OLD

CONTRACTS
STATE OF TEXAS
COUNTY OF DALLAS

LOVE FIELD RETAIL MERCHANDISE
CONCESSION CONTRACT

THIS AGREEMENT, entered into this 24th day of August, 1994 is by and between the
City of Dallas, a Texas municipal corporation (hereinafter called "City"), and
HUDSON RETAIL-DALLAS J.V., a joint venture comprised of HUDSON RETAIL-
DALLAS, INC., a Texas corporation, and ACCOMODATIONS, INC., a Texas
corporation (hereinafter called "Concessionaire").

WITNESSETH:

WHEREAS, City owns and operates Dallas Love Field, a municipal airport,
hereinafter called the "Airport"; and

WHEREAS, City has solicited proposals from qualified retail merchandise
operators for the sale of retail merchandise in designated areas of the Airport; and

WHEREAS, Concessionaire engages in the business of operating retail
merchandise concessions similar in nature to that proposed at the Airport; and

WHEREAS, City wishes to grant Concessionaire the right to operate a
concession for certain retail merchandise facilities at the Airport under an
agreement containing mutually satisfactory terms and covenants.

NOW, THEREFORE, in consideration of mutual covenants, terms,
conditions, promises and agreements contained herein, City and Concessionaire
mutually agree to the following:

ARTICLE I
DEFINITIONS

1.1 "Agreement" shall mean this Concession Agreement between City and
Concessionaire for the right to use the Assigned Premises (as defined in this
Agreement) for the conduct of retail merchandise services, under the terms and
conditions expressly set forth in this Agreement.

1.2 "Airport" shall mean the tract of land with all improvements thereon
and to be erected thereon, designated as "Dallas Love Field", all as depicted on
Exhibit A, attached to and made a part of this Agreement.

1.3 "Assigned Premises" shall mean the area or areas in the Terminal
designated on Exhibit B hereto as the place or places where the business of
Concessionaire may be conducted pursuant to this Agreement.

1.4 "Date of Beneficial Occupancy" or "DBO" shall mean the date on which
the Director certifies that the Concessionaire's finishes are completed and the
Assigned Premises, or any portion thereof, are ready to open for business.
1.5 "Commencement Date" shall mean the date(s) on which the Director certifies that the Assigned Premises or any portion thereof are available for finish work by Concessionaire.

1.6 "Concessionaire" shall mean the prime operator under this Agreement.

1.7 "Director of Aviation" or "Director" shall mean the Director of the Airport or his designee as from time to time appointed by the City authorized to act with respect to any or all matters pertaining to this Agreement.

1.8 "Disadvantaged Business Enterprise" and "DBE" shall mean, as certified by the North Central Texas Regional Certification Agency (NCTRCA) and verified by the City, a business whether it is a corporation, sole proprietorship, partnership or joint venture, of which at least 51 percent of the interest is owned and controlled by one or more socially and economically disadvantaged individuals as defined in the Airport and Airways Safety and Capacity Expansion Act of 1987 and the regulations promulgated pursuant hereto at 49 CFR Part 23.

1.9 "Facilities" shall mean, collectively, the Terminal and concourses designated for commercial air transportation activities at the Airport.

1.10 "Fixed Improvements" shall mean all structural improvements made by Concessionaire pursuant to Paragraph 7.1 of this Agreement, including but not limited to ceiling, wall and floor finishes, power, water and other utility conductors and light fixtures, all of which are permanently affixed to the Assigned Premises.

1.11 "Gross Revenues" shall mean all monies or other consideration paid or payable to Concessionaire and its Suboperators on all sales of products and services at or from its operations at the Facilities and shall include all charges or other fees charged by Concessionaire, whether for cash or credit, and without deduction for credit card discounts or thefts, and whether the same shall be paid or unpaid. There shall be allowed, when properly recorded and accounted for, as a reduction from Gross Revenues, sales taxes and excise taxes where stated separately and collected from the customer for remittance to the taxing authority, as well as verifiable refunds made by the Concessionaire to customers because of unacceptable or unsatisfactory goods or services.

1.12 "Initial Capital Investment" shall mean all improvements made to the Assigned Premises during the Interim Term including architectural and engineering fees, subject to limitations contained herein, fixed improvements, fixtures, furniture, equipment, electrical and HVAC improvements.

1.13 "Interim Term" shall mean the term commencing upon the execution of this Agreement and terminating at earlier of 1) the completion of all finish work to the Assigned Premises or 2) 90 days after the Commencement Date of the last remaining location to be finished by Concessionaire.

1.14 "Minimum Annual Guarantee" shall mean the minimum amount of money due City annually from Concessionaire in consideration of the rights granted Concessionaire under this Agreement.
1.15 "Percentage Payment" shall mean the sum of money due City, on account of City's share of Gross Revenues as hereinafter provided.

1.16 "Personal Property" shall mean all furniture and other portable property furnished and used by Concessionaire in its operations hereunder.

1.17 "Primary Term" shall mean the term commencing upon the termination of the Interim Term and terminating ten (10) years thereafter, unless sooner terminated as provided herein.

1.18 "Suboperator" shall mean any person or firm operating a facility in the Assigned Premises pursuant to a City-approved agreement with Concessionaire.

1.19 "Term" shall mean the term of this Agreement as defined in Article III.

1.20 "Terminal" shall mean the public areas of the Terminal Building at the Airport, including the existing terminal building and the concourse, or any additional area that may be opened or constructed for airline gates to the traveling public.

1.21 "Trade Fixtures" shall mean all appliances, signage and any other major equipment with a useful life in excess of three (3) years, installed by Concessionaire for use in its operations hereunder. Although such Trade Fixtures may be affixed to the Assigned Premises, the same may be removed without structural damage to the Assigned Premises.

1.22 "Year" shall mean any twelve month period commencing upon execution of this Agreement.

ARTICLE II
ASSIGNED PREMISES

2.1 The City hereby grants to the Concessionaire and the Concessionaire takes from the City the right to use designated areas in the Facilities as hereinafter described and more specifically set forth on Exhibit B, attached to and made a part of this Agreement, all collectively hereafter referred to as the Assigned Premises. It is understood and agreed that, upon completion of construction of the Facilities, "as built" drawings will be substituted as Exhibit B without further amendment hereto.

RETAIL AREAS: Refer to Exhibit B.

SUPPORT SPACE: Refer to Exhibit B.

ARTICLE III
TERM

3.1 This Agreement shall be effective and binding as of August 24, 1994 (the "Effective Date"). The Interim Term shall commence on the Effective Date and
shall continue until the Date of Beneficial Occupancy of all of the Assigned Premises. The Primary Term shall commence upon the expiration of the Interim Term and shall continue for a period of ten (10) years thereafter, subject to the City's rights as set forth in this Agreement.

3.2 City, in its sole discretion, shall have the option to renew this Agreement for one (1) additional period of five (5) years. If the option is exercised, the renewal term commences upon the expiration of the Primary Term of this Agreement. Such renewal shall be subject to all of the same terms, covenants and conditions of this Agreement. In order to exercise such renewal option, City shall advise Concessionaire in writing of its intent to renew no later than six (6) months prior to the end of the Primary Term of this Agreement.

3.3 In the event Concessionaire shall, with the consent of the City, hold over and remain in possession of any of the Assigned Premises after the expiration of this Agreement, such holding over shall not be deemed to operate as a renewal or extension of this Agreement but shall only create a month-to-month basis on the same terms, conditions and covenants, including consideration, contained in this Agreement, except that such holdover arrangement shall be terminable at the will of the City.

ARTICLE IV
USES AND PRIVILEGES

4.1 The Concessionaire has the non-exclusive right, privilege and the obligation to operate and manage the retail merchandise concessions for the sale of newspapers, magazines, paperback books, sundries and gift items in and from its Assigned Premises. Further, the Concessionaire has the right, subject to the approval of the City, to permit portions of the Assigned Premises to be used by Suboperators selected by Concessionaire and approved by the City. Exhibit C, attached to and made a part of this Agreement, describes the types of facilities and inventory items which Concessionaire and its Suboperators shall have the right to offer in the Assigned Premises, subject to the provisions of Article V of this Agreement. The sale of items other than retail merchandise or the furnishing by Concessionaire of services other than those described in Exhibit C shall not be permitted without prior written approval of the City.

Neither Concessionaire nor its Suboperators shall have the right under this Agreement to sell liquor or wine by the bottle or otherwise engage in packaged liquor or wine sales on any of the Assigned Premises or to provide Duty Free merchandise.

4.2 Nothing in this Agreement shall be construed to limit or prohibit the right of City to permit the installation and operation, by the City or any other tenant, of vending machines anywhere on the Airport, outside of Concessionaire's Assigned Premises.

4.3 If during the Term of the Agreement, the City determines that additional retail merchandise facilities are needed to satisfy passenger demand, the Concessionaire shall have the right of first refusal on any additional facilities. If
Concessionaire should elect not to operate said additional facilities, the City shall have the right to negotiate with some other operator for the operation of the additional facilities.

4.4 The Concessionaire has the non-exclusive right of ingress and egress from its Assigned Premises, subject to any rules or regulations which may have been established or may be established in the future by the Director or the City. Such rights of ingress and egress shall apply to the Concessionaire’s employees, guests, patrons, invitees, suppliers and other authorized individuals. The rights of ingress and egress likewise apply to the transport of equipment, material, machinery and other property. In connection with any such ingress or egress, the Concessionaire shall not, and shall not permit others, to obstruct or otherwise interfere with any airline’s or other tenant’s operations or use of the Facilities or the Airport.

4.5 Should a conflict arise between the Concessionaire and other tenants or concession operators at the Airport regarding the scope of concession privileges, the decision of the Director shall be final.

4.6 While the City may provide parking facilities to the Concessionaire’s employees in common with employees of other Concessionaires and users of the Airport, it retains the right to impose a reasonable charge for the privilege of utilizing these parking facilities. Nothing herein contained shall be deemed to require the City to provide parking facilities to Concessionaire’s employees.

ARTICLE V
OPERATIONAL STANDARDS

5.1 The Director shall have the right to determine the Concessionaire’s compliance with all operational standards.

5.2 Assigned Premises shall be operated seven (7) days per week eighteen (18) hours per day, or at such hours as may be established by the Director.

5.3 The Concessionaire and its Suboperators shall honor at least two major credit cards for any purchase over $15.00. Concessionaire shall install and use, or cause to be installed and used at each facility in the Assigned Premises, cash registers, sales slips, invoicing machines and other automatic accounting equipment or devices required to properly and accurately record the Gross Revenues on all sales, by type and location, services and other business transactions made by Concessionaire under this Agreement.

5.4 All merchandise offered at the retail operations at the Airport shall be of the highest quality, shall conform to all applicable regulations and shall be purchased from reliable sources. The Concessionaire shall charge prices which are in compliance with the established pricing policy contained herein. Any actual or perceived degradation of the quality of any merchandise shall be conveyed to the Concessionaire, in writing, by the Director. Concessionaire agrees to correct any degradation in quality to the City's reasonable satisfaction within ten (10) days of such notification.
5.5 Concessionaire may not charge prices for any merchandise that exceeds the street pricing policy, as hereinafter defined. The street pricing policy for all merchandise sold by Concessionaire at the Airport shall be defined as follows:

A. Any merchandise which is received from the supplier with a manufacturer's suggested retail price posted on the merchandise, the price cannot exceed the pre-priced amount;

B. For the required merchandise identified on Exhibit C, prices shall not be more than ten (10) percent higher than the price charged for the same merchandise at Stop-N-Go Convenience Store, 5325 Lemmon Avenue, Dallas, Texas 75209, located off-Airport, excluding any short term promotional pricing.

C. For merchandise sold from branded franchise retail operations, the maximum price charged cannot be more than ten (10) percent higher than the prices charged for the same product or merchandise at the closest off-Airport location operating under the same brand name, excluding any short term promotional pricing.

D. For any other merchandise, other than that merchandise identified in Subparagraphs A, B and C above, the maximum price charged cannot be more than twenty (20) percent higher than the average price charged for the same or similar product or merchandise at the following Dallas area locations:

1. West End Market Place
2. Fort Worth Stockyards
3. Holiday Inn (DFW Airport)

Concessionaire shall submit to the City from time to time and within thirty (30) days of the end of each year, an annual pricing report demonstrating compliance by Concessionaire with the above pricing policy. For the purposes of establishing the street price of an item, any difference in the size or quality of a product or merchandise shall constitute a price differential.

5.6 Concessionaire may request, in writing, from time to time approval to add or delete inventory items specified in Exhibit C of this Agreement. Furthermore, the Director may request the addition or deletion of certain items specified in Exhibit C of this Agreement in response to public demand or public opinion. Concessionaire agrees to alter the inventory items as a result pursuant to City's reasonable request.

5.7 The Concessionaire shall maintain, develop and promote business conducted by it and its Suboperators in the Facilities. Any marketing promotions are subject to the approval of the Director.

5.8 Concessionaire shall conduct its concession operation in a first class manner in accordance with the highest standards. The service shall be prompt, courteous and efficient. Concessionaire shall maintain its Assigned Premises and
conduct its operations at all times in a safe, clean, orderly and inviting condition, to the reasonable satisfaction of the Director. The Concessionaire and its Suboperators shall not create any nuisance, annoy or be offensive or disturbing to others.

5.9 All concession operations shall be supervised at all times by an active, qualified, competent manager or a qualified subordinate in the manager’s absence. The manager or qualified subordinate shall be available at the Assigned Premises during normal business hours. Said manager shall have full authority to make day-to-day business decisions on behalf of Concessionaire and shall be responsible for ordering and receiving merchandise, maintaining merchandise and supplies and supervising sales personnel and other personnel employed in the business of the Concessionaire, represent the Concessionaire in dealings with Concessionaire’s Suboperators and coordinate all concession activities with the City. Concessionaire will cause such manager to be assigned a duty station or office on the Airport. Each Suboperator hereunder shall likewise provide a manager for said Suboperator’s operations and business hereunder, subject to the same duties and responsibilities with respect to such Suboperator’s concessions, as herein provided for the manager of the Concessionaire.

5.10 All personnel employed by the Concessionaire and its Suboperators shall be neat, clean and courteous at all times. Employees shall wear name tags while on duty and shall be properly uniformed. No loud, boisterous or otherwise improper actions or language shall be permitted while on or about the Airport. Concessionaire and its Suboperators shall provide sufficient number of employees so as to properly conduct Concessionaire’s and Suboperator’s operations.

5.11 The Director shall have the right to approve all point of sale displays which may affect safety of the passengers and/or security of the revenues. In no event shall Concessionaire display merchandise or other advertisement material in the public area or outside the Assigned Premises.

5.12 Concessionaire shall monitor and use all reasonable efforts to remedy problems and complaints raised by Airport patrons with respect to the operation of the Assigned Premises, and shall answer all written customer complaints within twenty-four (24) hours of receipt of same, and shall furnish the Director with a copy of any, such complaint and the reply thereto.

5.13 Within sixty (60) days prior to the commencement of each Year, Concessionaire shall prepare and submit to the City for approval an operating, staffing, quality assurance and marketing plan for the next ensuing Year. These plans shall include details of service standards, staffing numbers, staff training, operating hours, quality assurance programs, seasonal promotions, refurbishment ideas, etc. In addition, Concessionaire shall prepare and submit to the City forecasts of gross sales by location and by retail category for the next ensuing Year.

ARTICLE VI
RENTALS, FEES, CHARGES AND ACCOUNTABILITY

6.1 Rentals, fees and charges payable by Concessionaire and its Suboperators are set forth below:
A. Concessionaire shall pay those utility charges for its Assigned Premises as provided, in Paragraph 6.5.

B. For each Year Concessionaire shall pay to the City the greater of either:

1) the sum of the following percentages of annual News and Sundry and Retail Gross Revenues:

15 percent of annual Gross Revenues from the sale of BRANDED retail operations between one dollar and $1,000,000.

20 percent of annual Gross Revenues from the sale of BRANDED retail operations greater than $1,000,000.

20 percent of annual Gross Revenues from the sale of NON-BRANDED retail operations between one dollar and $1,000,000.

25 percent of annual Gross Revenues from the sale of NON-BRANDED retail operations greater than $1,000,000.

15 percent of annual Gross Revenues from the sale of all news and sundry items, as defined on Exhibit C.

or:

2) the following Minimum Annual Guarantee payment:

<table>
<thead>
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<th>Year</th>
<th>Amount</th>
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<td>One</td>
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</tr>
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<td>Four</td>
<td>$879,599</td>
</tr>
<tr>
<td>Five</td>
<td>$923,578</td>
</tr>
</tbody>
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For Years six through 10 the Minimum Annual Guarantee shall be equal to ninety (90) percent of the prior Year's total Percentage Payments made by Concessionaire to City; provided, however, in no event shall any Minimum Annual Guarantee be less than $219,000.

For purposes of this Agreement, "branded retail operations" shall mean an operation where a franchise fee is paid to a franchisor.

6.2 During the Interim Term of this Agreement, Concessionaire shall pay only the Percentage Payment of Gross Revenues as outlined in Paragraph 6.1 above. However, Minimum Annual Guarantee payments shall commence at the earlier of 1) the expiration date of the Interim Term, as defined herein, or 2) the date ninety (90) days after the notification by the Director of the Commencement Date to Concessionaire signifying the City's approval to begin construction fit-out of the last remaining concession location.
6.3 Concessionaire shall pay rentals according to the following:

A. On or before the first day of each month of the Primary Term, without demand or invoice, Concessionaire shall pay to the City one-twelfth (1/12) of the applicable Year's Minimum Annual Guarantee.

B. On or before the 20th day of each month of the Interim Term and Primary Term of the Agreement, the Concessionaire shall submit to the City monthly reports setting forth the amount of Concessionaire's Gross Revenues for the preceding month, all in such format as required by the City. Such monthly reports shall reflect total Gross Revenues, total DBE Gross Revenues, Gross Revenues by operator, Gross Revenues by category (e.g., newspapers, gifts) and Gross Revenues by location, and such other information as may be required by the City. Such reports shall be signed by a responsible accounting officer of the Concessionaire and shall set forth specifically the amount of Gross Revenues derived from its Assigned Premises, including those operated by Concessionaire's Suboperators.

C. During the Interim Term, the Percentage Payment of Gross Revenues payable to the City shall accompany the monthly reports. During the Primary Term, the Percentage Payment of Gross Revenues exceeding the monthly portion of the Minimum Annual Guarantee paid, computed in accordance with Paragraph 6.1 above, shall accompany the monthly reports.

6.4 In the event Concessionaire's aggregate payments to the City for any Year exceed the Minimum Annual Guarantee and exceed the Percentage Payments of Gross Revenue for that Year, then Concessionaire shall be entitled to a credit for such overpayment in the next Year. Said credit shall be the difference between the amount paid by Concessionaire and the greater of the Minimum Annual Guarantee or the Percentage Payments of annual Gross Revenues for the Year in question. The overpayment shall be credited to rental payments next thereafter due from Concessionaire.

6.5 With respect to utilities consumed at or delivered to the Assigned Premises, Concessionaire shall pay to the Airport the electrical charges for the use as submetered to its Assigned Premises. Such charges shall be due within ten (10) days after receipt of an invoice from the City. All other utilities will be provided by the City.

6.6 Payments shall be made in lawful money of the United States, free from all claims, demands, set-offs or counter-claims of any kind. Without waiving any other right of action available to the City in the event of default in payments due hereunder, if Concessionaire is delinquent for a period of thirty (30) days or more in paying to the City any sum due and owing pursuant to this Agreement, Concessionaire shall pay to the City interest thereon at the rate of ten (10) percent per annum from the date such item was due and owing until full payment (plus interest) has been paid. City reserves the right, in its sole discretion, to forego
interest charges in whole or in part on those disputed items contested in good faith by Concessionaire.

6.7 The Concessionaire shall keep full and accurate books and records showing all of its Gross Revenues and expenses and the City shall have the right, through its authorized representatives, to inspect and audit the books and records, including sales tax returns for the State of Texas, at any time. Concessionaire hereby agrees that all such records and instruments will be made available to the City for at least a three (3) year period after the end of the Year in which such activity occurred. Concessionaire shall require a similar set of books and records be maintained by its Suboperators, which shall likewise be available to the City for inspection for at least the same three (3) year period.

6.8 Within ninety (90) days after the end of each Year Concessionaire shall submit to the City an annual report of Gross Revenue for the preceding Year covering all business transacted by Concessionaire under this Agreement. Such annual report shall be certified by an independent certified public accountant and shall be prepared in accordance with generally accepted auditing standards, including, but not limited to, the Statement of Auditing Standards (S.A.S.) #62 - Special Reports, paragraph 18. The independent certified public accountant shall certify that the Concessionaire's schedule of Gross Revenue and such other activity related to Percentage Payments, all as defined in this Agreement, is free from material misstatements and that the statements and payments to City resulting therefrom are in accordance with this Agreement. Any adjustments to Concessionaire's fees and charges paid under this Agreement shall be separately stated and remitted. No adjustment shall be permitted to the then-current fees and charges without City's specific written authorization.

Any financial statements or materials which reflect the financial condition (the "financial information") of the Concessionaire as a company or as operator of the premises and rights described herein shall constitute the proprietary, confidential material of the Concessionaire.

6.9 The City reserves the right to audit Concessionaire's books and records of receipts and the books and records of Concessionaire's Suboperators at any time for purposes of verifying Gross Revenues reported by and payments due from Concessionaire hereunder. Should any examination, inspection and audit of such books and records by the City disclose an understatement of the Gross Revenues received from all operations in the Assigned Premises by three (3%) percent or more, the entire expense of such audit shall be paid by Concessionaire. Any additional Percentage Payments due shall be paid by Concessionaire to the City with interest thereon at ten (10) percent per annum from the date such additional Percentage Rent became due.

ARTICLE VII
IMPROVEMENT OBLIGATIONS TO ASSIGNED PREMISES

7.1 As set forth in its Proposal, dated June 2, 1994, and attached hereto as Exhibit D, Concessionaire agrees to expend $1,182,366 for Initial Capital Investment improvements to the Assigned Premises.
Concessionaire's expenditures set forth above shall include reasonable direct costs, other than those excluded herein, paid by Concessionaire for work performed and materials furnished. Provided, however, Concessionaire shall not include: (1) payments for architectural, engineering, professional and consulting services which exceed fifteen percent (15%) of the total of the costs of such Fixed Improvements and Trade Fixtures; (2) interest and other financing charges; or (3) Concessionaire's own overhead expenses (except that Concessionaire may include the reasonable cost of paying its own employees to perform architectural, engineering, professional or consulting services, subject to the fifteen percent (15%) limit set forth in (1), above).

Concessionaire agrees that the Initial Capital Improvement improvement plan contained in Exhibit D shall be replaced with the actual improvement plan upon completion of construction and approval of the City with the statements submitted in accordance with Paragraph 7.6 contained herein.

7.2 All structural improvements, equipment and interior design and decor constructed or installed by the Concessionaire, its agents or contractors, including the plans and specifications, shall conform to all applicable state and local statutes, ordinances, building codes, rules and regulations and other appropriate agencies and commissions.

7.3 With respect to Concessionaire's initial plans and specifications for the above referenced improvements to the Assigned Premises, the Concessionaire agrees as follows:

A. Regarding the City's asbestos abatement program, the City intends to perform the asbestos abatement of the Assigned Premises on a site-by-site basis. The City has developed, through its Construction Manager, a detailed schedule indicating the specific order in which each site will be abated, which schedule is attached to and made a part of this Agreement as Exhibit E. Concessionaire agrees to complete its Assigned Premises improvements in accordance with the specific order contained in this schedule and to fully cooperate with the City and its Construction Manager.

B. Within thirty (30) days of the Effective Date of this Agreement, Concessionaire agrees to begin submitting final plans and specifications (three sets are required) for the Initial Capital Investment improvements to the Assigned Premises. Final plans and specifications may be submitted piecemeal in accordance with the specific order of the asbestos abatement schedule for each site. However, within ninety (90) days of the Effective Date of this Agreement, Concessionaire agrees to have all final plans and specifications completed and submitted to the Director for approval. Plans and specifications must include at a minimum the following: 1) Date upon which Date of Beneficial occupancy will occur for each site; 2) Architectural and engineering drawings, including furniture plans showing details of space occupancy, floor plans and reflected ceiling plans, partition and door location plans, telephone and electrical plans.
noting any special lighting and power load requirements, environmental design criteria and all security and communications information, detail plans and finish plans; 3) Design detail should include detailed storefront sketches, color and materials for walls, ceiling and floor finish, graphics and furniture/fixture/equipment selections; 4) Any other construction or detail reasonably requested by the City. No construction work shall commence until the Director has approved the plans and specifications and has issued a Notice to Proceed letter to Concessionaire.

C. The Director shall, within ten (10) days after receipt of any plans and specifications, either approve or disapprove the plans and specifications submitted by Concessionaire. The approval by the Director of any, plans and specifications refers to the conformity of such plans and specifications to the general architectural and aesthetic plan for the Assigned Premises and such approval shall not be unreasonably withheld. The plans and specifications are not approved for compliance with applicable laws or codes and neither the Director nor the City acting through its Director, by approving such plans and specifications, assumes liability or responsibility therefor or for any defect in any structure or improvement constructed according to such plans and specifications. The Director shall have the right to reject any designs submitted, and shall state the reasons for such action.

D. In the event the Director does not approve any plan or specification, the Concessionaire has fourteen (14) days to resubmit any, necessary modifications or revisions.

E. No changes or alterations shall be made to said plans and specifications once approved by the Director.

7.4 With respect to Concessionaire's construction activities for each site within the Assigned Premises, Concessionaire agrees as follows:

A. Upon the issuance of the official Commencement Date and Notice to Proceed by the Director, the Concessionaire shall immediately begin the construction and installation of the approved improvements to the specific site or sites to which such Notice to Proceed applies. Concessionaire agrees to diligently pursue completion of said improvements in accordance with the Date of Beneficial Occupancy included in its plans and specifications.

B. Any delay in construction of Concessionaire's obligations hereunder, due to fire, earthquake, wars, acts of the City or one of the City's contractors, or any other calamity beyond the control of the Concessionaire shall extend the DBO date. Concessionaire shall not be entitled to any compensation or damages as a result of any such delay.
C. Except as provided in (B) above, if an activity falls behind schedule, the Concessionaire shall schedule crews to a size to ensure that the construction activity will be completed by the agreed to DBO, at no cost to the City.

7.5 Prior to the commencement of the construction, Concessionaire shall cause its contractor to obtain and deliver to the City, at no cost to City, performance and payment bonds, as follows:

A. A performance bond in a sum equal to one hundred percent (100%) of the anticipated amount of the construction contract for Initial Capital Investment improvements. The bond shall be issued by a corporate surety licensed to issue bonds in the State of Texas and otherwise acceptable to the City, and shall be drawn on a form as approved by the City. The bond shall name City as a joint obligee and shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with the approved plans and specifications, and shall indemnify and hold harmless the City against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of the Concessionaire to perform completely the work described therein.

B. A payment bond with the Concessionaire’s contractor or contractors as principal, in a sum equal to one hundred percent (100%) of the amount of the construction contract for Initial Capital Investment improvements. The bond shall name City as a joint obligee and shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies and equipment used in the performance of any such construction contract.

7.6 Upon completion of the Initial Capital Investment obligations required hereunder, Concessionaire must provide the City with the following:

A. Within thirty (30) days following the completion of the improvement obligation, one reproducible copy of as-built drawings for each site.

B. Within sixty (60) days following the completion of the improvement obligations: 1) a statement certified by the Chief Financial Officer of the Concessionaire specifying the final total cost of all improvement obligations required hereunder, in a format similar to the format contained in the Bid document; 2) a certification that all improvements have been constructed in accordance with the approved plans and specifications, and in strict compliance with all applicable building codes, laws, rules, ordinances and regulations; and 3) certified proof demonstrating that no liens exist on any or all of the construction.
7.7 If the actual Initial Capital Investment improvement costs, as certified by the Concessionaire, are less than the amount specified in Paragraph 7.1 above, Concessionaire agrees to pay to the City, within thirty (30) days of such determination, the difference between the actual cost and the amount specified in Paragraph 7.1 above. Any amounts paid to the City as a result of this provision shall not be deemed a cost of the Initial Capital Investment obligation for any purpose hereunder nor shall it be deemed payment of or receipt of any rentals, Percentage Payments or Minimum Annual Guarantees due hereunder.

7.8 Upon completion of the Initial Capital Investment improvements to the Assigned Premises outlined hereinabove, the Concessionaire shall have the right to install or erect additional, non-structural improvements in the Assigned Premises; provided however, that all such alterations be commenced only after plans and specifications therefor have been submitted to and approved by the Director. Any such alterations and/or repairs shall be without cost to the City, completed within the time specified in the written approval, and with the least disturbance possible to the operation of the Airport, to the Airport tenants and to the public.

7.9 All Fixed Improvements in the Assigned Premises shall be and remain the property of Concessionaire or the Suboperator until the expiration of the Term of this Agreement, as set forth in Article III, or upon termination of this Agreement (whether by expiration of the Term, cancellation, forfeiture or otherwise, whichever first occurs); at which time the said Fixed Improvements shall become the property of the City. Any trade fixtures and personal property of Concessionaire and the Suboperators shall remain the property of Concessionaire or Suboperator, except as provided in Paragraph 14.4.

7.10 The Concessionaire shall not remove or demolish, in whole or in part, any improvements upon the Assigned Premises without prior written consent of the Director, which consent may be conditioned upon the obligation of Concessionaire to replace the same by a specified improvement. The Director shall not withhold consent unreasonably, shall not impose unreasonable conditions and shall state the reasons for withholding consent.

7.11 It is understood that the City shall have the right to install flight information display (FID) equipment in those portions of the Assigned Premises that are deemed appropriate. Concessionaire shall do nothing to interfere with the visibility or access to the FID equipment.

7.12 Commencing in Year Three of the Agreement, unless otherwise approved by the Director, the Concessionaire shall assure that not less than one-half of one percent (.005) of the annual Gross Revenues generated from the Assigned Premises for the previous year is expended on annual refurbishment of such Assigned Premises. Such refurbishment shall include refurbishments attributable to ordinary wear and tear, as well as replacement of furnishings and fixtures and upgrades and renovations necessary to maintain the standard of quality contemplated in the Proposal. Concessionaire, and Suboperator, if applicable, shall provide documentation of such annual refurbishment expenditure to the City within 30 days of the end of each Year commencing in Year Four.
ARTICLE VIII
MAINTENANCE AND REPAIRS

8.1 The Concessionaire agrees to provide at its own expense such maintenance, custodial and cleaning services and supplies as may be necessary or required in the operation and maintenance of its Assigned Premises.

8.2 At no cost to the City, the Concessionaire agrees to maintain and make necessary repairs to the interior of the Assigned Premises, the fixtures and equipment therein and appurtenances thereto including, without limitation, the interior windows, doors and entrances, storefronts, utility lines and connections, signs, floor coverings, interior walls and ceiling, the surfaces of interior columns exclusive of structural deficiencies, any columns or structural improvements erected by Concessionaire, partitions and lighting, electrical equipment and plumbing fixtures within the Assigned Premises. All work performed by the Concessionaire shall be subject to inspection and approval of the Director or his representative.

8.3 All repairs done by the Concessionaire or on its behalf shall be of first class quality in both materials and workmanship. All repairs will be made in conformity with the rules and regulations prescribed from time to time by federal, state or local authority having jurisdiction over the work in the Concessionaire's Assigned Premises.

8.4 Concessionaire shall provide its own interior maintenance of the Assigned Premises, including janitorial service and the replacement of electric light bulbs and tubes. Concessionaire shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of its operations as described herein (trash removal). Concessionaire shall provide and use suitable covered receptacles for all garbage, trash or other refuse. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the Assigned Premises is forbidden.

If the Concessionaire provides for janitorial services or trash removal services by contract or by other than its own employees, Concessionaire at its own cost shall utilize the same contractor for such janitorial services or trash removal services as utilized by the City to provide such services in the general area of the Facilities, or if such services are performed by the City, the Concessionaire shall utilize the services performed by the City. The charges for such services made by the contractor utilized by the City, or made by the City if services are provided by it, shall be reasonable and uniform among all tenants of the City for whom similar services are performed and separately charged to the Concessionaire as provided herein.

8.5 The City currently does not have a recycling program at the Airport. Concessionaire agrees that should a recycling program be implemented at the Airport at any time during the Term of this Agreement, Concessionaire shall fully comply with the provisions of the program.

8.6 The Director or his duly appointed representatives shall have the right to enter the Concessionaire's Assigned Premises to:
(i) inspect the Assigned Premises at any reasonable time or at any time in case of emergency, to determine whether the Concessionaire has complied with and is complying with the terms and conditions of this Agreement. The Director may, at his discretion, require the Concessionaire to effect repairs at the Concessionaire's own cost;

(ii) perform any and all things which the Concessionaire is obligated to and has failed to do after fifteen (15) days written notice to act, including: maintenance, repairs and replacements to the Concessionaire’s Assigned Premises. The cost of all labor and materials, and other charges required for performance of such work, plus fifteen (15) percent thereof for administrative overhead, will be paid by the Concessionaire to the City within ten (10) days following receipt of invoice by Concessionaire; and

(iii) perform any duty or function which the City may have in relation to the operations of the Airport, including carrying out the City’s duties and functions.

ARTICLE IX
LIABILITY, INDEMNITY AND INSURANCE

9.1 Concessionaire and its Suboperators agree to defend, indemnify and hold City, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Concessionaire’s, its Suboperators’ or their respective officers’, agents’, employees’ or separate contractors’, breach of any of the terms or provisions of this Agreement, or by any negligent or strictly liable act or omission of Concessionaire or its Suboperators, its officers, agents, employees or subcontractors, in the performance of this Agreement; except that the indemnity provided for in this Paragraph 9.1 shall not apply to any liability resulting from the sole negligence or fault of City, its officers, agents or employees and in the event of joint and concurrent negligence or fault of Concessionaire or its Suboperators and City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this Paragraph 9.1 are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

9.2 Prior to the approval of this Agreement by the City, Concessionaire and its Suboperators shall furnish a completed Insurance Certificate to the Director's Office, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverage, limits and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. City shall have no duty to perform this Agreement until such Certificate shall have been delivered to the Director's Office, and no officer or employee shall have authority to waive this requirement.
9.3 City reserves the right to review the insurance requirements of this Article during the Term of the Agreement and to adjust insurance coverage or limits when deemed necessary and prudent by City's Office of Risk Management, based upon changes in statutory law, court decisions or the claims history of the industry as well as the Concessionaire and its Suboperators.

Subject to Concessionaire and its Suboperators' right to maintain reasonable deductibles in such amounts as are approved by City, Concessionaire and its Suboperators shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Concessionaire and its Suboperators' sole expense, at least the following insurance coverage written by companies authorized or approved to write such insurance by the State of Texas and otherwise acceptable to City:
|   | Worker’s Compensation and Employers Liability | Statutory $100,000/500,000/100,000 |
|----------------------------------------|---------------------------------|
| 2. | Commercial General (public) Liability insurance including coverage for the following: | Combined single limit for bodily injury and property damage of $1,000,000 per occurrence or its equivalent. |
|    | a. Premises/operations | $1,000,000 each cause |
|    | b. Independent contractors | $250,000 |
|    | c. Products/completed operations | |
|    | d. Personal injury/advertising injury | |
|    | e. Contractual liability | |
|    | f. Medical payments | |
|    | g. Liquor liability hazard (not applicable for contractors) | |
|    | h. Fire legal liability (not applicable for contractors) | |
| 3. | Comprehensive Automobile Liability insurance, including coverage for loading and unloading hazards for: | Combined single limit for bodily injury and property damage of $1,000,000 per occurrence or its equivalent. |
|    | a. Owned/leased vehicles | |
|    | b. Non-owned vehicles | |
|    | c. Hired vehicles | |
| 4. | If project includes work with asbestos: | |
|    | Asbestos Abatement Liability insurance, including coverage for liability arising from the encapsulation, removal, handling, storage, transportation and disposal of asbestos containing materials. | $1,000,000 per occurrence |
|    | *Specific requirement for claims made form: Required period of coverage will be determined by the following formula: continuous coverage for life of the contract, plus one (1) year [to provide for warranty period], and an extended discovery period for a minimum of five (5) years which shall begin at the end of the warranty period. | |
| 5. | Umbrella Liability insurance to apply in excess and follow form of the primary liability coverage listed in 1, 2, 3 and 4 above. | $4,000,000 per occurrence |
| 6. | Commercial Crime insurance including City as loss payee rising from: | $200,000 per occurrence. Separate limit for each coverage (a and b). |
|    | a. Employee dishonesty, blanket form | |
|    | b. Theft, disappearance and destruction of money and securities. | |
| 7. | All-Risk Property insurance covering the Concessionaire and its sub-operators’ equipment, inventory and stock and improvements and betterments including but not limited to perils of fire, extended coverage, theft and vandalism. | 100 percent of the replacement costs. |
| 8. | All-Risk Builders Risk/Installation Floater covering materials and supplies used for remodeling, renovation or equipment installation. Perils to include but not be limited to fire, extended coverage, theft, vandalism and transit | 100 percent of the replacement costs. |
City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by City, Concessionaire and its Suboperators shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

9.4 Concessionaire and its Suboperators agree that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

A. Name the City of Dallas and its officers, employees and elected representatives as additional insureds, (as the interests of each insured may appear) as to all applicable coverage;

B. Provide for 30 days advance notice to City for cancellation, nonrenewal or material change in coverage;

C. Provide for an endorsement that the "other insurance" clause shall not apply to the City of Dallas where City is an additional insured shown on the policy;

D. Provide for notice to City at the two addresses shown below by registered mail;

E. Concessionaire and its Suboperators agree to waive subrogation against the City of Dallas, its officers and employees for injuries, including death, property damage or any other loss, to the extent same is covered by insurance;

F. Provide that all provisions of this Agreement concerning liability, duty and standard of care, together with the indemnification provision. shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

9.5 Concessionaire and its Suboperators shall notify City in the event of any changes in coverage and shall give such notices not less than 30 days prior to the change, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to City at the following addresses:

Director of Aviation        Director of Risk Management
Dallas Love Field           City of Dallas
8008 Cedar Springs         1500 Marilla-Room 1/c/North
Lock Box 16, Terminal Building  Dallas, Texas 75201
9.6 Approval, disapproval or failure to act by the City regarding any
insurance supplied by the Concessionaire and its Suboperators shall not relieve
the Concessionaire or its Suboperators of full responsibility or liability for damages and
accidents as set forth in the Agreement. Neither shall the bankruptcy, insolvency or
denial of liability by the insurance company exonerate the Concessionaire and its
Suboperators from liability.

9.7 If any contractors are hired by Concessionaire and its Suboperators,
Concessionaire and its Suboperators shall require the contractor to maintain at its
own expense, the same stipulated minimum insurance as shown in 9.1, 9.2, 9.3 (1),
(2), (3), (4) and (5) above and as needed to fulfill the requirements under 9.4, 9.5 and
9.6. The Concessionaire and its Suboperators shall have the responsibility to enforce
these insurance requirements upon the contractor(s).

9.8 Concessionaire shall obtain a Performance Bond in accordance with the
following provisions:

A. On the Effective Date of the Agreement, the Concessionaire will
provide the City with a document providing for financial
guarantees under this Agreement. Such financial guarantee
document shall be in the minimum amount of one hundred
percent (100%) of the highest of the first five years Minimum
Annual Guarantees.

The financial guarantee may be in the form of: 1) an irrevocable
letter of credit drawn on a banking institution acceptable to the
City, in favor of and deposited with the City; 2) a surety bond
issued by a surety company authorized or approved to do
business and licensed to write surety bonds in the State of Texas
(such insurance company or surety company shall be otherwise
acceptable to the City); or 3) a combination of both (1) and (2).

B. Commitment documents providing for continuation or
replacement of the financial guarantee documents shall be
received by the City at least thirty (30) days prior to expiration.

C. Failure to renew such financial guarantee upon expiration of
their coverage term shall be deemed an event of default.

ARTICLE X
ASSIGNMENT, DELEGATION AND CHANGE OF OWNERSHIP

10.1 Concessionaire agrees that it shall not assign, mortgage, pledge or
transfer this Agreement or any other right, privilege or license conferred by this
Agreement, either in whole or in part, or permit use of any Assigned Premises by
another, or in any manner encumber the Assigned Premises or any part thereof,
without obtaining in advance the written consent of the City.
The consent of the City with respect to any Suboperator shall, in part, be conditioned on the reasonable acceptability of the terms and provisions contained in the Suboperator document.

10.2 The Concessionaire shall obtain the written consent of the City, through its City Manager, prior to any change, transfer or merger of ownership between the Concessionaire and any other person, corporation or company. Any transfer or merger of ownership without such consent of the City shall constitute a breach of the Agreement under Article XIV.

10.3 The City reserves the right to deny any assignment, subcontract or transfer of ownership for any reason it deems in the best interest of the Airport.

ARTICLE XI
DAMAGE OR DESTRUCTION OF ASSIGNED PREMISES

11.1 Notice; Options - If all or a portion of the Assigned Premises are damaged or destroyed by fire, explosion, the elements or other casualty, at the sole option of the City such affected premises may be repaired or reconstructed at no cost to Concessionaire, subject to the limits as hereafter set forth. The Director shall notify Concessionaire within forty-five (45) days of such occurrence of the City’s intentions to repair or reconstruct or not to repair or reconstruct. Provided, however, if said damage is caused by the negligent or wrongful act or omission to act of Concessionaire, its Suboperators, agents or employees and the City elects to repair or reconstruct, Concessionaire shall be responsible for reimbursing the City for the cost and expense incurred in such repair to the extent that the insurance proceeds received by the City are not sufficient to pay the cost and expense of repair.

