, the MAG will be TBD (\$xxx,000.00) per year.
- B. During the entire Term of the Agreement, the Percentage Fee for each Contract Year of the Agreement, or portion thereof, shall be as provided below as determined by the applicable Advertising Category:

<u>Advertising Category</u>	<u>Percentage Fee</u>
Static Advertising	TBD%
Digital Advertising	TBD%
RCPB Advertising	TBD%
Other?	

SECTION 503. Concession Fee Payments. The Concession Fee payment shall be the greater of the “**MAG Payment**” (consisting of an amount equal to 1/12 of the MAG for the applicable Contract Year) or the “**Percentage Fee Payment**” (as set out above), and shall be due on or before the 20th day of the second month of the Term and each succeeding month during each Contract Year.

See Section 505 entitled “Unpaid Fees” and Article XIII entitled “Liquidated Damages” for the amount of any applicable service charge or liquidated damages.)

SECTION 504. REPORTS

- A. Statement of Gross Receipts. Concessionaire shall submit to the City, by the fifteenth (15th) day of the second and each succeeding month of each Contract Year hereof, during the Term of the Agreement, two (2) copies of an accurate statement of Gross Receipts certified by an officer of the Concessionaire. The statement of Gross Receipts must separately state Gross Receipts by Advertising Category. Concessionaire shall report Gross Receipts on a form approved by the Director. The Director reserves the right to request Concessionaire to provide documentation in a manner satisfactory to the Director, the specifics of all refunds deducted from Gross Receipts. The City reserves the right to use these statements of Gross Receipts as a source of information to bidders in future solicitations for this or similar concessions.
- B. Final Statement of Gross Receipts. The final statement of Gross Receipts will be due fifteen (15) days following expiration or early termination of this Agreement. The City reserves the right to use these statements as a source of information to bidders in future solicitations for this or similar concessions.
- C. Certified Audited Report of Gross Receipts. Concessionaire shall submit to the Airport Properties Division an audited report of Gross Receipts within one hundred twenty (120) days following the conclusion of each Contract Year, during the Term of the Agreement. This audit report must be prepared by an independent Certified Public Accountant. The audit report must, at a minimum, certify the accuracy of: 1) reported total accumulated Gross Receipts; and 2) the aggregate amount of goods and services attributable to ACDBE participants. The audit report must also include a schedule showing the total of actual Concession Fee Payments to the City during the Contract Year and must state an opinion as to the correctness of the Concession Fee Payments without exception. Delivery of an audit report containing a qualified opinion, an adverse opinion or a disclaimer of opinion as defined in the Statement on Auditing Standards, or as same may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, will be deemed to be a default pursuant to Article XI herein.
- D. Annual Audit Overpayment/Underpayment. In the event the annual audit indicates there was an underpayment of any rents, fees, charges, or other payments due and payable to the City, Concessionaire shall immediately pay the amount of the underpayment to the City. In the event of an overpayment, Concessionaire shall, upon City verification and approval, deduct the amount of the overpayment from the next scheduled Concession Fee Payment. If an overpayment occurs during the last Contract Year of the Term of the Agreement, the City will pay the amount of the overpayment to Concessionaire within thirty (30) days of receipt of the final audit report.
- E. Waiver of Audited Report of Gross Receipts Requirement. At the written request of the Concessionaire, the City may waive the annual Certified Audited Report of Gross Receipts requirement if, during the previous Contract Year, Concessionaire paid to the City only the Minimum Annual Guarantee (MAG) as set forth in Section 502 and 503. The City will review Concessionaire's payment history prior to approving the waiver request.

F. Quarterly ACDBE Activity Reports. Concessionaire shall be required to submit to the City by the 20th day following each calendar quarter (April 20th, July 20th, October 20th, and January 20th) an accurate statement of ACDBE utilization. Concessionaire shall document, in a manner satisfactory to the Director, the specifics of all Gross Receipts attributable to ACDBEs in addition to purchases from certified ACDBEs. This statement must be certified as accurate by an officer of the Concessionaire. Concessionaire shall submit quarterly ACDBE activity reports to the City in a form approved by the Director.

G. Joint Venture Activity Reports. If Concessionaire operates as a Joint Venture, Concessionaire is required to submit the following documents, as applicable, to the City in a form approved by the Director by the 15th day following each calendar quarter (April 15th, July 15th, October 15th, and January 15th) or as indicated below:

1. A copy of the fully executed Joint Venture agreement in the form submitted to the Airport for approval within thirty (30) days of execution of the Joint Venture agreement or by the Commencement Date of this Agreement, whichever is earlier;
2. An advance schedule of management committee meetings (including subcommittees) and minutes of such management committee meetings;
3. Joint Venture activity reports by the ACDBE partner(s) and acknowledged by the non-ACDBE partner detailing the activity of the ACDBE partner in relation to its assigned role in the operation and a detailed summary of its activities for the preceding quarter. Concessionaire must include in the activity reports any activity with regard to capital contributions, loans, loan repayments, etc.;
4. Documentation of all capital contributions made by the Joint Venture partners (ACDBE and non-ACDBE), including any promissory notes, within thirty (30) days of occurrence;
5. Any proposed amendments to the Joint Venture Agreement to the Business Diversity Development office for review and approval prior to its effective date;
6. Reconciliation of Administrative or Management Fees by the Joint Venture partners annually;
7. Federal tax returns filed by the Joint Venture, including all supporting schedules and K1s within thirty (30) days of filing the return;
8. An equity statement for each partner in the Joint Venture within thirty (30) days of the Joint Venture's fiscal year end; and
9. Additional information related to the above in order to demonstrate compliance with 49 CFR Part 23 and the FAA's Joint Venture Guidance as may be requested by the City from time to time.

H. ACDBE Documentation. Concessionaire shall keep, and make available to the City, such records (copies of subcontracts, paid invoices, documentation or correspondence) as are necessary for the City to determine compliance with the ACDBE participation goal. These records must be retained for a minimum of three (3) years after the termination of this agreement. The City reserves the right to investigate, monitor and/or review records for compliance.

SECTION 505. UNPAID FEES. All unpaid Concession Fees or any other fees, charges or payments due the City hereunder must bear a service charge of 1.5% per month if same is not paid and received by the City on or before the twentieth (20th) day of the month in which said payments are due; and Concessionaire agrees that it shall pay and discharge all costs and expenses including attorney fees and litigation cost incurred or expended by the City in collection of said delinquent amounts due, including service charges.

SECTION 506. PERFORMANCE AND PAYMENT BOND. Concessionaire agrees to furnish a Performance and Payment Bond in a form acceptable to City in the principal amount of **TBD (\$TBD)** prior to execution of this Agreement. Such bond or other form of security agreed to by the City will remain in full force and effect throughout the Term of this Agreement **and will extend at least one hundred eighty (180) days following the expiration or early termination of this Agreement**. In the event that said bond should expire prior to expiration or early termination of this Agreement, Concessionaire warrants, covenants and agrees to provide City a renewal bond prior to the expiring bond's expiration date. Such bond must guarantee the payment of all fees and performance of all other terms, covenants and conditions of this Agreement. The Performance and Payment Bond must be in the form of standard commercial guaranty bond running to City, written by a surety company authorized to do business in Missouri: having a "Best" key rating of not less than A and with a "Best" Financial Size Category of not less than Class VIII; and shown on the most recent U.S. Treasury Circular No. 570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The bond must be kept in full force and effect during the Term hereof, **and must extend at least one hundred eighty (180) days following the expiration or early termination of this Agreement**. City may agree to another form of deposit which provides equal protection of City's interest. If City cashes the bond or other form of deposit agreed to by the City, Concessionaire agrees to furnish a replacement Performance and Payment Bond or other form of deposit in the same principal amount within twenty (20) days.

SECTION 507. PROMPT PAYMENT OF TAXES AND FEES. Concessionaire warrants, covenants and agrees to pay promptly all lawful general taxes or payments in lieu of taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses (municipal, state or federal) required for the conduct of its business at and upon the Airport or under this Agreement, and further covenants and agrees not to permit any of said taxes, payments, assessments, fees and charges to become delinquent.

SECTION 508. ACCOUNTING RECORDS AND REPORTS. During the Term hereof, Concessionaire shall make available in the St. Louis area true, accurate, complete and auditable records of all business it conducts at the Airport. Concessionaire shall make same records available in the St. Louis area for three (3) years following the expiration or early termination of this

Agreement. These records must be accessible during usual business hours to the City or its duly appointed agents or auditors. Concessionaire is not required to maintain its records in the St. Louis area, as provided above, if it agrees to pay for all costs associated with conducting audits performed by the City, or its duly appointed agents or auditors, at the Concessionaire's place of records.

SECTION 509. RIGHT TO AUDIT.