11.2 Damage - Subject to the provisions of Paragraphs 11.1 and 11.4, if the damages are so extensive as to render the Assigned Premises or a portion thereof untenable, and notice of intent to repair or reconstruct has been given by the City, an appropriate portion of the Minimum Annual Guarantee payable under this Agreement shall abate from the time of the damage until such time as the damaged premises are fully restored and certified by the City as again ready for use; provided, however, that if said damage is caused by the negligent or wrongful act or omission to act of Concessionaire, its Suboperators or the agents or employees of either, said fees and charges will not abate.

11.3 Destruction - In the event all or a portion greater than fifty-percent (50%) of the Assigned Premises, excluding commissary space, is completely destroyed by fire, explosion, the elements, public enemy or other casualty or are so damaged that they are untenable and notice of intent not to repair or reconstruct has been issued, City or Concessionaire may cancel this Agreement in its entirety as of the date of such destruction. Notwithstanding the foregoing, if such destruction is a result of the negligent or wrongful act or omission to act of Concessionaire, its Suboperators, agents or the employees of either, Concessionaire shall not have the right to cancel this Agreement and the City may, in its discretion, require Concessionaire to repair and reconstruct said premises within six (6) months of such destruction and pay the cost therefore.
11.4 Limits of City's Obligations Defined - It is understood that, in the application of the foregoing provisions, the City's obligations shall be limited (i) to repair or reconstruction of the Assigned Premises to the same extent and of equal quality as obtained by Concessionaire at the Commencement Date of such premises; and (ii) to the extent of insurance proceeds available to the City for such purposes. Fixed Improvements, Trade Fixtures, redecoration and replacement of furniture, equipment and supplies shall be the responsibility of the Concessionaire and any such redecoration and refurnishing/re-equipping shall be equivalent in quality to that originally installed.

ARTICLE XII
COMPLIANCE

12.1 The Concessionaire, its officers, agents, servants, employees, contractors, licensees, Suboperators and any other person over which the Concessionaire has the right to control shall comply with all present and future laws, ordinances, orders, directives, codes, rules and regulations of the federal, state and local governmental agencies, including the City, which may be applicable to its operations at the Airport.

12.2 Concessionaire shall pay or in good faith contest, on or before their respective due dates, to the appropriate collecting authority, all federal, state and local taxes and fees, which are now or may hereafter be levied upon the Assigned Premises, or upon Concessionaire, or upon the business conducted at the Airport, or upon Concessionaire's interest hereunder, or upon any of the Concessionaire's property used in connection therewith; and shall have and maintain in current status all federal, state and local licenses and permits required or the operation of the business conducted by Concessionaire.

12.3 Concessionaire agrees to pay, or guarantees payment of, all lawful fines and penalties as may be assessed by the City or against the City for violations of federal, state or local laws, ordinances, ruling or regulations or Airport rules and regulations by Concessionaire or its officers, agents, servants, employees, contractors, licensees, Suboperators or any other person over which Concessionaire has the right to control within thirty (30) days of written notice of such fines or penalties.

12.4 Concessionaire will operate its concessions hereunder in a safe manner and without interfering with the airlines' use of the Facilities, for themselves and for their passengers and other business invitees.

12.5 Concessionaire shall not advertise an individual airline's transportation services or other goods or services offered in connection therewith, on or in the Assigned Premises without the written approval of the Director.

ARTICLE XIII
TERMINATION BY CONCESSIONAIRE

13.1 In addition to all other remedies otherwise available to the Concessionaire at law or in equity, the Concessionaire may terminate this
Agreement by giving a ninety (90) day written notice to the City, should any one or more of the following events occur, provided however that none of the unamortized capital improvements or the compensation and fees which are to be paid by Concessionaire herein will be refunded to Concessionaire:

A. The abandonment of the Airport as an airline terminal or the permanent removal of all certificated passenger airline service from the Airport for longer than ninety (90) days.

B. The assumption by the United States government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof, in such manner as to substantially restrict Concessionaire from operating thereon for a period of at least ninety (90) days;

C. The issuance by any court of competent jurisdiction of any injunction preventing or restraining the use of the Airport in such a manner as to substantially restrict the Concessionaire from conducting its operations hereunder, which prevention or restraint is not caused by the act or omission of the Concessionaire and which injunction remains in force for at least ninety (90) days.

13.2 Concessionaire retains any and all rights or remedies it may have under Texas law in the event of a material breach of this Agreement by the City.

ARTICLE XIV
TERMINATION BY CITY

14.1 In addition to all other remedies otherwise available to the City at law or in equity, the City may terminate this Agreement or may, without terminating this Agreement, take possession of the Assigned Premises by giving a thirty (30) day written notice to the Concessionaire, should any one or more of the following events occur:

A. Concessionaire fails to cooperate with any inspection of books and records, fails to maintain its books and records as required hereunder;

B. A majority of the ownership interest of Concessionaire under this Agreement is transferred, passes to or devolves upon, by operation of law or otherwise, any other person, firm or corporation without the written consent of the City (this shall not apply to a transfer between Robert B. Cohen and a member or members of his immediate family);

C. Concessionaire becomes, without the prior written approval of the City, a successor or merged corporation in a merger, a constituent corporation in a consolidation or a corporation in dissolution;

D. Concessionaire shall neglect or fail to perform and observe any promise, covenant or condition set forth in this Agreement after giving of written notice of breach from the City or the Director, except where
fulfillment of such obligation requires activity over a period of time and Concessionaire has commenced to perform whatever may be required within ten (10) days after giving of such notice and continues such performance without interruption;

E. Concessionaire makes an assignment for the benefit of creditors or is adjudged a bankrupt;

F. Deterioration of service for a period which, in the sole opinion of the City, materially and adversely affects the operation of service required to be performed by Concessionaire under this Agreement.

14.2 The City may immediately terminate this Agreement by the giving of written notice upon the occurrence of any one or more of the following:

A. Concessionaire fails to make any payments, to provide and maintain insurance, or to provide and maintain a performance bond, all as required in this Agreement within ten (10) days after the giving of written notice by the City of such failure;

B. Any lien is filed against the Assigned Premises arising, by or through the Concessionaire or because of any act or omission of Concessionaire and such lien is not removed, enjoined or a bond for satisfaction of such lien is not posted within ninety (90) days after the filing thereof;

C. Concessionaire abandons, deserts, vacates or discontinues its operation of the business herein authorized for a period of ten (10) days without prior written consent of City; or

14.3 Acceptance by the City of any rentals or other payments specified herein, after a breach of any of the terms of this Agreement shall not be deemed a waiver of any right on the part of the City to cancel this Agreement on account of any breach.

14.4 On or before the termination or reentry dates set forth in the written notice by the City to Concessionaire as set out in Paragraphs 3.3, 14.1 and 14.2, Concessionaire shall surrender the Assigned Premises. Concessionaire shall immediately remove all Trade Fixtures and Personal Property from the Assigned Premises and shall return such Assigned Premises in good condition, reasonable wear and tear excepted. City may reenter the Assigned Premises and may remove all persons and property from same upon the date of reentry. Upon any removal of Concessionaire's or Suboperator's Trade Fixtures and Personal Property by City hereunder, at the sole option of the City, (i) said property may be stored at a public warehouse or elsewhere at Concessionaire's sole cost and expense; or (ii) title to such Trade Fixtures and Personal Property shall vest in the City at no cost to the City.

14.5 The City may reassign Assigned Premises and any improvements thereon or any part thereof to be operated by one or more Suboperators or any other party acceptable to the City, at such rentals, fees and charges and upon such other terms and conditions as City, in its sole discretion, may deem advisable, with the right to make alterations, repairs or improvements on said premises.
14.6 No reentry or reassignment of Assigned Premises by City shall be construed as an election on City's part to terminate this Agreement unless a written notice of termination is given to Concessionaire.

14.7 In the event the City, without terminating this Agreement, re-enters, regains or resumes possession of the Assigned Premises, all of the obligations of Concessionaire hereunder shall survive and shall remain in full force and effect for the full term of this Agreement. And, subject to the City's obligation to mitigate damages, the amount or amounts of rental charges shall become due and payable to the City to the same extent, at the same time or times and in the same manner as if no termination, re-entry, regaining or resumption of possession had taken place. The City may maintain separate actions each month to recover any monies then due, or at its option and at any time, may sue to recover the full deficiency.

14.8 Unless otherwise directed by the City, at termination of this Agreement by expiration, cancellation or otherwise, Concessionaire shall immediately remove all Trade Fixtures and Personal Property from the Assigned Premises of Concessionaire and its Suboperators and return such Assigned Premises in good condition, reasonable wear and tear excepted.

14.9 The right to terminate this Agreement for the convenience of the City in the public interest is expressly retained by the City. In such event, the City will give ninety (90) days prior written notice of such termination for convenience, which notice shall stipulate the conditions for removal of all non-capital items such as movable equipment, trade fixtures, goods, etc. The conditions set out in Paragraphs 14.3 through 14.8 of this Agreement shall also govern the circumstances of termination for convenience, to the extent applicable. None of the unamortized capital improvements or the compensation and fees which are to be paid by Concessionaire under this Agreement will be refunded to Concessionaire as a result of termination for convenience. Further, no amount will be due Concessionaire for lost or anticipated profits as a result of any termination for convenience by the City.

ARTICLE XV
GOVERNMENTAL AND SUBORDINATION PROVISIONS

15.1 Nondiscrimination

A. The Concessionaire, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained or otherwise operated on the property described in this Agreement for a purpose which a Department of Transportation program or activity is extended for another purpose involving the provision of similar services or benefits, the Concessionaire must maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, as amended.
B. Concessionaire, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, covenants and agrees that (1) no person, on the grounds of race, color or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) in the construction of any improvements and the furnishing of services, no person on the grounds of race, color, creed or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) the Concessionaire shall use the Assigned Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, as amended.

C. That in the event of a breach of any of the above nondiscrimination covenants, the City shall have the right to terminate this Agreement and re-enter and repossess said Assigned Premises, and hold the same as if said Agreement had never been made or issued. This provision shall not be effective until the procedures of 49 CFR Part 21, as amended, are followed and completed, including exercise or expiration of appeal rights.

D. The Concessionaire shall furnish its accommodations and/or services on a fair, equal and nondiscriminatory basis to all users thereof, and it shall charge fair, reasonable and nondiscriminatory prices for each unit of services.

E. The Concessionaire assures that it shall undertake an Affirmative Action Program as required by 14 CFR Part 152, Subpart E, as amended, to insure that no person shall on the grounds of race, creed, color, national origin, sex or handicap be excluded from participating in any employment activities covered in 14 CFR Part 152 Subpart E. The Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Concessionaire assures that it shall require that its covered suborganizations provide assurances to the Concessionaire that they similarly shall undertake Affirmative Action Programs and that they shall require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, as amended, to the same effect.

F. The Concessionaire assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap, be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates Concessionaire for the period during which Federal assistance is extended to the Airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, this provision obligates the Concessionaire or its transferee for the longer of the following periods:
(1) the period during which property is used by the City or any transeree for a purpose for which Federal assistance is extended or for another purpose involving the provision of similar services or benefits; or

(2) the period during which the City or any transeree retains ownership or possession of the property.

G. It is the policy of the Department of Transportation and of the City that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, as amended, shall have the maximum opportunity to participate in the performance of leases as defined in 49 CFR 23.5. Consequently, the Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 23, as amended, apply to this Agreement.

The Concessionaire agrees to insure that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, as amended, have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, Concessionaire shall take all necessary and reasonable steps in accordance with 49 CFR Part 23, as amended, to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Concessionaire shall not discriminate on the basis of race, color, national origin or sex in the award or performance of Department of Transportation-assisted contracts.

H. The Concessionaire hereby assures that it shall include the above provisions in all agreements and cause all Suboperator to similarly include clauses in further subagreements.

I. The Concessionaire has been advised, and understands, that failure to make a good faith effort to carry out the requirements of this Article and of the DBE regulations will constitute a breach of this Agreement.

J. As used herein, the term "Department of Transportation" means the United States Department of Transportation.

15.2 Federal Aviation Act, Section 308 - Nothing herein contained shall be deemed to grant the Concessionaire any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act or the conduct of any activity on the Airport, except, subject to the terms and conditions hereof, the Concessionaire shall have the right to use the Assigned Premises under the provisions of this Agreement.

15.3 Subordination - This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between the City and the United States Government relative to the financing, operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of rights or property to the City for Airport purposes, or the acquisition or expenditure of funds for the improvement or development of the Airport,
including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as amended from time to time.

ARTICLE XVI
GENERAL PROVISIONS

16.1 Nonwaiver of Rights - No waiver of a breach by either party of any of the terms, covenants and conditions hereof to be performed, kept and observed by the other party, shall be construed as, or shall operate as, a waiver of any subsequent breach of any of the terms covenants or conditions herein contained, to be performed, kept and observed by the other party. No notice shall be required to restore time of the essence.

16.2 Notices - Notices required herein may be given by registered or certified mail by depositing the same in the United States mail in the continental United States, postage prepaid. Any such notice so mailed shall be presumed to have been communicated seventy-two (72) hours after deposit of same in the mail. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Notices to the City shall be addressed as follows:

Director of Aviation
Dallas Love Field, Lock Box 16
Love Field Terminal Building
8008 Cedar Springs
Dallas, Texas 75235

Notices to Concessionaire shall be addressed as follows:

Mario Di Domizio
Senior Vice President
Hudson County News Company
1305 Paterson Plank Road
North Bergen, New Jersey 07047

Marshall E. Lipman
General Counsel
Hudson County News Company
1305 Paterson Plank Road
North Bergen, New Jersey 07047

If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

16.3 Captions - The headings of the several articles of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

16.4 Severability - In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained will not affect the validity of any other covenant condition or provision; provided that the validity of any such covenant, condition or provision does not materially prejudice either the
City or Concessionaire in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

16.5 **Agent for Service of Process** - It is expressly understood and agreed that if the Concessionaire is not a resident of the State of Texas, or is an association or partnership without a member of partner resident of said State, or is a foreign corporation, the Concessionaire will appoint an agent for service of process in the State of Texas. Due to any failure on the part of said agent, or the inability of said agent to perform, or the Concessionaire's failure to appoint an agent when required, the Concessionaire does hereby designate the Secretary of State, Texas, its agent for the purpose of service of process in any court action between it and the City arising out of or based upon this Agreement, and the service shall be made as provided by the laws of the State of Texas for service upon a non-resident. It is further expressly agreed, covenanted and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, Concessionaire may be personally served with such process out of this State by the registered mailing of such complaint and process to the Concessionaire at the address set forth herein. Any such service out of this State shall constitute valid service upon the Concessionaire as of the date of mailing. It is further expressly agreed that the Concessionaire is amenable to and hereby agrees to the process so served, submits to the jurisdiction, and waives any and all obligations and protest thereto, any laws to the contrary notwithstanding.

16.6 **Waiver of Claims** - The Concessionaire waives any claim against the City and its officers, agents or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable or delaying the same or any part thereof from being carried out.

16.7 **Right to Develop Airport** - It is further covenanted and agreed that the City reserves the right to further develop or improve the Airport and all landing areas and taxiways as it may see fit, regardless of the desires or views of the Concessionaire and without interference or hinderance.

16.8 **Incorporation of Exhibits** - All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement. It is specifically agreed that Exhibits A, B, C, D and E may be modified and substituted in writing, in accordance with the provisions of this Agreement, without formal amendment hereto.

16.9 **Incorporation of Required Provision** - The parties incorporate herein by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

16.10 **Relationship of Parties** - Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship, between the parties hereto. The parties shall understand and agree that neither the method of computation of rent, nor any other provision contained herein, nor any
acts of the parties hereto creates a relationship other than the relationship of Concessionaire as permittee of the City.

16.11 Nonliability of Agents or Employees - No officer, agent or employee of the City or the Concessionaire shall be charged personally or held contractually liable by or to the other party under the provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

16.12 Successors and Assigns Bound - This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, where permitted by this Agreement.

16.13 Right to Amend - In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, the Concessionaire agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required.

16.14 Time of Essence - Time is expressed to be of the essence in this Agreement.

16.15 Gender - Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, unless the context otherwise requires.

16.16 Force Majeure - Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to causes beyond the control of that party or persons or entities for whose acts or omissions that party is responsible under this Agreement or applicable law, including, without limitation, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such party is not responsible or which is not in its own power to control.

16.17 Representative of the City - The Director shall be designated as the official representative of the City in all matters pertaining to this Agreement and shall have the right and authority to act on behalf of the City with respect to all action required of the City in this Agreement.

16.18 Governing Law - This Agreement is governed by the laws and case decisions of the State of Texas. Any disputes relating to this Agreement must be resolved in accordance with the laws and case decisions of Texas. This Agreement is performable in Dallas County. Exclusive venue for any legal action brought in connection with the terms and conditions of this Agreement shall be in Dallas County, Texas.

16.19 Certification - The Concessionaire, by execution of this Agreement, certifies that it:
A. is not owned or controlled by one or more citizens or nationals of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);

B. has not knowingly entered into any contract or subcontract for this project with a contractor that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list.

C. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, as amended, no contract shall be awarded to a Concessionaire who is unable to certify to the above. If the Concessionaire knowingly procures or subcontracts for the supply of any product or service of a foreign country on the said list for use of the project, the Federal Aviation Administration may direct, through the City, cancellation of the contract at no cost to the Government.

Further, the Concessionaire agrees that it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The Concessionaire may rely upon the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The Concessionaire shall provide immediate written notice to the City if it learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide immediate written notice to the Concessionaire, if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Concessionaire or any subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct, through the City, cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a Concessionaire is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.
16.20 **Writing Required** - Except as provided in Paragraph 16.8, neither this Agreement nor any term or provision hereof may be changed, waived, discharged or terminated orally, but only by a supplemental agreement in writing signed by both parties.

16.21 ** Conflict of Interest** - The following section of the Charter of the City of Dallas shall be one of the conditions of, and a part of, the consideration of this Contract, to-wit:

"CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED

(a) No officer or employee shall have any financial interest, direct or indirect, in any Contract with the City or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit his office, or position with the City. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the City Manager or the City Council.

(b) The alleged violations of this section shall be matters to be determined either by the Trial Board in the case of employees who have the right to appeal to the Trial Board, and by the City Council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by city employees in federally-funded housing programs, to the extent permitted by applicable federal or state law."

16.22 **Gifts to Public Servants**

A. CITY may terminate this Contract immediately if Concessionaire has offered, conferred, or agreed to confer any benefit upon a CITY employee or official that the CITY employee or official is prohibited by law from accepting.

B. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

C. Notwithstanding any other legal remedies, CITY may require Concessionaire to remove any employee of the Concessionaire from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Concessionaire as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.
ARTICLE XVII
ENTIRE AGREEMENT

17.1 The parties hereto understand and agree that this instrument contains the entire Agreement between the parties. The parties further understand and agree that neither party nor its agents have made representations or promises with respect to this Agreement except as expressly set forth herein; and that no claim or liability shall arise for any representations or promises not expressly stated in this Agreement. Any other writing or parol agreement with the other party being expressly waived.

EXECUTED this 24th day of August, 1994, by CITY, signing by and through its City Manager, duly authorized to execute same by Resolution No. 94-3119, adopted by the City Council on August 24, 1994, and by CONCESSIONAIRE, acting through its duly authorized official.

APPROVED AS TO FORM:
SAM A. LINDSAY, City Attorney

BY: Lawrence G. Safford
Assistant City Attorney

CITY OF DALLAS
JOHN L. WARE, City Manager

BY: 
Assistant City Manager

CONCESSIONAIRE:
HUDSON RETAIL-DALLAS J.V., a Texas joint venture

BY:
Hudson Retail-Dallas, Inc.
President

BY: 
Accomodations, Inc.
President

All obligations of Hudson Retail-Dallas, Inc. and Hudson Retail-Dallas J.V. are guaranteed by Hudson County News Company

BY:
Hudson County News Company
President
STATE OF TEXAS
COUNTY OF DALLAS

LOVE FIELD FOOD AND BEVERAGE
CONCESSION CONTRACT

THIS AGREEMENT, entered into this 24th day of August, 1994 is by and between the
City of Dallas, a Texas municipal corporation (hereinafter called "City"), and
DALLAS LOVE FIELD JOINT VENTURE, a Texas joint venture comprised of
MULTIRESTURANTS MANAGEMENT, INC., a Texas corporation, and
CULINAIRE OF TEXAS, INC., a Texas corporation (hereinafter called
"Concessionaire").

WITNESSETH:

WHEREAS, City owns and operates Dallas Love Field, a municipal airport,
hereinafter called the "Airport"; and

WHEREAS, City has solicited proposals from qualified food and beverage
operators for the sale of food and beverage in designated areas of the Airport; and

WHEREAS, Concessionaire engages in the business of operating food and
beverage concessions similar in nature to that proposed at the Airport; and

WHEREAS, City wishes to grant Concessionaire the right to operate a
concession for certain food and beverage facilities at the Airport under an agreement
containing mutually satisfactory terms and covenants.

NOW, THEREFORE, in consideration of mutual covenants, terms,
conditions, promises and agreements contained herein, City and Concessionaire
mutually agree to the following:

ARTICLE I
DEFINITIONS

1.1 "Agreement" shall mean this Concession Agreement between City and
Concessionaire for the right to use the Assigned Premises (as defined in this
Agreement) for the conduct of food and beverage services, under the terms and
conditions expressly set forth in this Agreement.

1.2 "Airport" shall mean the tract of land with all improvements thereon
and to be erected thereon, designated as "Dallas Love Field", all as depicted on
Exhibit A, attached to and made a part of this Agreement.

1.3 "Assigned Premises" shall mean the area or areas in the Terminal
designated on Exhibit B hereof as the place or places where the business of
Concessionaire may be conducted pursuant to this Agreement.
1.4 "Date of Beneficial Occupancy" or "DBO" shall mean the date on which the Director certifies that the Concessionaire's finishes are completed and the Assigned Premises, or any portion thereof, are ready to open for business.

1.5 "Commencement Date" shall mean the date(s) on which the Director certifies that the Assigned Premises or any portion thereof are available for finish work by Concessionaire.

1.6 "Concessionaire" shall mean the prime operator under this Agreement.

1.7 "Director of Aviation" or "Director" shall mean the Director of the Airport or his designee, as from time to time appointed by the City authorized to act with respect to any or all matters pertaining to this Agreement.

1.8 "Disadvantaged Business Enterprise" and "DBE" shall mean, as certified by the North Central Texas Regional Certification Agency (NCTRCA) and verified by the City, a business, whether it is a corporation, sole proprietorship, partnership or joint venture, of which at least 51 percent of the interest is owned and controlled by one or more socially and economically disadvantaged individuals as defined in the Airport and Airways Safety and Capacity Expansion Act of 1987 and the regulations promulgated pursuant hereto at 49 CFR Part 23.

1.9 "Facilities" shall mean, collectively, the Terminal and concourses designated for commercial air transportation activities at the Airport.

1.10 "Fixed Improvements" shall mean all structural improvements made by Concessionaire pursuant to Paragraph 7.1 of this Agreement, including but not limited to ceiling, wall and floor finishes, power, water and other utility conductors and light fixtures, all of which are permanently affixed to the Assigned Premises.

1.11 "Gross Revenues" shall mean all monies or other consideration paid or payable to Concessionaire and its Suboperators on all sales of products and services at or from its operations at the Facilities and shall include all charges or other fees charged by Concessionaire, whether for cash or credit, and without deduction for credit card discounts or thefts, and whether the same shall be paid or unpaid. The following shall be allowed, when properly recorded and accounted for, as a reduction from Gross Revenues: (1) sales taxes and excise taxes, where stated separately and collected from the customer for remittance to the taxing authority; (2) alcoholic beverage taxes collected for remittance to the taxing authority from retail sales of alcoholic beverages; (3) verifiable refunds made by the Concessionaire to customers because of unacceptable or unsatisfactory goods or services; (4) the verifiable cost of meals furnished to employees during their working hours; (5) gratuities or tips collected, recorded and directly remitted to employees; (6) the sale (not redemption) of gift certificates for food, beverages or promotional items at the Facilities; (7) the sale of non-edible, non-profit promotional items at the Facilities.

1.12 "Initial Capital Investment" shall mean all improvements made to the Assigned Premises during the Interim Term including architectural and engineering fees, subject to limitations contained herein, fixed improvements, fixtures, furniture, equipment, electrical and HVAC improvements.
1.13 "Interim Term" shall mean the term commencing upon the execution of this Agreement and terminating at the earlier of: 1) the completion of all finish work to the Assigned Premises; or 2) 90 days after the Commencement Date of the last remaining location to be finished by Concessionaire.

1.14 "Minimum Annual Guarantee" shall mean the minimum amount of money due City annually from Concessionaire in consideration of the rights granted Concessionaire under this Agreement.

1.15 "Percentage Payment" shall mean the sum of money due City on account of City's share of Gross Revenues as hereinafter provided.

1.16 "Personal Property" shall mean all furniture and other portable property furnished and used by Concessionaire in its operations hereunder.

1.17 "Primary Term" shall mean the term commencing upon the termination of the Interim Term and terminating ten (10) years thereafter, unless sooner terminated as provided herein.

1.18 "Suboperator" shall mean any person or firm operating a facility in the Assigned Premises pursuant to a City-approved agreement with Concessionaire.

1.19 "Term" shall mean the term of this Agreement as defined in Article III.

1.20 "Terminal" shall mean the public areas of the Terminal Building at the Airport, including the existing terminal building and the concourse, or any additional area that may be opened or constructed for airline gates to the traveling public.

1.21 "Trade Fixtures" shall mean all appliances, signage and any other major equipment with a useful life in excess of three (3) years, installed by Concessionaire for use in its operations hereunder. Although such Trade Fixtures may be affixed to the Assigned Premises, the same may be removed without structural damage to the Assigned Premises.

1.22 "Year" shall mean any twelve month period commencing upon execution of this Agreement.

ARTICLE II
ASSIGNED PREMISES

2.1 The City hereby grants to the Concessionaire and the Concessionaire takes from the City the right to use designated areas in the Facilities as hereinafter described and more specifically set forth on Exhibit B, attached to and made a part of this Agreement, all collectively hereafter referred to as the Assigned Premises. It is understood and agreed that, upon completion of construction of the Facilities, "as built" drawings will be substituted as Exhibit B without further amendment hereto.

FOOD AND BEVERAGE AREAS: Refer to Exhibit B.
ARTICLE III
TERM

3.1 This Agreement shall be effective and binding as of August 24, 1994 (the "Effective Date"). The Interim Term shall commence on the Effective Date and shall continue until the Date of Beneficial Occupancy of all of the Assigned Premises. The Primary Term shall commence upon the expiration of the Interim Term and shall continue for a period of ten (10) years thereafter, subject to the City's rights as set forth in this Agreement.

3.2 City, in its sole discretion, shall have the option to renew this Agreement for one (1) additional period of five (5) years. If the option is exercised, the renewal term commences upon the expiration of the Primary Term of this Agreement. Such renewal shall be subject to all of the same terms, covenants and conditions of this Agreement. In order to exercise such renewal option, City shall advise Concessionaire in writing of its intent to renew no later than six (6) months prior to the end of the Primary Term of this Agreement.

3.3 In the event Concessionaire shall, with the consent of the City, hold over and remain in possession of any of the Assigned Premises after the expiration of the Term of this Agreement, such holding over shall not be deemed to operate as a renewal or extension of this Agreement but shall only create a month-to-month basis on the same terms, conditions and covenants, including consideration, contained in this Agreement, except that such holdover arrangement shall be terminable at the will of the City.

ARTICLE IV
USES AND PRIVILEGES

4.1 The Concessionaire has the non-exclusive right, privilege and obligation to operate and manage the food and beverage concessions for the sale of food and beverage products in and from its Assigned Premises. Further, the Concessionaire has the right, subject to the approval of the City, to permit portions of the Assigned Premises to be used by Suboperators selected by Concessionaire and approved by the City. Exhibit C, attached to and made part of this Agreement, describes the types of facilities and inventory items which Concessionaire and its Suboperators shall have the right to offer in the Assigned Premises, subject to the provisions of Article V of this Agreement. The sale of items other than food and beverage or the furnishing by Concessionaire of other services than those described in Exhibit C shall not be permitted without prior written approval of the City. Neither Concessionaire nor its Suboperators shall have the right under this Agreement to sell liquor or wine by the bottle or otherwise engage in packaged liquor or wine sales on any of the Assigned Premises or to provide Duty Free merchandise.

4.2 Nothing in this Agreement shall be construed to limit or prohibit the right of City to permit the installation and operation, by the City or any other tenant,
of vending machines anywhere on the Airport, outside of Concessionaire's Assigned Premises.

4.3 If during the Term of this Agreement, the City determines that additional food and beverage service is needed to satisfy the passenger demands, the Concessionaire shall have the first right of refusal of any new food and beverage locations. If the Concessionaire should elect not to operate said additional locations, the City has the right to negotiate with some other operator for the operation of new food and beverage locations.

4.4 The Concessionaire has the non-exclusive right of ingress and egress from its Assigned Premises, subject to any rules or regulations which may have been established or may be established in the future by the Director or the City. Such rights of ingress and egress shall apply to the Concessionaire's employees, guests, patrons, invitees, suppliers and other authorized individuals. The rights of ingress and egress likewise apply to the transport of equipment, material, machinery and other property. In connection with any such ingress or egress, the Concessionaire shall not, and shall not permit others, to obstruct or otherwise interfere with any airline's or other tenant's operations or use of the Facilities or the Airport.

4.5 Should a conflict arise between the Concessionaire and other tenants or concession operators at the Airport regarding the scope of concession privileges, the decision of the Director shall be final.

4.6 While the City may provide parking facilities to the Concessionaire's employees in common with employees of other Concessionaires and users of the Airport, it retains the right to impose a reasonable charge for the privilege of utilizing these parking facilities. Nothing herein contained shall be deemed to require the City to provide parking facilities to Concessionaire's employees.

ARTICLE V
OPERATIONAL STANDARDS

5.1 The Director shall have the right to determine the Concessionaire's compliance with all operational standards.

5.2 Assigned Premises shall be operated seven (7) days per week eighteen (18) hours per day, or at such hours as may be established by the Director.

5.3 Except for those operations specifically described in Exhibit C, the Concessionaire and its Suboperators shall honor at least two major credit cards for any purchase over $5.00. Concessionaire shall install and use, or cause to be installed and used at each facility in the Assigned Premises, cash registers, sales slips, invoicing machines and other automatic accounting equipment or devices required to properly and accurately record the Gross Revenues on all sales, by type and location, services and other business transactions made by Concessionaire under this Agreement.

5.4 All items served at the food and beverage facilities at the Airport shall be of the highest quality, shall conform to all applicable regulations, and shall be
purchased from reliable sources. The Concessionaire shall serve adequate portions and charge prices which are in compliance with the established pricing policy contained herein. Any actual or perceived degradation in the quality of any food or beverage products shall be conveyed to the Concessionaire, in writing, by the Director. Concessionaire agrees to correct any degradation in quality to the City's reasonable satisfaction within ten (10) days of such notification.

5.5 Concessionaire may not charge prices for any products or services that exceed street prices, as hereinafter defined. The street price for any product or service sold by Concessionaire at the Airport shall be defined as follows:

A. For food and beverages sold from branded franchise food and beverage operations, the maximum price charged cannot be more than ten percent (10%) higher than the price charged for the same product or merchandise at the closest off-Airport location operating under the same brand name, excluding any short-term promotional pricing.

B. For food and beverages sold from non-branded operations, the maximum price charged cannot be more than twenty (20) percent higher than the average price charged for the same or similar product or merchandise at the following Dallas area locations:

1. Vie de France products-the Vie de France store in Valley View Mall in Dallas, Texas (Preston Road and LBJ)

2. Freshens products-the NorthPark Mall in Dallas, Texas, Town East Mall in Mesquite, Texas and Irving Mall in Irving, Texas

3. For bagels-Bagelstein's Bakery & Deli on Spring Valley Road, The Deli News on Maple Avenue and Bagel Chain on Lovers Lane, all in Dallas, Texas

4. For nuts-the Morrow Nut House locations in Red Bird Mall in Dallas, Texas, Richardson Square Mall in Richardson, Texas and the Grove at DFW Airport

5. For Ritas-the J. Pepe's Restaurant at the Quadrangle Mall, 2828 Routh Street, Dallas, Texas, the TGI Friday's on 4140 Lemmon Avenue, Dallas, Texas and Uncle Julio's on 4125 Lemmon Avenue, Dallas, Texas

Concessionaire shall submit to the City from time to time and within thirty (30) days of the end of each Year, an annual pricing report demonstrating compliance by Concessionaire with the above pricing policy. For the purposes of establishing the street price of an item, any difference in the size or quality of a product or merchandise shall constitute a price differential.

5.6 Concessionaire may request, in writing, from time to time approval to add or delete inventory items specified in Exhibit C of this Agreement, or to change the locations designated in Paragraph 5.5(B). Furthermore, the Director may request
the addition or deletion of certain items specified in Exhibit C of this Agreement in response to public demand or public opinion. Concessionaire agrees to alter the inventory items as a result pursuant to City's reasonable request.

5.7 The Concessionaire shall maintain, develop and promote business conducted by it and its Suboperators in the Facilities. Any marketing promotions are subject to the approval of the Director.

5.8 Concessionaire shall conduct its concession operation in a first class manner in accordance with the highest standards. The service shall be prompt, courteous and efficient. Concessionaire shall maintain its Assigned Premises and conduct its operations at all times in a safe, clean, orderly and inviting condition, to the reasonable satisfaction of the Director. The Concessionaire and its Suboperators shall not create any nuisance, annoy or be offensive or disturbing to others.

5.9 All concession operations shall be supervised at all times by an active, qualified, competent manager or a qualified subordinate in the manager's absence. The manager or qualified subordinate shall be available at the Assigned Premises during normal business hours. Said manager shall have full authority to make day-to-day business decisions on behalf of Concessionaire and shall be responsible for ordering and receiving merchandise, maintaining merchandise and supplies and supervising sales personnel and other personnel employed in the business of the Concessionaire, represent the Concessionaire in dealings with Concessionaire's Suboperators and coordinate all concession activities with the City. Concessionaire will cause such manager to be assigned a duty station or office on the Airport. Each Suboperator hereunder shall likewise provide a manager for said Suboperator's operations and business hereunder, subject to the same duties and responsibilities with respect to such Suboperator's concessions, as herein provided for the manager of the Concessionaire.

5.10 All personnel employed by the Concessionaire and its Suboperators shall be neat, clean and courteous at all times. Employees shall wear name tags while on duty and shall be properly uniformed. No loud, boisterous or otherwise improper actions or language shall be permitted while on or about the Airport. Concessionaire and its Suboperators shall provide sufficient number of employees so as to properly conduct Concessionaire's and Suboperator's operations.

5.11 The Director shall have the right to approve all point of sale displays which may affect safety of the passengers and/or security of the revenues. In no event shall Concessionaire display merchandise or other advertisement material in the public area or outside the Assigned Premises, unless otherwise approved by the Director.

5.12 Concessionaire shall monitor and use all reasonable efforts to remedy problems and complaints raised by Airport patrons with respect to the operation of the Assigned Premises, and shall answer all written customer complaints within twenty-four (24) hours of receipt of same, and shall furnish the Director with a copy of any such complaint and the reply thereto.

5.13 Within sixty (60) days prior to the commencement of each Year, Concessionaire shall prepare and submit to the City for approval an operating,
staffing, quality assurance and marketing plan for the next ensuing Year. These plans shall include details of service standards, staffing numbers, staff training, operating hours, quality assurance programs, seasonal promotions, refurbishment ideas, etc. In addition, Concessionaire shall prepare and submit to the City forecasts of gross sales by location and by food category for the next ensuing Year.

ARTICLE VI
RENTALS, FEES, CHARGES AND ACCOUNTABILITY

6.1 Rentals, fees and charges payable by Concessionaire and its Suboperators are set forth below:

A. Concessionaire shall pay those utility charges for its Assigned Premises as provided in Paragraph 6.5.

B. For each Year Concessionaire shall pay to the City the greater of either: (1) the sum of the following percentages of annual Food and Beverage (including alcoholic beverage) Gross Revenues:

10 percent of annual Gross Revenues from the sale of BRANDED food and non-alcoholic beverages between one dollar and $1,500,000.

15 percent of annual Gross Revenues from the sale of BRANDED food and non-alcoholic beverages greater than $1,500,000.

15 percent of annual Gross Revenues from sale of NON-BRANDED food and nonalcoholic beverages between one dollar and $1,500,000.

20 percent of annual Gross Revenues from the sale of NON-BRANDED food and non-alcoholic beverages greater than $1,500,000.

17 percent of annual Gross Revenues from the sale of all alcoholic beverages between one dollar and $1,500,000.

22 percent of annual Gross Revenues from the sale of alcoholic beverages greater than $1,500,000.

or:

2) the following Minimum Annual Guarantee payment:

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<tr>
<th>Year</th>
<th>Amount</th>
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<tr>
<td>Year One</td>
<td>$800,000</td>
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<tr>
<td>Year Two</td>
<td>$840,000</td>
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<tr>
<td>Year Three</td>
<td>$880,000</td>
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<td>Year Four</td>
<td>$885,000</td>
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<td>Year Five</td>
<td>$885,000</td>
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</tbody>
</table>
For Years six through ten the Minimum Annual Guarantee shall be equal to ninety (90) percent of the prior Year's total Percentage Payments made by Concessionaire to City; provided, however, in no event shall any Minimum Annual Guarantee be less than $409,000.

For purposes of this Agreement, "Branded food and beverage operations" shall mean an operation where a franchise fee is paid to a Franchisor.

6.2 During the Interim Term of this Agreement, Concessionaire shall pay only the Percentage Payment of Gross Revenues as outlined in Paragraph 6.1 above. However, Minimum Annual Guarantee payments shall commence at the earlier of 1) the expiration date of the Interim Term, as defined herein, or 2) the date ninety (90) days after the notification by the Director of the Commencement Date to Concessionaire signifying the City's approval to begin construction fit-out of the last remaining concession location.

6.3 Concessionaire shall pay rentals according to the following:

A. On or before the first day of each month of the Primary Term, without demand or invoice, Concessionaire shall pay to the City one-twelfth (1/12) of the applicable Year's Minimum Annual Guarantee.

B. On or before the 20th day of each month of the Interim Term and Primary Term of the Agreement, the Concessionaire shall submit to the City monthly reports setting forth the amount of Concessionaire's Gross Revenues for the preceding month, all in such format as required by the City. Such monthly reports shall reflect total Gross Revenues, total DBE Gross Revenues, Gross Revenues by operator, Gross Revenues by category and Gross Revenues by location (e.g., each restaurant, bar, etc.), and such other information as may be required by the City. Such reports shall be signed by a responsible accounting officer of the Concessionaire and shall set forth specifically the amount of Gross Revenues derived from its Assigned Premises, including those operated by Concessionaire's Suboperators.

C. During the Interim Term, the Percentage Payment of Gross Revenues payable to the City shall accompany the monthly reports. During the Primary Term, the Percentage Payment of Gross Revenues exceeding the monthly portion of the Minimum Annual Guarantee paid, computed in accordance with Paragraph 6.1 above, shall accompany the monthly reports.

6.4 In the event that Concessionaire's aggregate payments to the City for any Year exceed the Minimum Annual Guarantee and exceed the Percentage Payments of Gross Revenue for that Year, then Concessionaire shall be entitled to a credit for such overpayment in the next Year. Said credit shall be the difference between the amount paid by Concessionaire and the greater of the Minimum Annual Guarantee or the Percentage Payments of annual Gross Revenues for the Year in question. The overpayment shall be credited to rental payments next thereafter due from Concessionaire.
6.5 With respect to utilities consumed at or delivered to the Assigned Premises, Concessioneer shall pay to the Airport the electrical charges for the use as submetered to its Assigned Premises. Such charges shall be due within ten (10) days after receipt of an invoice from the City. All other utilities will be provided by the City.

6.6 Payments shall be made in lawful money of the United States, free from all claims, demands, set-offs or counter-claims of any kind. Without waiving any other right of action available to the City in the event of default in payments due hereunder, if Concessioneer is delinquent for a period of thirty (30) days or more in paying to the City any sum due and owing pursuant to this Agreement, Concessioneer shall pay to the City interest thereon at the rate of ten (10) percent per annum from the date such item was due and owing until full payment (plus interest) has been paid. City reserves the right, in its sole discretion, to forego interest charges in whole or in part on those disputed items contested in good faith by Concessioneers.

6.7 The Concessioneer shall keep full and accurate books and records showing all of its Gross Revenues and expenses and the City shall have the right, through its authorized representatives, to inspect and audit the books and records, including sales tax returns for the State of Texas at any time. Concessioneer hereby agrees that all such records and instruments will be made available to the City for at least a three (3) year period after the end of the Year in which such activity occurred. Concessioneer shall require a similar set of books and records be maintained by its Suboperators, which shall likewise be available to the City for inspection for at least the same three (3) year period.

6.8 Within ninety (90) days after the end of each Year, Concessioneer shall submit to the City an annual report of Gross Revenue for the preceding Year covering all business transacted by Concessioneer under this Agreement. Such annual report shall be certified by an independent certified public accountant and shall be prepared in accordance with generally accepted auditing standards, including, but not limited to, the Statement of Auditing Standards (S.A.S.) #62 - Special Reports, paragraph 18. The independent certified public accountant shall certify that the Concessioneer's schedule of Gross Revenue and such other activity related to Percentage Payments, all as defined in this Agreement, is free from material misstatements and that the statements and payments to City resulting therefrom are in accordance with this Agreement. Any adjustments to Concessioneer's fees and charges paid under this Agreement shall be separately stated and remitted. No adjustment shall be permitted to the then-current fees and charges without City's specific written authorization.

Any financial statements or materials which reflect the financial condition (the "financial information") of the Concessioneer as a company or as operator of the premises and rights described herein shall constitute the proprietary, confidential material of the Concessioneer.

6.9 The City reserves the right to audit Concessioneer's books and records of receipts and the books and records of Concessioneer's Suboperators at any time for purposes of verifying Gross Revenues reported by and payments due from Concessioneer hereunder. Should any examination, inspection and audit of such
books and records by the City disclose an understatement of the Gross Revenues received from all operations in the Assigned Premises by three (3%) percent or more, the entire expense of such audit shall be paid by Concessionaire. Any additional Percentage Payments due shall be paid by Concessionaire to the City with interest thereon at ten (10) percent per annum from the date such additional Percentage Rent became due.

ARTICLE VII
IMPROVEMENT OBLIGATIONS TO ASSIGNED PREMISES

7.1 As set forth in Tab 6 of its Proposal, dated June 2, 1994, and attached hereto as Exhibit D, Concessionaire agrees to expend $3,117,750 for Initial Capital Investment improvements to the Assigned Premises.

Concessionaire's expenditures set forth above shall include reasonable direct costs, other than those excluded herein, paid by Concessionaire for work performed and materials furnished. Provided, however, Concessionaire shall not include: (1) payments for architectural, engineering, professional and consulting services which exceed fifteen percent (15%) of the total of the costs of such Fixed Improvements and Trade Fixtures; (2) interest and other financing charges; or (3) Concessionaire's own overhead expenses (except that Concessionaire may include the reasonable cost of paying its own employees to perform architectural, engineering, professional or consulting services, subject to the fifteen percent (15%) limit set forth in (1) above).

Concessionaire agrees that the Initial Capital Investment improvement plan contained in Exhibit D shall be replaced with the actual improvement plan upon completion of construction and approval of the City with the statements submitted in accordance with Paragraph 7.6 contained herein.

7.2 All structural improvements, equipment and interior design and decor constructed or installed by the Concessionaire, its agents or contractors, including the plans and specifications, shall conform to all applicable state and local statutes, ordinances, building codes, rules and regulations and other appropriate agencies and commissions.

7.3 With respect to Concessionaire's initial plans and specifications for the above-referenced improvements to the Assigned Premises, the Concessionaire agrees as follows:

A. Regarding the City's asbestos abatement program, the City intends to perform the asbestos abatement of the Assigned Premises on a site-by-site basis. The City has developed, through its Construction Manager, a detailed schedule indicating the specific order in which each site will be abated, which schedule is attached to and made a part of this Agreement as Exhibit E. Concessionaire agrees to complete its Assigned Premises improvements in accordance with the specific order contained in this schedule (unless the order of abatement is modified in writing by the Director, in his sole discretion) and to fully cooperate with the City and its Construction Manager.
B. Within thirty (30) days of the Effective Date of this Agreement, Concessionaire agrees to begin submitting final plans and specifications (three sets are required) for the Initial Capital Investment improvements to the Assigned Premises. The Director may, for good cause presented by Concessionaire, extend the time to submit final plans and specifications. Final plans and specifications may be submitted piecemeal in accordance with the specific order of the asbestos abatement schedule for each site. However, within ninety (90) days of the Effective Date of this Agreement, Concessionaire agrees to have all final plans and specifications completed and submitted to the Director for approval. Plans and specifications must include at a minimum the following: 1) Date upon which Date of Beneficial Occupancy will occur for each site; 2) Architectural and engineering drawings, including furniture plans showing details of space occupancy, floor plans and reflected ceiling plans, partition and door location plans, telephone and electrical plans noting any special lighting and power load requirements, environmental design criteria and all security and communications information, detail plans and finish plans; 3) Design detail should include detailed storefront sketches, color and materials for walls, ceiling and floor finish, graphics and furniture/fixture/equipment selections; 4) Installation of electrical submeters within those food and beverage areas which are not currently submetered as of the Commencement Date; 5) Purchase and installation of equipment for the removal of smoke and grease-laden vapors to comply with the National Fire Protection Association's NFPA 96 Standard of the latest edition; 6) Purchase and installation of trash compactors at each food and beverage location; 7) Provisions to upgrade or replace the grease trap system; 8) Any other construction or detail reasonably requested by the City. No construction work shall commence until the Director has approved the plans and specifications and has issued a Notice to Proceed letter to Concessionaire.

C. The Director shall within ten (10) days after receipt of any plans and specifications either approve or disapprove the plans and specifications submitted by Concessionaire. The approval by the Director of any plans and specifications refers to the conformity of such plans and specifications to the general architectural and aesthetic plan for the Assigned Premises and such approval shall not be unreasonably withheld. The plans and specifications are not approved for compliance with applicable laws or codes and neither the Director nor the City, acting through its Director, by approving such plans and specifications, assumes liability or responsibility therefor or for any defect in any structure or improvement constructed according to such plans and specifications. The Director shall have the right to reject any designs submitted, and shall state the reason for such action.

D. In the event the Director does not approve any plan or specification, the Concessionaire has fourteen (14) days to resubmit any necessary modifications or revisions.
E. After approval, changes or alterations to said plans and specifications may only be made with the written consent of the Director.

7.4 With respect to Concessionaire's construction activities for each site within the Assigned Premises, Concessionaire agrees as follows:

A. Upon the issuance of the official Commencement Date and Notice to Proceed by the Director, the Concessionaire shall immediately begin the construction and installation of the approved improvements to the specific site or sites to which such Notice to Proceed applies. Concessionaire agrees to diligently pursue completion of said improvements in accordance with the Date of Beneficial Occupancy included in its plans and specifications.

B. Any delay in construction of Concessionaire's obligations hereunder, due to fire, earthquake, wars, acts of the City or one of the City's contractors or any other calamity beyond the control of the Concessionaire shall extend the DBO date. Concessionaire shall not be entitled to any compensation or damages as a result of any such delay.

C. Except as provided in (B) above, if an activity falls behind schedule, the Concessionaire shall schedule crews to a size to ensure that the construction activity will be completed by the agreed to DBO, at no cost to the City.

7.5 Prior to the commencement of the construction, Concessionaire shall cause its contractor to obtain and deliver to the City, at no cost to City, performance and payment bonds, as follows:

A. A performance bond in a sum equal to one hundred percent (100%) of the anticipated amount of the construction contract for Initial Capital Investment improvements. The bond shall be issued by a corporate surety licensed to issue bonds in the State of Texas and otherwise acceptable to the City, and shall be drawn on a form as approved by the City. The bond shall name City as a joint obligee and shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with the approved plans and specifications and shall indemnify and hold harmless the City against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of the Concessionaire to perform completely the work described therein.

B. A payment bond with the Concessionaire's contractor or contractors as principal, in a sum equal to one hundred percent (100%) of the amount of the construction contract for Initial Capital Investment improvements. The bond shall name City as a joint obligee and shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies and equipment used in the performance of any such construction contract.
7.6 Upon completion of the Initial Capital Investment obligations required hereunder, Concessionaire must provide the City with the following:

A. Within thirty (30) days following the completion of the improvement obligations, one reproducible copy of as-built drawings for each site.

B. Within sixty (60) days following the completion of the improvement obligations: 1) a statement certified by the Chief Financial Officer of the Concessionaire specifying the final total cost of all improvement obligations required hereunder, in a format similar to the format contained in the Bid document; 2) a certification that all improvements have been constructed in accordance with the approved plans and specifications, and in strict compliance with all applicable building codes, laws, rules, ordinances and regulations; and 3) certified proof demonstrating that no liens exist on any or all of the construction.

7.7 If the actual Initial Capital Investment improvement costs, as certified by the Concessionaire, are less than the amount specified in Paragraph 7.1 above, Concessionaire agrees to pay to the City, within thirty (30) days of such determination, the difference between the actual cost and the amount specified in Paragraph 7.1 above. Any amounts paid to the City as a result of this provision shall not be deemed a cost of the Initial Capital Investment obligation for any purpose hereunder nor shall it be deemed payment of or receipt of any rentals, Percentage Payments or Minimum Annual Guarantees due hereunder.

7.8 Upon completion of the Initial Capital Investment improvements to the Assigned Premises outlined hereinabove, the Concessionaire shall have the right to install or erect additional, non-structural improvements in the Assigned Premises; provided however, that all such alterations be commenced only after plans and specifications therefor have been submitted to and approved by the Director. Any such alterations and/or repairs shall be without cost to the City, completed within the time specified in the written approval and with the least disturbance possible to the operation of the Airport, to the Airport tenants and to the public.

7.9 All Fixed Improvements in the Assigned Premises shall be and remain the property of Concessionaire or the Suboperator until the expiration of the Term of this Agreement, as set forth in Article III, or upon termination of this Agreement (whether by expiration of the Term, cancellation, forfeiture or otherwise, whichever first occurs); at which time the said Fixed Improvements shall become the property of the City. Any trade fixtures and personal property of Concessionaire and the Suboperators shall remain the property of Concessionaire or Suboperator, except as provided in Paragraph 14.4.

7.10 The Concessionaire shall not remove or demolish, in whole or in part, any improvements upon the Assigned Premises without prior written consent of the Director, which consent may be conditioned upon the obligation of Concessionaire to replace the same by a specified improvement. The Director shall
not withhold consent unreasonably, shall not impose unreasonable conditions and shall state the reasons for withholding consent.

7.11 It is understood that the City shall have the right to install flight information display (FID) equipment in those portions of the Assigned Premises that are deemed appropriate. Concessionaire shall do nothing to interfere with the visibility or access to the FID equipment.

7.12 Commencing in Year Three of the Agreement, unless otherwise approved by the Director, the Concessionaire shall assure that not less than one-half of one percent (.005) of the annual Gross Revenues generated from the Assigned Premises for the previous year is expended on annual refurbishment of such Assigned Premises. Such refurbishment shall include refurbishments attributable to ordinary wear and tear, as well as replacement of furnishings and fixtures and upgrades and renovations necessary to maintain the standard of quality contemplated in the Proposal. Concessionaire, and Suboperator, if applicable, shall provide documentation of such annual refurbishment expenditure to the City within 30 days of the end of each Year commencing in Year Four.

ARTICLE VIII
MAINTENANCE AND REPAIRS

8.1 The Concessionaire agrees to provide at its own expense such maintenance, custodial and cleaning services and supplies as may be necessary or required in the operation and maintenance of its Assigned Premises.

8.2 At no cost to the City, the Concessionaire agrees to maintain and make necessary repairs to the interior of the Assigned Premises, the fixtures and equipment therein and appurtenances thereto including, without limitation, the interior windows, doors and entrances, storefronts, utility lines and connections, signs, floor coverings, interior walls and ceiling, the surfaces of interior columns exclusive of structural deficiencies, any columns or structural improvements erected by Concessionaire, partitions and lighting, electrical equipment and plumbing fixtures, including grease traps, within the Assigned Premises. All work performed by the Concessionaire shall be subject to inspection and approval of the Director or his representative.

8.3 All repairs done by the Concessionaire or on its behalf shall be of first class quality in both materials and workmanship. All repairs will be made in conformity with the rules and regulations prescribed from time to time by federal, state or local authority having jurisdiction over the work in the Concessionaire's Assigned Premises.

8.4 Concessionaire shall provide its own interior maintenance of the Assigned Premises, including janitorial service and the replacement of electric light bulbs and tubes. Concessionaire shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of its operations as described herein (trash removal). Concessionaire shall provide and use suitable covered receptacles for all garbage, trash or other refuse. Piling of boxes, cartons, barrels or other similar items
in an unsightly or unsafe manner on or about the Assigned Premises is forbidden. Concessionaire further agrees to keep the dock area and refuse removal area clean and neat and free from any unsightly or unsafe conditions.

If the Concessionaire provides for janitorial services or trash removal services by contract or by other than its own employees, Concessionaire at its own cost shall utilize the same contractor for such janitorial services or trash removal services as utilized by the City to provide such services in the general area of the Facilities, or if such services are performed by the City, the Concessionaire shall utilize the services performed by the City. The charges for such services made by the contractor utilized by the City, or made by the City if services are provided by it, shall be reasonable and uniform among all tenants of the City for whom similar services are performed and separately charged to the Concessionaire as provided herein.

8.5 The City currently does not have a recycling program at the Airport. Concessionaire agrees that should a recycling program be implemented at the Airport at any time during the Term of this Agreement, Concessionaire shall fully comply with the provisions of the program.

8.6 The Director or his duly appointed representatives shall have the right to enter the Concessionaire's Assigned Premises to:

(i) inspect the Assigned Premises at any reasonable time or at any time in case of emergency, to determine whether the Concessionaire has complied with and is complying with the terms and conditions of this Agreement. The Director may, at his discretion, require the Concessionaire to effect repairs at the Concessionaire's own cost;

(ii) perform any and all things which the Concessionaire is obligated to and has failed to do after fifteen (15) days written notice to act, including maintenance, repairs and replacements to the Concessionaire's Assigned Premises. The cost of all labor and materials, and other charges required for performance of such work, plus fifteen (15) percent thereof for administrative overhead, will be paid by the Concessionaire to the City within ten (10) days following receipt of invoice by Concessionaire; and

(iii) perform any duty or function which the City may have in relation to the operations of the Airport, including carrying out the City's duties and functions.

ARTICLE IX
LIABILITY, INDEMNITY AND INSURANCE

9.1 Concessionaire and its Suboperators agree to defend, indemnify and hold City, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Concessionaire's, its Suboperators' or their respective officers', agents', employees' or separate
contractors', breach of any of the terms or provisions of this Agreement, or by any negligent or strictly liable act or omission of Concessionaire or its Suboperators, its officers, agents, employees or subcontractors, in the performance of this Agreement; except that the indemnity provided for in this Paragraph 9.1 shall not apply to any liability resulting from the sole negligence or fault of City, its officers, agents or employees, and in the event of joint and concurrent negligence or fault of Concessionaire or its Suboperators and City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this Paragraph 9.1 are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

9.2 Prior to the approval of this Agreement by the City, Concessionaire and its Suboperators shall furnish a completed Insurance Certificate to the Director's Office, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverage, limits and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. City shall have no duty to perform this Agreement until such Certificate shall have been delivered to the Director's Office, and no officer or employee shall have authority to waive this requirement.

9.3 City reserves the right to review the insurance requirements of this Article during the Term of the Agreement and to adjust insurance coverage or limits when deemed necessary and prudent by City's Office of Risk Management, based upon changes in statutory law, court decisions or the claims history of the industry as well as the Concessionaire and its Suboperators.

Subject to Concessionaire and its Suboperators' right to maintain reasonable deductibles in such amounts as are approved by City, Concessionaire and its Suboperators shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Concessionaire's and its Suboperators' sole expense, at least the following insurance coverage written by companies authorized or approved to write such insurance by the State of Texas and otherwise acceptable to City:
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| 2. | Commercial General (public) Liability insurance including coverage for the following:  
   a. Premises/operations  
   b. Independent contractors  
   c. Products/completed operations  
   d. Personal injury/advertising injury  
   e. Contractual liability  
   f. Medical payments  
   g. Liquor liability hazard (not applicable for contractors)  
   h. Fire legal liability (not applicable for contractors) | Combined single limit for bodily injury and property damage of $1,000,000 per occurrence or its equivalent.  
   - $1,000,000 each cause  
   - $250,000 |
| 3. | Comprehensive Automobile Liability insurance, including coverage for loading and unloading hazards for:  
   a. Owned/leased vehicles  
   b. Non-owned vehicles  
   c. Hired vehicles | Combined single limit for bodily injury and property damage of $1,000,000 per occurrence or its equivalent. |
| 4. | If project includes work with asbestos:  
   Asbestos Abatement Liability insurance, including coverage for liability arising from the encapsulation, removal, handling, storage, transportation and disposal of asbestos containing materials.* | $1,000,000 per occurrence |
| 5. | Umbrella Liability insurance to apply in excess and follow form of the primary liability coverage listed in 1, 2, 3 and 4 above. | $4,000,000 per occurrence |
| 6. | Commercial Crime insurance including City as loss payee rising from:  
   a. Employee dishonesty, blanket form  
   b. Theft, disappearance and destruction of money and securities. | $200,000 per occurrence. Separate limit for each coverage (a and b). |
| 7. | All-Risk Property insurance covering the Concessionaire and its sub-operators’ equipment, inventory and stock and improvements and betterments including but not limited to perils of fire, extended coverage, theft and vandalism. | 100 percent of the replacement costs. |
| 8. | All-Risk Builders Risk/Installation Floater covering materials and supplies used for remodeling, renovation or equipment installation. Perils to include but not be limited to fire, extended coverage, theft, vandalism and transit | 100 percent of the replacement costs. |
City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by City, Concessionaire and its Suboperators shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

9.4 Concessionaire and its Suboperators agree that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

A. Name the City of Dallas and its officers, employees and elected representatives as additional insureds, (as the interests of each insured may appear) as to all applicable coverage;

B. Provide for 30 days advance notice to City for cancellation, nonrenewal or material change in coverage;

C. Provide for an endorsement that the "other insurance" clause shall not apply to the City of Dallas where City is an additional insured shown on the policy;

D. Provide for notice to City at the two addresses shown below by registered mail;

E. Concessionaire and its Suboperators agree to waive subrogation against the City of Dallas, its officers and employees for injuries, including death, property damage or any other loss, to the extent same is covered by insurance;

F. Provide that all provisions of this Agreement concerning liability, duty and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

9.5 Concessionaire and its Suboperators shall notify City in the event of any changes in coverage and shall give such notices not less than 30 days prior to the change, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to City at the following addresses:

Director of Aviation
Dallas Love Field
8008 Cedar Springs
Lock Box 16, Terminal Building
Dallas, Texas 75235

Director of Risk Management
City of Dallas
1500 Marilla Street, Room 1/c/North
Dallas, Texas 75201
9.6 Approval, disapproval or failure to act by the City regarding any insurance supplied by the Concessionaire and its Suboperators shall not relieve the Concessionaire or its Suboperators of full responsibility or liability for damages and accidents as set forth in the Agreement. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the Concessionaire and its Suboperators from liability.

9.7 If any contractors are hired by Concessionaire and its Suboperators, Concessionaire and its Suboperators shall require the contractor to maintain, at its own expense, the same stipulated minimum insurance as shown in 9.1, 9.2, 9.3 (1), (2), (3), (4) and (5) above and as needed to fulfill the requirements under 9.4, 9.5 and 9.6. The Concessionaire and its Suboperators shall have the responsibility to enforce these insurance requirements upon the contractor(s).

9.8 Concessionaire shall obtain a Performance Bond in accordance with the following provisions:

A. Within ten (10) days after the Effective Date of the Agreement, the Concessionaire will provide the City with a document providing for financial guarantees under this Agreement. Such financial guarantee document shall be in the minimum amount of one hundred percent (100%) of the highest of the first five years Minimum Annual Guarantees.

The financial guarantee may be in the form of: 1) an irrevocable letter of credit drawn on a banking institution acceptable to the City, in favor of and deposited with the City; 2) a surety bond issued by a surety company authorized or approved to do business and licensed to write surety bonds in the State of Texas (such surety company shall be otherwise acceptable to the City); or 3) a combination of both (1) and (2).

B. Commitment documents providing for continuation or replacement of the financial guarantee documents shall be received by the City at least thirty (30) days prior to expiration.

C. Failure to renew such financial guarantee upon expiration of their coverage term shall be deemed an event of default.

ARTICLE X
ASSIGNMENT, DELEGATION AND CHANGE OF OWNERSHIP

10.1 Concessionaire agrees that it shall not assign, mortgage, pledge or transfer this Agreement or any other right, privilege or license conferred by this Agreement, either in whole or in part, or permit use of any Assigned Premises by another, or in any manner encumber the Assigned Premises or any part thereof, without obtaining in advance the written consent of the City.

The consent of the City with respect to any Suboperator shall, in part, be conditioned on the reasonable acceptability of the terms and provisions contained in
the Suboperator document. Additionally, in regard to Concessionaire's primary Suboperator, McDonald's Corporation (hereinafter called "McDonald’s"), City agrees, in consideration of the Guarantee Agreement given by McDonald's as contained in Exhibit F, to abide by the nondisturbance terms contained in Exhibit G as long as McDonald's is not in breach of its Sublease arrangement with Concessionaire.

10.2 The Concessionaire shall obtain the written consent of the City, through its City Manager, prior to any change, transfer or merger of ownership between the Concessionaire and any other person, corporation or company. Any change, transfer or merger of ownership without such consent of the City shall constitute a breach of the Agreement under Article XIV.

10.3 The City reserves the right to deny any assignment, subcontract or transfer of ownership for any reason it deems in the best interest of the Airport.

ARTICLE XI
DAMAGE OR DESTRUCTION OF ASSIGNED PREMISES

11.1 Notice: Options - If all or a portion of the Assigned Premises are damaged or destroyed by fire, explosion, the elements or other casualty, at the sole option of the City such affected premises may be repaired or reconstructed at no cost to Concessionaire, subject to the limits as hereafter set forth. The Director shall notify Concessionaire within forty-five (45) days of such occurrence of the City's intentions to repair or reconstruct or not to repair or reconstruct. Provided, however, if said damage is caused by the negligent or wrongful act or omission to act of Concessionaire, its Suboperators, agents or employees and the City elects to repair or reconstruct, Concessionaire shall be responsible for reimbursing the City for the cost and expense incurred in such repair, to the extent that the insurance proceeds received by the City are not sufficient to pay the cost and expense of repair.

11.2 Damage - Subject to the provisions of Paragraphs 11.1 and 11.4, if the damages are so extensive as to render the Assigned Premises or a portion thereof untenable, and notice of intent to repair or reconstruct has been given by the City, an appropriate portion of the Minimum Annual Guarantee payable under this Agreement shall abate from the time of the damage until such time as the damaged premises are fully restored and certified by the City as again ready for use; provided, however, that if said damage is caused by the negligent or wrongful act or omission to act of Concessionaire, its Suboperators or the agents or employees of either, said fees and charges will not abate.

11.3 Destruction - In the event all or a portion greater than fifty percent (50%) of the Assigned Premises, excluding commissary space, is completely destroyed by fire, explosion, the elements, public enemy or other casualty, or are so damaged that they are untenable and notice of intent not to repair or reconstruct has been issued, City or Concessionaire may cancel this Agreement in its entirety as of the date of such destruction. Notwithstanding the foregoing, if such destruction is a result of the negligent or wrongful act or omission to act of Concessionaire, its Suboperators, agents or the employees of either, Concessionaire shall not have the right to cancel this Agreement and the City may, in its discretion, require

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Concessionaire to repair and reconstruct said premises within six (6) months of such
destruction and pay the cost therefor.

11.4 Limits of City's Obligations Defined - It is understood that, in the
application of the foregoing provisions, the City's obligations shall be limited (i) to
repair or reconstruction of the Assigned Premises to the same extent and of equal
quality as obtained by Concessionaire at the Commencement Date of such premises;
and (ii) to the extent of insurance proceeds available to the City for such purposes.
Fixed Improvements, Trade Fixtures, redecoration and replacement of furniture,
equipment and supplies shall be the responsibility of the Concessionaire and any
such redecoration and refurnishing/re-equiping shall be equivalent in quality to
that originally installed.

ARTICLE XII
COMPLIANCE

12.1 The Concessionaire, its officers, agents, servants, employees, contractors,
licensees, Suboperators and any other person over which the Concessionaire has the
right to control shall comply with all present and future laws, ordinances, orders,
directives, codes, rules and regulations of the federal, state and local governmental
agencies, including the City, which may be applicable to its operations at the Airport.

12.2 Concessionaire shall pay or in good faith contest, on or before their
respective due dates, to the appropriate collecting authority, all federal, state, and
local taxes and fees. which are now or may hereafter be levied upon the Assigned
Premises, or upon Concessionaire, or upon the business conducted at the Airport, or
upon Concessionaire's interest hereunder, or upon any of the Concessionaire's
property used in connection therewith; and shall have and maintain in current
status all federal, state and local licenses and permits required or the operation of the
business conducted by Concessionaire.

12.3 Concessionaire agrees to pay, or guarantees payment of all lawful fines
and penalties as may be assessed by the City or against the City for violations of
federal, state or local laws, ordinances, ruling or regulations or Airport rules and
regulations by Concessionaire or its officers, agents, servants, employees, contractors,
licensees, Suboperators or any other person over which Concessionaire has the right
to control within thirty (30) days of written notice of such fines or penalties.

12.4 Concessionaire will operate its concessions hereunder in a safe manner
and without interfering with the airlines' use of the Facilities, for themselves and
for their passengers and other business invitees.

12.5 Concessionaire shall not advertise an individual airline's
transportation services or other goods or services offered in connection therewith
on or in the Assigned Premises without the written approval of the Director.

ARTICLE XIII
TERMINATION BY CONCESSIONAIRE

13.1 In addition to all other remedies otherwise available to the
Concessionaire at law or in equity, the Concessionaire may terminate this
Agreement by giving a ninety (90) day written notice to the City, should any one or more of the following events occur, provided however that none of the unamortized capital improvements or the compensation and fees which are to be paid by Concessionaire herein will be refunded to Concessionaire:

A. The abandonment of the Airport as an airline terminal or the permanent removal of all certificated passenger airline service from the Airport for longer than ninety (90) days.

B. The assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof, in such manner as to substantially restrict Concessionaire from operating thereon for a period of at least ninety (90) days.

C. The issuance by any court of competent jurisdiction of any injunction preventing or restraining the use of the Airport in such a manner as to substantially restrict the Concessionaire from conducting its operations hereunder, which prevention or restraint is not caused by the act or omission of the Concessionaire and which injunction remains in force for at least ninety (90) days.

13.2 Concessionaire retains any and all rights or remedies it may have under Texas law in the event of a material breach of this Agreement by the City.

ARTICLE XIV
TERMINATION BY CITY

14.1 In addition to all other remedies otherwise available to the City at law or in equity, the City may terminate this Agreement or may, without terminating this Agreement, take possession of the Assigned Premises by giving a thirty (30) day written notice to the Concessionaire, during which 30 day period the Concessionaire shall have an opportunity to correct the situation (except for the Subsection D situation), should any one or more of the following events occur:

A. Concessionaire fails to cooperate with any inspection of books and records, fails to maintain its books and records as required hereunder;

B. A majority of the ownership interest of Concessionaire under this Agreement is transferred, passes to or devolves upon, by operation of law or otherwise, any other person, firm or corporation without the written consent of the City;

C. Concessionaire becomes, without the prior written approval of the City, a successor or merged corporation in a merger, a constituent corporation in a consolidation or a corporation in dissolution;

D. Concessionaire shall neglect or fail to perform and observe any promise, covenant or condition set forth in this Agreement after
giving of written notice of breach from the City or the Director, except where fulfillment of such obligation requires activity over a period of time and Concessionaire has commenced to perform whatever may be required within ten (10) days after giving of such notice and continues such performance without interruption;

E. Concessionaire makes an assignment for the benefit of creditors or is adjudged a bankrupt;

F. Deterioration of service for a period which, in the sole opinion of the City, materially and adversely affects the operation of service required to be performed by Concessionaire under this Agreement;

14.2 The City may immediately terminate this Agreement by the giving of written notice upon the occurrence of any one or more of the following:

A. Concessionaire fails to make any payments, to provide and maintain insurance or to provide and maintain a performance bond, all as required in this Agreement, and does not correct the default within ten (10) days after the giving of written notice by the City of such failure;

B. Any lien is filed against the Assigned Premises arising by or through the Concessionaire or because of any act or omission of Concessionaire and such lien is not removed, enjoined or a bond for satisfaction of such lien is not posted within ninety (90) days after notice thereof;

C. Concessionaire abandons, deserts, vacates or discontinues its operation of the business herein authorized for a period of ten (10) days without prior written consent of City.

14.3 Acceptance by the City of any rentals or other payments specified herein, after a breach of any of the terms of this Agreement shall not be deemed a waiver of any right on the part of the City to cancel this Agreement on account of any breach.

14.4 On or before the termination or reentry dates set forth in the written notice by the City to Concessionaire as set out in Paragraphs 3.3, 14.1 and 14.2, Concessionaire shall surrender the Assigned Premises. Concessionaire shall immediately remove all Trade Fixtures and Personal Property from the Assigned Premises and shall return such Assigned Premises in good condition, reasonable wear and tear excepted. City may reenter the Assigned Premises and may remove all persons and property from same upon the date of reentry. Upon any removal of Concessionaire's or Suboperator's Trade Fixtures and Personal Property by City hereunder, at the sole option of the City, (i) said property may be stored at a public warehouse or elsewhere at Concessionaire's sole cost and expense; or (ii) title to such Trade Fixtures and Personal Property shall vest in the City at no cost to the City.
14.5 In the event of termination before the termination date provided in this Agreement, or default and failure to cure, the City may reassign Assigned Premises and any improvements thereon or any part thereof to be operated by one or more Suboperators or any other party acceptable to the City, at such rentals, fees and charges and upon such other terms and conditions as City, in its sole discretion, may deem advisable, with the right to make alterations, repairs or improvements on said premises, unless the Suboperator assumes the performance obligations of the Concessionaire under a Guaranty Agreement approved by the City.

14.6 No reentry or reassignment of Assigned Premises by City shall be construed as an election on City’s part to terminate this Agreement unless a written notice of termination is given to Concessionaire.

14.7 In the event the City, without terminating this Agreement, re-enters, regains or resumes possession of the Assigned Premises, all of the obligations of Concessionaire hereunder shall survive and shall remain in full force and effect for the full term of this Agreement. Subject to the City’s obligation to mitigate damages, the amount or amounts of rental charges shall become due and payable to the City to the same extent, at the same time or times and in the same manner as if no termination, re-entry, regaining or resumption of possession had taken place. The City may maintain separate actions each month to recover any monies then due, or at its option and at any time, may sue to recover the full deficiency.

14.8 Unless otherwise directed by the City, at termination of this Agreement by expiration, cancellation or otherwise, Concessionaire shall immediately remove all Trade Fixtures and Personal Property from the Assigned Premises of Concessionaire and its Suboperators and return such Assigned Premises in good condition, reasonable wear and tear excepted.

14.9 The right to terminate this Agreement for the convenience of the City in the public interest is expressly retained by the City. In such event, the City will give ninety (90) days prior written notice of such termination for convenience, which notice shall stipulate the conditions for removal of all non-capital items such as movable equipment, trade fixtures, goods, etc. The conditions set out in Paragraphs 14.3 through 14.8 of this Agreement shall also govern the circumstances of termination for convenience, to the extent applicable. None of the compensation, fees or capital expenditures which are to be paid by Concessionaire under this Agreement will be refunded to Concessionaire as a result of termination for convenience. Provided, however, that City agrees to require any subsequent concessionaire as a condition of agreement to reimburse the Concessionaire and its Suboperators in the amount of any unamortized expenditures actually incurred for the fixed improvements required as part of the Initial Capital Investment, including the unamortized portion of architectural/engineering fees expended for design or construction of the fixed improvements, which reimbursement shall never exceed $2,029,637. If the City, for whatever reason, does not procure a new concessionaire for food and beverages at the Airport or does not exercise the provisions of Paragraph 14.10, City agrees to make such reimbursement, subject to appropriation of funding by the City Council and the not-to-exceed limit stated above. For purposes of this provision, the actual expenditures for fixed improvements required as part of the Initial Capital Investment, plus that portion of architectural/engineering fees expended for design or construction of the fixed
improvements, shall be amortized on a ten (10) year equal straight-line monthly basis. Costs shall be evidenced by invoices received by Concessionaire for actual work performed in connection with the fixed improvements, and such other documentation as may be reasonably required by the Director to verify the actual expenditure and amortization amount. Further, no amount will be due Concessionaire for lost or anticipated profits as a result of any termination for convenience by the City.

14.10 In the event of termination by the City for default or convenience, the City reserves the right, at its sole option, to direct Concessionaire in writing to assign any or all Suboperator contracts or subleases to the City, and to deliver to the City true and correct originals and copies of the assigned contracts or subleases with amendments, if any. Notwithstanding any other provision to the contrary but subject to the nondisturbance agreement set forth in Exhibit G, the City reserves the right to further assign such contracts or subleases without further amendment to any third party as City determines to be in the best interest of the Airport.

ARTICLE XV
GOVERNMENTAL AND SUBORDINATION PROVISIONS

15.1 Nondiscrimination

A. The Concessionaire, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained or otherwise operated on the property described in this Agreement for a purpose which a Department of Transportation program or activity is extended for another purpose involving the provision of similar services or benefits, the Concessionaire must maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, as amended.

B. Concessionaire, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, covenants and agrees that: (1) no person, on the grounds of race, color or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) in the construction of any improvements and the furnishing of services, no person on the grounds of race, color, creed or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) the Concessionaire shall use the Assigned Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, as amended.

C. That in the event of a breach of any of the above nondiscrimination covenants, the City shall have the right to terminate this Agreement and re-enter and repossess said Assigned Premises, and hold the same as if said Agreement had never been made or issued. This provision shall not be
effective until the procedures of 49 CFR Part 21, as amended, are followed and completed, including exercise or expiration of appeal rights.

D. The Concessionaire shall furnish its accommodations and/or services on a fair, equal and nondiscriminatory basis to all users thereof, and it shall charge fair, reasonable and nondiscriminatory prices for each unit of services.

E. The Concessionaire assures that it shall undertake an Affirmative Action Program as required by 14 CFR Part 152, Subpart E, as amended, to insure that no person shall on the grounds of race, creed, color, national origin, sex or handicap be excluded from participating in any employment activities covered in 14 CFR Part 152 Subpart E. The Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Concessionaire assures that it shall require that its covered suborganizations provide assurances to the Concessionaire that they similarly shall undertake Affirmative Action Programs and that they shall require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, as amended, to the same effect.

F. The Concessionaire assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap, be excluded from participating in any activity conducted with or benefitting from Federal assistance. This provision obligates Concessionaire for the period during which Federal assistance is extended to the Airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, this provision obligates the Concessionaire or its transferee for the longer of the following periods:

(1) the period during which property is used by the City or any transferee for a purpose for which Federal assistance is extended or for another purpose involving the provision of similar services or benefits; or

(2) the period during which the City or any transferee retains ownership or possession of the property.

G. It is the policy of the Department of Transportation and of the City that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, as amended, shall have the maximum opportunity to participate in the performance of leases as defined in 49 CFR 23.5. Consequently, the Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 23, as amended, apply to this Agreement.

The Concessionaire agrees to insure that Disadvantaged Business Enterprises, as defined in 49 CFR, Part 23, as amended, have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, Concessionaire shall take all necessary and reasonable steps in accordance with 49 CFR Part 23, as amended, to ensure that Disadvantaged Business Enterprises have the

27
maximum opportunity to compete for and perform contracts. Concessionaire shall not discriminate on the basis of race, color, national origin or sex in the award or performance of Department of Transportation-assisted contracts.

H. The Concessionaire hereby assures that it shall include the above provisions in all agreements and cause all Suboperator to similarly include clauses in further subagreements.

I. The Concessionaire has been advised, and understands, that failure to make a good faith effort to carry out the requirements of this Article and of the DBE regulations will constitute a breach of this Agreement.

J. As used herein, the term "Department of Transportation" means the United States Department of Transportation.

15.2 Federal Aviation Act, Section 308 - Nothing herein contained shall be deemed to grant the Concessionaire any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act or the conduct of any activity on the Airport, except, subject to the terms and conditions hereof, the Concessionaire shall have the right to use the Assigned Premises under the provisions of this Agreement.

15.3 Subordination - This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between the City and the United States Government relative to the financing, operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of rights or property to the City for Airport purposes, or the acquisition or expenditure of funds for the improvement or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as amended from time to time.

ARTICLE XVI
GENERAL PROVISIONS

16.1 Nonwaiver of Rights - No waiver of a breach by either party of any of the terms, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent breach of any of the terms, covenants or conditions herein contained, to be performed, kept and observed by the other party. No notice shall be required to restore time of the essence.

16.2 Notices - Notices required herein may be given by registered or certified mail by depositing the same in the United States mail in the continental United States, postage prepaid. Any such notice so mailed shall be presumed to have been communicated seventy-two (72) hours after deposit of same in the mail. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Notices to the City shall be addressed as follows:
Director of Aviation
Dallas Love Field, Lock Box 16
Love Field Terminal Building
8008 Cedar Springs
Dallas, Texas 75235

Notices to Concessionaire shall be addressed as follows:

Richard Gussoni, President
Culinaire of Texas, Inc.
2121 San Jacinto-Suite 1960
Dallas, Texas 75201

Gilbert Aranza
Multirestaurants Management, Inc.
c/o 350 North St. Paul Street
Suite 2700
Dallas, Texas 75201

If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

16.3 Captions - The headings of the several articles of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

16.4 Severability - In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained will not affect the validity of any other covenant, condition or provision; provided that the validity of any such covenant, condition or provision does not materially prejudice either the City or Concessionaire in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

16.5 Agent for Service of Process - It is expressly understood and agreed that if the Concessionaire is not a resident of the State of Texas, or is an association or partnership without a member of partner resident of said State, or is a foreign corporation, the Concessionaire will appoint an agent for service of process in the State of Texas. Due to any failure on the part of said agent, or the inability of said agent to perform, or the Concessionaire's failure to appoint an agent when required, the Concessionaire does hereby designate the Secretary of State, Texas, its agent for the purpose of service of process in any court action between it and the City, arising out of or based upon this Agreement, and the service shall be made as provided by the laws of the State of Texas for service upon a non-resident. It is further expressly agreed, covenanted and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, Concessionaire may be personally served with such process out of this State by the registered mailing of such complaint and process to the Concessionaire at the address set forth herein. Any such service out of this State shall constitute valid service upon the
Concessionaire as of the date of mailing. It is further expressly agreed that the Concessionaire is amenable to and hereby agrees to the process so served, submits to the jurisdiction, and waives any and all obligations and protest thereto, any laws to the contrary notwithstanding.

16.6 **Waiver of Claims** - The Concessionaire waives any claim against the City and its officers, agents or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable or delaying the same or any part thereof from being carried out.

16.7 **Right to Develop Airport** - It is further covenanted and agreed that the City reserves the right to further develop or improve the Airport and all landing areas and taxiways as it may see fit, regardless of the desires or views of the Concessionaire and without interference or hinderance.

16.8 **Incorporation of Exhibits** - All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement. It is specifically agreed that Exhibits A, B, C, D and E may be modified and substituted, in writing, in accordance with the provisions of this Agreement, without formal amendment hereto.

16.9 **Incorporation of Required Provision** - The parties incorporate herein by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

16.10 **Relationship of Parties** - Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship, between the parties hereto. The parties shall understand and agree that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto create a relationship other than the relationship of Concessionaire as permittee of the City.

16.11 **Nonliability of Agents or Employees** - No officer, agent or employee of the City or the Concessionaire shall be charged personally or held contractually liable by or to the other party under the provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

16.12 **Successors and Assigns Bound** - This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, where permitted by this Agreement.

16.13 **Right to Amend** - In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, the Concessionaire agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required.
16.14 **Time of Essence** - Time is expressed to be of the essence in this Agreement.

16.15 **Gender** - Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, unless the context otherwise requires.

16.16 **Force Majeure** - Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to causes beyond the control of that party or persons or entities for whose acts or omissions that party is responsible under this Agreement or applicable law, including, without limitation, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such party is not responsible or which is not in its own power to control.

16.17 **Representative of the City** - The Director shall be designated as the official representative of the City in all matters pertaining to this Agreement and shall have the right and authority to act on behalf of the City with respect to all action required of the City in this Agreement.

16.18 **Governing Law** - This Agreement is governed by the laws and case decisions of the State of Texas. Any disputes relating to this Agreement must be resolved in accordance with the laws and case decisions of Texas. This Agreement is performable in Dallas County, Texas. Exclusive venue for any legal action brought in connection with the terms and conditions of this Agreement shall be in Dallas County, Texas.

16.19 **Writing Required** - Except as provided in Paragraph 16.8, neither this Agreement nor any term or provision hereof may be changed, waived, discharged or terminated orally, but only by supplemental agreement in writing signed by both parties.

16.20 **Conflict of Interest** - The following section of the Charter of the City of Dallas shall be one of the conditions of, and a part of, the consideration of this Contract, to-wit:

"CHAPTER XXII. Sec. 11. **FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED**

(a) No officer or employee shall have any financial interest, direct or indirect, in any Contract with the City or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit his office, or position with the City. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the City Manager or the City Council."
(b) The alleged violations of this section shall be matters to be determined either by the Trial Board in the case of employees who have the right to appeal to the Trial Board, and by the City Council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by city employees in federally-funded housing programs, to the extent permitted by applicable federal or state law."

16.21 Gifts to Public Servants

A. City may terminate this Contract immediately if Concessionaire has offered, conferred, or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.

B. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

C. Notwithstanding any other legal remedies, City may require Concessionaire to remove any employee of the Concessionaire from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Concessionaire as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE XVII
ENTIRE AGREEMENT

17.1 The parties to this Agreement understand and agree that this instrument contains the entire Agreement between the parties. The parties further understand and agree that neither party nor its agents have made representations or promises with respect to this Agreement except as expressly set forth herein; and that no claim or liability shall arise for any representations or promises not expressly stated in this Agreement. Any other writing or parol agreement with the other party is expressly waived and superseded by this Agreement.
EXECUTED this the 24th day of August, 1994, by CITY, signing by and through its City Manager, duly authorized to execute same by Resolution No. 94-3120, adopted by the City Council on August 24, 1994, and by CONCESSIONAIRE, acting through its duly authorized official.