- A. City, or its duly appointed agents or auditors, reserves the right to audit Concessionaire's, subcontractor's, or others doing business under this Agreement, books, records and receipts at any time for the purpose of verifying the fees and payments hereunder. If, by the results of the audit(s), it is established that additional fees are due to the City, the Concessionaire shall pay such fees to the City not later than fifteen (15) days after completion of such audit and written notice by the Director. If the results of the audit(s) reveal a discrepancy of more than five percent (5%) between the fees and payments reported by the Concessionaire and the fees and payments determined by the audit, the cost of the audit will be borne by Concessionaire.
- B. If, as a result of an audit by any governmental entity, Concessionaire is required to restate Gross Receipts as defined herein, Concessionaire will, within thirty (30) days of finalization of the audit, report the change in Gross Receipts to the Airport. If the change in Gross Receipts results in Concessionaire owing additional Concession Fee Payments, Concessionaire will, within thirty (30) days, remit to the City the additional Concession Fee Payments.

SECTION 510. ADDITIONAL FEES, CHARGES AND RENTALS. Concessionaire shall pay additional fees, charges and rentals under the following conditions:

- A. If the City has paid any sum(s) or has incurred any obligations or expenses for which Concessionaire has agreed to pay or reimburse the City for; or
- B. If the City is required or elects to pay any sum(s) or incurs any obligations or expenses because of the failure, neglect or refusal of Concessionaire to perform or fulfill any of the Provisions of this Agreement.

Such payments will include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of fees, charges and rentals thereafter due hereunder. Each and every part of such payment will be recoverable by the City in the same manner and with like remedies as if it were originally a part of the basic fees, charges and rentals, as set forth herein.

For all purposes under this paragraph, and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum(s) by the City for any work done or material furnished will be prima facie evidence against Concessionaire that the amount of such payment was necessary and reasonable.

SECTION 511. NOTICE, PLACE AND MANNER OF PAYMENT. Payments to the City required by this Agreement must be made at the Airport Administrative Office at the address as set forth in Section 1501, or at such other place or by whatever payment method that the City may

determine as the City may hereafter notify Concessionaire, and must be made in legal tender of the United States of America.

SECTION 512. COLLECTION OF ADVERTISING FEES. Concessionaire is responsible for the collection of all advertising fees or charges to be paid by advertisers, and is responsible for uncollected funds. Failure by an advertiser to pay Concessionaire does not relieve Concessionaire from paying to the City the fees and payments set forth herein.

SECTION 513. ABATEMENT OF MINIMUM ANNUAL GUARANTEE.

Notwithstanding the foregoing requirements of Sections 501, 502, 503, and 504 hereof, the obligation of the Concessionaire to pay the MAG Payment due for a calendar month (but not the obligation of Concessionaire to pay the Percentage Fee Payment as required by Section 502(B) hereof will be abated to the extent provided herein upon a decline in the Airport's enplaned passengers:

- a. Should the number of passengers enplaning on scheduled airline flights within the Airport during any given calendar month decline by thirty percent (30%) or more from the same calendar month of 2022 (an "**Abatement Triggering Event**"), the obligation of the Concessionaire to pay 1/12 of the MAG for that calendar month **only** shall be abated in the following five percent (5%) increments to reflect the decline in passenger enplanements:
 - 1) A decline in enplanements of at least thirty percent (30%) but less than thirty five percent (35%) will cause an abatement of 30% of that month's MAG obligation;
 - 2) A decline in enplanements of at least thirty five percent (35%) but less than forty percent (40%) will cause an abatement of 35% of that month's MAG obligation;
 - 3) A decline in enplanements of at least forty percent (40%) but less than forty five percent (45%) will cause an abatement of 40% of that month's MAG obligation;
 - 4) A decline in enplanements of at least forty five percent (45%) but less than fifty percent (50%) will cause an abatement of 45% of that month's MAG obligation; and
 - 5) A decline in enplanements of at least fifty percent (50%) will cause an abatement of 50% of that month's MAG obligation. **It being understood that in no event will the month's MAG obligation be abated by more than 50%.**

An example of the Abatement of Minimum Annual Guarantee outlined in this Section 513, wherein the Airport enplaned the following passengers, and the total MAG Payment due from the Concessionaire is \$375,000:

May 2022 100,000 passengers

May 2024 70,000 passengers

For May 2024, the Concessionaire will be obligated to pay the greater of the reduced monthly MAG Payment of \$21,875 (the monthly MAG of \$31,250 reduced by 30% in response to the decline in enplanements) or the Percentage Fee Payment, which is due on July 20, 2024.

An example of the Abatement of Minimum Annual Guarantee outlined in this Section 513, wherein the Airport enplaned forty three percent (43%) fewer passengers than in the same calendar month of 2022, and the total MAG Payment due from the Concessionaire is \$375,000:

May 2022 100,000 passengers

May 2024 57,000 passengers

For May 2024, the Concessionaire will be obligated to pay the greater of the reduced monthly MAG Payment of \$18,750 (the monthly MAG Payment of \$31,250 reduced by 40% in response to the decline in enplanements and the Percentage Fee Payment, which is due on July 20, 2024.

- b. Notwithstanding the foregoing, under no circumstances shall the monthly MAG payment due be reduced by any amount greater than fifty percent (50%).

An example of the Abatement of Minimum Annual Guarantee outlined in this Section 513, wherein the Airport enplaned 60% fewer passengers than the same calendar month of 2022, and the total MAG Payment due from the Concessionaire is \$375,000:

May 2022 100,000 passengers

May 2024 40,000 passengers

For May 2024, the Concessionaire will be obligated to pay the greater of the reduced monthly MAG Payment of \$15,625 (the monthly MAG of \$31,250 reduced by the maximum 50%) and the Percentage Fee Payment, which is due on July 20, 2024.

Concessionaire acknowledges, stipulates and agrees that nothing in an Abatement Triggering Event will be construed to relieve the obligation of the Concessionaire to pay the greater of the MAG Payment or the Percentage Fee Payment, which will be due on the 20th day of the second succeeding month and each month thereafter.

ARTICLE VI CONCESSIONAIRE'S OPERATIONS

SECTION 601. STANDARDS OF SERVICE.

- A. The Concessionaire warrants, represents, covenants and agrees to meet the City's objectives as set out in the preamble hereof.
- B. The Concessionaire shall, at its own cost and expense, furnish a first-class Display Advertising Concession to include Static, Digital, and specialty advertisements, RCPBs, and ANPS, serving the needs of all Airport users.
- C. Concessionaire shall ensure that each passenger and Airport customer receives prompt and

efficient service. In conjunction with this requirement, Concessionaire shall ensure each advertising location contains up-to-date advertisements with up-to-date contact information.

- D. Concessionaire shall ensure that all Premises are cleaned and dusted no less frequently than every seven (7) days.
- E. Concessionaire shall ensure that all telephones on the RCPBs, including but not limited to handsets and keypads, at all locations are cleaned and sanitized no less frequently than every seven (7) days.
- F. Concessionaire shall check all Premises for mechanical malfunctions no less frequently than every seven (7) days. Concessionaire shall promptly repair any malfunctions, including but not limited to, advertisements, light bulbs, telephones, televisions, and digital display units. Concessionaire shall promptly notify the Airport in the event of any long term outage or malfunction. At the Director's request, Concessionaire shall place professionally made signage notifying passengers and Airport customers of any long term outage or malfunction. Note: Concessionaire is not responsible for the maintenance of the soffits above the RCPBs. However, the Concessionaire is responsible for the digital display units attached to the soffits above the RCPBs.
- G. Concessionaire shall respond within twenty-four (24) hours after notice by City of any and all maintenance issues.
- H. Concessionaire shall, no less than two (2) times per Contract Year, review, verify as operational, and update or repair as needed, the Braille and TTY Machines on the RCPBs. Concessionaire shall send the Airport Properties Division written notification when review and update has been completed.
- I. Concessionaire shall ensure that the exterior reservation centers, located outside of the terminal buildings, are well maintained and have professionally made signage. Such signage must properly identify the units, their use, and the Concessionaire providing the service. All equipment, signage and supplies used must be durable, all-weather materials.
- J. Deliveries of supplies, cash and coin to the Premises must be made at such times, by such routes/modes and at such locations as the City may reasonably approve.
- K. Premises must be kept clean, neat, business-like, and in an orderly condition at all times and Concessionaire shall provide for timely disposal of trash and debris at locations designated by the City.
- L. Concessionaire shall assure that its agents and employees do not engage in solicitation or pressure sales tactics for products offered on or about the Airport, including agents working at any specialty advertising locations.
- M. Concessionaire's operations must fully comply with all FAA regulations including security requirements, Airport rules and regulations, and Airport security plan. Employees must be

suitably badged in accordance with Airport security procedures and regulations and must fully comply with TSA regulation 1542 regarding conduct and access to the Airfield Operations Area (“AOA”).

SECTION 602. HOURS OF OPERATION. Concessionaire shall operate 24-hours per day; seven days per week, 365/366 days per year, as applicable. Concessionaire may not change the hours-of-operation without written application to and written approval of the Director. The City may require the Concessionaire to change its hours of operation to reflect changing operational circumstances at the Airport.