APPROVED AS TO FORM:
SAM A. LINDSAY, City Attorney

BY
Assistant City Attorney
Submitted to City Attorney

CITY OF DALLAS
JOHN L. WARE, City Manager

BY
Assistant City Manager

CONCESSIONAIRE:
DALLAS LOVE FIELD JOINT VENTURE, by its venturers

BY
Multirestaurants Management, Inc. - President

BY
Culinaire of Texas, Inc. - President
STATE OF TEXAS § SUPPLEMENTAL AGREEMENT NO. 1
COUNTY OF DALLAS § TO FOOD AND BEVERAGE CONCESSION
§ CONTRACT

THIS SUPPLEMENTAL AGREEMENT NO. 1 to that certain Agreement, dated August 24, 1994 ("the Agreement"), by and between the CITY OF DALLAS, TEXAS, a Texas municipal corporation, hereinafter called “City”, and DALLAS LOVE FIELD JOINT VENTURE, a Texas joint venture comprised of MULTIRESTAURANTS MANAGEMENT, INC., a Texas corporation, and CULINAIRE OF TEXAS, INC., a Texas corporation, with offices at 1700 Pacific Avenue, Suite 500, Dallas, Texas 75201, hereinafter called “Concessionaire”, evidences the following:

1. The scope of services is hereby amended as follows:

   NO CHANGE

2. The term of the Contract is revised as follows:

   NO CHANGE

3. Article IX, Section 9.8 of the Agreement is amended to read as follows:

   "9.8 Concessionaire shall obtain a Performance Bond in accordance with the following provisions:

   A. To guarantee performance of Concessionaire’s obligations under this Agreement, Concessionaire shall obtain a Performance Bond in the form prescribed by the City. The Performance Bond shall be in the minimum amount of one hundred percent (100%) of the highest of the first five years of Minimum Annual Guarantees. The Performance Bond must be issued by a surety company authorized or approved to do
business in the State of Texas, licensed to write surety bonds in the State of Texas and otherwise acceptable to City.

B. In lieu of a Performance Bond, Concessionaire may provide the City with an irrevocable letter of credit on a local banking institution acceptable to the City, in favor of and deposited with the City, in the minimum amount of one hundred percent (100%) of the highest of the first five years of Minimum Annual Guarantees. If Concessionaire has already provided a Performance Bond and wishes to substitute a letter of credit, Concessionaire shall provide City sixty (60) days prior written notice to the Director of the intent to substitute the letter of credit for the Performance Bond. The Director’s consent must be obtained before the substitution will be authorized, but such consent shall not be unreasonably withheld.

C. Commitment documents providing for continuation or replacement of the Performance Bond or letter of credit referenced above must be received by the City at least thirty (30) days prior to expiration. Failure to renew the Performance Bond or letter of credit, as applicable, upon expiration of its term of coverage shall be deemed an event of default.”

4. All other terms, provisions, conditions, and obligations of the Agreement between City and Concessionaire shall remain in full force and effect, and said Agreement, as same may have been previously amended, and this Supplemental Agreement No. 1 shall be construed together as a single contractual agreement.

EXECUTED this the 4th day of March, 1996, by City, signing by and through its City Manager, duly authorized to execute same by Administrative Action No. 96-96-1024 approved on March 4, 1996, and by Concessionaire, acting through its duly authorized official.

APPROVED AS TO FORM:
SAM A. LINDSAY, City Attorney

BY Lawrence G. Sallie
Assistant City Attorney
Submitted to City Attorney

CITY OF DALLAS
JOHN L. WARE, City Manager

BY
Assistant City Manager

Supplemental Agreement No. 1 to Concession Contract
Dallas Love Field Joint Venture
Page 2 of 3
CONCESSIONAIRE:
DALLAS LOVE FIELD JOINT VENTURE, by its venturers

BY ________________________________
Multirestaurants Management, Inc.
President

BY ________________________________
Culinaire of Texas, Inc.
President
NOTICE

FILE NUMBER  961024

THE ATTACHED VALIDATED ADMINISTRATIVE ACTION OR CHANGE ORDER WAS RETURNED TO THE INITIATING DEPARTMENT FOR DISTRIBUTION, INCLUDING THE SUPPORTING DOCUMENTATION.

VALIDATED BY

DATE RETURNED  March 6, 1996
# ADMINISTRATIVE ACTION

**CLASSIFICATION AND INSTRUCTIONS**

1. Check the appropriate box, complete and submit this form for the approval of:
   a. Low bid, budgeted construction, service or repair contracts of at least $10,000 but not more than $50,000.
   b. Professional/Personal service contracts of $10,000 or less.
   c. Other budgeted contracts for lawful City purposes less than $10,000.
   d. Additive and deductive change orders of $15,000 or less to competitively bid contracts.
   e. Amendments to non-bid contracts of $10,000 or less, or any decrease, subject to City Code Sec. 2-37.1.1

2. Attach all supporting documents including bid information as required.

3. See Administrative Directive 4-5, Sections 6 through 10 for additional guidelines and routing.

4. Any Administrative Actions to this vendor for this commodity in the last 12 months? YES ☐ NO ☐

(If YES, attach explanation.)

**SUBJECT:** Dallas Love Field Food and Beverage Contract

**TO:** BUDGET AND MANAGEMENT SERVICES

**ACTION REQUESTED:**

Approval of Supplemental Agreement #1 to the contract with Dallas Love Field Joint Venture. No Cost Consideration. CR#: 943120

**BACKGROUND**

Purpose of this Supplemental Agreement #1 is to clarify performance bond requirements in the food and beverage concession contract. This contract is a Revenue Contract and Supp. #1 will have no cost impact to the City.

**FUNDING**

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**PROJECT NO.** 7811

**COMMODITY CODE:**

**CHANGE ORDER DATA**

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| Total Change Order Percentage |

**COORDINATION**

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**APPROVAL**

Approved as being in accordance with the Budget and Chapter 2 of the Dallas City Code.

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**WHITE-City Secretary ** GREEN-City Controller ** CANARY-Budget & Mgmt Svcs ** PINK-Initiating Department ** GOLDENFOOD-Office of Minority Business Opportunity ** PUR-01756 REV 09/94
Memorandum

DATE
March 4, 1996

TO
Mary K. Suhm
Assistant City Manager

SUBJECT
Administrative Action - Dallas Love Field Joint Venture

Attached is an Administrative Action which will approve Supplemental Agreement #1 to the Dallas Love Field Joint Venture Contract for food and beverage services at Dallas Love Field.

The supplement clarifies performance bond language. The need for this arose when DLFJV attempted to obtain a performance bond to replace the letter of credit they had originally submitted. Apparently, the language in the original contract made it impossible for a bonding agency to provide what the contract called for. Consequently, when DLFJV pointed this out to Larry Scalf, he concurred with their opinion and proposed the language in the supplement. Scalf and the Venture have now agreed on the wording.

Your signature on the Administrative Action and the four copies of Supplemental Agreement #1 is requested. There is no cost consideration to the City.

Danny L. Bruce
Director of Aviation
PROPOSED AMENDMENTS
FIRST AMENDMENT TO THE DALLAS LOVE FIELD 
RETAIL MERCHANDISE CONCESSION CONTRACT

THIS FIRST AMENDMENT TO THE DALLAS LOVE FIELD RETAIL MERCHANDISE CONCESSION CONTRACT ("First Amendment") is entered into by and between the City of Dallas, a Texas municipal corporation, acting by and through its duly authorized officers ("City"), and Hudson Retail Dallas, J.V., a joint venture comprised of Hudson Group (H.G.) Retail, LLC, a Delaware limited liability company, Multiplex, Inc., a Texas corporation, and E.B.J. & Associates, Inc., a Texas corporation, ("Concessionaire").

WITNESSETH:

WHEREAS, on August 24, 1994, by Resolution No. 94-3119, the Dallas City Council approved a ten-year Retail Merchandise Concession Contract with Concessionaire ("Original Agreement"), and in 2006, City exercised the five-year renewal term in the Original Agreement to extend the term to June 30, 2011; and

WHEREAS, on July 11, 2006, City, the City of Fort Worth, the Dallas-Fort Worth International Airport Board, Southwest Airlines Co., and American Airlines, Inc. entered into an agreement to seek the elimination of restrictions on air service at Dallas Love Field ("Airport") contained in existing federal legislation ("The Wright Amendment"), and if such legislation was approved, the parties agreed to redevelop and modernize the existing Airport terminal facilities through the Love Field Modernization Program ("LFMP"); and

WHEREAS, reforms to The Wright Amendment were signed into law on October 13, 2006, and provide that the last of the interstate flight restrictions, first imposed on the Airport in 1979, will be lifted in October 2014; and

WHEREAS, City has agreed to work toward completion of the LFMP, which includes construction of a new Airport terminal building, by October 2014; and

WHEREAS, City anticipates an increase in the number of commercial airline passengers at the Airport both during and after the LFMP and wishes to ensure continuous and improved retail concession services to Airport passengers during implementation of the LFMP; and

WHEREAS, City and Concessionaire now desire to amend the Original Agreement to: (1) extend the renewal term, (2) provide for closure of Concessionaire’s retail locations to accommodate LFMP-related construction activities, (3) waive Concessionaire’s payment of the Minimum Annual Guarantee and modify Concessionaire’s required Percentage Payments upon the first closure of one of Concessionaire’s airside retail locations, and (4) provide certain terms under which Concessionaire will be allowed to sell bottled water at its news and gift store locations at the Airport.
NOW THEREFORE, in consideration of the mutual covenants and obligations herein, the Original Agreement is amended as follows:

SECTION 1.

Capitalized terms used in this First Amendment that are undefined in this First Amendment have the same meanings as defined in the Original Agreement.

SECTION 2.

The following Section 3.4 is added to Article III of the Original Agreement:

3.4 City shall extend the renewal term, granted to Concessionaire under Section 3.2 of the Original Agreement, from June 30, 2011 to the closing date, as determined in Section 4.7 below, of the last one of Concessionaire’s retail locations in the existing Airport terminal building.

SECTION 3.

The following Section 4.7 is added to Article IV of the Original Agreement:

4.7 Notwithstanding any provision of the Original Agreement to the contrary, the Director shall have the right to direct Concessionaire to close any of its retail locations in the existing Airport terminal building on a date and in a manner determined by the Director for the purpose of accommodating LFMP-related construction activities by providing Concessionaire with thirty (30) days advance written notice.

SECTION 4.

The following Section 6.9 is added to Article VI of the Original Agreement:

6.9 Waiver of the Minimum Annual Guarantee and Modification of Percentage Payment due to LFMP Construction-Related Retail Closures. Upon the date of the first closure of one of Concessionaire’s “airside retail locations” (defined below) in the existing Airport terminal building, Concessionaire shall not be required to pay City the Minimum Annual Guarantee stated in Section 6.1.B(2) of the Original Agreement; however, Concessionaire shall continue to make a Percentage Payment of Gross Revenues, in lieu of the minimum Percentage Payment required under Section 6.1.B(1) of the Original Agreement, as follows: 16% of annual Gross Revenues from the sale of merchandise from Concessionaire’s news and gift stores and 14% of annual Gross Revenues from the sale of merchandise from Concessionaire’s specialty stores. An “airside retail location” is a retail location in the secured portion of the Airport.
terminal building. All other rents, fees, and charges Concessionaire is required to pay City under the Original Agreement shall remain the same.

SECTION 5.

The following Section 6.10 is added to Article VI of the Original Agreement:

6.10 Sales of Bottled Water. In order to enhance customer service at the Airport, as of the date of execution of this First Amendment, Concessionaire shall have the right to sell bottled water at its news and gift store locations subject to Concessionaire’s compliance with this Section 6.10.

A. Definitions Related to Sales of Bottled Water.

(1) Base Amount. The “Base Amount” is the number of bottles of water that “DLFJV” (defined below) would have been expected to sell in the Airport terminal building in a calendar year prior to execution of this First Amendment. The Base Amount shall be calculated by multiplying the actual number of enplanements in the existing Airport terminal building for a calendar year (pro-rated for the first year from the date of execution of this First Amendment to December 31, 2010 and for the last year from January 1st to the expiration or earlier termination of the Contract) by the “Water Ratio” (defined below).

(2) Bottle of Water. A “bottle of water” is a bottle or container that holds twenty (20) ounces or less of water, including, but not limited to, enhanced, flavored, and sparkling water, sold at the Airport. If water is sold at the Airport in a bottle or container that holds more than twenty (20) ounces of water, the number of ounces of water in such bottle or container shall be divided by twenty (20) to determine the number of bottles of water such bottle or container is equivalent to.

(3) DLFJV. “DLFJV” means Dallas Love Field Joint Venture, the only food and beverage concession operator doing business at the Airport as of the execution of this First Amendment.

(4) Water Ratio. The “Water Ratio” is 0.10625. The Water Ratio shall be constant until the expiration of this First Amendment.

B. Fees on Bottled Water. Concessionaire shall pay to DLFJV the fees stated below; provided, however, Concessionaire shall only pay DLFJV a fee on the actual number of bottles of water sold by Concessionaire:

(1) Sales of Bottled Water Less Than or Equal to the Base Amount. If the combined sales of bottled water by Concessionaire and DLFJV at the Airport
are less than or equal to the Base Amount, Concessionaire shall pay DLFJV $1.47 per bottle of water sold by Concessionaire up to and including the Base Amount.

AND

(2) Sales of Bottled Water Greater Than the Base Amount. If the combined sales of bottled water by Concessionaire and DLFJV at the Airport exceeds the Base Amount, in addition to what Concessionaire is obligated to pay DLFJV in 6.10.B(1) above, Concessionaire shall also pay DLFJV $0.62 per bottle of water sold above the Base Amount.

C. Examples of How the Calculations Work.

(1) Base Amount Calculation: If there are 4,203,605 enplanements at the Airport during the period from March 1, 2010 to December 31, 2010, the Base Amount would be 446,633 (4,203,605 x 0.10625).

(2) Fee Calculation Example 1: If the Base Amount is calculated to be 446,633 for any given year and DLFJV sells 400,000 bottles of water during that year and Concessionaire sells 50,000 bottles of water during that year, Concessionaire would pay DLFJV $1.47 for each of the 46,633 of bottles of water sold by Concessionaire (bottles of water to equal the Base Amount) and $0.062 for each of the 3,367 of bottles of water sold by Concessionaire (bottles of water that exceeded the Base Amount).

(3) Fee Calculation Example 2. If the Base Amount is calculated to be 446,633 for any given year and DLFJV sells 447,000 bottles of water during that year and Concessionaire sells 50,000 bottles of water during that year, Concessionaire would pay DLFJV $0.62 for each of the 50,000 bottles of water sold by Concessionaire.

(4) Fee Calculation Example 3. If the Base Amount is calculated to be 446,633 for any given year and DLFJV sells 400,000 bottles of water during that year and Concessionaire sells 20,000 bottles of water during that year, Concessionaire would pay DLFJV $1.47 for each of the 20,000 bottles of water sold by Concessionaire.

D. Monthly Reporting of Sales of Bottled Water and Fee Calculation. In the monthly reports to City, required under Section 6.3.B of Concessionaire’s Original Agreement and under DLFJV’s contract with City, which each entity is required to submit on or before the twentieth (20th) day of the month, Concessionaire and DLFJV shall state the number of bottles of water the concessionaire has sold at the Airport in addition to all other required information. City shall rely on the bottled water sales information provided by each concessionaire to provide, on or before the thirtieth (30th) day of the month, Concessionaire and DLFJV with a calculation of the bottled water fee to be paid, if any, by Concessionaire to DLFJV.
E. **Payments to DLFJV.** Concessionaire shall have five (5) days from receipt of the bottled water fee calculation from City to pay DLFJV the bottled water fee, if any.

F. **Fee Calculation Disputes.** The failure of Concessionaire or DLFJV to contest City’s fee calculation in writing within five (5) days of receipt of the calculation shall be deemed a waiver of each concessionaire’s right to protest the fee calculation and/or payment. Protest of the fee calculation by either Concessionaire or DLFJV shall not relieve Concessionaire from its obligation to pay DLFJV, if required, in the amount and at the time required in Sections 6.10.D and 6.10.E above. The Director shall make a determination on the fee contestation within five (5) days of receipt, which determination shall be final and binding on Concessionaire and DLFJV. Any difference between City’s original calculation and the Director’s determination after a fee contestation shall be settled between Concessionaire and DLFJV within five (5) days of the Director’s determination.

G. **City Not Responsible for Fees on Bottled Water.** Nothing in this First Amendment shall be construed as giving Concessionaire or DLFJV any right to payment from City for any fees on bottled water sold at the Airport.

**SECTION 6.**

The following Section 14.1.G is added to Article XIV of the Original Agreement:

G. Concessionaire fails to comply with the requirements of Section 6.10 of this First Amendment.

**SECTION 7.**

All other terms, provisions, conditions, and obligations of the Original Agreement between City and Concessionaire shall remain in full force and effect, and said Original Agreement, as same has been previously amended, and this First Amendment shall be construed together as a single contractual agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]
IN WITNESS WHEREOF, this First Amendment is executed and effective as of the ___ day of ____________, 2010, by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. 10-____, approved on April 28, 2010, and by Concessionaire, acting by and through its duly authorized officer(s), thereby binding itself, its successors, assigns, and representatives for the faithful and full performance of the terms and provisions of this First Amendment.

CITY OF DALLAS:
MARY K. SUHM,
City Manager

By: __________________________
A. C. Gonzalez
Assistant City Manager

APPROVED AS TO FORM:
THOMAS P. PERKINS, JR.,
City Attorney

By: __________________________
Sarah F. Hasib
Assistant City Attorney

CONCESSIONAIRE:
Hudson Retail Dallas, J.V.

Brian Quinn
Joint Venture Manager

ATTACHMENT

Resolution No. 10-____, approved April 28, 2010
FIRST AMENDMENT TO THE DALLAS LOVE FIELD FOOD AND BEVERAGE CONCESSION CONTRACT

THIS FIRST AMENDMENT TO THE DALLAS LOVE FIELD FOOD AND BEVERAGE CONCESSION CONTRACT ("First Amendment") is entered into by and between the City of Dallas, a Texas municipal corporation, acting by and through its duly authorized officers ("City"), and Dallas Love Field Joint Venture, Ltd., a Texas limited partnership, ("Concessionaire"), as assignee of Dallas Love Field Joint Venture, a former joint venture comprised of MultiRestaurants Management, Inc., a Texas corporation, and Culinaire of Texas, Inc., a Texas corporation.

WITNESSETH:

WHEREAS, on August 24, 1994, by Resolution No. 94-3120, the Dallas City Council approved a ten-year Food and Beverage Concession Contract with Concessionaire ("Original Agreement"), and in 2006, City exercised the five-year renewal term in the Original Agreement to extend the term to June 30, 2011; and

WHEREAS, on July 11, 2006, City, the City of Fort Worth, the Dallas-Fort Worth International Airport Board, Southwest Airlines Co., and American Airlines, Inc. entered into an agreement to seek the elimination of restrictions on air service at Dallas Love Field ("Airport") contained in existing federal legislation ("The Wright Amendment"), and if such legislation was approved, the parties agreed to redevelop and modernize the existing Airport terminal facilities through the Love Field Modernization Program ("LFMP"); and

WHEREAS, reforms to The Wright Amendment were signed into law on October 13, 2006, and provide that the last of the interstate flight restrictions, first imposed on the Airport in 1979, will be lifted in October 2014; and

WHEREAS, City has agreed to work toward completion of the LFMP, which includes construction of a new Airport terminal building, by October 2014; and

WHEREAS, City anticipates an increase in the number of commercial airline passengers at the Airport both during and after the LFMP and wishes to ensure continuous and improved food and beverage concession services to Airport passengers during implementation of the LFMP; and

WHEREAS, City and Concessionaire now desire to amend the Original Agreement to: (1) extend the renewal term, (2) provide for closure of Concessionaire’s food and beverage locations to accommodate LFMP-related construction activities, (3) waive Concessionaire’s payment of the Minimum Annual Guarantee and modify Concessionaire’s required Percentage Payments upon the first closure of one of Concessionaire’s food and beverage locations, and (4) provide certain terms under which Concessionaire will be compensated by "Hudson" (defined in
Gross Revenues from the sale of non-branded food, and 15% of annual Gross Revenues from the sale of alcoholic beverages. The relocation of Concessionaire’s Cinnabon store within the lobby of the existing Airport terminal building shall not constitute the first closure of one of Concessionaire’s food and beverage locations for purposes of this Section 6.9. All other rents, fees, and charges Concessionaire is required to pay City under the Original Agreement shall remain the same.

SECTION 5.

The following Section 6.10 is added to Article VI of the Original Agreement:

6.10 **Sales of Bottled Water.** In order to enhance customer service at the Airport, as of the date of execution of this First Amendment, “Hudson” (defined below) shall have the right to sell bottled water at its news and gift store locations at the Airport, subject to the terms contained herein. Any fees paid by Hudson to Concessionaire pursuant to this Section 6.10 shall not be considered part of Concessionaire’s Gross Revenues for the purpose of determining Concessionaire’s Percentage Payment to City.

A. **Definitions Related to Sales of Bottled Water.**

(1) **Base Amount.** The “Base Amount” is the number of bottles of water that Concessionaire would have been expected to sell in the Airport terminal building in a calendar year prior to execution of this First Amendment. The Base Amount shall be calculated by multiplying the actual number of enplanements in the existing Airport terminal building for a calendar year (prorated for the first year from the date of execution of this First Amendment to December 31, 2010 and for the last year from January 1st to the expiration or earlier termination of the Contract) by the “Water Ratio” (defined below).

(2) **Bottle of Water.** A “bottle of water” is a bottle or container that holds twenty (20) ounces or less of water, including, but not limited to, enhanced, flavored, and sparkling water, sold at the Airport. If water is sold at the Airport in a bottle or container that holds more than twenty (20) ounces of water, the number of ounces of water in such bottle or container shall be divided by twenty (20) to determine the number of bottles of water such bottle or container is equivalent to.

(3) **Hudson.** “Hudson” means Hudson Retail Dallas, J.V. and its successors and assigns, the only retail merchandise concession operator doing business at the Airport as of the execution of this First Amendment.

(4) **Water Ratio.** The “Water Ratio” is 0.10625. The Water Ratio shall be constant until the expiration of this First Amendment.
Section 5 below) for Hudson’s right to sell bottled water at its news and gift store locations at the Airport.

**NOW THEREFORE,** in consideration of the mutual covenants and obligations herein, the Original Agreement is amended as follows:

**SECTION 1.**

Capitalized terms used in this First Amendment that are undefined in this First Amendment have the same meanings as defined in the Original Agreement.

**SECTION 2.**

The following Section 3.4 is added to Article III of the Original Agreement:

3.4 City shall extend the renewal term, granted to Concessionaire under Section 3.2 of the Original Agreement, from June 30, 2011 to the closing date, as determined in Section 4.7 below, of the last one of Concessionaire’s food and beverage locations in the existing Airport terminal building.

**SECTION 3.**

The following Section 4.7 is added to Article IV of the Original Agreement:

4.7 Notwithstanding any provision of the Original Agreement to the contrary, the Director shall have the right to direct Concessionaire to close any of its food and beverage locations in the existing Airport terminal building on a date and in a manner determined by the Director for the purpose of accommodating LFMP-related construction activities by providing Concessionaire with thirty (30) days advance written notice.

**SECTION 4.**

The following Section 6.9 is added to Article VI of the Original Agreement:

6.9 **Waiver of the Minimum Annual Guarantee and Modification of Percentage Payment due to LFMP Construction-Related Food and Beverage Closures.** Upon the date of the first closure of one of Concessionaire’s food and beverage locations in the existing Airport terminal building, Concessionaire shall not be required to pay City the Minimum Annual Guarantee stated in Section 6.1.B(2) of the Original Agreement; however, Concessionaire shall continue to make a Percentage Payment of Gross Revenues, in lieu of the minimum Percentage Payment required under Section 6.1.B(1) of the Original Agreement, as follows: 12% of annual Gross Revenues from the sale of branded food and non-alcoholic beverages, 13% of annual
B.  **Fees on Bottled Water.** Hudson shall pay to Concessionaire the fees stated below; provided, however, Hudson shall only pay Concessionaire a fee on the actual number of bottles of water sold by Hudson:

1. **Sales of Bottled Water Less Than or Equal to the Base Amount.** If the combined sales of bottled water by Concessionaire and Hudson at the Airport are less than or equal to the Base Amount, Hudson shall pay Concessionaire $1.47 per bottle of water sold by Hudson up to and including the Base Amount.

AND

2. **Sales of Bottled Water Greater Than the Base Amount.** If the combined sales of bottled water by Concessionaire and Hudson at the Airport exceeds the Base Amount, in addition to what Hudson is obligated to pay Concessionaire in 6.10.B(1) above, Hudson shall also pay Concessionaire $0.62 per bottle of water sold above the Base Amount.

C.  **Examples of How the Calculations Work.**

1. **Base Amount Calculation:** If there are 4,203,605 enplanements at the Airport during the period from March 1, 2010 to December 31, 2010, the Base Amount would be 446,633 (4,203,605 x 0.10625).

2. **Fee Calculation Example 1:** If the Base Amount is calculated to be 446,633 for any given year and Concessionaire sells 400,000 bottles of water during that year and Hudson sells 50,000 bottles of water during that year, Hudson would pay Concessionaire $1.47 for each of the 46,633 of bottles of water sold by Hudson (bottles of water to equal the Base Amount) and $0.62 for each of the 3,367 of bottles of water sold by Hudson (bottles of water that exceeded the Base Amount).

3. **Fee Calculation Example 2.** If the Base Amount is calculated to be 446,633 for any given year and Concessionaire sells 447,000 bottles of water during that year and Hudson sells 50,000 bottles of water during that year, Hudson would pay Concessionaire $0.62 for each of the 50,000 bottles of water sold by Hudson.

4. **Fee Calculation Example 3.** If the Base Amount is calculated to be 446,633 for any given year and Concessionaire sells 400,000 bottles of water during that year and Hudson sells 20,000 bottles of water during that year, Hudson would pay Concessionaire $1.47 for each of the 20,000 bottles of water sold by Hudson.

D.  **Monthly Reporting of Sales of Bottled Water and Fee Calculation.** In the monthly reports to City, required under Section 6.3.B of Concessionaire’s Original Agreement and under Hudson’s contract with City, which each entity is required to
submit on or before the twentieth (20th) day of the month, Concessionaire and Hudson shall state the number of bottles of water the concessionaire has sold at the Airport in addition to all other required information. City shall rely on the bottled water sales information provided by each concessionaire to provide, on or before the thirtieth (30th) day of the month, Concessionaire and Hudson with a calculation of the bottled water fee to be paid, if any, by Hudson to Concessionaire.

E. Payments to Concessionaire. Hudson shall have five (5) days from receipt of the bottled water fee calculation from City to pay Concessionaire the bottled water fee, if any.

F. Fee Calculation Disputes. The failure of Concessionaire or Hudson to contest City’s fee calculation in writing within five (5) days of receipt of the calculation shall be deemed a waiver of each concessionaire’s right to protest the fee calculation and/or payment. Protest of the fee calculation by either Concessionaire or Hudson shall not relieve Hudson from its obligation to pay Concessionaire, if required, in the amount and at the time required in Sections 6.10.D and 6.10.E above. The Director shall make a determination on the fee contestation within five (5) days of receipt, which determination shall be final and binding on Concessionaire and Hudson. Any difference between City’s original calculation and the Director’s determination after a fee contestation shall be settled between Concessionaire and Hudson within five (5) days of the Director’s determination.

G. City Not Responsible for Fees on Bottled Water. Nothing in this First Amendment shall be construed as giving Concessionaire or Hudson any right to payment from City for any fees on bottled water sold at the Airport.

SECTION 6.

The following Section 14.1.G is added to Article XIV of the Original Agreement:

G. Concessionaire fails to comply with the requirements of Section 6.10 of this First Amendment.

SECTION 7.

All other terms, provisions, conditions, and obligations of the Original Agreement between City and Concessionaire shall remain in full force and effect, and said Original Agreement, as same has been previously amended, and this First Amendment shall be construed together as a single contractual agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]
IN WITNESS WHEREOF, this First Amendment is executed and effective as of the ____ day of ____________, 2010, by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. 10-______, approved on April 28, 2010, and by Concessionaire, acting by and through its duly authorized officer(s), thereby binding itself, its successors, assigns, and representatives for the faithful and full performance of the terms and provisions of this First Amendment.

CITY OF DALLAS:
MARY K. SUHM,
City Manager

By: __________________________________
A. C. Gonzalez
Assistant City Manager

APPROVED AS TO FORM:
THOMAS P. PERKINS, JR.,
City Attorney

By: __________________________________
Sarah F. Hasib
Assistant City Attorney

CONCESSIONAIRE:
Dallas Love Field Joint Venture, Ltd.,
a Texas limited partnership

By: MultiRestaurants Concepts, Ltd.,
a Texas limited partnership,
its general partner

By: MultiRestaurants Management, Inc.,
a Texas corporation,
its general partner

By: __________________________
Gilbert Araiza
President

ATTACHMENT

Resolution No. 10-______, approved April 28, 2010
DALLAS LOVE FIELD
RETAIL CONCESSION CONTRACT

THIS RETAIL CONCESSION CONTRACT ("Contract") is made and entered into between the City of Dallas, Texas, a Texas municipal corporation located in Dallas County, Texas ("City"), and Hudson Retail Dallas, L.V., a joint venture comprised of Hudson Group (H.G.) Retail, LLC, a Delaware limited liability company, Multiplex, Inc., a Texas corporation, and E.B.J. & Associates, Inc., a Texas corporation, ("Concessionaire").

WITNESSETH:

WHEREAS, City owns and operates a municipal airport, Dallas Love Field ("Airport"); and

WHEREAS, on July 11, 2006, City, the City of Fort Worth, the Dallas-Fort Worth International Airport Board, Southwest Airlines Co., and American Airlines, Inc. entered into an agreement to seek the elimination of restrictions on air service at the Airport contained in existing federal legislation ("The Wright Amendment"), and if such legislation was approved, the parties agreed to redevelop and modernize the existing Airport terminal facilities through the Love Field Modernization Program ("LFMP"); and

WHEREAS, reforms to The Wright Amendment were signed into law on October 13, 2006, and provide that the last of the interstate flight restrictions, first imposed on the Airport in 1979, will be lifted in October 2014; and

WHEREAS, City has agreed to work toward completion of the LFMP, which includes construction of a new Airport terminal building by October 2014 ("Terminal"); and

WHEREAS, the Terminal will accommodate more than twice the amount of retail concession space than housed in the existing Airport terminal building and such concession space will be divided into to two retail concession packages; and

WHEREAS, Concessionaire has operated a retail concession at the Airport since 1996, has provided first-class service to Airport patrons, and will continue to provide retail concessions in the existing Airport terminal building during construction of the Terminal in accordance with that certain First Amendment to the Love Field Retail Merchandise Concession Contract by and between City and Concessionaire, approved by the City Council on April 28, 2010, by Resolution No. 10-______, and in accordance with this Contract; and

WHEREAS, City anticipates an increase in the number of commercial airline passengers at the Airport both during and after the LFMP and wishes to: (1) ensure continuous and improved retail concession services to Airport passengers during implementation of the LFMP and (2) contract with Concessionaire for operation of one of the retail concession packages in the Terminal without precluding Concessionaire from later participating in City’s request for proposals ("RFP") process.
for the right to operate the second retail concession package.

NOW THEREFORE, in consideration of the mutual covenants and obligations herein, the parties agree as follows:

SECTION 1. TERM

A. Effective Date and Commencement Date. This Contract shall be effective and binding upon the date of execution of this Contract ("Effective Date"). The "Term" (defined in Section 1.E below) shall commence upon the delivery of any portion of the "Assigned Premises" (defined in Section 2.A below) to Concessionaire ("Commencement Date").

B. Interim Term. The "Interim Term" of this Contract shall commence on the Commencement Date, shall include the period required for finish-out of the Assigned Premises both prior to the opening of the Terminal to the public and during the period the Terminal is partially open for aviation operations and to the public, and shall terminate on the last day of the calendar month during which the Director of Aviation ("Director") certifies in writing that the twentieth (20th) passenger boarding gate in the Terminal is usable for commercial air service.

C. Primary Term. The "Primary Term" of this Contract shall commence upon the expiration of the Interim Term and shall continue for a period of twelve (12) years thereafter, unless terminated earlier in accordance with this Contract.

D. Renewal Term. City, in its sole discretion, may renew this Contract for one additional period of three (3) years, which term shall commence upon the expiration of the Primary Term of this Contract ("Renewal Term"). The Renewal Term shall be subject to all of the same terms, covenants, and conditions of this Contract. City shall advise Concessionaire in writing of its intent to enter into the Renewal Term no later than six (6) months prior to the end of the Primary Term.

E. Term. In this Contract use of "the Term" means the Interim Term, the Primary Term, and the Renewal Term; use of "a Term" means the Interim Term, the Primary Term, or the Renewal Term.

F. Holdover of the Assigned Premises after Expiration of a Term. With City's prior written consent, Concessionaire may holdover and remain in possession of the Assigned Premises after the expiration of the Primary Term, in the case where City does not exercise the Renewal Term, or after the expiration of the Renewal Term. Concessionaire's holdover of the Assigned Premises shall not operate as an extension or renewal of either the Primary Term or Renewal Term of this Contract, but shall only create a month-to-month right to operate a retail concession on the Assigned Premises on the same terms, conditions, and covenants contained in this Contract, except that such holdover status shall be terminable at the will of City with thirty (30) days prior written notice.

SECTION 2. ASSIGNED PREMISES

Retail Merchandise Concession Contract – Dallas Love Field
04/15/10
A. **Assigned Premises.** City hereby grants to Concessionaire and Concessionaire accepts from City the right to use areas in the Airport as designated for use by Concessionaire and containing the number of square feet indicated in the attached Exhibit A-Assigned Retail Locations and Exhibit B-Assigned Support Space (collectively "Assigned Premises"). "Assigned Retail Locations" means Concessionaire’s assigned revenue-generating space in the Terminal; an individual retail unit may be referred to as an "Assigned Retail Location". "Assigned Support Space" means Concessionaire’s assigned non-revenue generating space at the Airport, including office and storage space.

B. **Late Opening of Assigned Retail Locations.** Concessionaire acknowledges that if it fails to open an Assigned Retail Location, delivered by the City in a timely manner, for business by the opening of a portion of the Terminal, in accordance with the LFMP construction phasing schedule, to scheduled airline activity as certified in writing by the Director (an "Opening Date"), and such failure shall be due to the fault of Concessionaire, such failure may cause City to suffer substantial damages, including loss of goodwill, that might be difficult to ascertain or prove. For that reason, but subject to extensions that may be approved in writing by the Director, if Concessionaire has not caused an Assigned Retail Location to be open to the public for business by the Opening Date for such Assigned Retail Location, Concessionaire must pay City liquidated damages at the rate of $500.00 per day for each day from the Opening Date for such Assigned Retail Location until the date on which such Assigned Retail Location actually opens to the public for business. Concessionaire acknowledges that the liquidated damages described in this Section 2.B is not an exclusive remedy and City may pursue any other remedies at its sole discretion.

C. **Substitution of Assigned Premises Exhibits.** The exact location, configuration, and square footage of the Assigned Premises as depicted in Exhibits A and B are approximate and subject to change as a result of the LFMP planning, design, and construction process. Upon completion of the Terminal design portion of the LFMP, City will provide Concessionaire with substitute versions of Exhibits A and B. Upon Concessionaire’s completion of its finish-out of the Assigned Premises, Concessionaire shall provide City with all as-built drawings, which will be substituted for Exhibits A and B. All such revised exhibits, once reviewed and accepted by Concessionaire, shall be confirmed by letter agreement signed by the Director and the Concessionaire’s authorized representative as a substitute exhibit to this Contract. Each such revised exhibit, once so confirmed, shall be considered by City and Concessionaire as incorporated into and shall be a part of this Contract in substitution of the exhibit it replaced. City and Concessionaire agree that the substitution of exhibits as described herein does not constitute an amendment to this Contract.

D. **Possible Additional Assigned Retail Location-Landside.** Concessionaire agrees to operate an additional Assigned Retail Location, a news and gift store, in the landside retail location of the Terminal, as shown on Exhibit A, if the concessionaire awarded the right to operate the “Second Retail Concession” (defined in Section 8 below) opts not to operate such landside retail location. Concessionaire’s operation of the landside retail location shall be subject to the same terms, covenants, and conditions of this Contract.
SECTION 3. GRANT OF CONCESSION RIGHTS

A. Non-Exclusive Right to Operate a Retail Concession. The Concessionaire has the non-exclusive right, privilege, and obligation to operate and manage a retail concession for the sale of merchandise, including, but not limited to newspapers, magazines, books, sundries, health and beauty aids, pre-packaged snacks, candy, bottled water, travel accessories, specialty merchandise, and gifts in and from its Assigned Premises. Subject to the approval of the Director, Concessionaire may permit portions of the Assigned Premises to be used by “Suboperators” selected by Concessionaire. A “Suboperator” means any person or entity operating an Assigned Retail Location in the Assigned Premises pursuant to a City-approved agreement with Concessionaire.

B. Permitted Retail Concepts. The attached Exhibit C-Permitted Retail Concepts describes the types of retail concepts which Concessionaire and its Suboperators shall have the right to operate in the Assigned Premises, subject to the provisions of Section 3.C of this Contract.

C. Permitted Retail Facilities, Merchandise, and Services.

(1) Submission of Concessionaire’s Development Plan. Within six (6) months of the Effective Date, Concessionaire shall submit a proposed development plan to the Director, for review and approval, indicating for each of the Assigned Retail Locations, the type of facility (e.g., news and gift store or specialty retail store), thematic concept for the location, merchandise and services to be offered, prices of said merchandise and services, operator (e.g., Concessionaire or Suboperator), preferred brand name options and a detailed explanation of the rationale of each proposed brand name option along with alternative brand options, if any, for each unit, and projected sales for the first year of the Primary Term (“Development Plan”). The proposed Development Plan shall be consistent with the Permitted Retail Concepts set forth in Exhibit C. By submission of one or more brand names in its proposed Development Plan, Concessionaire represents that it has all necessary rights, titles, and licenses to install and operate such brand(s) at the location(s) designated therein and agrees to provide City with proof of such right(s) as requested. Concessionaire further agrees that it will retain, to the extent reasonably possible, rights to such brand(s) for the duration of this Contract and the ability to terminate any such brand agreement(s) as may be necessary throughout the Term.

(2) Director Review of Development Plan. The Director, or his or her designee, shall review the submitted Development Plan. Such review may be based on, but not be limited to, the following review criteria: applicable passenger surveys, airline comments, consultant reviews, or other such evaluation tools as deemed necessary by the Director to evaluate the proposed Development Plan for all Assigned Retail Locations. The Director will attempt to meet with Concessionaire to review the submitted Development Plan within thirty (30) days after receipt of the proposed Development Plan. Concessionaire must respond to any changes in the Development Plan requested by the Director within five (5) days.

(3) Development Plan Review Panel. The Director may, in his or her sole
discretion, appoint a review panel to conduct said review and make recommendations to the Director. Upon completion of its review of the submitted Development Plan, the review panel shall submit the findings of its review and recommendations to the Director who may, in his or her discretion, approve in whole or in part, reject in whole or in part, or refer back to the review panel for further review and evaluation, the review panel's report and recommendations.

(4) **Approved Development Plan.** City and Concessionaire shall make reasonable efforts to ensure the mutual acceptability of Concessionaire's Development Plan. However, Concessionaire acknowledges and agrees that the Director's determination of and approval of a Development Plan, including but not limited to merchandise, prices, and brand names, shall be final and binding on Concessionaire. The approved Development Plan shall be attached to this Contract as **Exhibit D-Permitted Retail Facilities, Merchandise, and Services** and shall be incorporated into and be a part of this Contract. Exhibit D will describe the specific types of retail facilities and inventory items which Concessionaire and its Suboperators shall have the right to offer at the Assigned Retail Locations, subject to the provisions of Section 4 of this Contract. City and Concessionaire agree that the addition of Exhibit D as described in this Section 3.C(4) does not constitute an amendment to this Contract.

(5) **Modifications to Exhibit D.** Once Exhibit D is approved and incorporated into this Contract, the Development Plan shall not be modified, including but not limited to the substitution or relocation of brand names, without City's express written consent. Any approved modifications to the Development Plan shall be incorporated into this Contract as a substitution of the then-current Exhibit D. City and Concessionaire agree that any such substitution of Exhibit D as described in this Section 3.C(5) does not constitute an amendment to this Contract.

(6) **Merchandise or Services Not a Part of Approved Development Plan.** The sale of items other than retail merchandise or the furnishing by Concessionaire of other services than those described in Exhibit D shall not be permitted without the prior written approval of the Director. Neither Concessionaire nor its Suboperators shall have the right under this Contract to sell liquor or wine by the bottle or otherwise engage in packaged liquor or wine sales on any of the Assigned Premises or to sell duty free merchandise.

D. **Ingress to and Egress from the Assigned Premises.** Concessionaire has the non-exclusive right of ingress to and egress from its Assigned Premises, subject to any rules, regulations, directives, or orders which may have been established or may be established in the future by the Director or City, or state or federal government. Such rights of ingress and egress shall apply to the Concessionaire’s employees, Suboperators, guests, patrons, invitees, suppliers, and other authorized individuals. The rights of ingress and egress likewise apply to the transport of equipment, material, machinery, and other property. In connection with any such ingress or egress, Concessionaire shall not, and shall not permit others, to obstruct or otherwise interfere with the operation or use of the Airport by any airline or other tenant.
E. **City’s Right of Inspection of the Assigned Premises.** City retains the full right of entry in and to the Assigned Premises for any purpose necessary, incidental to, or in connection with its obligations under this Contract, or in the exercise of its governmental functions, or for the purpose of making any inspection it deems necessary. Without limiting the foregoing, Concessionaire agrees that authorized employees of City’s Department of Aviation may enter and inspect any area in the Assigned Premises to do any or all of the following:

1. Inspect the Assigned Premises at any reasonable time or at any time in case of emergency, to determine whether Concessionaire has complied with and is complying with the terms and conditions of this Contract. The Director may, at his or her discretion, require Concessionaire to effect repairs to the Assigned Premises at the Concessionaire’s own cost.