SECTION 603. PROMOTION. Concessionaire warrants, covenants and agrees that it shall take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it hereunder. Concessionaire shall not divert, cause or allow any business to be diverted from the Airport by referral or any other method. Any action taken by Concessionaire to diminish the Gross Receipts of the Concessionaire under this Agreement will constitute a material breach hereof and a cause for the termination of this Agreement by the City.

SECTION 604. PERSONNEL.

- A. Concessionaire shall ensure, *at its sole cost and expense*, all employees obtain an Airport-issued ID badge from the Airport Police Department and shall ensure all employees wear and display in an acceptable manner their Airport ID at all times while on Airport property. Employees must fully comply with TSA regulation 1542 regarding conduct and access to the AOA.
- B. Concessionaire, *at its cost*, acknowledges and agrees that all employees applying for an Airport ID badge must submit to a fingerprint-based criminal history record check.
- C. Concessionaire, *at its cost*, acknowledges and agrees that it shall conduct employee background checks of each of its personnel if required by the FAA, TSA or the City. Concessionaire recognizes and agrees that security requirements may change and Concessionaire agrees that it must comply with all such changes throughout the Term of this Agreement.
- D. Concessionaire understands and agrees that fines and penalties may be assessed by the FAA or the TSA for Concessionaire’s noncompliance with the provisions of TSA regulation 1542 as amended or other applicable laws or regulations. Concessionaire will promptly reimburse the City, within thirty (30) days of the City’s request, for any fines or penalties paid by the City due to Concessionaire’s noncompliance with said laws or regulations.
- E. Concessionaire shall require its employees (except managerial and supervisory employees) to wear appropriate uniforms and company-issued name tags so they may be identified by the public and indicates the fact and nature of their employment. Uniforms will be clean, neat, and worn according to company standards during the entire time the employee is on Airport property.

- F. Concessionaire shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each of whom shall be proficient in the duties to be performed in the operation of this Concession.
- G. Concessionaire shall ensure staff demonstrates customer service by presenting a pleasant greeting and smile upon interaction with any customer.
- H. All employees shall act in a courteous and helpful manner at all times with customers and fellow employees. Employees are expected to behave in businesslike and professional manner at all times while in uniform and on Airport property.
- I. Employees shall provide a friendly and professional greeting to customers whenever and wherever contact is made; employees shall display a positive attitude toward passengers and fellow employees; English will be spoken by staff, except when necessary to accommodate customer; the use of foul or inappropriate language in public areas at any time is prohibited; employees shall smile and use a pleasant tone of voice when conversing with the customers; employees shall be actively working while on duty and refrain from gathering and "chatting" in groups while on duty, unless necessary; employees shall refrain from the use of cell phones while on duty; employees shall not nap or sleep in public areas while in uniform; and employees shall be attentive to customers.
- J. Employees are not permitted to utilize public seating, boarding areas, gate areas or lounge areas within the terminal and concourses. The above areas are intended for use by the traveling public and not as rest or lounge facilities for employees.
- K. Concessionaire shall provide proper training of all employees including on-going customer service training and for the certification and licensing of employees in all areas of service as their duties might legally require. The Concessionaire shall participate in the Airport's customer service program.
- L. Concessionaire acknowledges only direct support vehicles and equipment will be allowed on the AOA. Qualifying, direct support vehicles and equipment must be approved by the Airport Police Department and all drivers must attend Airport-sponsored driver training prior to driving on the AOA, and attend any recurrent driver training required by the Airport.
- M. Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable federal, state, City, and local laws, rules and regulations including, without limitation, the Airport's Rules and Regulations, the Airport's Security Plan and all applicable FAA, TSA, & City security rules, regulations, plans orders, directives, requirements, and procedures.
- N. Concessionaire shall prohibit and restrain its agents, servants and employees from loud, noisy, boisterous or otherwise objectionable behavior. Upon objection from the Director concerning the conduct or appearance of any such persons, Concessionaire shall immediately take all steps necessary to remove the cause of the objection.

O. The Airport will provide the Concessionaire, at no cost or expense, **one (1) Terminal 1 Short Term Parking Garage** parking pass. Additional parking passes will be at *the sole cost and expense* of the Concessionaire.

P. The Airport is a smoke-free facility. Smoking is permitted only in designated smoking areas.

SECTION 605. ONSET OF SERVICE. Concessionaire will receive the Premises "**AS IS**". Concessionaire will be solely liable and responsible for all costs and expenses pertaining to the design, construction, acquisition, installation, replacement, relocation, and maintenance of the Existing Improvements, New Improvements, Removable Fixtures, equipment, and fixtures as is necessary to provide service pursuant to this Agreement.

At the time of the award of this Agreement, Concessionaire submitted with its bid a transition plan and development schedule, subject to the approval of the Director, for the efficient transition of service from any previous concessionaire. Concessionaire shall be responsible to coordinate the execution of the transition, in accordance with the approved transition plan with the previous concessionaire to assure a smooth transition of service with the minimum amount of disruption of service to the traveling public and other Airport users.

Concessionaire acknowledges, stipulates and agrees that the City will not be responsible or liable for any relocation costs associated with Concessionaires' personal property or Removable Fixtures including, without limitation, any loss of income or profit.

SECTION 606. PRICING. Concessionaire shall charge prices that are fair, reasonable and nondiscriminatory to all categories of users. The basis must be substantially similar to the prices charged for similar services at other airports of similar size. Prices are subject to review by the Director and must not be implemented until approved by the Director. Concessionaire agrees that it will not change prices until approved in writing by the Director.

Except as expressly permitted in this Agreement, Concessionaire may not permit any free or discounted advertising without the prior written approval of the Director.

SECTION 607. MANAGER. Concessionaire shall at all times retain one (1) or more qualified, competent and experienced manager(s) who will manage and supervise the operations and the facilities and fully represent and act on behalf of the Concessionaire in all matters pertaining to its business operation. The manager(s) shall be available by phone during regular business hours. A responsible subordinate shall be in charge and available by phone at all times during the manager's absence. The Manager or subordinate shall be available after hours by phone to resolve any issues pertaining to the Concession operations.

SECTION 608. CONFLICTS. Concessionaire shall monitor the movement of its vehicles or equipment to minimize conflict with other functions and users of the Airport and shall coordinate its use of the Airport with other users.

SECTION 609. RECORD KEEPING. Concessionaire agrees to provide a system for the collection of all monies and provision of accounting, audit and statements of revenue as required

by Article V of this Agreement. This system must be capable of providing comprehensive records, in a format acceptable to the Director, of daily, monthly and annual sales of Concessionaire and ACDBE participant(s) under this Agreement (these records are to be retained by Concessionaire). Concessionaire must also maintain records that document, in a format acceptable to the Director, the portion of revenue attributable to ACDBE participants.

SECTION 610. TRANSITION PERIOD. If applicable, during any future transition of the Concession to another Concessionaire, the incumbent Concessionaire hereby warrants, represents, covenants and agrees that Concessionaire shall use its best efforts to assure a smooth transition and agrees to closely coordinate the planning and execution of the transition with the Director.

SECTION 611. OPERATION.

- A. Concessionaire shall be responsible for all aspects of the development, management and operation of this Concession. Further, Concessionaire shall provide and be responsible for all employees and necessary components of the operation, including inventory, fixtures, equipment, Removable Fixtures and supplies.
- B. The City will not be responsible for any equipment, Improvements, Removable Fixtures, supplies or fixtures used, maintained or stored on the Premises, nor will it be responsible for damage to such items resulting from flood, fire, explosion, vandalism or other causes outside the control and responsibility of the City.

SECTION 612. COMMUNICATION.

- A. If requested, Concessionaire's local manager shall schedule monthly or quarterly meetings (at the Airport's discretion) with the appropriate representative of the Airport Properties Division to discuss sales and the DBE Program office to discuss ACDBE participation, or any other relevant issues which may affect Concessionaire's operation at the Airport. Concessionaire shall also be available for meetings at other times as necessary.
- B. Concessionaire shall be responsible for notifying the Airport Properties Division of any problem that reduces service or sales levels or in any way impairs Concessionaire's operation. The Airport will make every reasonable effort to assist in eliminating such problems.

SECTION 613. CUSTOMER COMPLAINTS. Concessionaire shall establish procedures for handling all customer complaints. Concessionaire shall respond in writing to every complaint, written or oral, within seven (7) calendar days of the complaint and shall make good faith efforts to explain, resolve or rectify the cause of the complaint. Concessionaire shall provide the Director with a copy of each such complaint and its written response thereto.

SECTION 614. DELIVERIES. Concessionaire shall monitor the movement of deliveries to avoid conflict with other functions and users of the Airport and shall coordinate its use of the receiving dock with other users. All deliveries are the responsibility of Concessionaire and not the City. The Concessionaire shall comply with all Transportation Security Administration (TSA) and FAA regulations concerning the delivery, distribution and storage of products

SECTION 615. OPERATIONAL AUDIT. During the Term of this Agreement, Concessionaire shall be subject to regular operational facilities inspections of Concessionaire's operations at the Airport.