2. Perform any and all things which the Concessionaire is obligated to and has failed to do after fifteen (15) days written notice to act, including maintenance, repairs, and replacements to Concessionaire’s Assigned Premises. The cost of all labor and materials and other charges required for performance of such work, plus 15% thereof for administrative overhead, will be paid by Concessionaire to City within ten (10) following receipt of an invoice by Concessionaire.

3. Perform any duty or function which City may have in relation to the operations of the Airport, including carrying out the City’s duties and functions.

F. **Conflicts between Concessionaire and Other Airport Operators or Tenants.** Should a conflict arise between Concessionaire and other tenants or concession operators at the Airport regarding the scope of concession privileges, the decision of the Director shall be final.

G. **Vending Machines.** Nothing in this Contract shall be construed to limit or prohibit the right of City to permit the installation and operation of vending machines, by City or any other tenant, anywhere on the Airport, outside of Concessionaire’s Assigned Premises; provided, however, City shall not install or operate or allow any other tenant to install or operate vending machines that sell or dispense newspapers, magazines, books, pre-packaged snacks, or cigarettes in public areas of the Airport that are located within two hundred (200) feet of one of Concessionaire’s Assigned Retail Locations. In addition, in Concessionaire’s Assigned Retail Locations, Concessionaire may not install or maintain amusement or vending machines or other machines operated by coins, tokens, or credit or debit cards without the prior written consent of the Director. This prohibition includes, but is not limited to, sales from vending machines of such items as cigarettes, candy, maps, coffee, soft drinks, newspapers, stamps, and insurance policies; telephones; dispensation of cash, money orders, and checks; and operation of mechanical or electronic game devices, electronic video games, and entertainment devices.

H. **Concessionaire’s Employees’ Parking.** Nothing in this Contract shall be deemed to require City to provide parking to Concessionaire’s employees. City may provide parking accommodations to Concessionaire’s employees in common with employees of other concession
operators and users of the Airport and retains the right to impose a reasonable charge for the privilege of using such parking accommodations.

I. Receiving Dock. Concessionaire shall have the right to use the Airport receiving dock under the same terms and conditions as other Airport concessionaires and tenants.

SECTION 4. OPERATIONAL STANDARDS

A. General Operational Standards. Concessionaire’s business shall be conducted in a manner that: (1) meets the needs of Airport patrons and employees, (2) reflects positively upon the Concessionaire and City, and (3) is satisfactory to the Director. Concessionaire shall offer quality products, provide prompt and courteous service, and shall equip, organize, and efficiently manage the facilities to provide first-class service and products in a clean, attractive, and pleasant atmosphere. Concessionaire shall operate its business in the Assigned Retail Locations so as to maximize the “Gross Revenues” (defined in Section 5.B below) produced by such operation and shall maintain an adequate staff of employees and maintain in the Assigned Retail Locations at all times a stock of merchandise as is reasonably designed to maximize Gross Revenues.

B. Determination of Compliance with Operational Standards. The Director shall have the sole right to determine Concessionaire’s compliance with all operational standards, including, but not limited to, the quality of merchandise sold, the character of the services rendered to the public, and the appearance and condition of the Assigned Premises. Concessionaire agrees to promptly discontinue or remedy any objectionable practice or condition within five (5) days after written notice from the Director. City reserves the right to conduct, or have its designee conduct, periodic performance audits of the Assigned Premises to assure that all of the operational, safety, and compliance standards of this Contract are consistently performed by Concessionaire. Concessionaire acknowledges that such performance audits will be conducted by City or its designee and hereby agrees to cooperate with any such performance audit. Said performance audits may include objective standards in the areas of (1) product quality, (2) customer service, and (3) cleanliness and maintenance. If Concessionaire fails to meet and maintain minimum standards in any of these areas, City may, at its discretion, assess a fee per occurrence pursuant to Section 4.T of this Contract.

C. Maintenance and Repair Generally. Concessionaire shall provide at its own expense such maintenance, custodial, and cleaning services and supplies as may be necessary or required to maintain the Assigned Premises in good appearance, repair, and safe condition. Specifically, Concessionaire agrees to maintain and make necessary repairs to the interior of the Assigned Premises, the fixtures and equipment therein and appurtenances thereto including, without limitation, the interior windows, doors and entrances, storefronts, utility lines and connections, signs, floor coverings, interior walls and ceiling, the surfaces of interior columns exclusive of structural deficiencies, any columns or structural improvements erected by Concessionaire, partitions and lighting, including replacement of electric light bulbs and tubes, electrical equipment and plumbing fixtures, within the Assigned Premises. All work performed by Concessionaire shall be subject to inspection and approval of the Director or his or her
representative.

(1) **Janitorial Service.** Concessionaire shall, without cost to City, provide all janitorial services for the Assigned Premises. Concessionaire shall ensure that the Assigned Premises are kept free from all rubbish, filth, and refuse.

(2) **Quality of Repairs.** All repairs done by Concessionaire or on its behalf shall be of first-class quality, equal to or better than the original in both materials and workmanship. All repairs will be made in conformity with the rules and regulations prescribed from time to time by federal, state, or local authority having jurisdiction over the work in Concessionaire's Assigned Premises.

(3) **Preventive and Routine Maintenance Programs.** Upon the execution of this Contract, Concessionaire shall establish a preventive and routine maintenance program, the provisions of which shall be subject to the initial written approval of and periodic review by the Director. Concessionaire shall from time to time, upon request, provide the Director a written schedule of Concessionaire's cleaning and maintenance program.

(4) **Routine Refurbishment.** On or about the commencement of each year, the Director and Concessionaire shall tour the Assigned Premises and jointly agree upon what, if any, routine refurbishment is required to maintain the Assigned Premise in first-class condition, and Concessionaire shall promptly undertake such refurbishment at its sole cost and expense. For purposes of this Section 4.C(4), refurbishment shall mean the routine repainting or redecoration of public areas within the Assigned Premises, including the replacement or repair of worn carpet, tile, furniture, furnishings, fixtures, or finishes.

(5) **Maintenance Personnel and Program.** Concessionaire agrees to employ sufficient personnel, and provide necessary equipment to keep the Assigned Premises and all furniture, furnishings, fixtures, and equipment clean, neat, safe, sanitary, and in good working order and condition at all times pursuant to the maintenance requirements of this Section 4.C(5).

(6) **City Sole Judge of Maintenance.** City shall be the sole judge of the quality of maintenance. City, or its designee, may at any time, without notice, enter upon the Assigned Premises to determine if maintenance satisfactory to City is being performed. Performance by Concessionaire of maintenance pursuant to a written maintenance plan previously approved by the Director shall be conclusive evidence of satisfactory maintenance, unless the Director determines that there is a present and substantial danger of serious injury to users of the Assigned Premises. If it is determined that said maintenance is not satisfactory, the Director shall so notify Concessionaire in writing. If said maintenance is not performed by Concessionaire to City's standards within fifteen (15) days after receipt of written notice, the City or its designee thereafter shall have the right to enter upon the Assigned Premises and perform the maintenance therefore, and Concessionaire agrees to promptly reimburse the City for the cost thereof, plus 15% for administrative overhead.
(7) **Hazardous Conditions.** Concessionaire shall not do or permit to be done or any act which invalidates any fire insurance policies covering the Terminal that are either required under this Contract or carried by City. Concessionaire shall not do or permit to be done or any act, which in the opinion of the Director, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Contract. Concessionaire shall promptly observe, comply with, and execute the provisions of any and all present and future rules, regulations, requirements, orders, and directions of the Director which may pertain to the operations on the Assigned Premises. Upon discovery, Concessionaire shall immediately give oral notice to the City of any hazardous or potentially hazardous conditions in the Assigned Premises or in the Terminal. Any hazardous or potentially hazardous condition in the Assigned Premises shall be corrected immediately upon receipt of oral notice from the City. At the direction of the City, Concessionaire shall close the Assigned Premises until such hazardous or potentially hazardous condition is removed.

D. **Trash Removal.** Concessionaire shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage, and other refuse caused as a result of its operations as described in this Contract. Concessionaire shall provide and use suitable covered receptacles for all garbage, trash, or other refuse. Concessionaire shall keep any areas used for trash and garbage storage prior to removal from Airport in a clean and orderly condition so as not to attract rodents, pests and birds or create an offensive odor. In transporting trash and refuse from the Assigned Premises, Concessionaire shall use only carts, vehicles or conveyances that are covered, leak proof, and equipped with wheels suitable for operating on carpets or tile or terrazzo flooring without damage thereto. Such disposal shall take place during hours as may be directed by City. Piling of boxes, cartons, barrels, or other similar items in an unsightly, unsafe, or unsanitary manner on or about the Assigned Premises is forbidden. Concessionaire further agrees to keep the dock area and refuse removal area clean and neat and free from any unsightly, unsafe, or unsanitary conditions. If City provides trash containers or compactors for the removal of Concessionaire’s trash, Concessionaire agrees to pay its share of the costs of such containers or compactors.

E. **Environmental Efforts.** Concessionaire shall fully comply with the provisions of any City recycling program in effect at the Airport, whether currently existing, re-designed, or newly implemented any time during the Term of this Contract at Concessionaire’s own cost. If City provides suitable containers for the collection of recyclable materials, Concessionaire agrees to pay its share of the costs of such containers. Concessionaire shall not install or utilize any water-cooled ice makers on the Assigned Premises.

F. **Plumbing Facilities.** The plumbing facilities, within the Assigned Premises and elsewhere in the Airport, shall not be used for any purpose other than that for which they are constructed, and no foreign substance of any kind shall be thrown therein. If installed in connection with the Assigned Premises, Concessionaire shall, at its own expense, check and clean at least monthly all grease traps and grease receptors. The expense of any breakage, stoppage, or damage resulting from a violation of this provision, wherever such occurs, shall be borne by Concessionaire who may, or whose employees, agents, or invitees may, have caused it.
G. **Signs and Advertisements.** Concessionaire shall have the right to install and operate upon or in the Assigned Retail Locations, and at Concessionaire’s sole cost and expense, signs containing its name and representing its business. For purposes of this Section, signs shall include, but not necessarily be limited to, identification signs, company logos, advertising, or promotions, photographs, art displays, and the like. City reserves the right to remove all signs or advertisements that do not conform to the requirements of this Section without notice to Concessionaire. All signs shall be in good taste, of professional quality, and shall be approved by the Director. No handwritten signs of any nature shall be allowed or approved. No sign or advertisement of any kind shall be allowed outside the Assigned Retail Locations without the approval of the Director.

1. **Design.** All signs shall conform to the requirements of the tenant design criteria for the Terminal building.

2. **Sign Illumination.** Concessionaire shall have its display windows, signs, interior sales area, and permitted advertising displays adequately illuminated continuously during the “Store Hours” (defined in Section 4.H below) and, if such hours are less than twenty-four (24) hours, such additional hours as City may establish from time to time in its sole discretion.

3. **Music and Announcements.** Concessionaire shall not play music or utilize a public address system in such a fashion that the sound therefrom can be heard outside of Concessionaire’s Assigned Premises. If the Assigned Premises are not enclosed, Concessionaire shall not play music or utilize a public address system.

H. **Hours of Operation.**

1. **Hours of Operation Generally.** Concessionaire shall ensure that each of the Assigned Retail Locations are continuously open for business and provide all services and sales activities as required by this Contract every day of the Term at such hours as are necessary for Concessionaire to be open sixty (60) minutes before the time of the first scheduled outgoing flight of the day until the time of the last scheduled outgoing flight of the day (“Store Hours”). Any modifications to Store Hours that may be requested from time to time by Concessionaire shall be subject to the Director’s prior written approval as determined in his or her sole discretion.

2. **Extension of Store Hours.** Notwithstanding anything in this Contract to the contrary, Concessionaire agrees to remain open beyond Store Hours at the Director’s request for events including, but not limited to, the following:

   a. **Operations during Periods of Flight Delays.** In the event of delayed flights at the Airport, Concessionaire shall remain continuously open and provide all services and sales activities as required by this Contract until said flights depart the gate or City otherwise instructs, even if such period is beyond the current Store Hours for said Assigned Retail Location.
(b) **Emergency Operations.** If City deems it necessary, on an emergency basis, to serve the public during times other than Store Hours, Concessionaire shall remain continuously open and provide all services and sales activities in the facilities as required by City during the emergency period.

(c) **Federal Regulations.** If the Director deems it necessary for City and/or Concessionaire to remain in compliance with any federal statutes or regulations, Concessionaire shall remain continuously open and provide all services and sales activities in the facilities as required by the Director.

(3) **Temporary Closings.** Concessionaire shall not be deemed to have breached or be in default in respect of such operating requirement as a result of temporary closing of an Assigned Retail Location in connection with maintenance or repairs, renovation or remodeling, inventories, or other temporary closing in the normal course of the Concessionaire’s business provided that Concessionaire has received from City, prior to such temporary closing, permission for such temporary closing in writing.

(4) **Posting of Store Hours.** Concessionaire shall prominently post in each of the Assigned Retail Locations, in an area visible to customers, the current listing of the facility’s hours of operation.

I. **Concessionaire’s Personnel.** Concessionaire shall maintain a sufficient number of properly trained personnel to ensure that all customers of Concessionaire receive prompt and courteous service at all times.

(1) **Manager of Concessionaire’s Operations.** Concessionaire shall select and appoint a manager of Concessionaire’s operations at the Airport who is a qualified and experienced manager or supervisor vested with full power and authority with respect to the conduct of the operation of the retail concession at the Airport. Said manager shall have full authority to make day-to-day business decisions on behalf of Concessionaire, with respect to the concession operations contemplated by this Contract, and shall represent the Concessionaire in day-to-day business dealings with City, and coordinate all concession activities with City. Concessionaire shall cause such manager to be assigned a duty station or office in the Assigned Premises at which he or she shall be available during normal business hours. During the absence of such manager, Concessionaire will, at all times during Store Hours, assign or cause to be assigned, a qualified subordinate to assume and be directly responsible for the carrying out of his or her duties. Concessionaire shall submit information to the Director on how Concessionaire’s manager and qualified subordinate may be contacted seven (7) days per week, twenty-four (24) hours per day.

(2) **Staffing Levels.** Concessionaire shall recruit, train, supervise, direct, and deploy the number of representatives, agents, and employees (collectively “personnel”) necessary to promptly provide services to all customers and to meet all of the requirements of this Contract. Concessionaire shall be continuously responsible for actively managing
personnel levels to ensure that changes in passenger activity, due to schedule changes, load factor changes, or flight delays are adequately accommodated through increased levels of personnel.

(3) Conduct of Personnel. Concessionaire’s personnel shall be qualified, trained, courteous, informative, and helpful to the public. Concessionaire shall provide proper training of all employees and for the certification and/or licensing of employees in all areas of service as their duties might practically and legally require. Concessionaire shall ensure that all personnel refrain from any loud, boisterous, offensive, or inappropriate conduct and that they treat all patrons professionally, equally, and courteously, including, but not limited to forms of address, without regard to race, creed, color, national origin, ethnicity, age, disability, gender, or sexual orientation. Additionally, all personnel:

(a) Shall be actively working while on the sales floor in view of the public. No personnel shall be engaged in personal conversation (via telephone, etc.) or activities such as reading, writing, eating, etc.

(b) Shall be attentive to customer needs, display a positive attitude, and refrain from discussing personal issues/problems within the sales areas of the Assigned Retail Locations.

(c) Shall provide warm, friendly, smiling, prompt and courteous service.

(d) Shall be proficient with and trained in the required operations of all equipment and devices used in the facilities to facilitate sales (i.e., point of sale devices, credit card transaction equipment, etc.).

(e) Shall be familiar with all applicable policies of this Contract, City, and Concessionaire.

(f) All personnel engaged in sales activities shall speak and comprehend English, at a level appropriate to their duties.

(g) Shall, in the interest of job safety and to protect the general public, not engage in the duties required under this Contract while under the influence of controlled substances; Concessionaire shall provide and maintain a drug-free jobsite.

(h) Shall not smoke while performing the duties of this Contract; Concessionaire shall operate and maintain the Assigned Premises smoke-free and in accordance with the Airport’s policy on designated smoking areas.

(4) Concessionaire’s Employees’ Attire. The attire of Concessionaire’s personnel shall be neat, clean, of the highest character, and in keeping with that worn by personnel in similar first-class business in City. Personnel shall be attired in identifiable
dress and at all times display proper Airport identification as well as visible identification of their name and employer.

(5) **Additional Staff and/or Training Programs.** Any actual or perceived degradation in (a) the customer service requirements set forth in this Contract or other duties, rights, or responsibilities set forth in this Contract provided by Concessionaire in the course of conducting Concessionaire’s permitted uses or (b) the training and competence of Concessionaire’s personnel shall be conveyed to the Concessionaire and Concessionaire hereby agrees that it shall promptly institute training programs, and/or add additional adequately trained and capable staff to the satisfaction of City.

(6) **City Right to Object.** City shall have the right to object to the demeanor, conduct, and appearance of any employee of Concessionaire or any of its invitees or those doing business with it, whereupon Concessionaire shall take all steps necessary to remedy the cause of the objection. If requested by Concessionaire, City shall present its objections in writing and provide the opportunity to reply to the objections, such reply to be given consideration by City.

J. **Acceptance of Credit Cards.** Concessionaire and its Suboperators shall accept as payment for goods and services all nationally recognized credit or charge cards including, at a minimum, American Express, Master Card, VISA, and Discover, unless otherwise agreed to by the City in writing.

K. **Cash and Record Handling Requirements.** Concessionaire shall at all times observe cash and record handling procedures and maintain cash and record handling systems in accordance with written procedures submitted to and approved by City. City and Concessionaire agree that such written procedures may be revised from time to time, as mutually agreed upon by Concessionaire and City, upon the advent of generally accepted technological changes. The agreed-upon cash and record handling procedures and required systems shall be incorporated in the written policy and rules and regulations of Concessionaire that cover the accounting and handling of all sales and services transactions related to this Contract.

L. **Accounting Equipment.** Concessionaire shall install and use, or cause to be installed and used at each facility in the Assigned Retail Locations, cash registers, sales slips, invoicing machines, and other automatic accounting equipment or devices required to properly and accurately record the Gross Revenues on all sales, by type and location, services, and other business transactions made by Concessionaire under this Contract. Concessionaire’s point-of-sale equipment shall additionally have, at a minimum, all of the following features:

(1) A reasonable number of segregated category addresses to allow for accurate reporting of gross receipts by various merchandise categories;

(2) The capability of recording transactions by sequential control number to an audit tape or computer file;
The capability of printing a transaction history to tape or computer media by time of day, day, month, and year;

The capability of printing a customer receipt showing the amount due, amount tendered, and change due to the customer as well as the time and date of transaction and name and telephone number of Concessionaire;

A fee display of sufficient size and legibility to be readily visible to the customer during a transaction; and

A reasonable back-up and/or storage of data redundancy to assure sales data are always available and reliable.

M. Quality and Character of Merchandise.

(1) Quality of Merchandise. All merchandise offered for sale at Concessionaire's retail locations at the Airport shall be new, fresh, and of the highest quality, safe, sanitary, properly labeled, as advertised, conform to all applicable regulations, and shall be purchased from reliable sources. Concessionaire shall charge prices which are in compliance with the established pricing policy contained in this Contract. Any actual or perceived degradation in the quality of any merchandise shall be conveyed to Concessionaire, in writing, by the Director. Concessionaire agrees to correct any degradation in quality to City's reasonable satisfaction within four (4) business hours of such notification.

(2) Stocking of Merchandise. Concessionaire shall be required to have continuously in stock, on display, and available for sale a full and complete stock of merchandise consistent with Exhibit D. Concessionaire shall ensure that all such merchandise is at all times attractively and logically arranged and that all merchandise displays are fully stocked with product. Concessionaire will not display any merchandise or advertisements for merchandise that it does not have for sale and in stock in the Assigned Retail Locations during such display.

(3) Merchandise Displays. Concessionaire shall not place or install any racks, stands, "Trade Fixtures" (defined in Section 9.A below), pedestal signs or displays of products outside the boundaries of the Assigned Premises without the prior written approval of the City.

(4) City Right to Object to Sale of Certain Merchandise. Concessionaire shall upon written demand from City cease selling any item that City shall determine is objectionable for sale or display at the Airport and immediately remove such item from its inventory and not thereafter offer such item for sale at the Airport.

(5) Replacement and Refunds. Concessionaire shall, at all times during the term of this Contract and without any additional charge to customers, replace any merchandise determined by customers to be unsatisfactory, flawed, or defective or shall provide customers...
a full refund therefor provided said customers have complied with any applicable warranty and use provisions applicable to the merchandise.

N. **Street Pricing.** Concessionaire may not charge prices for any products or services that exceed the “street price”. The “street price” for any product or service sold by Concessionaire at the Airport shall be determined as follows:

1. **Merchandise with Pre-Printed Prices.** Merchandise affixed with pre-printed prices shall be sold at the pre-printed price.

2. **Merchandise without Pre-Printed Prices.** For merchandise without pre-printed prices, the maximum price that Concessionaire may charge for any product cannot be more than 10% higher than the price charged for the same or similar products or services at locations in City that are to be mutually agreed upon by City and Concessionaire during the Development Plan approval process set forth in Section 3.C of this Contract.

O. **Deliveries.** Concessionaire shall receive and take all deliveries of money, supplies, and merchandise at such times, in such locations, and by such routes approved by the Director. Concessionaire shall be responsible for the return of all pallets, storage containers, and other equipment belonging to its suppliers. Concessionaire shall monitor the movement of deliveries of merchandise to avoid conflict with other Airport functions and shall coordinate its use of the receiving docks with the use by other Airport concessionaires or tenants, as determined by City. Any containers moving through the public areas or common areas must be covered or otherwise protected and all carts used to move supplies and equipment must be approved by City. Emergency deliveries may be made at other times subject to prior approval of the Director or his or her designee.

P. **Payment of Taxes and Permit and License Fees.** Concessionaire shall promptly pay all lawful general taxes, special assessments, excises, license fees, and permit fees, of whatever nature, applicable to its operation at the Airport and Concessionaire shall obtain and maintain current all local, state, or federal licenses required to conduct its business at the Airport. Concessionaire shall not permit any of said taxes, assessments, excises, fees, or charges to become delinquent.

Q. **Services Nondiscriminatory.** Concessionaire shall provide all services authorized hereunder to its customers and patrons upon a fair, equal, and nondiscriminatory basis and charge fair, reasonable, and nondiscriminatory prices; provided, however, Concessionaire may make or give such reasonable and nondiscriminatory discounts, rebates, or other similar price reductions as it may desire to its employees.

R. **Customer Comments and Complaints.** Concessionaire shall be required to respond to any customer complaints in writing within ten (10) days of receipt, with a good faith effort to explain, resolve, or rectify the corresponding problem. Concessionaire shall provide the Director with a copy of any complaint received the same day it is received by Concessionaire and shall provide the Director with a copy of the written response the same day it is sent. Customer complaints received by City shall be forwarded to the Concessionaire, who shall respond utilizing the above procedure. Concessionaire shall be required to implement and utilize a customer comment
system (cards, telephone, web, etc.). All such completed comments and Concessionaire’s summary reports shall be provided to City within ten (10) days of receipt and/or completion.

S. Compliance with All Applicable Laws and Limitations of this Contract. Concessionaire shall comply with all applicable local, state, and federal laws and regulations, obtain and maintain at all times its own expense, all licenses, certificates, and any other such documents necessary for the operation of its concession at the Airport. Concessionaire shall not permit any unlawful practice to be committed on the Assigned Premises. Concessionaire shall not use or permit the use of the Assigned Premises for any purpose not authorized by this Contract or that in any way which disturbs other tenants or concessionaires at the Airport. In addition, Concessionaire shall comply with the following:

(1) Health and Safety Standards. Concessionaire shall ensure that all requirements of City, county, and state boards of health, and health and sanitary regulations adopted by the City, county, state, or any governmental legal authority, are fully complied with in all facilities. Concessionaire shall give access for inspection purposes to any duly authorized representatives of such governing bodies and to City. Concessionaire shall provide the Director with copies of all inspection reports within forty-eight (48) hours of receipt. This paragraph does not require Concessionaire to waive any applicable attorney-client or attorney work product privileges, or otherwise to waive any legal rights it may possess.

(2) Concessionaire’s Standards. Concessionaire shall submit to City a copy of any of its own customer service, operations, etc. standards, plans, and/or manuals, and shall ensure continuous adherence to Concessionaire’s own standards in addition to City’s standards as set forth herein.

T. Failure to Comply with Operational Standards. Concessionaire acknowledges City’s desire to provide the public and air traveler with the level and quality of service as described herein. Accordingly, City may, in its sole discretion, assess a fee of $100 per occurrence for a violation of this Contract as liquidated damages for such violation. Concessionaire and City agree that the fee is reasonable, and Concessionaire further agrees to pay to City the fee upon the occurrence of the violation and upon written demand by City. Concessionaire further acknowledges the fee is not an exclusive remedy and City may pursue any other remedies at its sole discretion. Except for violations of requirements regarding operating hours and health code violations, which shall accrue immediately and without notice upon violation, other fees shall not be assessed unless the violation continues for more than three (3) calendar days after City has given to Concessionaire written notice of the violation; provided, however, after City has given Concessionaire notice of a violation of the same operating requirement more than twice during any twelve (12) month period, commencing upon the first notice of violation of said operating requirement, the fee shall be immediately assessed with no opportunity to cure. Further, after two (2) violations of the same operating requirement within any twelve (12) month period, commencing upon the first notice of violation of said operating requirement, City reserves the right, in its sole discretion, to deem said repeated violations a default hereunder and to seek any other remedies available to it under this Contract including, but not limited to, termination of this Contract.

Retail Merchandise Concession Contract – Dallas Love Field
04/15/10
SECTION 5. CONCESSION FEES

A. Consideration. In consideration for the rights and privileges granted by City to Concessionaire under this Contract, Concessionaire shall pay to City the fees described in this Section.

B. Definition of Gross Revenues. “Gross Revenues” shall mean all monies or other consideration received or receivable, paid or payable, cash or credit, regardless of collection in the case of the latter, to Concessionaire and any of its Suboperators on all sales of products and services, whether retail or wholesale, derived from the operation of its retail concession at the Airport and shall include all transactions, whether placed by telephone, via internet, in person, or by mail (including e-mail) and all charges or other fees charged by Concessionaire, regardless the place or time of actual payment, without any deductions for credit card discounts or thefts, except for the following:

1. Taxes. Any federal, state or municipal taxes separately stated and collected from customers and directly payable to the respective taxing authority by Concessionaire;
2. Refunds. Verifiable refunds made by Concessionaire to customers because of unacceptable or unsatisfactory goods or services; and

C. Percentage Fee or Minimum Annual Guarantee Payments. During each year of the Primary Term and the Renewal Term, if any, in consideration for the rights and privileges granted Concessionaire under this Contract, Concessionaire shall pay to City the greater of either:

1. Percentage Fee. The sum of the following percentages of Gross Revenues during each year (“Percentage Fee”):
   a. 16% of annual Gross Revenues from the sale of merchandise from Concessionaire’s facilities designated as news and gifts stores on Exhibit A; and
   b. 14% of annual Gross Revenues from the sale of merchandise from Concessionaire’s facilities designated as specialty stores on Exhibit A.

OR

2. Minimum Annual Guarantee. The following minimum annual guarantee (“MAG”):
   a. First Year. In the first year of the Primary Term the MAG is $0.21 per “Enplaned Passenger”. “Enplaned Passenger” means any local originating,
connecting, or through passenger that boards a flight from the Airport, excluding passengers who have disembarked and re-boarded for the purpose of continuing their journey on the same aircraft with the same flight number.

(b) Years Two-Twelve. In years two (2) through twelve (12) of the Primary Term, the MAG is 90% of the prior year’s total Percentage Fee; provided, however, in no event shall the MAG be less than the MAG during the first year of the Primary Term.

(c) Renewal Term. If City grants Concessionaire a Renewal Term, the MAG shall be the greater of (i) the MAG in effect during the year immediately preceding the Renewal Term or (ii) 90% of the Percentage Fee during the year immediately preceding the start of the Renewal Term.

D. Percentage Fee Payments during the Interim Term. During the Interim Term, Concessionaire shall not be required to pay the MAG stated in Section 5.C(2) above; however, Concessionaire shall pay City the Percentage Fee described in Section 5.C(1) above and all other rents, fees, and charges required under this Contract.

E. Possibility for Greater Percentage Fee and MAG. If Concessionaire is awarded the right to operate the “Second Retail Concession”, as defined in Section 8 of this Contract, and Concessionaire has proposed to pay a greater Percentage Fee than the Percentage Fee stated in Section 5.C(1) above, Concessionaire shall be required to pay City the greater Percentage Fee stated in its proposal for the Second Retail Concession instead of the Percentage Fee defined in Section 5.C(1) above.

F. Utilities. Concessionaire shall pay City for any utility separately metered and consumed at or delivered to the Assigned Premises. The Assigned Premises shall be sub-metered.

G. Rent for Assigned Support Space. City shall charge Concessionaire no more than $40.00 per square foot for its Assigned Support Space.

H. Marketing Fees. City shall not charge Concessionaire marketing fees in excess of 1% of Concessionaire’s yearly Gross Revenues.

SECTION 6. PAYMENTS AND STATEMENTS

A. Payment Obligations Generally. Concessionaire covenants to pay all compensation and charges under this Contract independent of any obligation of City. No breach of this Contract by City shall relieve Concessionaire of its obligation and duty to pay all rents, charges, and fees when due under this Agreement. Payments required to be made by Concessionaire to City under this Contract shall be made in lawful money of the United States, free from all claims, demands, set-offs, or counter-claims of any kind and shall be payable to and at:
City of Dallas  
Department of Aviation  
Love Field Airport Terminal Building  
8008 Cedar Springs Road  
Lock Box 16  
Dallas, Texas 75235  

B. **MAG Payment Due Date.** On or before the first day of each month of during the Primary Term and Renewal Term, if any, Concessionaire shall pay to City one-twelfth (1/12) of the MAG as calculated in Section 5.C(2) of this Contract. For purposes of the monthly MAG payments during the first year of the Primary Term only, the monthly MAG payment shall be estimated to equal one-twelfth (1/12) of the product of the number of Enplaned Passengers during the twelve (12) months immediately preceding the start of the Primary Term multiplied by $0.21.

C. **Percentage Fee Payment Due Date.** During the Interim Term, Concessionaire shall pay the Percentage Fee and any other rentals and fees due City, on or before the twentieth (20th) day of each month. During the Primary Term and Renewal Term, if any, Concessionaire shall pay City the Percentage Fee, to the extent that such percentage payment exceeds the monthly installment of the MAG, on or before the twentieth (20th) day of each month.

D. **Monthly Statement of Gross Revenues.** On or before the twentieth (20th) day of each month during the Term of this Contract, starting on the second month of the Term, and at the same time that Concessionaire submits its Percentage Fee payment, Concessionaire shall submit to City a copy of an accurate statement of its Gross Revenues for the preceding month in such format as required by City.

(1) **Contents of Monthly Statement.** The monthly report shall state Concessionaire’s total Gross Revenues, total “DBE” (defined in Section 21) Gross Revenues, Gross Revenues by Suboperator, Gross Revenues by category (e.g., newspapers, gifts, bottled water), and Gross Revenues by location, the number of “bottles of water” (defined in Section 8) sold, and such other information as may be required by City.

(2) **Certification of Monthly Statement.** The monthly statement shall be certified by the signature of a responsible accounting officer of Concessionaire.

E. **Late MAG Payment, Percentage Fee Payment, or Monthly Statement of Gross Revenues.** Payment of the MAG shall be considered delinquent if it has not been received by the tenth (10th) day of the month due. The Percentage Fee payment and monthly statement of Gross Revenues due will be considered late if not received by the twenty-fifth (25th) day of the month it is due. Concessionaire shall be assessed interest on the amount owed City, in accordance with Section 2-1.1 of the Dallas City Code, for each day that any payment is delinquent. Any interest assessment is in addition to, and not in lieu of, the then owned payment, if any, which shall remain due and payable. Any delinquent charge shall be in addition to the right to terminate this Contract for delinquent payments as granted to City in this Contract.
F. Interest on Payments Delinquent Thirty-Days or More. Without waiving any other right of action available to City in the event of default in payments due under this Contract, if Concessionaire is delinquent for a period of thirty (30) days or more in paying to City any sum due and owing pursuant to this Contract, Concessionaire shall pay to City interest thereon at the rate of 10% per annum from the date such item was due and owing and until full payment (plus interest) has been paid. City reserves the right, in its sole discretion, to forego interest charges in whole or in part on those contested items disputed in good faith by Concessionaire.

G. Overpayments. In the event Concessionaire’s aggregate payments to City for any year exceed the MAG and Percentage Fee due for that year, Concessionaire shall be entitled to a credit for such overpayment in the next year.

   (1) Annual True-ups. The first determination of overpayment shall be made twelve (12) months after the commencement of the Primary Term and shall be repeated every twelve (12) months thereafter until the end of the Primary Term or Renewal Term, if any.

   (2) Calculation of Overpayments. A credit for overpayment shall be the difference between the amount paid by Concessionaire and the greater of the MAG or the Percentage Fee for the year at issue. Any overpayment shall be credited to the next payments due City from Concessionaire.

H. Payment for Utilities. Payment for utilities provided to the Assigned Premises shall be due within ten (10) days after Concessionaire’s receipt of an invoice from City.

I. Other Rents, Fees, and Charges. Unless otherwise stated in this Section, all other rents, fees, and charges due from Concessionaire under this Contract shall be payable to City on or before the first day of each month during the Term.

SECTION 7. ANNUAL PERFORMANCE REVIEW

A. Within ninety (90) days of the end of each year of the Term, the Director and Concessionaire shall meet to review the financial, customer service, and operational performance of each of the Assigned Retail Locations during the prior year. During the course of said review, the Director may determine, in his or her sole discretion, while taking into consideration those factors that may impact Concessionaire’s performance including, but not limited to, construction in the Terminal and changes in Airport security procedures, that the performance of any of the Assigned Retail Locations is unsatisfactory if an Assigned Retail Location meets any one or more of the following conditions during the prior year:

   (1) Sales per Enplaned Passenger were less than 80% of the “Projected Sales per Enplaned Passenger” for an Assigned Retail Location. “Projected Sales per Enplaned Passenger” for an Assigned Retail Location shall equal the projected sales for such location set forth in Exhibit D divided by 5,261,000;
(2) Sales per Enplaned Passenger were less than 85% of Sales per Enplaned Passenger for the same Assigned Retail Location during the year two years prior;

(3) Score(s) on secret shopper survey(s) conducted by City or its designee(s), if any, were less than 80% of the maximum achievable score(s) for such survey(s);

(4) Score(s) on operational survey(s) conducted by City or its designee(s), if any, were less than 80% of the maximum achievable score(s) for such survey(s); or

(5) The result(s) of passenger satisfaction survey(s) conducted by City or its designee, if any, indicate that a statistically significant majority of passengers assign an Assigned Retail Location a rating of three (3) or less (on a scale of one (1) to five (5)).

B. In the event that the Director determines, based on the performance criteria as specified in this Section 7, that any of the Assigned Retail Locations performed in an unsatisfactory fashion during the prior year, then within thirty (30) days of written notice of such determination, Concessionaire shall prepare and submit to the Director, for his or her approval, a “Remediation Plan” (defined below) to improve the performance of all such Assigned Retail Locations. The “Remediation Plan” means a plan including, but not be limited to, proposed remedial activities such as employee training, staffing changes, merchandise and service modifications, facility refurbishment and repair, and/or replacement of concept or brand. Upon approval by the Director, Concessionaire agrees to diligently implement the approved Remediation Plan and further agrees to submit to the Director monthly reports on the progress of implementation of the approved Remediation Plan. If the approved Remediation Plan includes the replacement of a concept or brand, then City and Concessionaire will enter into good faith negotiations to consider a replacement brand. If such concept or brand replacement is mutually agreed, the reimbursement for unamortized capital and the capital investment required for such brand substitution will be a component of such good faith negotiations, based on the initial “Capital Investment” (defined in Section 9 below) of the unit, the unamortized capital, and the capital investment required for the concept or brand replacement.

C. In the event the Director determines, based on the performance criteria as specified in this Section 7, any of the Assigned Retail Locations has performed in an unsatisfactory fashion during two (2) or more consecutive years, City reserves the right to require Concessionaire to replace the underperforming concept or brand. Within ninety (90) days of written notice of the City’s intention to require such replacement, Concessionaire shall submit to the City a proposal for such brand or concept replacement plan. Such plan shall include, but not be limited to, a detailed description of the brand or concept, capital expense required to re-brand, sales projections, and the specific timetable to replace the brand. City reserves the right to approve or deny the replacement plan and require Concessionaire to resubmit another replacement plan. The decision to approve or deny the replacement plan is in the City’s sole discretion.

SECTION 8. SALES OF BOTTLED WATER
A. Sales of Bottled Water Generally. In order to ensure high levels of customer satisfaction at the Airport, Concessionaire and the operator of the "Second Retail Concession" (defined below) shall have the right to sell bottled water at its news and gift store locations subject to Concessionaire's compliance with this Section 8.

B. Applicability of this Section. During all or a portion of the Interim Term of this Contract, Concessionaire will operate a retail concession in the existing Airport terminal building; Concessionaire may sell bottled water at its news and gift store locations in the existing Airport terminal building under the terms of the First Amendment to the Love Field Retail Merchandise Concession Contract by and between City and Concessionaire, approved by the City Council on April 28, 2010, by Resolution No. 10-_____. This Section 8 applies only to the retail concessionaires’ (Hudson and the operator of the Second Retail Concession) sales of bottled water in the Terminal.

C. Definitions Related to Sales of Bottled Water.

1. Base Amount. The "Base Amount" is the number of bottles of water that "DLFJV" (defined below) and the operator of the "Second Food and Beverage Concession" (defined below) would have been expected to sell in the Terminal in a calendar year. The Base Amount shall be calculated by multiplying the actual number of enplanements in the Terminal for a calendar year (pro-rated for the first year from the Commencement Date to December 31st of that same year and for the last year from January 1st to the expiration or earlier termination of the Contract) by the "Water Ratio" (defined below).

2. Bottle of Water. A "bottle of water" is a bottle or container that holds twenty (20) ounces or less of water, including, but not limited to, enhanced, flavored, and sparkling water, sold at the Airport. If water is sold at the Airport in a bottle or container that holds more than twenty (20) ounces of water, the number of ounces of water in such bottle or container shall be divided by twenty (20) to determine the number of bottles of water such bottle or container is equivalent to.


4. Second Food and Beverage Concession. The "Second Food and Beverage Concession" means the food and beverage concession that is separate from the food and beverage concession operated by DLFJV and which is awarded to a food and beverage concession operator following a RFP process; provided, however, DLFJV is not precluded from being awarded the Second Food and Beverage Concession.

5. Second Retail Concession. The "Second Retail Concession" means the retail concession that is separate from the retail concession operated by Hudson under this Contract and which is awarded to a retail concession operator following a RFP process; provided, however, Hudson is not precluded from being awarded the Second Retail Concession.
(6) DLFJV. "DLFJV" means Dallas Love Field Joint Venture, the only food and beverage concession operator doing business at the Airport prior to the Effective Date. DLFJV shall also operate a food and beverage concession at the Airport coterminous with Concessionaire’s operation of its retail concession granted under this Contract and may also operate the Second Food and Beverage Concession if it is awarded to them.

(7) Water Ratio. The “Water Ratio” is 0.10625. The Water Ratio shall be constant until the expiration of the Term of this Contract.

D. Fees on Bottled Water. Hudson and the concessionaire operating the Second Retail Concession shall pay to DLFJV the fees stated below; provided, however, Hudson and the concessionaire operating the Second Retail Concession shall only pay DLFJV a fee on the actual number of bottles of water each concessionaire has sold:

(1) Sales of Bottled Water Less Than or Equal to the Base Amount. If the combined sales of bottled water by Hudson, the concessionaire operating the Second Retail Concession, DLFJV, and the concessionaire operating the Second Food and Beverage Concession are less than or equal to the Base Amount, Hudson and the concessionaire operating the Second Retail Concession shall each pay DLFJV $1.47 per bottle of water sold by each.

AND

(2) Sales of Bottled Water Greater Than the Base Amount. If the combined sales of bottled water by Hudson, the concessionaire operating the Second Retail Concession, DLFJV, and the concessionaire operating the Second Food and Beverage Concession exceed the Base Amount AND

(a) The combined sales of bottled water by DLFJV and the concessionaire operating the Second Food and Beverage Concession are less than the Base Amount, Hudson and the concessionaire operating the Second Retail Concession shall each pay DLFJV $1.47 per bottle of water for each retail concessionaire’s proportionate share of bottles of water sold below the Base Amount AND $0.62 per bottle of water for each remaining bottle of water sold. For purposes of this Section 8.D(2)(a), the proportionate share of bottles of water sold below the Base Amount by each retail concessionaire shall be a ratio of the bottles of water sold below the Base Amount by Hudson or the concessionaire operating the Second Retail Concession, as applicable, to the total number of bottles of water sold by both Hudson and the Second Retail Concession below the Base Amount.

OR

(b) The combined sales of bottled water by DLFJV and the concessionaire operating the Second Food and Beverage Concession exceed the Base Amount, Hudson and the concessionaire operating the Second Retail Concession shall each
pay DLFJV $0.62 per bottle of water sold.

E. Examples of How the Calculations Work.

1. **Base Amount Calculation:** If there are 4,203,605 enplanements at the Airport during the period January 1, 2015 to December 31, 2015, the Base Amount would be 446,633 (4,203,605 x 0.10625).