SECTION 616. ENTERTAINMENT SYSTEMS/WIRELESS DATA. No radio or television or other similar device will be installed without first obtaining, in each instance, the Director's written consent which will not be unreasonably withheld. No antenna or aerial will be erected on the roof, interior walls or exterior walls of the Premises or on the Airport without, in each instance, first obtaining the prior written consent of the Director. Any radio, television, or other similar device, antenna or aerial so installed without such prior written consent will be subject to removal and forfeiture without notice at any time. No loudspeakers, televisions, phonographs, radios, or other devices will be used in a manner so as to be heard outside the Premises without the prior written consent of the Director. Surveillance equipment will be permitted within the Premises for surveillance within the Premises only. Concessionaire is not permitted, nor may Concessionaire permit others to use, establish, purchase, sell, or maintain any type of wireless data transmission service or antennae in, on or from the Premises without obtaining the prior written consent of the Director, whose consent may be withheld for any reason whatsoever, or for no reason. The cost removal of any of the foregoing will be borne by the Concessionaire. It is agreed that all television, radio, antenna, wireless data transmission service, and other similar devices installed and in place prior to the Commencement Date are considered approved by the Director. In addition, wireless transmission of data from Concessionaires point of sales systems, if applicable, to its accounting and other systems will be reasonably permitted.

SECTION 617. ENHANCED MEASURES. Concessionaire will timely and promptly comply with any orders and directives ("**Enhanced Measures**") related to the health and safety of airport users that may be instituted, in any form (directives, Executive Orders, St. Louis County orders, ordinances, etc.). Examples of Enhanced Measures include, but are not necessarily limited to:

1. Enhanced security procedures. Concessionaire acknowledges that it will comply with any enhanced security procedures instituted by the Transportation Security Administration, the FAA, and / or other state and local officials. Examples of these enhances procedures include, but are not necessarily limited to, employee screening procedures, security badging changes, and access control adjustments;
2. Enhanced cleaning procedures. Concessionaire acknowledges that it will comply with any enhanced cleaning procedures instituted by the City, St. Louis County, the state of Missouri, health officials (including the Centers For Disease Control, the City Health Department, the St. Louis County Department of Health, and other federal, state, and local authorities). Examples of enhanced cleaning procedures include, but are not necessarily limited to, disinfectant cleaning and fogging, pest control, use of approved and recommended cleaning materials and supplies, laundry requirements, and staff health screening / hygiene / personal protective equipment requirements;

3. Enhanced administrative procedures. Concessionaire acknowledges that it will comply with any advanced administrative procedures that may be instituted by the City or federal, state, or local authorities. Examples of enhanced administrative procedures include, but are not necessarily limited to, compliance recordkeeping, work logs, cleaning logs, and other records that the City may deem useful in complying with rules and regulations.
4. Enhanced capacity standards. Concessionaire shall immediately comply with Enhanced Measures related to any reduced or adjusted passenger capacity within its Premises.

ARTICLE VII IMPROVEMENTS AND ALTERATIONS

SECTION 701. CONSTRUCTION BY CONCESSIONAIRE.

- A. Concessionaire takes the Premises “AS IS” as provided for in Article II, Section 201 hereof, and agrees, at Concessionaire’s sole cost and expense, to design, erect, construct, install, replace, equip and furnish Improvements, Removable Fixtures, equipment and fixtures, and make related facility changes as needed to operate a Display Advertising Concession, in accordance with and subject to the Provisions of this Agreement.
- B. Concessionaire agrees that all such work will be completed according to the Tenant Design Standards, which are filed of record in the Office of the Director of Airports.
 1. Concessionaire shall submit a signed Tenant Construction or Alteration Application (“TCA”) including complete construction drawings and specifications, as required by Section 704, to the Airport Properties Division. The TCA shall be submitted for each location in accordance with the construction drawings and specifications. Concessionaire also understands and agrees that certain work elements described in its TCA may require separate or additional approval from the City before proceeding with the specific work element. As such, Concessionaire ongoing coordination with the City at all times is crucial.
 2. Concessionaire shall submit a St. Louis County building permit number not more than thirty (30) days following submission of the TCA to the Airport Properties Division. (A building permit number is required before the TCA can be approved.)
 3. Concessionaire shall submit the contractor’s liability insurance certificates, performance bonds, and payment bonds, required by Sections 705 and 706, to the Airport Properties Division not more than forty-five (45) days following the TCA approval by the Airport Properties Division and prior to beginning of work.
 4. Concessionaire shall use only City-approved contractors or subcontractors for New Improvements affecting control or programming of Airport systems including, but not limited to, security access control, fire alarm and detection, HVAC control, closed circuit televisions (CCTVs) and elevators.

5. Concessionaire shall complete all construction and open all Premises fully fixtured and operational no later than one hundred eighty (180) days after full execution of the Agreement by the City (also see Article XIII).
6. Failure to open and operate in accordance with this Section 701 may result in Concessionaire being assessed liquidated damages in the amount of **Five Hundred Dollars (\$500.00) per day** for each day beyond ten (10) days after the Commencement Date.
7. Concessionaire shall submit a certificate of completion and a certified copy of a St. Louis County occupancy permit to the Airport Properties Division, as required by Section 708 hereof.

In the event Concessionaire encounters material believed to be asbestos or polychlorinated biphenyl (“PCB”) which has not been rendered harmless, or specifically identified with method of removal, handling or protection, Concessionaire shall immediately stop work in the affected area and report the condition to the Director in writing. The work in the affected area will not thereafter be resumed except by written agreement of the Director and Concessionaire if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area will be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the Director and Concessionaire. Concessionaire shall not be required to perform, without their consent, any work related to asbestos or PCB.

SECTION 702. INITIAL MINIMUM INVESTMENT. In connection with Concessionaire’s performance under Section 701 of this Agreement, and as agreed to in advance in writing by the City, Concessionaire shall expend or cause to be expended Refurbishment Costs for the Refurbishment of the Premises, including but not limited to RCPBs, in an amount not less than **TO BE DETERMINED BY PROPOSAL (\$TBD) (the “Initial Minimum Investment”)**. Concessionaire shall complete or cause to be completed such Refurbishment subject to and in accordance with all the Provisions of this Agreement. Concessionaire’s Refurbishment must be completed no later than **one (1) year after the Commencement Date** of the Agreement unless delayed or postponed at the Director’s written direction.

Concessionaire shall furnish the Director with satisfactory proof of Refurbishment Costs for the unit within one hundred eighty (180) days following completion of work to the Premises. This proof of Refurbishment Costs must include, at a minimum, an itemized account of all included costs, supported by paid invoices (copies to be provided only if specifically requested by the Director) and certified by an Independent Certified Public Accountant, and will supply the resulting audit report to the Director. Concessionaire shall provide to the Director any other proof or documentation required by the Director to ensure compliance with the Provisions of this Article VII.

Concessionaire is encouraged by City to productively expend the entire Initial Minimum Investment. However, in the event Concessionaire’s actual expenditures for Refurbishment Costs are less than the Initial Minimum Investment, the difference will be an item of additional payment

due and payable to City within thirty (30) days after the receipt of an invoice for such difference from City.

SECTION 703. MID-TERM REINVESTMENT Concessionaire covenants, warrants, represents, and agrees that the Concessionaire shall expend or cause to be expended Refurbishment Costs for Refurbishments to the Premises in an amount not less than **TO BE DETERMINED BY PROPOSALS (\$TBD)** (the “**Mid-Term Reinvestment**”) during **Contract Year 5** of the Agreement. The Mid-Term Reinvestment to Refurbish the Premises including New Improvements will include only those Refurbishment Costs incurred or expended by the Concessionaire or its sublessees’ during Contract Year 5, unless delayed at the City’s direction. Concessionaire shall perform and complete the Refurbishments for the Mid-Term Reinvestment in accordance with the Provisions of this Agreement. The Director reserves the right to participate in and approve the Concessionaire’s Mid-Term Reinvestment plans to Refurbish the Premises.

Concessionaire shall furnish the Director with satisfactory proof of the Mid-Term Reinvestment within one hundred eighty (180) days following completion of work to the Premises. Upon completion of the Refurbishment, the Concessionaire shall promptly have the Refurbishment Cost for Mid-Term Reinvestment to Refurbish the Premises certified by an Independent Certified Public Accountant and shall promptly supply the resulting audit report to the Director. Concessionaire shall also promptly provide to the Director any other proof or documentation reasonably requested by Director to insure compliance with the Provisions of this Article VII.

Concessionaire is encouraged by City to productively expend the entire Mid-Term Reinvestment amount. However, in the event Concessionaire’s actual expenditures for Refurbishment Costs to Refurbish the Premises are less than the Mid-Term Reinvestment amount of Fifty Thousand Dollars (\$50,000.00), the difference will be an item of additional payment due and payable to City within thirty (30) days after the receipt of an invoice for such difference from City.

SECTION 704. PREPARATION OF PLANS AND SPECIFICATIONS. Concessionaire shall submit detailed drawings, plans and specifications sealed by an appropriate Missouri registered professional for improving and equipping the Premises. *Concessionaire shall begin work on proposed construction only after it has received the written approval of its plans and specifications from the Director.*

SECTION 705. CONTRACTOR’S LIABILITY INSURANCE. In any contract appertaining to improving, constructing, maintenance, repair, or equipping of the Premises, Concessionaire shall require the contractor to cause the Insured Parties, to be insured against the risk of claims and demands, just or unjust, by third persons against the Insured Parties, against and from all such claims and demands, with bodily injury limits of not less than Three Million Dollars (\$3,000,000) as to any one person, and Three Million Dollars (\$3,000,000) as to any one occurrence, and with property damage limits of not less than Three Million Dollars (\$3,000,000) as to any one occurrence. Said insurance must be in a form acceptable to the City.

SECTION 706. PERFORMANCE AND PAYMENT BONDS. Concessionaire shall require each of its contractors and suppliers of construction materials to furnish both a Performance Bond **and** a Payment Bond **each** in the full amount of any contract in a form acceptable to the City. The

Payment Bond must comply with the coverage requirements and conditions of Section 107.170 RSMo (Revised Statutes State of Missouri). Copies of the bonds must be given to the City for approval before work begins. Any sum or sums derived from the Performance Bond and Payment Bond will be used for the completion of said construction and/or the payment of laborers and material suppliers, as the case may be.

SECTION 707. MECHANICS' AND MATERIALMEN'S LIENS. Concessionaire agrees not to permit any mechanics' or materialmen's or any other lien or encumbrance to be attached or foreclosed upon the Premises or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

SECTION 708. CERTIFICATE OF COMPLETION. Upon the completion of the improvements hereunder, Concessionaire shall submit to the Director a copy of its acceptance letter certifying completion and a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Concessionaire. Concessionaire will provide the City with sealed as-built drawings, preferably in an electronic format, within ninety (90) days of opening of each retail location.

SECTION 709. SIGNS.

- A. Concessionaire shall not erect, maintain or display any signs on the Premises without the prior written approval of the Director. The term "**sign**" as used herein, means advertising signs, billboards, banners, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, Concessionaire has the right to install such advertising and identification signs as may be necessary for the proper conduct of a Display Advertising Concession as contemplated hereunder. Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising on the Premises.
- B. Concessionaire shall be responsible for the cost of any new signs or modifications to existing signs. All modifications to these signs must be approved by the Director and are subject to all applicable requirements of this Section 709 hereof and the Tenant Design Standards.
- C. Prior to the erection, construction or placement of any sign, Concessionaire shall submit to the Director for approval, all drawings, electrical details, sketches, designs, elevations, mounting details and dimensions of such signs. Any conditions, restrictions or limitations with respect to the use thereof as stated by the Director in writing will become conditions of the Agreement.
- D. Concessionaire shall not place any advertising matter, displays or other literature not directly pertaining to the Display Advertising Concession or place any signs outside of the Premises without the prior written approval of the Director.
- E. Handwritten signs are strictly prohibited.
- F. The Director reserves the right to require the removal of any signs or advertising in, on or within the Premises deemed unacceptable or improper and the Director's decision will be final

and binding.

SECTION 710. TITLE TO IMPROVEMENTS, EQUIPMENT AND REMOVABLE FIXTURES.

All Improvements constructed or placed in the Premises by Concessionaire that are not Removable Fixtures, as well as all alterations, modifications, and enlargements thereof will become part of the Premises with title vesting to the City upon expiration or earlier termination of this Agreement. This vesting of title is subject, however, to Concessionaire's obligation to operate, repair, maintain and replace, and its right of possession, use and occupancy during the Term and in accordance with this Agreement.

All Removable Fixtures will remain the property of Concessionaire, and must be promptly removed by Concessionaire at date of expiration or early termination of this Agreement. Within sixty (60) days of the commencement of the operation in the Premises, a list of such Removable Fixtures must be submitted in writing to the Director by Concessionaire for the Director's approval, and such list must be updated by Concessionaire no less than one (1) time per Contract Year, thirty (30) days after the Contract Year anniversary date or as may be necessary or as requested by the City.

The City reserves the right, and Concessionaire agrees that the Director may require Concessionaire to promptly and timely remove any or all Removable Fixtures and restore the Premises to an acceptable condition as approved by the Director. Concessionaire agrees to bear all costs of such removals and restorations (see Section 402 entitled "Surrender of Possession"). If after fifteen (15) days following the expiration or early termination of this Agreement, Concessionaire fails to remove its Removable Fixtures from the Premises, such Removable Fixtures may be deemed abandoned. In addition to whatever other rights are available to the City, with prior notification of Concessionaire, the City may: (i) remove and store all or any portion of the Removable Fixtures at Concessionaire's expense, or (ii) take title to, use, sell or otherwise dispose of all or any portion of the Removable Fixtures. If the City takes title to any Removable fixtures or otherwise disposes of the property, the City shall be entitled to all proceeds of sale of any Removable Fixtures as liquidated damages for the Concessionaire's breach of its covenant to timely remove its Removable Fixtures.

SECTION 711. DEMOLITION OF EXISTING IMPROVEMENTS. During the Term of the Agreement, Concessionaire and City may mutually agree that certain Existing Improvements are obsolete, redundant, or otherwise undesirable. Upon identification of Existing Improvements to be demolished, the Concessionaire, at its sole cost and expense, will remove the Existing Improvement. The Premises shall then be available to the Concessionaire who may, at its sole cost, install New Improvements as a replacement.

Notwithstanding any language to the contrary within this Section or Section 605, during the Build-Out Period only, the City will allow Concessionaire to review the Premises to identify Existing Improvements determined by Concessionaire to be surplus and which Concessionaire would like removed. If the City, in its sole determination, agrees that an Existing Improvement is surplus, the City will remove, and be responsible for the costs associated with removing, the Existing Improvement. In the event an Existing Improvement is removed by City pursuant to a request by Concessionaire, Concessionaire acknowledges and agrees that said location will be removed from the

Premises for the remaining term of this Agreement, unless otherwise agreed to in writing by the Director.

ARTICLE VIII USE OF PREMISES

SECTION 801. COMPLIANCE WITH LAWS AND REGULATIONS. Concessionaire shall comply with all applicable Rules and Regulations, the Airport Certification Manual, Airport Security Plans and procedures, and operating directives, environmental plans or program, promulgated or established by the Airport Authority, the Airport Commission, the Director, or the City, as they may be amended from time to time. In addition, Concessionaire shall comply with all statutes, laws, ordinances, orders, judgments, decrees, permits, regulations, environmental plans and programs, Environmental Permits, Environmental Laws, directions and requirements of all federal, state, City, local and other governmental authorities, now or hereafter applicable to the Premises and/or its operations within the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways.

SECTION 802. USE. Concessionaire shall provide and pay for all repairs and maintenance of the Premises, *except* the following which will be the responsibility of the City:

- A. The structural components of the building.
- B. The utility system to the point of Concessionaire's connection to the utility system, except where the utility systems are owned or controlled by the utility companies.
- C. The washing of the exterior of windows in the terminal building.

Concessionaire shall perform the following functions as part of its responsibilities in the repair and maintenance of the Premises. The following list includes certain functions but Concessionaire's responsibilities are not limited to those functions:

- A. Keep the Premises clean and sanitary in accordance with Section 601 of this Agreement.
- B. Keep all its equipment and fixtures within the Premises in good repair and appearance including, without limitation, all Improvements, Existing Improvements, and Removable Fixtures.
- C. Keep the Premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.
- D. Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of Concessionaire or its agents or employees.
- E. Provide for complete, sanitary handling and disposal of all trash, garbage, recycling and refuse (liquid or solid) in accordance with standards established by the Director

applicable to all Airport tenants. Such standards may require the use of special devices including, but not limited to, special containers, compactors and disposal systems. Concessionaire agrees to promptly provide and install same and to abide by such standards.

- F. If the City provides or designates a service for picking up refuse and garbage, Concessionaire will be required to use said service.
- G. If the City establishes a recycling program, the Concessionaire will fully participate in said recycling program. Concessionaire must comply with all applicable City, county, state, and federal regulations regarding recycling.
- H. Concessionaire shall break down or cause to break down all cardboard boxes prior to their disposal.
- I. Confine all handling and holding of Concessionaire's property to the Premises.
- J. Keep the Premises free of all pests, providing such pest control services as required.
- K. Keep the Premises secured at all times.
- L. Provide, at Concessionaire's sole cost and expense, a functional mailing address or other means of receiving mail, and ensure all mail is directed to that address. The City is not responsible for the Concessionaire's mail or the subsequent delivery thereof.
- M. No storage will be permitted on the exterior areas of the Premises.

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and Concessionaire hereby releases and discharges the City from any and all inconvenience claims, liability or causes of action arising out of or incidental to the closing of any right-of-way, including, without limitation, loss of profit or business, actual, incidental, consequential or special damages. Notwithstanding, if Concessionaire is negatively impacted the City will make good faith efforts to work with Concessionaire to provide a solution that will offset the negative impact.