2. **Fee Calculation Example 1.** If during the period January 1, 2015 to December 31, 2015, the Base Amount is calculated to be 446,633 and DLFJV sold 200,000 bottles of water, the concessionaire operating the Second Food and Beverage Concession sold 200,000 bottles of water (a total of 400,000 bottles of water sold by the food and beverage concessionaires), Hudson sold 25,000 bottles, and the concessionaire operating the Second Retail Concession sold 25,000 bottles of water, Hudson and the concessionaire operating the Second Retail Concession would each pay DLFJV $1.47 for each of the 23,316.5 bottles of water sold and $0.62 for each of the 1,668.5 bottles of water sold.

3. **Fee Calculation Example 2.** If during the period January 1, 2015 to December 31, 2015, the Base Amount is calculated to be 446,633 and the total number of bottles of water sold by both food and beverage concession operators is 447,000, Hudson sold 25,000 bottles, and the concessionaire operating the Second Retail Concession sold 25,000 bottles of water, Hudson and the concessionaire operating the Second Retail Concession would each pay DLFJV $0.62 on each of the 25,000 bottles of water sold per retail concessionaire.

4. **Fee Calculation Example 3.** If during the period January 1, 2015 to December 31, 2015, the Base Amount is calculated to be 446,633 and both food and beverage concession operators sold a total of 400,000 bottles of water, Hudson sold 10,000 bottles, and the concessionaire operating the Second Retail Concession sold 10,000 bottles of water, Hudson and the concessionaire operating the Second Retail Concession would each pay DLFJV $1.47 for each of the 10,000 bottles of water sold per retail concessionaire.

F. **Fee Calculation.** On or before the twentieth (20th) day of the month, City will receive monthly statements from Hudson, as required under Section 6 of this Contract, the concessionaire operating the Second Retail Concession, DLFJV, and the concessionaire operating the Second Food and Beverage Concession. Each monthly statement will include the number of bottles of water sold by each concessionaire at the Airport. City shall rely on the bottled water sales information provided by each concessionaire in the monthly statements to provide, on or before the thirtieth (30th) day of the month, Hudson, the concessionaire operating the Second Retail Concession, and DLFJV with a calculation of the bottled water fee to be paid, if any, by Hudson and the concessionaire operating the Second Retail Concession to DLFJV.

G. **Payments to DLFJV.** Hudson and the concessionaire operating the Second Retail Concession shall have five (5) days from receipt of the bottled water fee calculation from City to pay DLFJV the bottled water fee, if any.
H. Fee Calculation Disputes. The failure of Hudson, the concessionaire operating the Second Retail Concession, or DLFJV to contest City’s fee calculation in writing within five (5) days of receipt of the calculation shall be deemed a waiver of each concessionaire’s right to protest the fee calculation and/or payment. Protest of the fee calculation by any concessionaire shall not relieve Hudson or the concessionaire operating the Second Retail Concession from the obligation to pay DLFJV, if required, in the amount and at the time required in Sections 8.F and 8.G. The Director shall make a determination on the fee contestation within five (5) days of receipt, which determination shall be final and binding on Hudson, the concessionaire operating the Second Retail Concession and DLFJV. Any difference between City’s original calculation and the Director’s determination after a fee contestation shall be settled between Hudson, the concessionaire operating the Second Retail Concession, and/or DLFJV within five (5) days of the Director’s determination.

I. City Not Responsible for Fees on Bottled Water. Nothing in this Contract shall be construed as giving Hudson, the concessionaire operating the Second Retail Concession, DLFJV, or the concessionaire operating the Second Food and Beverage Concession any right to payment from City for any fees on bottled water sold at the Airport.

SECTION 9. IMPROVEMENTS TO THE ASSIGNED PREMISES


(1) Capital Investment. “Capital Investment” means all reasonable direct costs for work performed and materials furnished for improvements made to the Assigned Premises including architectural and engineering fees, fixed improvements, fixtures, equipment, electrical, and HVAC improvements; however, Capital Investment shall not include: (a) payments for architectural, engineering, professional, and consulting services which exceed 15% of the total of the costs of “Fixed Improvements” and “Trade Fixtures”, as each term is defined below; (b) interest and other financing charges; or (c) Concessionaire’s own overhead expenses (except that Concessionaire may include the reasonable cost of paying its own employees to perform architectural, engineering, professional, or consulting services, subject to the 15% limit set forth in (a) above).

(2) Fixed Improvements. “Fixed Improvements” means all structural improvements made by Concessionaire pursuant to this Section, including but not limited to ceiling, wall and floor finishes; power, water, and other utility conductors; and light fixtures, all of which are permanently affixed to the Assigned Premises.

(3) Personal Property. “Personal Property” means all furniture and other portable property furnished and used by Concessionaire in its operations under this Contract.

(4) Trade Fixtures. “Trade Fixtures” means all appliances, signage, and any other major equipment with a useful life in excess of three (3) years, installed by Concessionaire for use in its operations under this Contract. Although Trade Fixtures may be affixed to the
Assigned Premises, Trade Fixtures may be removed from the Assigned Premises as long as such removal does not cause structural damage to the Assigned Premises.

B. **Minimum Initial Capital Investment.** During the Interim Term, Concessionaire shall make an initial “Capital Investment” in the Assigned Retail Locations of a minimum of $350.00 per square foot.

C. **Minimum Mid-Primary Term Capital Investment.** During the sixth year of the Primary Term, in order to refurbish the Assigned Retail Locations to like-new condition, Concessionaire shall make a Capital Investment in the Assigned Retail Locations of a minimum of $65.00 per square foot.

D. **Submission and Approval of Plans and Specifications.** Prior to Concessionaire’s commencement of any construction activities on the Assigned Premises, Concessionaire shall submit plans and specifications to the Director for review and approval. No construction work shall commence until the Director has approved the plans and specifications and has issued a notice to proceed letter to Concessionaire.

1. **Submission of Plans and Specifications.** Concessionaire shall submit final plans and specifications (three sets are required) for the initial Capital Investment improvements to be completed on the Assigned Premises during the Interim Term at least ninety (90) days prior to the date that any portion of the Assigned Premises is delivered to Concessionaire for construction and at least thirty (30) days prior to the end of the sixth year of the Primary Term, Concessionaire agrees to submit final plans and specifications (three sets are required) for the required mid-term Capital Investment refurbishment of improvements to be completed on the Assigned Premises during the Primary Term. The Director may, for good cause presented by Concessionaire, extend the time to submit final plans and specifications. With the Director’s approval, final plans and specifications may be submitted piecemeal in accordance with the phasing schedule for the LFMP. Plans and specifications must include all of the following at a minimum:

   a. A completion date for each component site of the Assigned Premises.

   b. Architectural and engineering drawings, including furniture plans showing details of space occupancy, floor plans, and reflected ceiling plans, partition and door location plans, telephone and electrical plans noting any special lighting and power load requirements, environmental design criteria and all security and communications information, detail plans and finish plans.

   c. Design detail that includes detailed storefront sketches, color, and materials for walls, ceiling and floor finishes, graphics, and furniture, fixture, and equipment selections.

   d. Installation of electrical sub-meters within the Assigned Premises.
(e) Any other construction or detail reasonably requested by City.

(2) Review and Approval of Plans and Specifications. Within ten (10) days after receipt of any plans and specifications from Concessionaire, the Director shall either approve or disapprove the plans and specifications submitted by Concessionaire. The approval by the Director of any plans and specifications refers to the conformity of such plans any specifications to the general architectural and aesthetic plan for the Assigned Premises and such approval shall not be unreasonably withheld. The plans and specifications are not approved for compliance with applicable laws or codes and neither the Director nor City, acting through its Director, by approving such plans and specifications, assumes any liability or responsibility for any defect in any structure or improvement constructed according to such plans and specifications. The Director shall have the right to reject any designs submitted, and shall state the reason for such action. In the event the Director does not approve any plan or specification, Concessionaire has fourteen (14) days to resubmit any necessary modifications or revisions. After the Director gives his or her approval, changes or alterations to the plans and specifications may only be made with the written consent of the Director.

E. Construction on the Assigned Premises. With respect to any of Concessionaire’s construction activities on the Assigned Premises, Concessionaire agrees as follows:

(1) Upon the issuance of the official notice to proceed letter by the Director, Concessionaire shall immediately begin the construction and installation of the approved improvements to the specific site or sites to which such notice to proceed applies. Concessionaire agrees to diligently pursue completion of such improvements in accordance with the completion date stated in its plans and specifications.

(2) Any delay in construction of any improvements due to fire, earthquake, wars, acts of City or one of City’s contractors, or any other calamity beyond the control of Concessionaire shall extend the completion date. Concessionaire shall not be entitled to any compensation or damages as a result of any such delay.

(3) Except as provided in Section 9.E(2), if an activity falls behind schedule, Concessionaire shall schedule crews to a size to ensure that the construction activity will be completed by the agreed to completion date, at no cost to City.

F. Performance and Payment Bonds. Prior to the commencement of any construction on the Assigned Premises, Concessionaire shall cause its contractor(s) to obtain and deliver to City, at no cost to City, performance and payment bonds, as follows:

(1) Performance Bond. Concessionaire’s contractor(s) shall obtain a performance bond in a sum equal to 100% of the anticipated amount of the construction contract for any improvements. The performance bond shall be issued by a corporate surety licensed to issue bonds in the State of Texas and otherwise acceptable to City and shall be drawn on a form as approved by City. The bond shall name City as a joint
obligee and shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with the approved plans and specifications and shall indemnify and hold harmless City against any losses and liability, damages, expenses, claims, and judgments caused by or resulting from any failure of contractor to perform completely the work described therein.

(2) Payment Bond. Concessionaire’s contractor(s) shall obtain a payment bond with the Concessionaire’s contractor(s) as principal(s), in a sum equal to 100% of the amount of the construction contract for any improvements. The payment bond shall name City as a joint obligee and shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of any construction contract.

G. Documentation to be Provided by Concessionaire upon Completion of Construction. Upon completion of any Capital Investment obligations required under this Contract, Concessionaire shall provide the City with all of the following:

(1) Within thirty (30) days following the completion of the improvement obligations: one reproducible copy of as-built drawings for each site.

(2) Within sixty (60) days following the completion of the improvement obligations, all of the following:

(a) A statement certified by Concessionaire’s chief financial officer specifying the final total cost of all improvement obligations required under this Contract.

(b) A certification that all improvements have been constructed in accordance with the approved plans and specifications, and in strict compliance with all applicable building codes, laws, rules, ordinances, and regulations.

(c) Certified proof demonstrating that no liens exist on any or all of the Assigned Premises, including, but not limited to, a waiver of lien from all construction contractors and signed releases from all sub-contractors that indicate receipt of payment in full for all work performed or furniture, fixtures, or supplies delivered.

H. Installation of Non-Structural Improvements. Concessionaire shall have the right to install or erect non-structural improvements in the Assigned Premises; provided however, that all such alterations be commenced only after plans and specifications for such non-structural improvements have been submitted to and approved by the Director. Any such alterations or repairs shall be without cost to the City, completed within the time specified in the Director’s written approval, and with the least disturbance possible to the operation of the Airport, to the Airport tenants, and to the public.
I. Prohibition on Liens. Concessionaire agrees not to permit any mechanic’s lien, materialman’s lien, or any other lien to be placed or foreclosed upon the Assigned 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.

J. Conformance with All Laws. All structural improvements, equipment, and interior design and decor constructed or installed by Concessionaire, its agents, employees, Suboperators, or contractors, including the plans and specifications, shall conform to all applicable local, state, and federal statutes, ordinances, building codes, rules, and regulations.

K. Failure to Meet Minimum Capital Investment. If the actual Capital Investment improvement costs, as certified by the Concessionaire, are less than the minimum expenditures required in Sections 9.B or 9.C, as applicable, Concessionaire agrees to pay to City, within thirty (30) days of such determination, the difference between the actual cost and the applicable required minimum expenditure. Any amounts paid to City as a result of this provision shall not be deemed a cost of the Capital Investment obligations for any purpose under this Contract nor shall it be deemed payment of any Percentage Fee, MAG, or other rental payment due under this Contract.

L. Ownership of Fixed Improvements. All Fixed Improvements in the Assigned Premises shall be and remain the property of Concessionaire or its Suboperators until the expiration of the Primary Term or Renewal Term, if any, or upon termination of this Contract, whether by expiration, cancellation, forfeiture, or otherwise, whichever first occurs, at which time the Fixed Improvements shall become the property of City. Any Trade Fixtures and Personal Property of Concessionaire and its Suboperators shall remain the property of Concessionaire or its Suboperators, unless otherwise provided in this Contract.

M. Prohibition on Removal or Demolition of Improvements. Concessionaire shall not remove or demolish, in whole or in part any improvements upon the Assigned Premises without the prior written consent of the Director, which consent may be conditioned upon the obligation of Concessionaire to replace the same by a specified improvement. The Director shall not withhold consent unreasonably, shall not impose unreasonable conditions, and shall state any reasons for withholding consent.

SECTION 10. DAMAGE OR DESTRUCTION OF ASSIGNED PREMISES

A. Notice and Options. If all or a portion of the Assigned Premises are damaged or destroyed by fire, explosion, the elements, or other casualty, at the sole option of City, the affected portions of the Assigned Premises may be repaired or reconstructed at no cost to Concessionaire, subject to the limits as hereafter set forth. The Director shall notify Concessionaire within thirty (30) days of such occurrence of City’s intentions to repair or reconstruct or not to repair or reconstruct; provided, however, if said damage is caused by the negligent or wrongful act or omission to act of Concessionaire, its Suboperators, agents, or employees and City elects to repair or reconstruct, Concessionaire shall be responsible for
reimbursing City for the cost and expense incurred in such repair, to the extent that the insurance proceeds received by City are not sufficient to pay the cost and expense of repair.

B. Damage. Subject to the provisions of Sections 10.A above and 10.D below, if the damages are so extensive as to render the Assigned Premises or a portion thereof un-tenantable, and notice of intent to repair or reconstruct has been given by City, an appropriate portion of the MAG payable under this Contract shall abate from the time of the damage until such time as the damaged premises are fully restored and certified by City as again ready for use; provided, however, that if said damage is caused by the negligent or wrongful act or omission to act of Concessionaire, its Suboperators or the agents or employees of either, said fees and charges will not abate.

C. Destruction. In the event all or a portion greater than 50% of the Assigned Retail Locations is completely destroyed by fire, explosion, the elements, public enemy, or other casualty, or are so damaged that they are un-tenantable and notice of intent not to repair or reconstruct has been issued, City or Concessionaire may cancel this Contract in its entirety as of the date of such destruction. Notwithstanding the foregoing, if such destruction is a result of the negligent or wrongful act or omission to act of Concessionaire, its Suboperators, agents, or the employees of either, Concessionaire shall not have the right to cancel this Contract and City may, in its discretion, require Concessionaire to repair and reconstruct said premises within six months of such destruction and pay the cost therefor.

D. Limits of City’s Obligations Defined. It is understood that, in the application of the foregoing provisions, City’s obligations shall be limited to: (1) repair or reconstruction of the Assigned Premises to the same extent and of equal quality as Concessionaire obtained from City and (2) the extent of insurance proceeds available to City for such purposes. Fixed Improvements, Trade Fixtures, redecoration and replacement of Personal Property, equipment, and supplies shall be the responsibility of Concessionaire and any such redecoration and refurnishing/re-equipping shall be equivalent in quality to that originally installed.

SECTION 11. RIGHT TO INSPECT BOOKS, AUDIT, AND CPA OPINION

A. City’s Right to Inspect Concessionaire’s Books. During the term of this Contract, Concessionaire shall maintain or cause to be maintained, true, accurate, and in a standard accounting manner, records of business conducted under this Contract. Concessionaire further agrees that City shall have the right at all reasonable times to inspect and copy such books, records, and receipts and to designate a duly authorized representative to audit, check, or investigate the auditing procedures and accounting records, including daily, weekly, and monthly receipts accruing from said business; and

B. City Audit. The Director shall have the right, at any time, upon reasonable notice to Concessionaire, to cause an audit to be made of the books and records of Concessionaire that relate to its operations pursuant to this Contract for a period of at least five (5) years after the end of the year to which the books and records pertain. If, as a result of such audit, it is established that
Concessionaire is liable to City for the payment of any sum, Concessionaire will, upon written demand from the Director, pay such sum to City, together with any interest at the rate specified by any applicable City ordinance. In the event that there is no applicable City ordinance in effect, then any such sum shall earn interest at the rate of 10% per year, from the date that the sum should have been paid. Further, if such audit establishes that Concessionaire has understated revenues which it collected or was required to collect by more than 2% for any thirty-day period, then the entire expense of the audit shall be borne by Concessionaire. City’s rights under this Section shall survive the termination of this Contract.

C. **Opinion of Certified Public Accountant.** Within ninety (90) days of the end of the each year of this Contract, and within ninety (90) days of the Contract’s expiration or termination, Concessionaire shall furnish to City an opinion from an Independent Certified Public Accountant (“CPA”) as to the amount of Gross Revenues reported to City for that year. The CPA shall perform the examination in accordance with generally accepted auditing standards including such tests of the accounting records and such other auditing procedures considered necessary in the circumstances. The CPA’s opinion shall be considered delinquent if it has not been received by City within ninety (90) days of the end of each year of the Contract and/or ninety (90) days after expiration or termination of the Contract. A delinquent charge of $20.00 per day shall be charged for each day the CPA opinion is delinquent. If a required CPA opinion is delinquent for more than sixty (60) days, City may engage the services of a CPA to issue the required opinion and charge Concessionaire for the work performed. The fee for this service shall be in addition to the $20.00 per day late fee.

**SECTION 12. INSURANCE REQUIREMENTS**

Concessionaire shall procure, pay for, and maintain during the Term of this Contract, with a company authorized to do business in the State of Texas and acceptable to City, the minimum insurance coverage contained in Exhibit E-Insurance Requirements, attached to and made part of this Contract. City reserves the right to review the insurance requirements during the Term of this Contract and to adjust insurance coverage or limits when deemed necessary and prudent by City’s Office of Risk Management, based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Concessionaire and its Suboperators. City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies.

**SECTION 13. PERFORMANCE BOND**

In order to guarantee Concessionaire’s performance of services and payment obligations required under this Contract, within ten (10) days of Concessionaire’s receipt of the notice to proceed letter described in Section 9.D, Concessionaire shall procure a performance bond issued by a corporate surety or sureties licensed to issue surety bonds in the State of Texas, authorized to do
insurance business in Texas, listed on the United State Treasury List of Sureties Authorized to Issue Bonds for Federal Jobs, and otherwise acceptable to City. The bond shall be issued on forms approved by City and shall name Concessionaire and City as joint obligees. The bond shall be maintained during the Term of the Contract. Concessionaire is required to secure a replacement surety in the same manner as required above in the event the original surety becomes insolvent. The required amount of the bond during each year of the Contract shall be determined by the Director.

SECTION 14. INDEMNIFICATION

A. INDEMNITY. AS A CONDITION OF THIS CONTRACT, CONCESSIONAIRE AGREES AND IS BOUND TO INDEMNIFY, DEFEND AND HOLD CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, JUDGMENTS, FINES, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM, BROUGHT OR SOUGHT BY ANY PERSON, PERSONS, OR ANY GOVERNMENTAL AGENCY THAT MAY ARISE OUT OF, BE INCIDENT TO, OR OCCASIONED BY:

(1) ANY TYPE OF USE, OCCUPANCY, MAINTENANCE, OR CONSTRUCTION OF OR ON THE ASSIGNED PREMISES, INCLUDING CONCESSIONAIRE’S INSTALLATIONS AND IMPROVEMENTS TO THE ASSIGNED PREMISES; OR

(2) ANY BREACH OF ANY OF THE TERMS AND PROVISIONS OF THIS CONTRACT; OR

(3) ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF CONCESSIONAIRE, ITS OFFICERS, EMPLOYEES, INVITEES, AGENTS, CONTRACTORS, AND SUBCONTRACTORS RELATED TO OR ARISING OUT OF ANY TYPE OF USE, OCCUPANCY, MAINTENANCE, OR CONSTRUCTION OF THE ASSIGNED PREMISES OR CONCESSIONAIRE’S INSTALLATION AND IMPROVEMENTS TO THE ASSIGNED PREMISES OR RELATED TO ANY OF CONCESSIONAIRE’S ACTIVITIES AT THE AIRPORT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY COST OR LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF CITY, ITS OFFICERS, AGENTS, EMPLOYEES, OR CONTRACTORS. IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF BOTH CONCESSIONAIRE AND CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.
B. Release of City. City assumes no responsibility for any property placed in or on the Assigned Premises and City is hereby expressly released and discharged from any and all liability for any loss, injury, or damage to persons or property that may be sustained by reason of the use or occupancy of the Assigned Premises under this Contract, unless same is caused by the negligence or willful act of City, its officers, agents, invitees, employees, or contractors.

C. Parties to Which this Section is Applicable. The provisions of this Section that apply to Concessionaire shall also apply to any party holding by, through, or under Concessionaire.

SECTION 15. TERMINATION BY CONCESSIONAIRE

A. In addition to all other remedies otherwise available to Concessionaire at law or in equity, Concessionaire may terminate this Contract by giving ninety (90) days written notice to City, should anyone or more of the following events occur; provided, however, that none of the unamortized capital improvements or the compensation and fees which are to be paid by Concessionaire herein will be refunded to Concessionaire:

1. The abandonment of the Airport as an airline terminal or the permanent removal of all certificated passenger airline service from the Airport for longer than ninety (90) days.

2. The assumption by the United States government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof, in such manner as to substantially restrict Concessionaire from operating thereon for a period of at least ninety (90) days.

3. The issuance by any court of competent jurisdiction of any injunction preventing or restraining the use of the Airport in such a manner as to substantially restrict the Concessionaire from conducting its operations hereunder, which prevention or restraint is not caused by the act or omission of Concessionaire and which injunction remains in force for at least ninety (90) days.

B. Concessionaire retains any and all rights or remedies it may have under Texas law in the event of a material breach of this Contract by City.

SECTION 16. TERMINATION BY CITY

A. Termination for Cause. City, through its City Manager, also reserves the right to terminate this Contract and may exercise all rights of entry and re-entry, with or without process of law, upon the Assigned Premises, or City may, without terminating this Contract, take possession of the Assigned Premises, in the event any of the circumstances below should occur. City may take the actions in the preceding sentence for any of the matters listed below after giving Concessionaire
written notice and a minimum of thirty (30) days from delivery of the notice to cure any such default or breach:

(1) Concessionaire becomes insolvent.

(2) Concessionaire makes an assignment for the benefit of creditors or is adjudged to be bankrupt.

(3) Concessionaire fails to make the payments due City under this Contract after having received written notice from City advising of Concessionaire’s failure to make payments, and after City has given Concessionaire ten (10) days to make the payments that are due.

(4) Concessionaire fails to keep any covenant, agreement, or obligation in this Contract after having received a written notice from City advising of its failure to perform and, except for failure to make payments which is provided for in the preceding clause, after City has given Concessionaire thirty (30) days to correct the failure called to Concessionaire’s attention.

(5) A majority of the ownership interest of Concessionaire under this Contract is transferred, passes to, or devolves upon, by operation of law or otherwise, any other person, firm or corporation without the written consent of City.

(6) Concessionaire fails to cooperate with any inspection of books and records or fails to maintain its books and records as required under this Contract.

(7) Deterioration of service for a period which, in the sole opinion of City, materially and adversely affects the operation of service required to be performed by Concessionaire under this Contract.

(8) Concessionaire fails to comply with the requirements of Section 8 of this Contract.

B. Immediate Termination with Notice. City, through its City Manager, may immediately terminate or cancel this Contract by giving written notice to Concessionaire upon the occurrence of any one or more of the following:

(1) Concessionaire fails to provide and maintain a performance bond, all as required in this Contract, and does not correct the default within ten (10) days after the giving of written notice by City of such failure.

(2) Any lien is filed against the Assigned Premises arising by or through the Concessionaire or because of any act or omission of Concessionaire and such lien is not removed, enjoined, or a bond for satisfaction of such lien is not posted within thirty (30) days after notice thereof.
(3) Concessionaire abandons, deserts, vacates, or discontinues its operation of the business herein authorized for a period of ten (10) days without prior written consent of the Director.

C. Immediate Termination without Notice. Notwithstanding any other provision of this Contract, City, through its City Manager, may immediately terminate or cancel this Contract if Concessionaire makes a willful false report of revenue.

D. Termination for Convenience. The right to terminate this Contract, in whole or in part, for the convenience of City, without cause any time, with ninety (90) days notice, in the public interest is expressly retained by City; provided, however, such right may only be exercised by City with the express approval of the Dallas City Council. The notice given by City shall stipulate the conditions for removal of all non-capital items such as Trade Fixtures and Personal Property. The conditions set out in Sections 16.E-16.J of this Contract shall also govern the circumstances of termination for convenience, to the extent applicable. Upon receipt of a notice of termination, Concessionaire shall cease its operations under this Contract in accordance with the conditions specified in the notice of termination. If City exercises its right to terminate this Contract under this Section 16.D, City shall reimburse Concessionaire for the unamortized costs of Concessionaire’s initial Capital Investment, as defined in Section 9.A(1) of this Contract, amortized on a straight-line basis over the Primary Term. No amount will be due Concessionaire for lost or anticipated profits as a result of any termination for convenience by City.

E. Acceptance by City of any rentals or other payments specified herein after a breach of any of the terms of this Contract shall not be deemed a waiver of any right on the part of City to cancel this Contract on account of any breach.

F. On or before the termination or reentry dates set forth in the written notice by City to Concessionaire as, Concessionaire shall surrender the Assigned Premises. Concessionaire shall immediately remove all Trade Fixtures and Personal Property from the Assigned Premises and shall return such Assigned Premises in good condition, reasonable wear and tear excepted. City may reenter the Assigned Premises and may remove all persons and property from same upon the date of reentry. Upon any removal of Concessionaire’s or any Suboperator’s Trade Fixtures and Personal Property by City hereunder, at the sole option of City: (a) said property may be stored at a public warehouse or elsewhere at Concessionaire’s sole cost and expense or (b) title to such Trade Fixtures and Personal Property shall vest in City at no cost to City.

G. In the event of termination before the termination date provided in this Contract, or default and failure to cure, City may reassign Assigned Premises and any improvements thereon or any part thereof to be operated by one or more Suboperators or any other party acceptable to City at such rentals, fees, and charges and upon such other terms and conditions as City, in its sole discretion, may deem advisable, with the right to make alterations, repairs, or improvements on the Assigned Premises, unless the Suboperator assumes the performance obligations of the Concessionaire under a guaranty agreement approved by City.
H. No reentry or reassignment of Assigned Premises by City shall be construed as an election on City’s part to terminate this Contract unless a written notice of termination is given to Concessionaire.

I. In the event City, without terminating this Contract, re-enters, regains, or resumes possession of the Assigned Premises, all of the obligations of Concessionaire hereunder shall survive and shall remain in full force and effect for the full term of this Contract. Subject to City’s obligation to mitigate damages, the amount or amounts of rental charges shall become due and payable to City to the same extent, at the same time or times and in the same manner as if no termination, re-entry, regaining, or resumption of possession had taken place. City may maintain separate actions each month to recover any monies then due, or at its option and at any time, may sue to recover the full deficiency.

J. Unless otherwise directed by City, at termination of this Contract by expiration, cancellation, or otherwise, Concessionaire shall immediately remove all Trade Fixtures and Personal Property from the Assigned Premises and its Suboperators and return such Assigned Premises in good condition, reasonable wear and tear excepted.

K. In the event of termination by City for default or convenience, City reserves the right, at its sole option, to direct Concessionaire in writing to assign any or all Suboperator contracts or subleases to City and to deliver to City true and correct originals and copies of the assigned contracts or subleases with amendments, if any. Notwithstanding any other provision to the contrary, City reserves the right to further assign such contracts or subleases without further amendment to any third party as City determines to be in the best interest of the Airport.

L. On the date set forth in the notice of termination, the term of this Contract and all right, title, and interest of Concessionaire shall expire. Failure of City to take any authorized action upon default by Concessionaire shall not constitute waiver of City’s right of termination.

SECTION 17. CHANGED CIRCUMSTANCES

A. Need for Additional Retail Locations. If during the Term of this Contract, City determines that additional retail locations are needed at the Airport, City has the right to negotiate with other retail operators to provide retail goods and services at said additional locations.

B. National Emergency. City and Concessionaire agree that the United States Government has the right under a national emergency to utilize all or any part of the Airport. If the United States Government exercises its rights under a national emergency, which results in restriction of the airline service through, or general public access to, the Terminal, then City hereby agrees to make a fair and reasonable revision in the MAG applicable under this Contract. However, if the United States Government exercises its rights under a national emergency, which results in no restriction of the airline service through, or general public access to, the Terminal, then City hereby agrees to make a fair and reasonable revision in the MAG applicable under this Contract.
C. **Decrease in Enplanements.** City, through the Director, reserves the right to decrease the MAG. If enplanements at the Airport decrease by more than 30% for at least two (2) consecutive months, a pro rata formula will be used. Any such decrease will not affect the annual percentage of Gross Revenues paid to City.

### SECTION 18. ASSIGNMENT, DELEGATION, OR CHANGE OF OWNERSHIP

A. **Assignment.** Concessionaire agrees that it shall not assign, mortgage, pledge, or transfer this Contract or any other right, privilege, or license conferred by this Contract, either in whole or in part, or permit use of any Assigned Premises by another, or in any manner encumber the Assigned Premises or any part thereof, without prior written approval from the City Manager.

B. **Change of Ownership.** Concessionaire shall obtain the written consent of City, through its Director, prior to any change, transfer or merger of ownership between Concessionaire and any other person, corporation, or company. Any change, transfer, or merger of ownership without such consent of City shall constitute a breach of this Contract under Section 16.

C. **Best Interest of the Airport.** City reserves the right to deny any assignment, subcontract, or transfer of ownership for any reason it deems in the best interest of the Airport.

### SECTION 19. FORCE MAJEURE

Neither City nor Concessionaire shall be deemed in violation of this Contract if either party is prevented from performing any of the obligations in this Contract due to a "force majeure". For purposes of this Contract, "force majeure" shall mean any contingency or cause beyond the reasonable control of the parties including, without limitation: acts of God or the public enemy; war; riot; civil commotion; insurrection; state, federal, or municipal government, or de facto governmental action, unless caused by acts or omissions of Concessionaire; fires; explosions; and floods.

### SECTION 20. COMPLIANCE

A. Concessionaire, its officers, agents, servants, employees, contractors, licensees, Suboperators, and any other person over which Concessionaire has the right to control shall comply with all present and future laws, ordinances, orders, directives, codes, rules, and regulations of the federal, state and local governmental agencies, including City, which may be applicable to its operations at the Airport.

B. Concessionaire shall pay or in good faith contest, on or before their respective due dates, to the appropriate collecting authority, all federal, state, and local taxes and fees, which are now or may hereafter be levied upon the Assigned Premises, or upon Concessionaire, or upon the business conducted at the Airport, or upon Concessionaire's interest hereunder, or
upon any of the Concessionaire’s property used in connection therewith and shall have and
maintain in current status all federal, state, and local licenses and permits required or the
operation of the business conducted by Concessionaire.

C. Concessionaire agrees to pay, or guarantees payment of, all lawful fines and
penalties as may be assessed by City or against City for violations of federal, state, or local
laws, ordinances, rulings, or regulations or Airport rules, regulations, directives, or orders by
Concessionaire or its officers, agents, servants, employees, contractors, licensees, Suboperators,
or any other person over which Concessionaire has the right to control within thirty (30) days of
written notice of such fines or penalties, unless otherwise provided by law.

D. Concessionaire will operate its concessions hereunder in a safe manner and
without interfering with the airlines’ use of the Terminal, for themselves and for their passengers
and other business invitees.

E. Concessionaire shall not advertise an individual airline’s transportation services
or other goods or services offered in connection therewith on or in the Assigned Premises
without the written approval of the Director.

SECTION 21. NON-DISCRIMINATION

A. This Contract is subject to the requirements of the United States Department of
Transportation’s (“DOT”) regulations 49 CFR Part 23, as may be amended. Concessionaire agrees
that it will not discriminate against any business owner because of the owner’s race, color, national
origin, or sex in connection with the award or performance of any concession agreement,
management contract or subcontract, purchase or lease agreement, covered by 49 CFR Part 23.
Concessionaire agrees to include the above statement in any subsequent concession agreement or
contract covered by 49 CFR Part 23 that it enters into and shall cause those businesses that it
contracts with to similarly include the statement in further agreements.

B. City and Concessionaire hereby covenant and agree that they will take all necessary
action to insure that in connection with any work or activities conducted under the Contract, neither
City nor Concessionaire or their agents, employees, or consultants or their consultants agents and
employees, will directly or through contractual or other arrangements discriminate in the treatment or
employment of any individual or groups on the grounds of race, color, religion, national origin or
sex. Concessionaire assures that it will undertake an affirmative action program as required by 14
CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national
origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part
152, Subpart E. Concessionaire assures that no person shall be excluded on these grounds from
participating in or receiving the services or benefits of any program or activity covered by this
subpart. Concessionaire assures that its covered sub-organizations shall be required to provide
assurances to Concessionaire that they similarly will undertake affirmative action programs and that
they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart
E, to the same effect. Concessionaire agrees to comply with any affirmative action plan or steps for
equal employment opportunity required by 14 CFR Part 152, Subpart E, as part of the affirmative action program, or by any federal, state, or local agency or court, including those resulting from a conciliation agreement, a consent decree, court order, or similar mechanism. Concessionaire agrees to obtain similar assurances from its covered sub-organizations, as required by 14 CFR Part 152, Subpart E.

C. Concessionaire assures that no person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the conduct or performance of Concessionaire’s activities at the Airport on the grounds of age, race, color, national origin, sex, or handicap unrelated to job performance either directly, indirectly, or through contractual or other arrangements. Concessionaire shall comply with all applicable requirements of the Americans with Disabilities Act, 42, U.S.C.A. SS12101-12213, as amended.

D. Both parties acknowledge that they have read the applicable federal regulations, 14 CFR Part 152, Subpart E, and 49 CFR Parts 21, 23 and 26 as applicable.

E. Concessionaire, its personal representatives, successors in interest, and assignees, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the Assigned Premises for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Concessionaire shall maintain and operate the Assigned Premises and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.

F. Concessionaire, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:

(1) No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, and

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

(3) That Concessionaire shall use the Assigned Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
G. In the event of breach of any of the above nondiscrimination covenants, City has the right to terminate this Contract and to re-enter, repossess, and hold the Assigned Premises as if this Contract was never made or issued.

H. Concessionaire shall make good faith efforts, as defined in 49 CFR Part 23, Sub-Part D, to meet or exceed the Airport Concession Disadvantaged Business Enterprise ("ACDBE") annual percentage goal, i.e., to subcontract an established percentage of the dollar value of this Contract, on an annual basis, to disadvantaged small business concerns owned and controlled by socially and economically disadvantaged individuals or form joint ventures with such disadvantaged small business concerns. Such percentage will be established annually as required by Federal Aviation Administration ("FAA") and DOT regulations. The annual percentage goal may be met via annual purchase of goods and services used for business conducted at the Airport from a certified Disadvantaged Business Enterprise ("DBE"). In the event that Concessionaire qualifies annually as a DBE, the annual contract goal shall be deemed as having been met. Individuals who are presumed to be socially and economically disadvantaged include women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. Concessionaire will be required to submit information concerning the certified DBEs that will participate in the Contract within thirty (30) days of the award of this Contract. The information shall include: (1) the name, address, and phone number of each DBE; (2) a description of the work to be performed by each DBE; and (3) a copy of the DBE Certificate and agency name that certified the DBE. If Concessionaire is unable to achieve any annual percentage goal, it will be required to provide documentation demonstrating that it made good faith efforts in attempting to do so as required for the period that the annual percentage goal was not met.

I. ACDBE requirements of 49 CFR Part 23, as may be amended, apply to this Contract. As such, Concessionaire agrees to submit regular ACDBE utilization reports in the manner prescribed, on a timely basis, in accordance with the fiscal year timetable established, detailing ACDBE contracting and purchasing activities in achievement of annual percentage goals in compliance with 49 CFR Part 23.

J. City and Concessionaire agree to ensure that DBEs, as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Contract. In this regard, Concessionaire shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that DBEs have the maximum opportunity to compete for and perform on contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts. All bidders, potential contractors, or subcontractors for this DOT-assisted contract are hereby notified that failure to carry out the DOT policy and the ACDBE obligation, as set forth above, shall constitute a breach of contract which may result in termination of this Contract or such other remedy as deemed appropriate by the recipient and the FAA.

SECTION 22. SUBORDINATION TO FEDERAL REQUIREMENTS
This Contract is subject and subordinate to the provisions of any agreement heretofore or hereafter made between City and the United States government relative to the financing, operation, or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of rights or property to City for Airport purposes, or the acquisition or expenditure of funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as amended from time to time. The federal government may require modifications or changes to this document as a condition precedent to granting of funds for the improvement of the Airport. Should the federal government require such changes, Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Contract as may be reasonably required to enable City to obtain

SECTION 23. RIGHT TO DEVELOP AIRPORT

City reserves the right to further develop or improve the Airport and all landing areas and taxiways as it may see fit, regardless of the desires or views of Concessionaire and without interference or hindrance.

SECTION 24. NOTICES

Any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or deposited in the United States mail by certified letter, return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this Section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If intended for City, to:
Attn: Director of Aviation
City of Dallas
Department of Aviation
Love Field Airport Terminal Building
8008 Cedar Springs Road
Lock Box 16
Dallas, Texas 75235

If intended for Concessionaire, to:
Attn: President
Hudson Group
One Meadowlands Plaza
9th Floor
East Rutherford, New Jersey 07073

With copy to:
General Counsel
Hudson Group
One Meadowlands Plaza
9th Floor
East Rutherford, New Jersey 07073
SECTION 25. AGENT FOR SERVICE OF PROCESS

It is expressly understood and agreed that if Concessionaire is not a resident of the State of Texas, or is an association or partnership without a member of partner resident of the State of Texas, or is a foreign corporation, Concessionaire will appoint an agent for service of process in the State of Texas. Due to any failure on the part of said agent, or the inability of said agent to perform, or Concessionaire’s failure to appoint an agent when required, Concessionaire does hereby designate the Secretary of State of Texas, its agent for the purpose of service of process in any court action between it and City, arising out of or based upon this Contract, and the service shall be made as provided by the laws of the State of Texas for service upon a non-resident. It is further expressly agreed, covenanted and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, Concessionaire may be personally served with such process out of the State of Texas by the registered mailing of such complaint and process to Concessionaire at the address set forth herein. Any such service out of the State of Texas shall constitute valid service upon Concessionaire as of the date of mailing. It is further expressly agreed that Concessionaire is amenable to and hereby agrees to the process so served, submits to the jurisdiction, and waives any and all obligations an protest thereto, any laws to the contrary notwithstanding.

SECTION 26. CONFLICT OF INTEREST OF CITY EMPLOYEES

The following Section of the Charter of City of Dallas shall be one of the conditions, and a part of, the consideration of this Contract, to wit:

“CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED --

(a) No officer or employee shall have any financial interest, direct or indirect, in any contract with City or be financially interested, directly or indirectly, in the sale to City of any land, materials, supplies or services, except on behalf of City as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit the officer’s or employee’s office or position with City. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with City shall render the contract involved voidable by City Manager or The City Council.

(b) The alleged violations of this section shall be matters to be determined either by the Trial Board in the case of employees who have the right to appeal to the Trial Board and by The City Council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by City employees in federally-funded housing programs, to the extent permitted by applicable federal or state law.”
SECTION 27. GIFT TO PUBLIC SERVANT

A. City may terminate this Contract immediately if Concessionaire has offered, agreed to confer, or conferred any “benefit” upon a City employee or official that City employee or official is prohibited by law from accepting. City has been advised by the prosecuting authorities that the Section 36.10(4) exception to Section 36.08 and 36.09 of the Texas Penal Code is not available to public servants who have no legal reporting requirements.

B. For purposes of this Section, “benefit” means anything reasonably regarded as economic gain or economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.

C. Notwithstanding any other legal remedies, City may require Concessionaire to remove any employee of Concessionaire who has violated the restrictions of this Section or any similar state or federal law, and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

SECTION 28. NOTICE OF CONTRACT CLAIM

This Contract is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Contract as if written word for word in this Contract. Concessionaire shall comply with the requirements of this ordinance as a precondition of any claim relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

SECTION 29. REPRESENTATIVE OF CITY

Unless otherwise stated in this Contract, the Director shall be designated as the official representative of City in all matters pertaining to this Contract and shall have the right and authority to act on behalf of City with respect to all actions required of City in this Contract.

SECTION 30. REQUIRED APPROVALS

When the approval of the Director or Concessionaire is required, approval shall not be unreasonably requested or withheld.

SECTION 31. WAIVERS
Any waiver of default by either party of any term, covenant, and/or condition of this Contract shall not be construed or operate as a waiver of any subsequent default of any other terms, covenants, and/or condition of this Contract.

SECTION 32. WAIVER OF CLAIMS

Concessionaire waives any claim against City and its officers, agents, or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Contract or any part thereof, or by any judgment or award in any suit or proceeding declaring this Contract null, void or voidable or delaying the same or any part thereof from being carried out.

SECTION 33. RIGHTS CUMULATIVE

The rights and remedies of City and Concessionaire specified in this Contract are not intended to be, and shall not be, exclusive of one another or exclusive of any common law right of either of the parties hereto.

SECTION 34. NO AGENCY, PARTNERSHIP, OR JOINT VENTURE

No term or provision of this Contract or act of Concessionaire in the performance of this Contract shall be construed as making Concessionaire the agent, servant, representative, partner, or employee of City for any purpose whatsoever. In performing services under this Contract, the relationship between City and Concessionaire is that of an independent contractor, and City and Concessionaire by the execution of this Contract do not change Concessionaire's independent status. The parties have not formed nor are operating as a joint enterprise under Texas law.