SECTION 803. RIGHT TO ENTER, INSPECT AND MAKE REPAIRS. The City and its authorized officers, agents, employees, contractors, subcontractors and other representatives have the right (at such times as may be reasonable under the circumstances and with as little interruption of Concessionaire's operations as is practicable) to enter upon, and in, the Premises for the following purposes:

- A. To inspect such Premises to determine whether Concessionaire has complied, and is complying, with the terms, covenants and conditions of this Agreement.

- B. To perform maintenance and make repairs Concessionaire is obligated, but has failed to do so after the City has given Concessionaire notice to do so, in which event, Concessionaire shall reimburse the City for the cost thereof, plus a charge of fifteen percent (15%) for overhead, within thirty (30) days of the City's written request or demand.
- C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems.
- D. To perform inspections, testing, reporting, surveys, environmental inspections, remediation, studies and assessments during normal business hours.

SECTION 804. UTILITIES.

- A. Electrical Fee. The Concessionaire agrees to pay a monthly charge for electricity consumed based upon the number of advertising locations and the electrical specifications of the displays. **The monthly charge as of the Commencement Date is \$TBD.** The amount may be recalculated as part of the review of any tenant construction application for the addition, removal or change in advertising displays.
- B. Electrical Service & Supply. If electrical service outlets are not available where needed, Concessionaire will be responsible for bringing electrical service to the Premises. Concessionaire shall be responsible for any needed modifications or upgrades in electrical supply caused by increased lighting or other changes to the Premises made by the Concessionaire.
- C. Other Utilities. Concessionaire shall provide and pay for all other utilities (including telephone and other third party service) it requires, including but not limited to deposits, installation costs, costs of upgrading or relocating utility service, connection charges, telephone and data lines it requires, meter deposits, and all service charges for telephone and other utility services metered directly to the Premises, regardless of whether or not such utility services are furnished by the City or a utility service company.

The City will not be liable to Concessionaire for damages or any losses for the interruption of any utility service, or for any delay in the supplying or furnishing of any utility service. Concessionaire does hereby release and discharge the City from any and all inconvenience, losses, claims, or cause of actions arising out of or incidental to such interruption, including, without limitation, loss of profit or business, actual or incidental, consequential or special damages.

The properties comprising the Airport, including these Premises, are managed by the City and, as such, have been made subject to City Ordinance 66777 by policy directive of the Airport Authority. As applied to the Airport, this policy prohibits the installation of groundwater extraction wells for domestic or agricultural use. The installation of groundwater extraction wells of any kind is subject to pre-approval by the Director, or their designee, including the installation of wells used for groundwater investigation and remedial activities.

SECTION 805. INTERFERENCE WITH AIRPORT UTILITIES. Concessionaire shall not interfere with the Airport's utilities systems including but not limited to drainage or sewage systems, plumbing, heating, cooling and air condition systems, electrical systems, communications systems, domestic hot or cold water, gas, fire suppressions systems, fire alarm systems, and fire hydrants on the Airport, without prior notification to, and written approval from the Director.

SECTION 806. INTERFERENCE TO AIR NAVIGATION. Concessionaire warrants, represents and agrees that no obstruction to air navigation, as such are defined from time to time by application of the criteria of Part 77 of the Federal Aviation Regulations or subsequent and additional regulations of the FAA, will be constructed or permitted to remain in or on the Premises. Any obstructions will be immediately removed by Concessionaire at its expense. Concessionaire warrants, represents and agrees not to increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight of the Air Traffic Control Tower and its operations. Concessionaire further warrants, represents and agrees not to install any structures, objects, machinery or equipment that would interfere with the operation of navigation aids or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport.

ARTICLE IX INSURANCE, DAMAGE, AND INDEMNIFICATION

SECTION 901. INSURANCE.

- A. General. Concessionaire at all times during the term hereof, shall cause the Insured Parties to be insured as additional insured **on an occurrence basis** against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities or omissions of Concessionaire, its officers, agents, and employees pursuant to this Agreement both on the Premises and at the Airport.
- B. Risks and Minimum Limits of Coverage. Concessionaire shall procure and maintain the following policies of insurance:
1. Commercial General Liability Insurance with a per occurrence limit not less than \$10 million and annual aggregate limit of not less than \$20 million.
 2. Automobile Liability Insurance in an amount not less than Five Million Dollars (\$5,000,000.00) combined single limit per occurrence (for automobiles used by Concessionaire in the course of its performance hereunder, including Concessionaire's non-owned and hired autos). In addition, Concessionaire shall carry excess coverage in the amount of Five Million Dollars (\$5,000,000.00) to Concessionaire's automobile liability insurance.
 3. Workers' Compensation and Employer's Liability Insurance in accordance with Missouri laws and regulations. With respect to Workers' Compensation Insurance, if Concessionaire elects to be self-insured, Concessionaire shall comply with the applicable requirements of

law. Concessionaire shall require that all its subcontractors or licensees similarly provide such coverage (or qualify as a self-insured) for their respective employees. City, its officers, employees, or agents will not be liable or responsible for any claims or actions occasioned by Concessionaire's failure to comply with the provisions of this subparagraph and that the indemnification provisions hereof will apply to this Section. It is expressly agreed that the employees of Concessionaire are not employees of the City for any purpose, and that employees of the City are not employees of Concessionaire.

4. Contents Insurance. Concessionaire shall be solely responsible for obtaining insurance policies that provide coverage for losses of Concessionaire owned property including, without limitation, Concessionaire's personal property and Removable Fixtures. The City is not required to provide such insurance coverage or be responsible for payment of Concessionaire's cost for such insurance.
 5. Builders Risk Insurance. During any period of construction or reconstruction for which Concessionaire contracts, Concessionaire shall carry, or shall require its contractor or contractors to carry, a policy of Builders Risk Insurance in an amount sufficient to insure the value of the work. The City must be named Loss Payee on Builders Risk coverage to the extent of the City's interest therein (except to the extent coverage relates to Concessionaire's equipment and personal property). Concessionaire may elect to self-insure for individual projects with a total cost of Fifty Thousand Dollars (\$50,000.00) or less.
 6. Other Property Coverage. Concessionaire shall provide an "All Risk" insurance policy providing protection from direct loss arising out of any fortuitous cause other than those perils or causes specifically excluded by form and which covers Concessionaire's improvements to the Premises including, without limitation, Improvements, Removable Fixtures, trade fixtures, and equipment. The City must be named Loss Payee on such coverage to the extent of the City's interest therein (except to the extent coverage relates to Concessionaire's Removable Fixtures and personal property).
- C. Issuers of Policies. The issuer of each policy required herein must be a financially sound insurance company authorized to issue insurance policies in the State of Missouri. Acceptable insurers include insurance companies with an "A.M. Best Company" rating of at least an "A-," or other insurers or insurance syndicates of similar recognized responsibility.
1. Form of Policies. The insurance may be in one or more policies of insurance.
 2. Non-waiver. Nothing the City does or fails to do will relieve Concessionaire from its duties to provide the required coverage hereunder, and the City's actions or inactions will not be construed as waiving the City's rights hereunder.
 3. Insured Parties. Each policy by endorsement, except those for Workers' Compensation and Employer's Liability, must name the Insured Parties as "additional insured" on the certificate of insurance, including all renewal certificates, to the extent of Concessionaire's indemnification obligations hereunder. Inclusion as an "additional insured" is not intended to and does not, make the City a partner or joint venturer with Concessionaire in its

operations.

The “additional insured” language must read exactly as follows: “St. Charles County, Missouri; St. Clair County, Illinois; St. Louis County, Missouri; the City of St. Louis, Missouri, and its Board of Aldermen and Airport Commission; and their respective officers, employees, and agents are additional insured on the General Comprehensive and Automobile Liability portions of the insurance.”

The “Certificate Holder” portion should read exactly: “City of St. Louis, Lambert-St. Louis International Airport, P.O. Box 10212, St. Louis, Missouri 63145.”

4. Deductibles. Concessionaire shall assume and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for the same against the City, its officers, agents, or employees; provided, however, that nothing herein stated will diminish Concessionaire's rights or increase Concessionaire's obligations in respect to its undertakings or hold harmless defense and indemnification set forth in Section 904 hereof.
4. Cancellation. Each policy shall expressly state that it may not be cancelled, materially modified or non-renewed unless a thirty (30) day advance notice is given in writing to the City by the insurance company, or authorized representative of Concessionaire.
5. Subrogation. Each policy must contain an endorsement by which the issuer waives any claim or right in the nature of subrogation to recover against the Insured Parties.
6. Endorsement of Primary Insurance. Each policy hereunder must be primary insurance to any other insurance available to the Additional Insured and Loss Payee with respect to claims arising hereunder.
7. Liability for Premium. Concessionaire shall be solely responsible for payment of all insurance premiums required pursuant to this Agreement, and the City will not be obligated to pay any premiums; provided, however, that if Concessionaire fails to obtain the insurance as required herein or make premium payments, the City may, without further notification, effect such insurance or make such payments on Concessionaire's behalf and, after notice to Concessionaire, the City may recover the cost of those payments with the installment of Fees and Charges next due, plus fifteen percent (15%) administrative charge, from Concessionaire.
8. Proof of Insurance. Within thirty (30) days of the effective date of this Agreement and at any time during the term hereof, Concessionaire shall furnish the City with certificates of insurance and required endorsements. At least fifteen (15) days prior to the expiration of any such policy, Concessionaire shall submit to the City a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Concessionaire shall, within fifteen (15) days after the date of such notice from the insurer of such cancellation or reduction in coverage, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon reasonable notification by the City to Concessionaire, the City will

have the right to examine Concessionaire's insurance policies as they relate to this Agreement.

- D. Maintenance of Coverage. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that Concessionaire, continuously and without interruption, maintain in force the required insurance coverages set forth above.
- E. City Right to Review and Adjust Coverage Limits. The City reserves the right at reasonable intervals during the Term of this Agreement to cause the insurance requirements of this Article to be reviewed, at its sole cost, by an independent insurance consultant experienced in insurance for public airports, taking into consideration changes in statutory law, court decisions, or the claims history of the airline industry as well as that of Concessionaire, and, based on the written recommendations of such consultant, and in consultation with Concessionaire, to reasonably adjust the insurance coverages and limits required herein but not more often than every twenty-four (24) months.

SECTION 902. CONCESSIONAIRE ACTIONS AFFECTING INSURANCE. Concessionaire must not knowingly do or permit to be done anything, either by act or failure to act, that may cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport, or that may cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If such Concessionaire's act, or failure to act, causes cancellation of any policy, then Concessionaire shall immediately, upon notification by the City, do whatever is necessary to cause reinstatement of said insurance. Furthermore, if Concessionaire does or permits to be done any act or fails to do any act which causes an increase in the City's insurance premiums, Concessionaire shall immediately remedy such actions and pay the increase in premiums, upon notice from the City to do so; but in any event, Concessionaire will hold the City harmless for any expenses or damage resulting from any such action.

SECTION 903. DAMAGE TO PREMISES.

- A. Minor Damage. If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is partially damaged by fire or other casualty, but said circumstances do not render the Premises untenable as determined by the City, the affected Premises will be repaired to usable condition with due diligence by the City as provided in this Section. In such case, the fees payable hereunder with respect to affected Premises shall be paid up to the time of such damage and will thereafter be abated ratably in the proportion that the untenable area bears to the total Premises of the same category or type of space. Such abatement in fees will continue until the affected Premises are restored adequately for Concessionaire's use.
- B. Substantial Damage. If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is so extensively damaged by fire, or other casualty, as to render any portion of said Premises untenable but capable of being repaired, as determined by the City, the affected Premises will be repaired to usable condition with due diligence by the City as provided in this Section. In such case, the fees payable hereunder with respect to affected Premises will be paid up to the time of such damage and will thereafter be abated ratably in the proportion that the untenable area bears to the total Premises of the same

category or type of space. Such abatement in fees will continue until the affected Premises are restored adequately for Concessionaire's use. The City will use its reasonable efforts to provide alternate facilities to continue Concessionaire's operation while repair, reconstruction, or replacement is being completed, at a rental rate not to exceed that provided herein for comparable space, provided that Concessionaire's rental costs will not increase as a result of any such alternate facilities unless Concessionaire requests additional space or space replacement of a classification at higher rental rates concurrent with such reassignment to alternate facilities.

C. Total Damage.

1. If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is damaged by fire or other casualty, and is so extensively damaged as to render any portion of said Premises incapable of being repaired, as determined by the City, the City will notify Concessionaire as soon as practicable under the circumstances after the date of such damage of its decision whether to reconstruct or replace the affected Premises. However, the City will be under no obligation to replace or reconstruct the affected Premises. The fees payable hereunder with respect to affected Premises must be paid up to the time of such damage and thereafter will cease until such time as replacement or reconstructed space will be available for use by Concessionaire.
2. If the City elects to reconstruct or replace affected Premises, the City will use reasonable efforts to provide alternate facilities to continue Concessionaire's operation while repair, reconstruction, or replacement is being completed, at a rental rate not to exceed that provided herein for comparable space. However, if such damaged space is not replaced or reconstructed, or the City is not diligently pursuing such replacement or reconstruction, within six (6) months after the date of such damage or destruction, Concessionaire will have the right, upon giving the City thirty (30) days advance notice, to delete the affected Premises from this Agreement, but this Agreement will remain in effect with respect to the remainder of said Premises, unless such damaged or destroyed premises prevent Concessionaire from operating its Concession at the Airport.
3. If the City elects not to reconstruct or replace affected Premises, the City will meet and consult with Concessionaire on ways to permanently provide Concessionaire with adequate replacement space for affected Premises. Concessionaire will have the right, upon giving the City thirty (30) days advance notice, to delete the affected Premises from this Agreement, but this Agreement will remain in full force and effect with respect to the remainder of said Premises, unless the loss of such Premises prevents Concessionaire from operating its Concession at the Airport.

D. Scope of Restoration of Premises.

1. The City's obligations to repair, reconstruct, or replace affected Premises under the provisions of this section will in any event be limited to using due diligence and reasonable efforts to restore affected Premises to substantially the same condition that existed prior to any such damage and will further be limited by the provisions of Sections 903 A-C. If the City elects to repair, reconstruct, or replace affected Premises as provided in this section,

then Concessionaire must proceed with due diligence and at its sole cost and expense to repair, install, reconstruct, or replace its signs, fixtures, equipment, furnishings, Removable Fixtures, Improvements, and other items provided, constructed, or installed by Concessionaire in or about the Premises in a manner and in a condition at least equal to that which existed prior to said damage or destruction.

2. In lieu of the City's repair, reconstruction, or replacement of the affected Premises, as provided in this section, if Concessionaire requests to perform said function with respect to damage under Sections 903 A and B, the City may, in its sole discretion, allow Concessionaire to do so. Any such work by Concessionaire must be done in accordance with the requirements of this Agreement, including without limitation, Article VII. The City shall reimburse Concessionaire for the cost of such authorized work performed by Concessionaire as agreed to in writing by the City and the Concessionaire. Concessionaire will be considered to be doing such work on its own behalf and not as a Concessionaire or contractor of the City.

- E. Damage From Concessionaire Negligence. Notwithstanding the provisions of this Section, if damage to or destruction of the Premises is due to the negligent or willful acts of Concessionaire, its agents, servants, or employees, or those under its control, there will be no abatement of fees during the restoration or replacement of said Premises. In addition, Concessionaire will have no option to delete the affected Premises from this Agreement. To the extent that the costs of repairs pursuant to this section exceed the amount of any insurance proceeds payable to the City by reason of such damage or destruction, Concessionaire shall promptly pay the amount of such additional costs to the City.

SECTION 904. INDEMINIFICATION.

- A. Concessionaire shall defend, indemnify, and hold harmless the **Indemnified Parties** from and against any and all loss, liability, penalties, damages of whatever nature, causes of action, suits, claims, demands, judgments, injunctive relief, awards, settlements, costs, and expenses, including payments of claims of liability resulting from any injury or death of any person or damage to or destruction of any property including all reasonable costs for investigation and defense thereof (including but not limited to attorneys' fees, court costs and expert fees) of any nature, arising out of and in connection with this Agreement, the conduct of the Concessionaire or Concessionaire's use of the Premises or other areas or facilities at the Airport by Concessionaire, its agents, officers, employees, contractors, independent contractors, subcontractors, licensees, invitees, and sublessees, including, but not limited to:
- 1) the acts or omissions of Concessionaire, its agents, officers, employees, contractors, independent contractors, subcontractors, licensees, invitees, sublessees, or suppliers;
 - 2) Concessionaire's use or occupancy of the Airport, including but not limited to the Premises; and
 - 3) any violation by Concessionaire in the conduct of Concessionaire's Concession or its use of its Premises or other areas or facilities at the Airport of any Provision of this Agreement.

Concessionaire shall, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not.