SECTION 35. PERSONAL LIABILITY

No City Councilmember, director, officer, employee, or other agent of either party shall be personally liable under or in connection with this Contract while performing in good faith duties therein.

SECTION 36. SUCCESSORS AND ASSIGNS

The terms and conditions of this Contract are binding upon the successors and assigns, legal representatives, and sub-lessees of all parties hereto; provided, however, this Contract shall not be assigned by Concessionaire without prior written approval from the Director.

SECTION 37. HEADINGS

Retail Merchandise Concession Contract – Dallas Love Field
04/15/10
The headings of the Sections of this Contract are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Contract and shall not be construed to affect in any manner the terms, provisions, interpretation, or construction of the Contract.

SECTION 38. LEGAL CONSTRUCTION

In the case that any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract, and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

SECTION 39. INCORPORATION OF REQUIRED PROVISIONS

The parties incorporate herein by this reference all provisions lawfully required to be contained in this Contract by any governmental body or agency.

SECTION 40. GOVERNING LAW

This Contract is made subject to the provisions of the Charter and ordinances of City, as amended, and all applicable state and federal laws. This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state. Additionally, while performing its activities and services at the Airport, Concessionaire, Concessionaire’s agents, employees, Suboperators, and sub-contractors shall be subject to Airport rules, regulations and orders of the Director, currently in effect or hereinafter enacted.

SECTION 41. VENUE

The obligation of the parties to this Contract shall be performable in Dallas County, Texas. If legal action is necessary in connection with or to enforce rights under this Contract, exclusive venue shall lie in Dallas County, Texas.

SECTION 42. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Contract is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by
SECTION 43. AMENDMENTS; ENTIRE CONTRACT

This Contract (with all referenced exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of the parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Contract. This Contract may be modified or amended only by written agreement of the parties, to be attached to and made a part of this Contract.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]
IN WITNESS WHEREOF, this Contract is executed and effective as of the ___ day of ____________, 2010 ("Effective Date"), by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. 10-____, approved on April 28, 2010, and by Concessionaire, acting by and through its duly authorized officer(s), thereby binding itself, its successors, assigns, and representatives for the faithful and full performance of the terms and provisions of this Contract.

CITY OF DALLAS:
MARY K. SUHM,
City Manager

By: __________________________
A. C. Gonzalez
Assistant City Manager

APPROVED AS TO FORM:
THOMAS P. PERKINS, JR.,
City Attorney

By: __________________________
Sarah F. Hasib
Assistant City Attorney

CONCESSIONAIRE:
Hudson Retail Dallas, J.V.

Brian Quinn
Joint Venture Manager

ATTACHMENTS & EXHIBITS

Resolution No. 10-____, approved April 23, 2010

Exhibit A  Assigned Retail Locations
Exhibit B  Assigned Support Space
Exhibit C  Permitted Retail Concepts
Exhibit D  Permitted Retail Facilities, Merchandise, and Services
Exhibit E  Insurance Requirements

Retail Merchandise Concession Contract – Dallas Love Field
04/15/10
DALLAS LOVE FIELD
FOOD AND BEVERAGE CONCESSION CONTRACT

THIS FOOD AND BEVERAGE CONCESSION CONTRACT ("Contract") is made and entered into between the City of Dallas, Texas, a Texas municipal corporation located in Dallas County, Texas, acting by and through its duly authorized officers ("City"), and Love Field Partners I, Ltd., a Texas limited partnership, acting by and through its general partner JavaStar, Inc., a Texas corporation, ("Concessionaire").

WITNESSETH:

WHEREAS, City owns and operates a municipal airport, Dallas Love Field ("Airport"); and

WHEREAS, on July 11, 2006, City, the City of Fort Worth, the Dallas-Fort Worth International Airport Board, Southwest Airlines Co., and American Airlines, Inc. entered into an agreement to seek the elimination of restrictions on air service at the Airport contained in existing federal legislation ("The Wright Amendment"), and if such legislation was approved, the parties agreed to redevelop and modernize the existing Airport terminal facilities through the Love Field Modernization Program ("LFMP"); and

WHEREAS, reforms to The Wright Amendment were signed into law on October 13, 2006, and provide that the last of the interstate flight restrictions, first imposed on the Airport in 1979, will be lifted in October 2014; and

WHEREAS, City has agreed to work toward completion of the LFMP, which includes construction of a new Airport terminal building by October 2014 ("Terminal"); and

WHEREAS, the Terminal will accommodate nearly twice the amount of food and beverage concession space than housed in the existing Airport terminal building and such concession space will be divided into two food and beverage concession packages; and

WHEREAS, Concessionaire has operated a food and beverage concession at the Airport since 1996, has provided first-class service to Airport patrons, and will continue to provide food and beverage concessions in the existing Airport terminal building during construction of the Terminal in accordance with that certain First Amendment to the Love Field Food and Beverage Concession Contract by and between City and Concessionaire, approved by the City Council on April 28, 2010, by Resolution No. 10-______, and in accordance with this Contract; and

WHEREAS, City anticipates an increase in the number of commercial airline passengers at the Airport both during and after the LFMP and wishes to: (1) ensure continuous and improved food and beverage concession services to Airport passengers during implementation of the LFMP and (2) contract with Concessionaire for operation of one of the food and beverage concession packages in the Terminal without precluding Concessionaire from later participating in City's request for
proposals ("RFP") process for the right to operate the second food and beverage concession package.

NOW THEREFORE, in consideration of the mutual covenants and obligations herein, the parties agree as follows:

SECTION 1. TERM

A. Effective Date and Commencement Date. This Contract shall be effective and binding upon the date of execution of this Contract ("Effective Date"). The "Term" (defined in Section 1.E below) shall commence upon the delivery of any portion of the "Assigned Premises" (defined in Section 2.A below) to Concessionaire ("Commencement Date").

B. Interim Term. The "Interim Term" of this Contract shall commence on the Commencement Date, shall include the period required for finish-out of the Assigned Premises both prior to the opening of the Terminal to the public and during the period the Terminal is partially open for aviation operations and to the public, and shall terminate on the last day of the calendar month during which the Director of Aviation ("Director") certifies in writing that the twentieth (20th) passenger boarding gate in the Terminal is usable for commercial air service.

C. Primary Term. The "Primary Term" of this Contract shall commence upon the expiration of the Interim Term and shall continue for a period of twelve (12) years thereafter, unless terminated earlier in accordance with this Contract.

D. Renewal Term. City, in its sole discretion, may renew this Contract for one additional period of three (3) years, which term shall commence upon the expiration of the Primary Term of this Contract ("Renewal Term"). The Renewal Term shall be subject to all of the same terms, covenants, and conditions of this Contract. City shall advise Concessionaire in writing of its intent to enter into the Renewal Term no later than six (6) months prior to the end of the Primary Term.

E. Term. In this Contract use of "the Term" means the Interim Term, the Primary Term, and the Renewal Term; use of "a Term" means the Interim Term, the Primary Term, or the Renewal Term.

F. Holdover of the Assigned Premises after Expiration of a Term. With City’s prior written consent, Concessionaire may holdover and remain in possession of the Assigned Premises after the expiration of the Primary Term, in the case where City does not exercise the Renewal Term, or after the expiration of the Renewal Term. Concessionaire’s holdover of the Assigned Premises shall not operate as an extension or renewal of either the Primary Term or Renewal Term of this Contract, but shall only create a month-to-month right to operate a food and beverage concession on the Assigned Premises on the same terms, conditions, and covenants contained in this Contract, except that such holdover status shall be terminable at the will of City with thirty (30) days prior written notice.
SECTION 2. ASSIGNED PREMISES

A. Assigned Premises. City hereby grants to Concessionaire and Concessionaire accepts from City the right to use areas in the Airport as designated for use by Concessionaire and containing the number of square feet indicated in the attached Exhibit A-Assigned Food and Beverage Locations and Exhibit B-Assigned Support Space (collectively “Assigned Premises”). “Assigned Food and Beverage Locations” means Concessionaire’s assigned revenue-generating space in the Terminal; an individual food and beverage unit may be referred to as an “Assigned Food and Beverage Location”. “Assigned Support Space” means Concessionaire’s assigned non-revenue generating space at the Airport, including office and storage space.

B. Late Opening of Assigned Food and Beverage Locations. Concessionaire acknowledges that if it fails to open an Assigned Food and Beverage Location, delivered by the City in a timely manner, for business by the opening of a portion of the Terminal to scheduled airline activity as certified in writing by the Director (“Opening Date”), and such failure shall be due to the fault of Concessionaire, such failure may cause City to suffer substantial damages, including loss of goodwill, that might be difficult to ascertain or prove. For that reason, but subject to extensions that may be approved in writing by the Director, if Concessionaire has not caused an Assigned Food and Beverage Location to be open to the public for business by the Opening Date for such Assigned Food and Beverage Location, Concessionaire must pay City liquidated damages at the rate of $500.00 per day for each day from the Opening Date for such Assigned Food and Beverage Location until the date on which such Assigned Food and Beverage Location actually opens to the public for business. Concessionaire acknowledges that the liquidated damages described in this Section 2.B is not an exclusive remedy and City may pursue any other remedies at its sole discretion. City shall make an effort, to the greatest extent possible within the constraints of LFMP-related construction phasing, to deliver an Assigned Food and Beverage Location to Concessionaire six (6) months prior to its Opening Date. Notwithstanding anything in this Section 2.B to the contrary, Concessionaire shall in no event be expected to open any Assigned Food and Beverage Location in less than four (4) months following delivery of such space by City.

C. Substitution of Assigned Premises Exhibits. The exact location, configuration, and square footage of the Assigned Premises as depicted in Exhibits A and B are approximate and subject to change as a result of the LFMP planning, design, and construction process. Upon completion of the Terminal design portion of the LFMP, City will provide Concessionaire with substitute versions of Exhibits A and B. Upon Concessionaire’s completion of its finish-out of the Assigned Premises, Concessionaire shall provide City with all as-built drawings, which will be substituted for Exhibits A and B. All such revised exhibits, once reviewed and accepted by Concessionaire, shall be confirmed by letter agreement signed by the Director and the Concessionaire’s authorized representative as a substitute exhibit to this Contract. Each such revised exhibit, once so confirmed, shall be considered by City and Concessionaire as incorporated into and shall be a part of this Contract in substitution of the exhibit it replaced. City and Concessionaire agree that the substitution of exhibits as described herein does not constitute an amendment to this Contract.
SECTION 3. GRANT OF CONCESSION RIGHTS

A. Non-Exclusive Right to Operate a Food and Beverage Concession. The Concessionaire has the non-exclusive right, privilege, and obligation to operate and manage a food and beverage concession for the sale of food and beverage products and services in and from its Assigned Premises. Subject to the approval of the Director, Concessionaire may permit portions of the Assigned Premises to be used by “Suboperators” selected by Concessionaire. A “Suboperator” means any person or entity operating an Assigned Food and Beverage Location in the Assigned Premises pursuant to a City-approved agreement with Concessionaire.

B. Permitted Food and Beverage Concepts. The attached Exhibit C-Permitted Food and Beverage Concepts describes the types of food and beverage concepts which Concessionaire and its Suboperators shall have the right to operate in the Assigned Premises, subject to the provisions of Section 3.C of this Contract.

C. Permitted Food and Beverage Facilities, Products, and Services.

1. Submission of Concessionaire’s Development Plan. Within six (6) months of the Effective Date, Concessionaire shall submit a proposed development plan to the Director, for review and approval, indicating for each of the Assigned Food and Beverage Locations, the type of facility (e.g., branded full service dining, branded casual dining, or quick or walkaway service), thematic concept for the location, food and beverage products and services to be offered, prices of said food and beverage products and services, operator (e.g., Concessionaire or Suboperator), preferred brand name options and a detailed explanation of the rationale of each proposed brand name option along with alternative brand options, if any, for each unit, and projected sales for the first year of the Primary Term (“Development Plan”). The proposed Development Plan shall be consistent with the Permitted Food and Beverage Concepts set forth in Exhibit C. By submission of one or more brand names in its proposed Development Plan, Concessionaire represents that it has all necessary rights, titles, and licenses to install and operate such brand(s) at the location(s) designated therein and agrees to provide City with proof of such right(s) as requested. Concessionaire further agrees that it will retain, to the extent reasonably possible, rights to such brand(s) for the duration of this Contract and the ability to terminate any such brand agreement(s) as may be necessary throughout the Term.

2. Director Review of Development Plan. The Director, or his or her designee, shall review the submitted Development Plan. Such review may be based on, but not be limited to, the following review criteria: applicable passenger surveys, airline comments, consultant reviews, or other such evaluation tools as deemed necessary by the Director to evaluate the proposed Development Plan for all Assigned Food and Beverage Locations. The Director shall meet with Concessionaire to review the submitted Development Plan within thirty (30) days after receipt of the proposed Development Plan. If such meeting is delayed through no fault of Concessionaire, the Director shall extend Concessionaire’s deadline to complete its Development Plan. Concessionaire must respond to any changes in the Development Plan requested by the Director within five (5) days.
(3) Development Plan Review Panel. The Director may, in his or her sole discretion, appoint a review panel to conduct said review and make recommendations to the Director. Upon completion of its review of the submitted Development Plan, the review panel shall submit the findings of its review and recommendations to the Director who may, in his or her discretion, approve in whole or in part, reject in whole or in part, or refer back to the review panel for further review and evaluation, the review panel’s report and recommendations.

(4) Approved Development Plan. City and Concessionaire shall make reasonable efforts to ensure the mutual acceptability of Concessionaire’s Development Plan. However, Concessionaire acknowledges and agrees that the Director’s determination of and approval of a Development Plan consistent with Exhibits A and C, including, but not limited to, food and beverage products and services, prices, and brand names, shall be final and binding on Concessionaire. The approved Development Plan shall be attached to this Contract as Exhibit D-Permitted Food and Beverage Facilities, Products, and Services and shall be incorporated into and be a part of this Contract. Exhibit D will describe the specific types of food and beverage facilities and food and beverage products and services which Concessionaire and its Suboperators shall have the right to offer at the Assigned Food and Beverage Locations, subject to the provisions of Section 4 of this Contract. City and Concessionaire agree that the addition of Exhibit D as described in this Section 3.C(4) does not constitute an amendment to this Contract.

(5) Modifications to Exhibit D. Once Exhibit D is approved and incorporated into this Contract, the Development Plan shall not be modified, including but not limited to the substitution or relocation of brand names, without City’s express written consent. Any approved modifications to the Development Plan shall be incorporated into this Contract as a substitution of the then-current Exhibit D. City and Concessionaire agree that any such substitution of Exhibit D as described in this Section 3.C(5) does not constitute an amendment to this Contract.

(6) Products or Services Not a Part of Approved Development Plan. The sale of items other than food or beverage products or the furnishing by Concessionaire of other services than those described in Exhibit D shall not be permitted without the prior written approval of the Director. Neither Concessionaire nor its Suboperators shall have the right under this Contract to sell, for consumption off of the Assigned Premises, liquor or wine by the bottle or otherwise engage in packaged liquor or wine sales on any of the Assigned Premises or to sell duty free merchandise.

D. Ingress to and Egress from the Assigned Premises. Concessionaire has the non-exclusive right of ingress to and egress from its Assigned Premises, subject to any rules, regulations, directives, or orders which may have been established or may be established in the future by the Director or City, or state or federal government. Such rights of ingress and egress shall apply to the Concessionaire’s employees, Suboperators, guests, patrons, invitees, suppliers, and other authorized individuals. The rights of ingress and egress likewise apply to the transport of equipment, material,
machinery, and other property. In connection with any such ingress or egress, Concessionaire shall not, and shall not permit others, to obstruct or otherwise interfere with the operation or use of the Airport by any airline or other tenant.

E. City’s Right of Inspection of the Assigned Premises. City retains the full right of entry in and to the Assigned Premises for any purpose necessary, incidental to, or in connection with its obligations under this Contract, or in the exercise of its governmental functions, or for the purpose of making any inspection it deems necessary. Without limiting the foregoing, Concessionaire agrees that authorized employees of City’s Department of Aviation may enter and inspect any area in the Assigned Premises to do any or all of the following:

1. Inspect the Assigned Premises at any reasonable time or at any time in case of emergency, to determine whether Concessionaire has complied with and is complying with the terms and conditions of this Contract. The Director may, at his or her discretion, require Concessionaire to effect repairs to the Assigned Premises at the Concessionaire’s own cost.

2. Perform any and all things which the Concessionaire is obligated to and has failed to do after fifteen (15) days written notice to act, including maintenance, repairs, and replacements to Concessionaire’s Assigned Premises. The cost of all labor and materials and other charges required for performance of such work, plus 15% thereof for administrative overhead, will be paid by Concessionaire to City within ten (10) following receipt of an invoice by Concessionaire.

3. Perform any duty or function which City may have in relation to the operations of the Airport, including carrying out the City’s duties and functions.

F. Conflicts between Concessionaire and Other Airport Operators or Tenants. Should a conflict arise between Concessionaire and other tenants or concession operators at the Airport regarding the scope of concession privileges, the decision of the Director shall be final.

G. Vending Machines. Nothing in this Contract shall be construed to limit or prohibit the right of City to permit the installation and operation of vending machines, by City or any other tenant, anywhere on the Airport, outside of Concessionaire’s Assigned Premises; provided, however, City shall not install or operate or allow any other tenant to install or operate vending machines that sell or dispense food or beverages in public areas of the Airport that are located within two hundred (200) feet of one of Concessionaire’s Assigned Food and Beverage Locations. In addition, in Concessionaire’s Assigned Food and Beverage Locations, Concessionaire may not install or maintain amusement or vending machines or other machines operated by coins, tokens, or credit or debit cards without the prior written consent of the Director. This prohibition includes, but is not limited to, sales from vending machines of such items as cigarettes, candy, maps, coffee, soft drinks, newspapers, stamps, and insurance policies; telephones; dispensation of cash, money orders, and checks; and operation of mechanical or electronic game devices, electronic video games, and entertainment devices.
H. **Concessionaire’s Employees’ Parking.** Nothing in this Contract shall be deemed to require City to provide parking to Concessionaire’s employees. City may provide parking accommodations to Concessionaire’s employees in common with employees of other concession operators and users of the Airport and retains the right to impose a reasonable charge for the privilege of using such parking accommodations.

I. **Receiving Dock.** Concessionaire shall have the right to use the Airport receiving dock under the same terms and conditions as other Airport concessionaires and tenants.

**SECTION 4. OPERATIONAL STANDARDS**

A. **General Operational Standards.** Concessionaire’s business shall be conducted in a manner that: (1) meets the needs of Airport patrons and employees, (2) reflects positively upon the Concessionaire and City, and (3) is satisfactory to the Director. Concessionaire shall offer quality products, provide prompt and courteous service, and shall equip, organize, and efficiently manage the facilities to provide first-class service and products in a clean, attractive, and pleasant atmosphere. Concessionaire shall operate its business in the Assigned Food and Beverage Locations so as to maximize the “Gross Revenues” (defined in Section 5.B below) produced by such operation and shall maintain an adequate staff of employees and maintain in the Assigned Food and Beverage Locations at all times a stock of food and beverage products as is reasonably designed to maximize Gross Revenues.

B. **Determination of Compliance with Operational Standards.** The Director shall have the sole right to determine Concessionaire’s compliance with all operational standards, including, but not limited to, the quality of food and beverage products sold, the character of the services rendered to the public, and the appearance and condition of the Assigned Premises. Concessionaire agrees to promptly discontinue or remedy any objectionable practice or condition within five (5) days after written notice from the Director. City reserves the right to conduct, or have its designee conduct, periodic performance audits of the Assigned Premises to assure that all of the operational, safety, and compliance standards of this Contract are consistently performed by Concessionaire. Concessionaire acknowledges that such performance audits will be conducted by City or its designee and hereby agrees to cooperate with any such performance audit. Said performance audits may include objective standards in the areas of (1) product quality, (2) customer service, and (3) cleanliness and maintenance. If Concessionaire fails to meet and maintain minimum standards in any of these areas, City may, at its discretion, assess a fee per occurrence pursuant to Section 4.T of this Contract.

C. **Maintenance and Repair Generally.** Concessionaire shall provide at its own expense such maintenance, custodial, and cleaning services and supplies as may be necessary or required to maintain the Assigned Premises in good appearance, repair, and safe condition. Specifically, Concessionaire agrees to maintain and make necessary repairs to the interior of the Assigned Premises, the fixtures and equipment therein and appurtenances thereto including, without limitation, the interior windows, doors and entrances, storefronts, utility lines and connections, signs, floor coverings, interior walls and ceiling, the surfaces of interior columns
exclusive of structural deficiencies, any columns or structural improvements erected by Concessionaire, partitions and lighting, including replacement of electric light bulbs and tubes, electrical equipment and plumbing fixtures, within the Assigned Premises. All work performed by Concessionaire shall be subject to inspection and approval of the Director or his or her representative.

(1) **Janitorial Service.** Concessionaire shall, without cost to City, provide all janitorial services for the Assigned Premises. Concessionaire shall ensure that the Assigned Premises are kept free from all rubbish, filth, and refuse.

(2) **Quality of Repairs.** All repairs done by Concessionaire or on its behalf shall be of first-class quality, equal to or better than the original in both materials and workmanship. All repairs will be made in conformity with the rules and regulations prescribed from time to time by federal, state, or local authority having jurisdiction over the work in Concessionaire’s Assigned Premises.

(3) **Preventive and Routine Maintenance Programs.** Upon the execution of this Contract, Concessionaire shall establish a preventive and routine maintenance program, the provisions of which shall be subject to the initial written approval of and periodic review by the Director. Concessionaire shall from time to time, upon request, provide the Director a written schedule of Concessionaire’s cleaning and maintenance program.

(4) **Routine Refurbishment.** On or about the commencement of each year, the Director and Concessionaire shall tour the Assigned Premises and jointly agree upon what, if any, routine refurbishment is required to maintain the Assigned Premises in first-class condition, and Concessionaire shall promptly undertake such refurbishment at its sole cost and expense. For purposes of this Section 4.C(4), refurbishment shall mean the routine repainting or redecoration of public areas within the Assigned Premises, including the replacement or repair of worn carpet, tile, furniture, furnishings, fixtures, or finishes.

(5) **Maintenance Personnel and Program.** Concessionaire agrees to employ sufficient personnel, and provide necessary equipment to keep the Assigned Premises and all furniture, furnishings, fixtures, and equipment clean, neat, safe, sanitary, and in good working order and condition at all times pursuant to the maintenance requirements of this Section 4.C(5).

(6) **City Sole Judge of Maintenance.** City shall be the sole judge of the quality of maintenance. City, or its designee, may at any time, without notice, enter upon the Assigned Premises to determine if maintenance satisfactory to City is being performed. Performance by Concessionaire of maintenance pursuant to a written maintenance plan previously approved by the Director shall be conclusive evidence of satisfactory maintenance, unless the Director determines that there is a present and substantial danger of serious injury to users of the Assigned Premises. If it is determined that said maintenance is not satisfactory, the Director shall so notify Concessionaire in writing. If said maintenance is not performed by Concessionaire to City’s standards within fifteen (15) days after receipt of written notice, the
City or its designee thereafter shall have the right to enter upon the Assigned Premises and perform the maintenance therefor, and Concessionaire agrees to promptly reimburse the City for the cost thereof, plus 15% for administrative overhead.

(7) **Hazardous Conditions.** Concessionaire shall not do or permit to be done or any act which invalidates any fire insurance policies covering the Terminal that are either required under this Contract or carried by City. Concessionaire shall not do or permit to be done or any act, which in the opinion of the Director, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Contract. Concessionaire shall promptly observe, comply with, and execute the provisions of any and all present and future rules, regulations, requirements, orders, and directions of the Director which may pertain to the operations on the Assigned Premises. Upon discovery, Concessionaire shall immediately give oral notice to the City of any hazardous or potentially hazardous conditions in the Assigned Premises or in the Terminal. Any hazardous or potentially hazardous condition in the Assigned Premises shall be corrected immediately upon receipt of oral notice from the City. At the direction of the City, Concessionaire shall close the Assigned Premises until such hazardous or potentially hazardous condition is removed.

D. **Trash Removal.** Concessionaire shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage, and other refuse caused as a result of its operations as described in this Contract. Concessionaire shall provide and use suitable covered receptacles for all garbage, trash, or other refuse. Concessionaire shall keep any areas used for trash and garbage storage prior to removal from Airport in a clean and orderly condition so as not to attract rodents, pests and birds or create an offensive odor. In transporting trash and refuse from the Assigned Premises, Concessionaire shall use only carts, vehicles or conveyances that are covered, leak proof, and equipped with wheels suitable for operating on carpets or tile or terrazzo flooring without damage thereto. Such disposal shall take place during hours as may be directed by City. Piling of boxes, cartons, barrels, or other similar items in an unsightly, unsafe, or unsanitary manner on or about the Assigned Premises is forbidden. Concessionaire further agrees to keep the dock area and refuse removal area clean and neat and free from any unsightly, unsafe, or unsanitary conditions. If City provides trash containers or compactors for the removal of Concessionaire’s trash, Concessionaire agrees to pay its reasonable share of the costs of such containers or compactors.

E. **Environmental Efforts.** Concessionaire shall fully comply with the provisions of any City recycling program in effect at the Airport, whether currently existing, re-designed, or newly implemented any time during the Term of this Contract at Concessionaire’s own cost. If City provides suitable containers for the collection of recyclable materials, Concessionaire agrees to pay its reasonable share of the costs of such containers. Concessionaire shall not install or utilize any water-cooled ice makers on the Assigned Premises.

F. **Plumbing Facilities.** The plumbing facilities, within the Assigned Premises and elsewhere in the Airport, shall not be used for any purpose other than that for which they are constructed, and no foreign substance of any kind shall be thrown therein. If installed in connection
with the Assigned Premises, Concessionaire shall, at its own expense, check and clean at least monthly all grease traps and grease receptors. The expense of any breakage, stoppage, or damage resulting from a violation of this provision, wherever such occurs, shall be borne by Concessionaire who may, or whose employees, agents, or invitees may, have caused it.

G. **Signs and Advertisements.** Concessionaire shall have the right to install and operate upon or in the Assigned Food and Beverage Locations, and at Concessionaire’s sole cost and expense, signs containing its name and representing its business. For purposes of this Section, signs shall include, but not necessarily be limited to, identification signs, company logos, advertising, or promotions, photographs, art displays, and the like. City reserves the right to remove all signs or advertisements that do not conform to the requirements of this Section without notice to Concessionaire. All signs shall be in good taste, of professional quality, and shall be approved by the Director. No handrawn signs of any nature shall be allowed or approved. No sign or advertisement of any kind shall be allowed outside the Assigned Food and Beverage Locations without the approval of the Director.

1. **Design.** All signs shall conform to the requirements of the tenant design criteria for the Terminal building.

2. **Sign Illumination.** Concessionaire shall have its display windows, signs, interior sales area, and permitted advertising displays adequately illuminated continuously during the “Store Hours” (defined in Section 4.H below) and, if such hours are less than twenty-four (24) hours, such additional hours as City may establish from time to time in its sole discretion.

3. **Music and Announcements.** Concessionaire shall not play music or utilize a public address system in such a fashion that the sound therefrom can be heard outside of Concessionaire’s Assigned Premises. If the Assigned Premises are not enclosed, Concessionaire shall not play music or utilize a public address system.

H. **Hours of Operation.**

1. **Hours of Operation Generally.** Concessionaire shall ensure that each of the Assigned Food and Beverage Locations are continuously open for business and provide all services and sales activities as required by this Contract every day of the Term at such hours as are necessary for Concessionaire to be open ninety (90) minutes before the time of the first scheduled outgoing flight of the day until the time of the last scheduled outgoing flight of the day (“Store Hours”). Any modifications to Store Hours that may be requested from time to time by Concessionaire shall be subject to the Director’s prior written approval as determined in his or her sole discretion.

2. **Extension of Store Hours.** Notwithstanding anything in this Contract to the contrary, Concessionaire agrees, at the Director’s request, to keep such Assigned Food and Beverage Locations, as the Director determines is reasonable to the circumstances, open beyond Store Hours for events including, but not limited to, the following:
(a) **Operations during Periods of Flight Delays.** In the event of delayed flights at the Airport, Concessionaire shall remain continuously open and provide all services and sales activities as required by this Contract until said flights depart the gate or City otherwise instructs, even if such period is beyond the current Store Hours for said Assigned Food and Beverage Location.

(b) **Emergency Operations.** If City deems it necessary, on an emergency basis, to serve the public during times other than Store Hours, Concessionaire shall remain continuously open and provide all services and sales activities in the facilities as required by City during the emergency period.

(c) **Federal Regulations.** If the Director deems it necessary for City and/or Concessionaire to remain in compliance with any federal statutes or regulations, Concessionaire shall remain continuously open and provide all services and sales activities in the facilities as required by the Director.

(3) **Temporary Closings.** Concessionaire shall not be deemed to have breached or be in default in respect of such operating requirement as a result of temporary closing of an Assigned Food and Beverage Location in connection with maintenance or repairs, renovation or remodeling, inventories, or other temporary closing in the normal course of the Concessionaire’s business provided that Concessionaire has received from City, prior to such temporary closing, permission for such temporary closing in writing.

(4) **Posting of Store Hours.** Concessionaire shall prominently post in each of the Assigned Food and Beverage Locations, in an area visible to customers, the current listing of the facility’s hours of operation.

I. **Concessionaire’s Personnel.** Concessionaire shall maintain a sufficient number of properly trained personnel to ensure that all customers of Concessionaire receive prompt and courteous service at all times.

(1) **Manager of Concessionaire’s Operations.** Concessionaire shall select and appoint a manager of Concessionaire’s operations at the Airport who is a qualified and experienced manager or supervisor vested with full power and authority with respect to the conduct of the operation of the food and beverage concession at the Airport. Said manager shall have full authority to make day-to-day business decisions on behalf of Concessionaire, with respect to the concession operations contemplated by this Contract, and shall represent the Concessionaire in day-to-day business dealings with City, and coordinate all concession activities with City. Concessionaire shall cause such manager to be assigned a duty station or office in the Assigned Premises at which he or she shall be available during normal business hours. During the absence of such manager, Concessionaire will, at all times during Store Hours, assign or cause to be assigned, a qualified subordinate to assume and be directly responsible for the carrying out of his or her duties. Concessionaire shall submit information
to the Director on how Concessionaire’s manager and qualified subordinate may be contacted seven (7) days per week, twenty-four (24) hours per day.

(2) **Staffing Levels.** Concessionaire shall recruit, train, supervise, direct, and deploy the number of representatives, agents, and employees (collectively “personnel”) necessary to promptly provide services to all customers and to meet all of the requirements of this Contract. Concessionaire shall be continuously responsible for actively managing personnel levels to ensure that changes in passenger activity, due to schedule changes, load factor changes, or flight delays are adequately accommodated through increased levels of personnel.

(3) **Conduct of Personnel.** Concessionaire’s personnel shall be qualified, trained, courteous, informative, and helpful to the public. Concessionaire shall provide proper training of all employees and for the certification and/or licensing of employees in all areas of service as their duties might practically and legally require. Concessionaire shall ensure that all personnel refrain from any loud, boisterous, offensive, or inappropriate conduct and that they treat all patrons professionally, equally, and courteously, including, but not limited to forms of address, without regard to race, creed, color, national origin, ethnicity, age, disability, gender, or sexual orientation. Additionally, all personnel:

(a) Shall be actively working while on the sales floor in view of the public. No personnel shall be engaged in personal conversation (via telephone, etc.) or activities such as reading, writing, eating, etc.

(b) Shall be attentive to customer needs, display a positive attitude, and refrain from discussing personal issues/problems within the sales areas of the Assigned Food and Beverage Locations.

(c) Shall provide warm, friendly, smiling, prompt and courteous service.

(d) Shall be proficient with and trained in the required operations of all equipment and devices used in the facilities to facilitate sales (i.e., point of sale devices, credit card transaction equipment, etc.).

(e) Shall be familiar with all applicable policies of this Contract, City, and Concessionaire.

(f) All personnel engaged in sales activities shall speak and comprehend English, at a level appropriate to their duties.

(g) Shall, in the interest of job safety and to protect the general public, not engage in the duties required under this Contract while under the influence of controlled substances; Concessionaire shall provide and maintain a drug-free jobsite.
(h) Shall not smoke while performing the duties of this Contract; Concessionaire shall operate and maintain the Assigned Premises smoke-free and in accordance with the Airport’s policy on designated smoking areas.

(4) Concessionaire’s Employees’ Attire. The attire of Concessionaire’s personnel shall be neat, clean, of the highest character, and in keeping with that worn by personnel in similar first-class business in City. Personnel shall be attired in identifiable dress and at all times display proper Airport identification as well as visible identification of their name and employer.

(5) Additional Staff and/or Training Programs. Any actual or perceived degradation in (a) the customer service requirements set forth in this Contract or other duties, rights, or responsibilities set forth in this Contract provided by Concessionaire in the course of conducting Concessionaire’s permitted uses or (b) the training and competence of Concessionaire’s personnel shall be conveyed to the Concessionaire and Concessionaire hereby agrees that it shall promptly institute training programs, and/or add additional adequately trained and capable staff to the satisfaction of City.

(6) City Right to Object. City shall have the right to object to the demeanor, conduct, and appearance of any employee of Concessionaire or any of its invitees or those doing business with it, whereupon Concessionaire shall take all steps necessary to remedy the cause of the objection. If requested by Concessionaire, City shall present its objections in writing and provide the opportunity to reply to the objections, such reply to be given consideration by City.

J. Acceptance of Credit Cards and Issuance of Individual Guest Checks. Concessionaire and its Suboperators shall accept as payment for goods and services all nationally recognized credit or charge cards including, at a minimum, American Express, Master Card, VISA, and Discover, unless otherwise agreed to by the City in writing. Upon request, Concessionaire shall issue one guest check per customer.

K. Cash and Record Handling Requirements. Concessionaire shall at all times observe cash and record handling procedures and maintain cash and record handling systems in accordance with written procedures submitted to and approved by City. City and Concessionaire agree that such written procedures may be revised from time to time, as mutually agreed upon by Concessionaire and City, upon the advent of generally accepted technological changes. The agreed-upon cash and record handling procedures and required systems shall be incorporated in the written policy and rules and regulations of Concessionaire that cover the accounting and handling of all sales and services transactions related to this Contract.

L. Accounting Equipment. Concessionaire shall install and use, or cause to be installed and used at each facility in the Assigned Food and Beverage Locations, cash registers, sales slips, invoicing machines, and other automatic accounting equipment or devices required to properly and accurately record the Gross Revenues on all sales, by type and location, services, and other business transactions made by Concessionaire under this Contract.
Concessionaire’s point-of sale equipment shall additionally have, at a minimum, all of the following features:

1. A reasonable number of segregated category addresses to allow for accurate reporting of gross receipts by various food and beverage products and services categories;

2. The capability of recording transactions by sequential control number to an audit tape or computer file;

3. The capability of printing a transaction history to tape or computer media by time of day, day, month, and year;

4. The capability of printing a customer receipt showing the amount due, amount tendered, and change due to the customer as well as the time and date of transaction and name and telephone number of Concessionaire;

5. A fee display of sufficient size and legibility to be readily visible to the customer during a transaction; and

6. A reasonable back-up and/or storage of data redundancy to assure sales data are always available and reliable.

M. Quality and Character of Food and Beverage Products.

1. Quality of Products. All products offered for sale at Concessionaire’s food and beverage locations at the Airport shall be new, fresh, and of the highest quality, safe, sanitary, properly labeled, as advertised, conform to all applicable regulations, and shall be purchased from reliable sources. Concessionaire shall charge prices which are in compliance with the established pricing policy contained in this Contract. Any actual or perceived degradation in the quality of any products shall be conveyed to Concessionaire, in writing, by the Director. Concessionaire agrees to correct any degradation in quality to City’s reasonable satisfaction within four (4) business hours of such notification.

2. Stocking of Products. Concessionaire shall be required to have continuously in stock and available for sale a full and complete stock of products consistent with Exhibit D, unless there are shortages of such products that are beyond the control of Concessionaire. If there are shortages of products beyond the control of Concessionaire, Concessionaire shall, in writing, notify City of such shortage, the reason(s) for such shortage, and indicate the period of time the shortage is anticipated to last. Concessionaire will not display any advertisements for products that it does not have for sale and in stock in the Assigned Food and Beverage Locations during such advertisement.

3. Product Displays. Concessionaire shall not place or install any racks, stands, “Trade Fixtures” (defined in Section 9.A below), pedestal signs or displays of products
outside the boundaries of the Assigned Premises without the prior written approval of the City.

(4) City Right to Object to Sale of Certain Products. Concessionaire shall upon written demand from City cease selling any item that City shall determine is objectionable for sale or display at the Airport and immediately remove such item from its inventory and not thereafter offer such item for sale at the Airport.

(5) Replacement and Refunds. Concessionaire shall, at all times during the term of this Contract and without any additional charge to customers, replace any products determined by customers to be unsatisfactory, flawed, or defective or shall provide customers a full refund therefor.

N. Street Pricing. Concessionaire may not charge prices for any products or services that exceed the “street price”. The “street price” for any product or service sold by Concessionaire at the Airport shall be determined as follows:

(1) Branded Full Service Dining or Branded Casual Dining. In Concessionaire’s Assigned Food and Beverage Locations that provide branded full service dining and branded casual dining, as set forth in Exhibit D, the maximum price that Concessionaire may charge for any product or service cannot be more than 10% higher than the price charged for the same or similar products at locations in City that are to be mutually agreed upon by City and Concessionaire during the Development Plan approval process set forth in Section 3.C of this Contract.

(2) Quick or Walk-Away Service. In Concessionaire’s Assigned Food and Beverage Locations that provide quick or walk-away service, as set forth in Exhibit D, the maximum price that Concessionaire may charge for any product or service cannot be more than 15% higher than the price charged for the same or similar products at locations in City that are to be mutually agreed upon by City and Concessionaire during the Development Plan approval process set forth in Section 3.C of this Contract.

(3) Non-Branded Items. In Concessionaire’s Assigned Food and Beverage Locations that are non-branded, as set forth in Exhibit D, the maximum price that Concessionaire may charge for any product or service cannot be more than 20% higher than the price charged for the same or similar products at locations in City that are to be mutually agreed upon by City and Concessionaire during the Development Plan approval process set forth in Section 3.C of this Contract.

O. Deliveries. Concessionaire shall receive and take all deliveries of money, supplies, and food and beverage products at such times, in such locations, and by such routes approved by the Director. Concessionaire shall be responsible for the return of all pallets, storage containers, and other equipment belonging to its suppliers. Concessionaire shall monitor the movement of deliveries of food and beverage products to avoid conflict with other Airport functions and shall coordinate its use of the receiving docks with the use by other Airport concessionaires or tenants, as determined by
City. Any containers moving through the public areas or common areas must be covered or otherwise protected and all carts used to move supplies and equipment must be approved by City. Emergency deliveries may be made at other times subject to prior approval of the Director or his or her designee.

P. **Payment of Taxes and Permit and License Fees.** Concessionaire shall promptly pay all lawful general taxes, special assessments, excises, license fees, and permit fees, of whatever nature, applicable to its operation at the Airport and Concessionaire shall obtain and maintain current all local, state, or federal licenses required to conduct its business at the Airport. Concessionaire shall not permit any of said taxes, assessments, excises, fees, or charges to become delinquent.

Q. **Services Nondiscriminatory.** Concessionaire shall provide all services authorized hereunder to its customers and patrons upon a fair, equal, and nondiscriminatory basis and charge fair, reasonable, and nondiscriminatory prices; provided, however, Concessionaire may make or give such reasonable and nondiscriminatory discounts, rebates, or other similar price reductions as it may desire to its employees.

R. **Customer Comments and Complaints.** Concessionaire shall be required to respond to any customer complaints in writing within ten (10) days of receipt, with a good faith effort to explain, resolve, or rectify the corresponding problem. Concessionaire shall provide the Director with a copy of any customer complaint received the same day it is received by Concessionaire and shall provide the Director with a copy of the written response the same day it is sent. Customer complaints received by City shall be forwarded to the Concessionaire, who shall respond utilizing the above procedure. Concessionaire shall be required to implement and utilize a customer comment system (cards, telephone, web, etc.). All such completed comments and Concessionaire’s summary reports shall be provided to City within ten (10) days of receipt and/or completion.

S. **Compliance with All Applicable Laws and Limitations of this Contract.** Concessionaire shall comply with all applicable local, state, and federal laws and regulations, obtain and maintain at all times at its own expense, all licenses, certificates, and any other such documents necessary for the operation of its concession at the Airport. Concessionaire shall not permit any unlawful practice to be committed on the Assigned Premises. Concessionaire shall not use or permit the use of the Assigned Premises for any purpose not authorized by this Contract or that in any way which disturbs other tenants or concessionaires at the Airport. In addition, Concessionaire shall comply with the following:

1. **Health and Safety Standards.** Concessionaire shall ensure that all requirements of City, county, and state boards of health, and health and sanitary regulations adopted by the City, county, state, or any governmental legal authority, are fully complied with in all facilities. Concessionaire shall give access for inspection purposes to any duly authorized representatives of such governing bodies and to City. Concessionaire shall provide the Director with copies of all inspection reports within forty-eight (48) hours of receipt. This paragraph does not require Concessionaire to waive any applicable attorney-client or attorney work product privileges, or otherwise to waive any legal rights it may possess.
(2) **Concessionaire’s Standards.** Concessionaire shall submit to City a copy of any of its own customer service, operations, etc. standards, plans, and/or manuals, and shall ensure continuous adherence to Concessionaire’s own standards in addition to City’s standards as set forth herein.