- B. Concessionaire shall defend, indemnify, pay, and hold harmless the Indemnified Parties from and against all applicable taxes and assessments for which the City may become liable and which by law may be levied or assessed on the Premises, or which arise out of the operations of Concessionaire or by reason of Concessionaire's occupancy of its Premises except for any taxes or assessments based on the gross or net income or gross or net receipts of the City that are not allocable to Concession-related receipts. However, Concessionaire may, at its own risk, cost, and expense, and at no cost to the City, contest, by appropriate judicial or administrative proceedings, the applicability or the legal or constitutional validity of any such tax or assessment, and the City will, to the extent permitted by law, execute such documents as are reasonably necessary to permit Concessionaire to contest or appeal the same. Concessionaire shall be responsible for obtaining bills for all of said taxes and assessments directly from the taxing authority and shall promptly deliver to the City, upon request by the City, copies of receipts of payment. If the City receives any tax billings falling within the scope of this paragraph, it will forward said billings to Concessionaire. Concessionaire shall, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not.
- C. Concessionaire shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature associated therewith in any way arising from or based in whole or substantial part upon claim or allegation of a violation of any federal, state, or local laws, statutes, resolutions, regulations, ordinance, or court order affecting the Airport, by Concessionaire, its agents, employees, contractors, or suppliers, in conjunction with Concessionaire's use and/or occupancy of the Premises or its operations at the Airport. Concessionaire will, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not. Concessionaire shall include the substance of this Subsection (C) in every sublease, contract or other agreement which Concessionaire may enter into related to its activities at the Airport, and any such sublease, contract or other agreement shall specifically provide that the City is a third-party beneficiary of this and related provisions. This provision does not constitute a waiver of any other condition of this Agreement prohibiting or limiting assignments, subletting or subcontracting.
- D. Concessionaire shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature arising from or based in whole or part upon the presence in, or the release into, the environment or the Airport of any Hazardous Materials to the extent caused by, or resulting from, the acts or omissions of Concessionaire or its agents, officers, employees, contractors, independent contractors, sublessees, invitees, licensees, or suppliers at the Airport whether resulting from negligent conduct or otherwise under this or any prior agreement.
- E. If a prohibited incursion into the Airport Operations Area ("**AOA**") occurs, or if the AOA or sterile area security is breached, by or due to the negligence or willful act or omission of any of Concessionaire's employees, officers, agents, contractors, independent contractors,

sublessees, invitees, licensees, or suppliers, and such incursion or breach results in a civil penalty action against the City, Concessionaire shall assume the defense of any such action and be responsible for any civil penalty or settlement amount required to be paid by the City as a result of such incursion or breach. The City shall notify Concessionaire of any allegation, investigation, or proposed or actual civil penalty sought for such incursion or breach. Civil penalties and settlement and associated expenses reimbursable under this paragraph include but are not limited to those paid or incurred as a result of violation of FAA or TSA regulations or security directives.

- F. Concessionaire's obligation to defend and indemnify past officers, employees, and agents of the Indemnified Parties applies to such persons only for claims, suits, demands, actions, liability, loss, damages, judgments, or fines arising from events, occurrences, and circumstances during which said officers, employees, and agents held their office or position with the Indemnified Parties.
- G. The City shall promptly notify Concessionaire of each claim, action, proceeding, or suit in respect of which indemnity may be sought by the City against Concessionaire hereunder, setting forth the particulars of such claim, action, proceeding or suit; shall furnish Concessionaire with a copy of all judicial filings and legal process and any correspondence received by the City related thereto; and shall tender the defense of same to Concessionaire.
- H. The duty to defend, indemnify, hold harmless, and reimburse applies to any claim, demands, or suits made against the City for which Concessionaire is responsible pursuant to this Section. Provided, however, that upon the filing by anyone of a claim with the City for damages arising out of incidents for which Concessionaire herein agrees to indemnify and hold the City harmless, the City shall promptly notify Concessionaire of such claim and, if Concessionaire does not settle or compromise such claim, then Concessionaire shall undertake the legal defense of such claim both on behalf of Concessionaire and on behalf of the City, at Concessionaire's expense; provided, however, that Concessionaire shall immediately notify City if a conflict between the interests of Concessionaire and City arises during the course of such representation. Concessionaire shall use counsel reasonably acceptable to the City Counselor of the City or his or her designee, after consultation with the Airport Director, in carrying out its obligations hereunder.

The provisions of this Section survive the expiration or early termination of this Agreement. It is specifically agreed, however, that the City, at its option and at its own expense, may participate in the legal defense of any claim defended by Concessionaire in accordance with this Section. Any final judgment rendered against the City for any cause for which Concessionaire is liable hereunder will be conclusive against Concessionaire as to amount upon the expiration of the time for appeal there from. Nothing in this Article will be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim of legal liability against the City. This Section is not to be construed as a waiver of the City's sovereign or other immunity.

- I. The City, at its own expense except as otherwise provided herein, will be invited to attend and participate in all meetings (including those related to settlement) and to appear and participate

in all judicial proceedings and to the extent of its interests, approve, in writing, the terms of any settlement related to any claim, action, proceeding or suit set forth in this Section.

- J. Notwithstanding the provisions of this Section, Concessionaire will have no obligation to defend, indemnify, or hold harmless the City for any consequential damages or for any amounts to be paid in connection with losses, liabilities, penalties, damages of whatever nature, causes of action, suits, claims, demands, injunctive relief, judgments, awards and settlements because, and to the extent, of the gross negligence or willful misconduct of the City, but only if the City is conclusively determined to be more than ten percent (10%) liable due to comparative negligence.
- K. This Section survives the expiration or early termination of this Agreement. Concessionaire understands and agrees that any insurance protection furnished by Concessionaire pursuant to Section 901 will in no way limit Concessionaire's responsibility to indemnify and hold harmless the City under the Provisions of this Agreement.

SECTION 905. CITY NOT LIABLE. Unless otherwise expressly provided for in this Agreement, the City will not in any event be liable to Concessionaire for:

- A. Any acts or omissions of Concessionaire, its officers, directors, employees, agents, contractors, independent contractors, licensees, sublessees, invitees, or suppliers, or for any conditions resulting from the operations or activities of Concessionaire's directors, officers, employees, agents, contractors, independent contractors, licensees, invitees, sublessees, or suppliers;
- B. Concessionaire's failure to perform any of the obligations hereunder or for any delay in the performance thereof;
- C. Any environmental condition in existence at the Airport, or any part thereof, which condition may interfere with Concessionaire's business or other operations or activities, or which might otherwise cause damages to Concessionaire through loss of business, destruction of property, or injury to Concessionaire, its officers, directors, employees, agents, contractors, suppliers, passengers, invitees, or licensees except to the extent such conditions are caused by the City, its employees or agents; or
- D. Bodily injury or any loss or damage to real or personal property or business income occasioned by flood, fire, smoke, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil commotion, vandalism, malicious mischief, or acts of war or terrorism, or for any injury, loss or damage not caused by the negligence, willful misconduct, or bad faith of the City.

ARTICLE X ASSIGNMENT AND SUBCONTRACTING

SECTION 1001. ASSIGNMENT AND SUBCONTRACTING.

- A. Concessionaire shall not assign or transfer this Agreement. In the event there is an assignment of this Agreement by operation of law, the City will be entitled within ninety (90) days after written notice thereof to exercise the City's option hereby given to terminate this Agreement no sooner than thirty (30) days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, will include but not be limited to the vesting of Concessionaire's right, title and interest in the Concessionaire's furnishings, Removable Fixtures, or Concessionaire's interest in this Agreement, as a trustee in bankruptcy or as an assignee for the benefit of creditors or in a purchase thereof at a judicial sale or other involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee, or assignee, any rights, title or interest in the City premises or any of the Removable Fixtures, except subject to the City's right to terminate this Agreement.
- B. Concessionaire shall not sublet the Premises or subcontract or transfer any part of the services to be performed hereunder, except as may be necessary to comply with the ACDBE participation goal in Article XII of this Agreement. At least sixty (60) days prior to any contemplated subletting of the Premises or subcontracting of this Agreement, Concessionaire must submit a written request to the Director. This request must include a copy of the proposed subcontract or sublease. Any sublease for space or subcontract or granting of rights acquired hereunder will be subject to the review and written approval of the Director. Such sublease or subcontract, however, must require at a minimum: (i) strict compliance with all applicable Provisions of this Agreement; (ii) a provision that the sublessee or subcontractor will use the facilities solely for the purposes identified in this Agreement; (iii) a provision ensuring that all concession services are available during the hours of operation required in Section 602 of this Agreement; (iv) a provision providing that all terms of the sublease are subject to and subordinate to the Provisions of this Agreement; and (v) a provision that the term of the sublease will expire immediately at the expiration or early termination of this Agreement.

The parties understand and agree that Concessionaire is responsible for the performance of its assignees, sublessees, and subcontractors under this Agreement. Concessionaire agrees to initiate and take all corrective action should a subcontractor or sublessee fail to comply with its contract with the Concessionaire or any Provision of this Agreement. There will be no reduction of the Minimum Annual Guarantee payable to the City during any such period of change-out or vacancy of a subcontractor or sublessee.

- C. No subcontract, sublease, or other agreement will be effective as it pertains to the City until such time as the City receives a fully executed copy of the approved subcontract, sublease or agreement as provided for above. Any such assignment or transfer or subcontract of services or the subletting of the Premises without the consent of the City, as provided for above, will constitute a default on the part of Concessionaire under this Agreement, and the City may terminate this Agreement as provided for in Article XI. No action or failure to act on the part of any officer, agent or employee of the City will constitute a waiver by the City of this provision.

ARTICLE XI
TERMINATION OF AGREEMENT IN ENTIRETY