T. **Failure to Comply with Operational Standards.** Concessionaire acknowledges City’s desire to provide the public and air traveler with the level and quality of service as described herein. Accordingly, City may, in its sole discretion, assess a fee of $100 per occurrence for a violation of this Contract as liquidated damages for such violation. Concessionaire and City agree that the fee is reasonable, and Concessionaire further agrees to pay to City the fee upon the occurrence of the violation and upon written demand by City. Concessionaire further acknowledges the fee is not an exclusive remedy and City may pursue any other remedies at its sole discretion. Except for violations of requirements regarding operating hours and health code violations, which shall accrue immediately and without notice upon violation, other fees shall not be assessed unless the violation continues for more than three (3) calendar days after City has given to Concessionaire written notice of the violation; provided, however, after City has given Concessionaire notice of a violation of the same operating requirement more than twice during any twelve (12) month period, commencing upon the first notice of violation of said operating requirement, the fee shall be immediately assessed with no opportunity to cure.

**SECTION 5. CONCESSION FEES**

A. **Consideration.** In consideration for the rights and privileges granted by City to Concessionaire under this Contract, Concessionaire shall pay to City the fees described in this Section.

B. **Definition of Gross Revenues.** “Gross Revenues” shall mean all monies or other consideration received or receivable, paid or payable, cash or credit, regardless of collection in the case of the latter, to Concessionaire and any of its Suboperators on all sales of products and services, whether retail or wholesale, derived from the operation of its food and beverage concession at the Airport and shall include all transactions, whether placed by telephone, via internet, in person, or by mail (including e-mail) and all charges or other fees charged by Concessionaire, regardless of the place or time of actual payment, without any deductions for credit card discounts or thefts, except for the following:

1. **Taxes.** Any federal, state or municipal taxes separately stated and collected from customers and directly payable to the respective taxing authority by Concessionaire;

2. **Refunds.** Verifiable refunds made by Concessionaire to customers because of unacceptable or unsatisfactory goods or services;

3. **Tips and Gratuities.** Tips or gratuities collected, recorded, and directly remitted to employees;
(4) **Alcoholic Beverage Taxes.** Alcoholic beverage taxes collected for remittance to the taxing authority from retail sales of alcoholic beverages;

(5) **Employee Meals.** The discounted portion of or complimentary meals provided to Airport employees during their working hours;

(6) **Sales of Gift Cards.** The sale, but not the redemption, of gift cards or gift certificates for food, beverages, or promotional items at the Assigned Food and Beverage Locations;

(7) **Non-Edible Promotional Items.** The sale of non-edible, non-profit, promotional items offered by Concessionaire’s or its Suboperators’ franchisors at the Assigned Food and Beverage Locations; and

(8) **Fees on Bottled Water.** Monies received by Concessionaire pursuant to Section 8 of this Contract.

C. **Percentage Fee or Minimum Annual Guarantee Payments.** During each year of the Primary Term and the Renewal Term, if any, in consideration for the rights and privileges granted Concessionaire under this Contract, Concessionaire shall pay to City the greater of either:

(1) **Percentage Fee.** The sum of the following percentages of Gross Revenues during each year ("Percentage Fee"): 

(a) 12% of annual Gross Revenues from the sale of food and non-alcoholic beverages from the Assigned Food and Beverage Locations identified as branded in Exhibit D;

(b) 13% of annual Gross Revenues from the sale of food and non-alcoholic beverages from the Assigned Food and Beverage Locations identified as non-branded in Exhibit D; and

(c) 15% of annual Gross Revenues from the sale of alcoholic beverages.

OR

(2) **Minimum Annual Guarantee.** The following minimum annual guarantee ("MAG"): 

(a) **First Year of the Primary Term/Phase I.** In the first year of the Primary Term, during “Phase I” identified in Exhibit A, the MAG is a dollar amount per “Enplaned Passenger” (defined below) as determined using the following formula: the number of square feet of the Assigned Food and Beverage Locations Concessionaire is operating on the first day of the Primary Term multiplied by
$145.00 with the resulting product divided by 5,261,000. “Enplaned Passenger” or “EP”, as abbreviated on Exhibit A, is defined in the same manner as defined by the United States Department of Transportation (“DOT”).

(b) Remaining Years of Phase I. After the first year of the Primary Term/Phase I and until the commencement of “Phase II” identified in Exhibit A, the MAG is 90% of the prior year’s total Percentage Fee; provided, however, in no event shall the MAG be less than the MAG as calculated under Section 5.C(2)(a) above.

(c) First Year of Phase II. In the first year of Phase II, the MAG is a dollar amount per Enplaned Passenger as determined using the following formula: the number of square feet of the Assigned Food and Beverage Locations Concessionaire is operating on the first day of Phase II multiplied by $145.00 with the resulting product divided by 5,750,000.

(d) Remaining Years of Phase II. After the first year of Phase II and until the end of the Primary Term, the MAG is 90% of the prior year’s total Percentage Fee; provided, however, in no event shall the MAG be less than the MAG as calculated under Section 5.C(2)(c) above.

(e) Renewal Term. If City grants Concessionaire a Renewal Term, the MAG shall be the greater of (i) the MAG in effect during the year immediately preceding the Renewal Term or (ii) 90% of the Percentage Fee during the year immediately preceding the start of the Renewal Term.

D. Percentage Fee Payments during the Interim Term. During the Interim Term, Concessionaire shall not be required to pay the MAG stated in Section 5.C(2) above; however, Concessionaire shall pay City the Percentage Fee described in Section 5.C(1) above and all other rents, fees, and charges required under this Contract.

E. Possibility for Greater Percentage Fee and MAG. If Concessionaire is awarded the right to operate the “Second Food and Beverage Concession”, as defined in Section 8 of this Contract, and Concessionaire has proposed to pay a greater Percentage Fee than the Percentage Fee stated in Section 5.C(1) above, Concessionaire shall be required to pay City the greater Percentage Fee stated in its proposal for the Second Food and Beverage Concession instead of the Percentage Fee defined in Section 5.C(1) above.

F. Utilities. Concessionaire shall pay City for any utility separately metered and consumed at or delivered to the Assigned Premises. The Assigned Premises shall be sub-metered.

G. Rent for Assigned Support Space. City shall charge Concessionaire no more than $40.00 per square foot for its Assigned Support Space.

H. Marketing Fees. City shall not charge Concessionaire marketing fees in excess of 1% of Concessionaire’s yearly Gross Revenues.
SECTION 6. PAYMENTS AND STATEMENTS

A. Payment Obligations Generally. Concessionaire covenants to pay all compensation and charges under this Contract independent of any obligation of City. No breach of this Contract by City shall relieve Concessionaire of its obligation and duty to pay all rents, charges, and fees when due under this Agreement. Payments required to be made by Concessionaire to City under this Contract shall be made in lawful money of the United States, free from all claims, demands, set-offs, or counter-claims of any kind and shall be payable to and at:

City of Dallas
Department of Aviation
Love Field Airport Terminal Building
8008 Cedar Springs Road
Lock Box 16
Dallas, Texas 75235

B. MAG Payment Due Date. On or before the first day of each month of the Primary Term and Renewal Term, if any, Concessionaire shall pay to City one-twelfth (1/12) of the MAG as calculated in Section 5.C(2) of this Contract. For purposes of the monthly MAG payments during the first year of the Primary Term only, the monthly MAG payment shall be estimated to equal one-twelfth (1/12) of the product of the number of Enplaned Passengers during the twelve (12) months immediately preceding the start of the Primary Term multiplied by the amount of the MAG calculated under the formula contained in Section 5.C(2)(a) of this Contract.

C. Percentage Fee Payment Due Date. During the Interim Term, Concessionaire shall pay the Percentage Fee and any other rentals and fees due City, on or before the twentieth (20th) day of each month. During the Primary Term and Renewal Term, if any, Concessionaire shall pay City the Percentage Fee, to the extent that such percentage payment exceeds the monthly installment of the MAG, on or before the twentieth (20th) day of each month.

D. Monthly Statement of Gross Revenues. On or before the twentieth (20th) day of each month during the Term of this Contract, starting on the second month of the Term, and at the same time that Concessionaire submits its Percentage Fee payment, Concessionaire shall submit to City a copy of an accurate statement of its Gross Revenues for the preceding month in such format as required by City.

1) Contents of Monthly Statement. The monthly report shall state Concessionaire’s total Gross Revenues, total “DBE” (defined in Section 22) Gross Revenues, Gross Revenues by Suboperator, Gross Revenues by category (e.g., newspapers, gifts, bottled water), and Gross Revenues by location, the number of “bottles of water” (defined in Section 8) sold, and such other information as may be required by City.
(2) **Certification of Monthly Statement.** The monthly statement shall be certified by the signature of a responsible accounting officer of Concessionaire.

E. **Late MAG Payment, Percentage Fee Payment, or Monthly Statement of Gross Revenues.** Payment of the MAG shall be considered delinquent if it has not been received by the tenth (10th) day of the month due. The Percentage Fee payment and monthly statement of Gross Revenues due will be considered late if not received by the twenty-fifth (25th) day of the month it is due. Concessionaire shall be assessed interest on the amount owed City, in accordance with Section 2-1.1 of the Dallas City Code, for each day that any payment is delinquent. Any interest assessment is in addition to, and not in lieu of, the then owned payment, if any, which shall remain due and payable. Any delinquent charge shall be in addition to the right to terminate this Contract for delinquent payments as granted to City in this Contract.

F. **Interest on Payments Delinquent Thirty-Days or More.** Without waiving any other right of action available to City in the event of default in payments due under this Contract, if Concessionaire is delinquent for a period of thirty (30) days or more in paying to City any sum due and owing pursuant to this Contract, Concessionaire shall pay to City interest thereon at the rate of 10% per annum from the date such item was due and owing and until full payment (plus interest) has been paid. City reserves the right, in its sole discretion, to forego interest charges in whole or in part on those contested items disputed in good faith by Concessionaire.

G. **Overpayments.** In the event Concessionaire’s aggregate payments to City for any year exceed the MAG and Percentage Fee due for that year, Concessionaire shall be entitled to a credit for such overpayment in the next year within thirty (30) days following City’s receipt of the annual opinion from an Independent Certified Public Accountant from Concessionaire, as required under Section 11.C of this Contract. For any overpayment made by Concessionaire in the final year of the Contract, Concessionaire shall be entitled to a refund.

1. **Annual True-ups.** The first determination of overpayment shall be made twelve (12) months after the commencement of the Primary Term and shall be repeated every twelve (12) months thereafter until the end of the Primary Term or Renewal Term, if any.

2. **Calculation of Overpayments.** A credit for overpayment shall be the difference between the amount paid by Concessionaire and the greater of the MAG or the Percentage Fee for the year at issue. Any overpayment shall be credited to the next payments due City from Concessionaire.

H. **Payment for Utilities.** Payment for utilities provided to the Assigned Premises shall be due within ten (10) days after Concessionaire’s receipt of an invoice from City.

I. **Other Rents, Fees, and Charges.** Unless otherwise stated in this Section, all other rents, fees, and charges due from Concessionaire under this Contract shall be payable to City on or before the first day of each month during the Term.
SECTION 7. ANNUAL PERFORMANCE REVIEW

A. Within ninety (90) days of the end of each year of the Term, the Director and Concessionaire shall meet to review the financial, customer service, and operational performance of each of the Assigned Food and Beverage Locations during the prior year. During the course of said review, the Director may determine, in his or her sole discretion, while taking into consideration those factors that may impact Concessionaire’s performance including, but not limited to, construction in the Terminal and changes in Airport security procedures, that the performance of any of the Assigned Food and Beverage Locations is unsatisfactory if an Assigned Food and Beverage Location meets any one or more of the following conditions during the prior year:

(1) Sales per Enplaned Passenger were less than 80% of the “Projected Sales per Enplaned Passenger” for an Assigned Food and Beverage Location. “Projected Sales per Enplaned Passenger” for an Assigned Food and Beverage Location shall equal the projected sales for such location set forth in Exhibit D divided by 5,261,000;

(2) Sales per Enplaned Passenger were less than 85% of Sales per Enplaned Passenger for the same Assigned Food and Beverage Location during the year two years prior;

(3) Score(s) on secret shopper survey(s) conducted by City or its designee(s), if any, were less than 80% of the maximum achievable score(s) for such survey(s);

(4) Score(s) on operational survey(s) conducted by City or its designee(s), if any, were less than 80% of the maximum achievable score(s) for such survey(s); or

(5) The result(s) of passenger satisfaction survey(s) conducted by City or its designee, if any, indicate that a statistically significant majority of passengers assign an Assigned Food and Beverage Location a rating of three (3) or less (on a scale of one (1) to five (5)). Such survey(s), if not conducted by City, shall be conducted by a qualified and competent firm experienced in designing and conducting such surveys.

B. In the event that the Director determines, based on the performance criteria as specified in this Section 7, that any of the Assigned Food and Beverage Locations performed in an unsatisfactory fashion during the prior year, then within thirty (30) days of written notice of such determination, Concessionaire shall prepare and submit to the Director, for his or her approval, a “Remediation Plan” (defined below) to improve the performance of all such Assigned Food and Beverage Locations. The “Remediation Plan” means a plan including, but not be limited to, proposed remedial activities such as employee training, staffing changes, food and beverage product and service modifications, facility refurbishment and repair, and/or replacement of concept or brand. Upon approval by the Director, Concessionaire agrees to diligently implement the approved Remediation Plan and further agrees to submit to the Director monthly reports on the progress of implementation of the approved Remediation Plan. If the approved Remediation Plan includes the replacement of a concept or brand, then City and Concessionaire will enter into good faith negotiations to consider a replacement brand. If such concept or brand replacement is mutually
agreed, the reimbursement for unamortized capital and the capital investment required for such brand substitution will be a component of such good faith negotiations, based on the initial “Capital Investment” (defined in Section 9 below) of the unit, the unamortized capital, and the capital investment required for the concept or brand replacement.

C. In the event the Director determines, based on the performance criteria as specified in this Section 7, any of the Assigned Food and Beverage Locations has performed in an unsatisfactory fashion during two (2) or more consecutive years, City reserves the right to require Concessionaire to replace the underperforming concept or brand. Within ninety (90) days of written notice of the City’s intention to require such replacement, Concessionaire shall submit to the City a proposal for such brand or concept replacement plan. Such plan shall include, but not be limited to, a detailed description of the brand or concept, capital expense required to re-brand, sales projections, and the specific timetable to replace the brand. City reserves the right to approve or deny the replacement plan and require Concessionaire to resubmit another replacement plan. The decision to approve or deny the replacement plan is in the City’s sole discretion.

SECTION 8. SALES OF BOTTLED WATER

A. Sales of Bottled Water Generally. In order to ensure high levels of customer satisfaction at the Airport, “Hudson” (defined below) and the operator of the “Second Retail Concession” (defined below) shall have the right to sell bottled water at its news and gift store locations.

B. Applicability of this Section. During all or a portion of the Interim Term of this Contract, Hudson will operate a retail concession in the existing Airport terminal building; Hudson may sell bottled water at its news and gift store locations in the existing Airport terminal building under the terms of the First Amendment to the Love Field Retail Merchandise Concession Contract by and between City and Hudson, approved by the City Council on April 28, 2010, by Resolution No. 10_____. This Section 8 applies only to the retail concessionaires’ (Hudson and the operator of the Second Retail Concession and their successors and assigns) sales of bottled water in the Terminal.

C. Definitions Related to Sales of Bottled Water.

1. Base Amount. The “Base Amount” is the number of bottles of water that Concessionaire and the operator of the “Second Food and Beverage Concession” (defined below) would have been expected to sell in the Terminal in a calendar year. The Base Amount shall be calculated by multiplying the actual number of enplanements in the Terminal for a calendar year (pro-rated for the first year from the Commencement Date to December 31st of that same year and for the last year from January 1st to the expiration or earlier termination of the Contract) by the “Water Ratio” (defined below).

2. Bottle of Water. A “bottle of water” is a bottle or container that holds twenty (20) ounces or less of water, including, but not limited to, enhanced, flavored, and sparkling
water, sold at the Airport. If water is sold at the Airport in a bottle or container that holds more than twenty (20) ounces of water, the number of ounces of water in such bottle or container shall be divided by twenty (20) to determine the number of bottles of water such bottle or container is equivalent to.

(3) Hudson. “Hudson” means Hudson Retail Dallas, J.V., the only retail concession operator doing business at the Airport prior to the Effective Date and its successors and assigns. Hudson shall also operate a retail concession at the Airport coterminous with Concessionaire’s operation of its food and beverage concession granted under this Contract and may also operate the Second Retail Concession if it is awarded to them.

(4) Second Food and Beverage Concession. The “Second Food and Beverage Concession” means the food and beverage concession that is separate from the food and beverage concession operated by LFP under this Contract and which is awarded to a food and beverage concession operator following a RFP process; provided, however, LFP is not precluded from being awarded the Second Food and Beverage Concession. The terms of this Section 8 shall apply to the operator of the Second Food and Beverage Concession and its successors and assigns under its contract with City.

(5) Second Retail Concession. The “Second Retail Concession” means the retail concession that is separate from the retail concession operated by Hudson and which is awarded to a retail concession operator following a RFP process; provided, however, Hudson is not precluded from being awarded the Second Retail Concession.

(6) LFP. “LFP” means Concessionaire.

(7) Water Ratio. The “Water Ratio” is 0.10625. The Water Ratio shall be constant until the expiration of the Term of this Contract.

D. Fees on Bottled Water. Hudson and the concessionaire operating the Second Retail Concession shall pay to LFP the fees stated below; provided, however, Hudson and the concessionaire operating the Second Retail Concession shall only pay LFP a fee on the actual number of bottles of water each retail concessionaire has sold:

(1) Sales of Bottled Water Less Than or Equal to the Base Amount. If the combined sales of bottled water by Hudson, the concessionaire operating the Second Retail Concession, LFP, and the concessionaire operating the Second Food and Beverage Concession are less than or equal to the Base Amount, Hudson and the concessionaire operating the Second Retail Concession shall each pay LFP $1.47 per bottle of water sold by each.

AND

(2) Sales of Bottled Water Greater Than the Base Amount. If the combined sales
of bottled water by Hudson, the concessionaire operating the Second Retail Concession, LFP, and the concessionaire operating the Second Food and Beverage Concession exceeds the Base Amount AND

(a) The combined sales of bottled water by LFP and the concessionaire operating the Second Food and Beverage Concession are less than the Base Amount, Hudson and the concessionaire operating the Second Retail Concession shall each pay LFP $1.47 per bottle of water for each retail concessionaire’s proportionate share of bottles of water sold below the Base Amount AND $0.62 per bottle of water for each remaining bottle of water sold. For purposes of this Section 8.D(2)(a), the proportionate share of bottles of water sold below the Base Amount by each retail concessionaire shall be a ratio of the bottles of water sold by Hudson or the concessionaire operating the Second Retail Concession, as applicable, to the total number of bottles of water sold by both Hudson and the Second Retail Concession.

OR

(b) The combined sales of bottled water by LFP and the concessionaire operating the Second Food and Beverage Concession exceed the Base Amount, Hudson and the concessionaire operating the Second Retail Concession shall each pay LFP $0.62 per bottle of water sold.

E. Examples of How the Calculations Work.

(1) **Base Amount Calculation**: If there are 4,203,605 enplanements at the Airport during the period January 1, 2015 to December 31, 2015, the Base Amount would be 446,633 (4,203,605 x 0.10625).

(2) **Fee Calculation Example 1**: If during the period January 1, 2015 to December 31, 2015, the Base Amount is calculated to be 446,633 and LFP sold 200,000 bottles of water, the concessionaire operating the Second Food and Beverage Concession sold 200,000 bottles of water (a total of 400,000 bottles of water sold by the food and beverage concessionaires), Hudson sold 25,000 bottles, and the concessionaire operating the Second Retail Concession sold 25,000 bottles of water, Hudson and the concessionaire operating the Second Retail Concession would each pay LFP $1.47 for each of the 23,316.5 bottles of water sold and $0.62 for each of the 1,668.5 bottles of water sold.

(3) **Fee Calculation Example 2**: If during the period January 1, 2015 to December 31, 2015, the Base Amount is calculated to be 446,633 and the total number of bottles of water sold by both food and beverage concession operators is 447,000, Hudson sold 25,000 bottles, and the concessionaire operating the Second Retail Concession sold 25,000 bottles of water, Hudson and the concessionaire operating the Second Retail Concession would each pay LFP $0.62 on each of the 25,000 bottles of water sold per retail concessionaire.
(4) Fee Calculation Example 3. If during the period January 1, 2015 to December 31, 2015, the Base Amount is calculated to be 446,633 and both food and beverage concession operators sold a total of 400,000 bottles of water, Hudson sold 10,000 bottles, and the concessionaire operating the Second Retail Concession sold 10,000 bottles, Hudson and the concessionaire operating the Second Retail Concession would each pay LFP $1.47 for each of the 10,000 bottles of water sold per retail concessionaire.

F. Fee Calculation. On or before the twentieth (20th) day of the month, City will receive monthly statements from LFP, as required under Section 6 of this Contract, Hudson, the concessionaire operating the Second Retail Concession, and the concessionaire operating the Second Food and Beverage Concession. Each monthly statement will include the number of bottles of water sold by each concessionaire at the Airport. City shall rely on the bottled water sales information provided by each concessionaire in the monthly statements to provide, on or before the thirtieth (30th) day of the month, Hudson, the concessionaire operating the Second Retail Concession, and LFP with a calculation of the bottled water fee to be paid, if any, by Hudson and the concessionaire operating the Second Retail Concession to LFP.

G. Payments to LFP. Hudson and the concessionaire operating the Second Retail Concession shall have five (5) days from receipt of the bottled water fee calculation from City to pay LFP the bottled water fee, if any.

H. Fee Calculation Disputes. The failure of Hudson, the concessionaire operating the Second Retail Concession, or LFP to contest City’s fee calculation in writing within five (5) days of receipt of the calculation shall be deemed a waiver of each concessionaire’s right to protest the fee calculation and/or payment. Protest of the fee calculation by any concessionaire shall not relieve Hudson or the concessionaire operating the Second Retail Concession from the obligation to pay LFP, if required, in the amount and at the time required in Sections 8.F and 8.G. The Director shall make a determination on the fee contestation within five (5) days of receipt, which determination shall be final and binding on Hudson, the concessionaire operating the Second Retail Concession and LFP. Any difference between City’s original calculation and the Director’s determination after a fee contestation shall be settled between Hudson, the concessionaire operating the Second Retail Concession, and/or LFP within five (5) days of the Director’s determination.

I. City Not Responsible for Fees on Bottled Water. Nothing in this Contract shall be construed as giving Hudson, the concessionaire operating the Second Retail Concession, LFP, or the concessionaire operating the Second Food and Beverage Concession any right to payment from City for any fees on bottled water sold at the Airport.

SECTION 9. IMPROVEMENTS TO THE ASSIGNED PREMISES

(1) Capital Investment. “Capital Investment” means all reasonable direct costs for work performed and materials furnished for improvements made to the Assigned Premises including “Fixed Improvements”, “Trade Fixtures”, and “Personal Property”, as each term is defined below, architectural and engineering fees, electrical, and HVAC improvements; however, Capital Investment shall not include: (a) payments for architectural, engineering, professional, and consulting services which exceed 15% of the total of the costs of “Fixed Improvements” and “Trade Fixtures”, as each term is defined below; (b) interest and other financing charges; or (c) Concessionaire’s own overhead expenses (except that Concessionaire may include the reasonable cost of paying its own employees to perform architectural, engineering, professional, or consulting services, subject to the 15% limit set forth in (a) above).

(2) Fixed Improvements. “Fixed Improvements” means all structural improvements made by Concessionaire pursuant to this Section, including but not limited to ceiling, wall and floor finishes; power, water, and other utility conductors; and light fixtures, all of which are permanently affixed to the Assigned Premises.

(3) Personal Property. “Personal Property” means furniture and all other portable property furnished and used by Concessionaire in its operations under this Contract.

(4) Trade Fixtures. “Trade Fixtures” means all appliances, signage, and any other major equipment with a useful life in excess of three (3) years, installed by Concessionaire for use in its operations under this Contract. Although Trade Fixtures may be affixed to the Assigned Premises, Trade Fixtures may be removed from the Assigned Premises as long as such removal does not cause structural damage to the Assigned Premises.

B. Minimum Initial Capital Investment. During the Interim Term, Concessionaire shall make an initial Capital Investment, as defined in Section 9.A(1), in the Assigned Food and Beverage Locations of a minimum of $400.00 per square foot.

C. Minimum Mid-Primary Term Refurbishment. During the sixth year of the Primary Term, in order to refurbish the Assigned Food and Beverage Locations to like-new condition, Concessionaire shall make a Capital Investment, as defined in Section 9.A(1), in the Assigned Food and Beverage Locations of a minimum of $75.00 per square foot.

D. Submission and Approval of Plans and Specifications. Prior to Concessionaire’s commencement of any construction activities on the Assigned Premises, Concessionaire shall submit plans and specifications to the Director for review and approval. No construction work shall commence until the Director has approved the plans and specifications and has issued a notice to proceed letter to Concessionaire.

(1) Submission of Plans and Specifications. Concessionaire shall submit final plans and specifications (three sets are required) for the initial Capital Investment improvements to be completed on the Assigned Premises during the Interim Term at least ninety (90) days prior to the date that any portion of the Assigned Premises is delivered to
Concessionaire for construction and at least thirty (30) days prior to the end of the sixth year of the Primary Term, Concessionaire agrees to submit final plans and specifications (three sets are required) for the required mid-term Capital Investment refurbishment of improvements to be completed on the Assigned Premises during the Primary Term. The Director may, for good cause presented by Concessionaire, extend the time to submit final plans and specifications. With the Director’s approval, final plans and specifications may be submitted piecemeal in accordance with the phasing schedule for the LFMP. Plans and specifications must include all of the following at a minimum:

(a) A completion date for each component site of the Assigned Premises.

(b) Architectural and engineering drawings, including furniture plans showing details of space occupancy, floor plans, and reflected ceiling plans, partition and door location plans, telephone and electrical plans noting any special lighting and power load requirements, environmental design criteria and all security and communications information, detail plans and finish plans.

(c) Design detail that includes detailed storefront sketches, color, and materials for walls, ceiling and floor finishes, graphics, and furniture, fixture, and equipment selections.

(d) Installation of electrical sub-meters within the Assigned Premises.

(e) Any other construction or detail reasonably requested by City.

(2) Review and Approval of Plans and Specifications. Within ten (10) days after receipt of any plans and specifications from Concessionaire, the Director shall either approve or disapprove the plans and specifications submitted by Concessionaire. The approval by the Director of any plans and specifications refers to the conformity of such plans any specifications to the general architectural and aesthetic plan for the Assigned Premises and such approval shall not be unreasonably withheld. The plans and specifications are not approved for compliance with applicable laws or codes and neither the Director nor City, acting through its Director, by approving such plans and specifications, assumes any liability or responsibility for any defect in any structure or improvement constructed according to such plans and specifications. The Director shall have the right to reject any designs submitted, and shall state the reason for such action. In the event the Director does not approve any plan or specification, Concessionaire has fourteen (14) days to resubmit any necessary modifications or revisions. After the Director gives his or her approval, changes or alterations to the plans and specifications may only be made with the written consent of the Director.

E. Construction on the Assigned Premises. With respect to any of Concessionaire’s construction activities on the Assigned Premises, Concessionaire agrees as follows:

(1) Upon the issuance of the official notice to proceed letter by the Director,
Concessionaire shall immediately begin the construction and installation of the approved improvements to the specific site or sites to which such notice to proceed applies. Concessionaire agrees to diligently pursue completion of such improvements in accordance with the completion date stated in its plans and specifications.

(2) Any delay in construction of any improvements due to fire, earthquake, wars, acts of City or one of City’s contractors, or any other calamity beyond the control of Concessionaire shall extend the completion date. Concessionaire shall not be entitled to any compensation or damages as a result of any such delay.

(3) Except as provided in Section 9.E(2), if an activity falls behind schedule, Concessionaire shall schedule crews to a size to ensure that the construction activity will be completed by the agreed to completion date, at no cost to City.

F. Performance and Payment Bonds. Prior to the commencement of any construction on the Assigned Premises, Concessionaire shall cause its contractor(s) to obtain and deliver to City, at no cost to City, performance and payment bonds, as follows:

(1) Performance Bond. Concessionaire’s contractor(s) shall obtain a performance bond in a sum equal to 100% of the anticipated amount of the construction contract for any improvements. The performance bond shall be issued by a corporate surety licensed to issue bonds in the State of Texas and otherwise acceptable to City and shall be drawn on a form as approved by City. The bond shall name City as a joint obligee and shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with the approved plans and specifications and shall indemnify and hold harmless City against any losses and liability, damages, expenses, claims, and judgments caused by or resulting from any failure of contractor to perform completely the work described therein.

(2) Payment Bond. Concessionaire’s contractor(s) shall obtain a payment bond with the Concessionaire’s contractor(s) as principal(s), in a sum equal to 100% of the amount of the construction contract for any improvements. The payment bond shall name City as a joint obligee and shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of any construction contract.

G. Documentation to be Provided by Concessionaire upon Completion of Construction. Upon completion of the any Capital Investment obligations required under this Contract, Concessionaire shall provide the City with all of the following:

(1) Within thirty (30) days following the completion of the improvement obligations: one reproducible copy of as-built drawings for each site.

(2) Within sixty (60) days following the completion of the improvement obligations, all of the following:
(a) A statement certified by Concessionaire’s chief financial officer specifying the final total cost of all improvement obligations required under this Contract.

(b) A certification that all improvements have been constructed in accordance with the approved plans and specifications, and in strict compliance with all applicable building codes, laws, rules, ordinances, and regulations.

(c) Certified proof demonstrating that no liens exist on any or all of the Assigned Premises, including, but not limited to, a waiver of lien from all construction contractors and signed releases from all sub-contractors that indicate receipt of payment in full for all work performed or furniture, fixtures, or supplies delivered.

H. Installation of Non-Structural Improvements. Concessionaire shall have the right to install or erect non-structural improvements in the Assigned Premises; provided however, that all such alterations be commenced only after plans and specifications for such non-structural improvements have been submitted to and approved by the Director. Any such alterations or repairs shall be without cost to the City, completed within the time specified in the Director’s written approval, and with the least disturbance possible to the operation of the Airport, to the Airport tenants, and to the public.

I. Prohibition on Liens. Concessionaire agrees not to permit any mechanic’s lien, materialman’s lien, or any other lien to be placed or foreclosed upon the Assigned 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.

J. Conformance with All Laws. All structural improvements, equipment, and interior design and decor constructed or installed by Concessionaire, its agents, employees, Suboperators, or contractors, including the plans and specifications, shall conform to all applicable local, state, and federal statutes, ordinances, building codes, rules, and regulations.

K. Failure to Meet Minimum Capital Investment. If the actual Capital Investment improvement costs, as certified by the Concessionaire, are less than the minimum expenditures required in Sections 9.B or 9.C, as applicable, Concessionaire agrees to pay to City, within thirty (30) days of such determination, the difference between the actual cost and the applicable required minimum expenditure. Any amounts paid to City as a result of this provision shall not be deemed a cost of the Capital Investment obligations for any purpose under this Contract nor shall it be deemed payment of any Percentage Fee, MAG, or other rental payment due under this Contract.

L. Ownership of Fixed Improvements. All Fixed Improvements in the Assigned Premises shall be and remain the property of Concessionaire or its Suboperators until the expiration of the Primary Term or Renewal Term, if any, or upon termination of this Contract,
whether by expiration, cancellation, forfeiture, or otherwise, whichever first occurs, at which time the Fixed Improvements shall become the property of City. Any Trade Fixtures and Personal Property of Concessionaire and its Suboperators shall remain the property of Concessionaire or its Suboperators, unless otherwise provided in this Contract.

M. **Prohibition on Removal or Demolition of Improvements.** Concessionaire shall not remove or demolish, in whole or in part any improvements upon the Assigned Premises without the prior written consent of the Director, which consent may be conditioned upon the obligation of Concessionaire to replace the same by a specified improvement. The Director shall not withhold consent unreasonably, shall not impose unreasonable conditions, and shall state any reasons for withholding consent.

SECTION 10. DAMAGE OR DESTRUCTION OF ASSIGNED PREMISES

A. **Notice and Options.** If all or a portion of the Assigned Premises are damaged or destroyed by fire, explosion, the elements, or other casualty, at the sole option of City, the affected portions of the Assigned Premises may be repaired or reconstructed at no cost to Concessionaire, subject to the limits as hereafter set forth. The Director shall notify Concessionaire within thirty (30) days of such occurrence of City’s intentions to repair or reconstruct or not to repair or reconstruct; provided, however, if said damage is caused by the negligent or wrongful act or omission to act of Concessionaire, its Suboperators, agents, or employees and City elects to repair or reconstruct, Concessionaire shall be responsible for reimbursing City for the cost and expense incurred in such repair, to the extent that the insurance proceeds received by City are not sufficient to pay the cost and expense of repair.

B. **Damage.** Subject to the provisions of Sections 10.A above and 10.D below, if the damages are so extensive as to render the Assigned Premises or a portion thereof un-tenantable, and notice of intent to repair or reconstruct has been given by City, an appropriate portion of the MAG payable under this Contract shall abate from the time of the damage until such time as the damaged premises are fully restored and certified by City as again ready for use; provided, however, that if said damage is caused by the negligent or wrongful act or omission to act of Concessionaire, its Suboperators or the agents or employees of either, said fees and charges will not abate.

C. **Destruction.** In the event all or a portion greater than 50% of the Assigned Food and Beverage Locations is completely destroyed by fire, explosion, the elements, public enemy, or other casualty, or are so damaged that they are un-tenantable and notice of intent not to repair or reconstruct has been issued, City or Concessionaire may cancel this Contract in its entirety as of the date of such destruction. Notwithstanding the foregoing, if such destruction is a result of the negligent or wrongful act or omission to act of Concessionaire, its Suboperators, agents, or the employees of either, Concessionaire shall not have the right to cancel this Contract and City may, in its discretion, require Concessionaire to repair and reconstruct said premises within six months of such destruction and pay the cost therefor.
D. **Limits of City’s Obligations Defined.** It is understood that, in the application of the foregoing provisions, City’s obligations shall be limited to: (1) repair or reconstruction of the Assigned Premises to the same extent and of equal quality as Concessionaire obtained from City and (2) the extent of insurance proceeds available to City for such purposes. Fixed Improvements, Trade Fixtures, redecoration and replacement of Personal Property, equipment, and supplies shall be the responsibility of Concessionaire and any such redecoration and refurnishing/re-equipping shall be equivalent in quality to that originally installed.

**SECTION 11. RIGHT TO INSPECT BOOKS, AUDIT, AND CPA OPINION**

A. **City’s Right to Inspect Concessionaire’s Books.** During the term of this Contract, Concessionaire shall maintain or cause to be maintained, true, accurate, and in a standard accounting manner, records of business conducted under this Contract. Concessionaire further agrees that City shall have the right at all reasonable times to inspect and copy such books, records, and receipts and to designate a duly authorized representative to audit, check, or investigate the auditing procedures and accounting records, including daily, weekly, and monthly receipts accruing from said business; and

B. **City Audit.** The Director shall have the right, at any time, upon reasonable notice to Concessionaire, to cause an audit to be made of the books and records of Concessionaire that relate to its operations pursuant to this Contract for a period of at least five (5) years after the end of the year to which the books and records pertain. If, as a result of such audit, it is established that Concessionaire is liable to City for the payment of any sum, Concessionaire will, upon written demand from the Director, pay such sum to City, together with any interest at the rate specified by any applicable City ordinance. In the event that there is no applicable City ordinance in effect, then any such sum shall earn interest at the rate of 10% per year, from the date that the sum should have been paid. Further, if such audit establishes that Concessionaire has understated revenues which it collected or was required to collect by more than 2% for any thirty-day period, then the entire expense of the audit shall be borne by Concessionaire. City’s rights under this Section shall survive the termination of this Contract.

C. **Opinion of Certified Public Accountant.** Within ninety (90) days of the end of the each year of this Contract, and within ninety (90) days of the Contract’s expiration or termination, Concessionaire shall furnish to City an opinion from an Independent Certified Public Accountant (“CPA”) as to the amount of Gross Revenues reported to City for that year. The CPA shall perform the examination in accordance with generally accepted auditing standards including such tests of the accounting records and such other auditing procedures considered necessary in the circumstances. The CPA’s opinion shall be considered delinquent if it has not been received by City within ninety (90) days of the end of each year of the Contract and/or ninety (90) days after expiration or termination of the Contract. A delinquent charge of $20.00 per day shall be charged for each day the CPA opinion is delinquent. If a required CPA opinion is delinquent for more than sixty (60) days, City may engage the services of a CPA to issue the required opinion and charge Concessionaire for the work performed. The fee for this service shall be in addition to the $20.00 per day late fee.
SECTION 12. INSURANCE REQUIREMENTS

Concessionaire shall procure, pay for, and maintain during the Term of this Contract, with a company authorized to do business in the State of Texas and acceptable to City, the minimum insurance coverage contained in Exhibit E-Insurance Requirements, attached to and made part of this Contract. City reserves the right to review the insurance requirements during the Term of this Contract and to adjust insurance coverage or limits when deemed necessary and prudent by City’s Office of Risk Management, based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Concessionaire and its Suboperators. City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies.

SECTION 13. PERFORMANCE BOND

In order to guarantee Concessionaire’s performance of services and payment obligations required under this Contract, within ten (10) days of Concessionaire’s receipt of the notice to proceed letter described in Section 9.D, Concessionaire shall procure a performance bond issued by a corporate surety or sureties licensed to issue surety bonds in the State of Texas, authorized to do insurance business in Texas, listed on the United State Treasury List of Sureties Authorized to Issue Bonds for Federal Jobs, and otherwise acceptable to City. The bond shall be issued on forms approved by City and shall name Concessionaire and City as joint obligees. The bond shall be maintained during the Term of the Contract. Concessionaire is required to secure a replacement surety in the same manner as required above in the event the original surety becomes insolvent. The required amount of the bond during each year of the Contract shall be equivalent to one-half of the MAG amount of the Contract during said year.

SECTION 14. INDEMNIFICATION

A. INDEMNITY. AS A CONDITION OF THIS CONTRACT, CONCESSIONAIRE AGREES AND IS BOUND TO INDEMNIFY, DEFEND AND HOLD CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, JUDGMENTS, FINES, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM, BROUGHT OR SOUGHT BY ANY PERSON, PERSONS, OR ANY GOVERNMENTAL AGENCY THAT MAY ARISE OUT OF, BE INCIDENT TO, OR OCCASIONED BY:

(1) ANY TYPE OF USE, OCCUPANCY, MAINTENANCE, OR CONSTRUCTION OF OR ON THE ASSIGNED PREMISES, INCLUDING CONCESSIONAIRE’S INSTALLATIONS AND IMPROVEMENTS TO THE
ASSIGNED PREMISES; OR

(2) ANY BREACH OF ANY OF THE TERMS AND PROVISIONS OF THIS CONTRACT; OR

(3) ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF CONCESSIONAIRE, ITS OFFICERS, EMPLOYEES, INVITEES, AGENTS, CONTRACTORS, AND SUBCONTRACTORS RELATED TO OR ARISING OUT OF ANY TYPE OF USE, OCCUPANCY, MAINTENANCE, OR CONSTRUCTION OF THE ASSIGNED PREMISES OR CONCESSIONAIRE'S INSTALLATION AND IMPROVEMENTS TO THE ASSIGNED PREMISES OR RELATED TO ANY OF CONCESSIONAIRE'S ACTIVITIES AT THE AIRPORT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY COST OR LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF CITY, ITS OFFICERS, AGENTS, EMPLOYEES, OR CONTRACTORS. IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF BOTH CONCESSIONAIRE AND CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

B. Release of City. City assumes no responsibility for any property placed in or on the Assigned Premises and City is hereby expressly released and discharged from any and all liability for any loss, injury, or damage to persons or property that may be sustained by reason of the use or occupancy of the Assigned Premises under this Contract, unless same is caused by the negligence or willful act of City, its officers, agents, invitees, employees, or contractors.

C. Parties to Which this Section is Applicable. The provisions of this Section that apply to Concessionaire shall also apply to any party holding by, through, or under Concessionaire.

SECTION 15. TERMINATION BY CONCESSIONAIRE

A. In addition to all other remedies otherwise available to Concessionaire at law or in equity, Concessionaire may terminate this Contract by giving ninety (90) days written notice to City, should anyone or more of the following events occur; provided, however, that none of the unamortized capital improvements or the compensation and fees which are to be paid by Concessionaire herein will be refunded to Concessionaire:

(1) The abandonment of the Airport as an airline terminal or the permanent removal of all certificated passenger airline service from the Airport for longer than ninety (90) days.
(2) The assumption by the United States government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof, in such manner as to substantially restrict Concessionaire from operating thereon for a period of at least ninety (90) days.

(3) The issuance by any court of competent jurisdiction of any injunction preventing or restraining the use of the Airport in such a manner as to substantially restrict the Concessionaire from conducting its operations hereunder, which prevention or restraint is not caused by the act or omission of Concessionaire and which injunction remains in force for at least ninety (90) days.

B. Concessionaire retains any and all rights or remedies it may have under Texas law in the event of a material breach of this Contract by City.

SECTION 16. TERMINATION BY CITY

A. Termination for Cause. City, through its City Manager, also reserves the right to terminate this Contract and may exercise all rights of entry and re-entry, with or without process of law, upon the Assigned Premises, or City may, without terminating this Contract, take possession of the Assigned Premises, in the event any of the circumstances below should occur. City may take the actions in the preceding sentence for any of the matters listed below after giving Concessionaire written notice and a minimum of thirty (30) days from delivery of the notice to cure any such default or breach:

(1) Concessionaire becomes insolvent.

(2) Concessionaire makes an assignment for the benefit of creditors or is adjudged to be bankrupt.

(3) Concessionaire places any furniture, fixtures, equipment, or improvements on the Assigned Premises which would be subject to a lien of higher or equal dignity than City’s landlord lien.

(4) Concessionaire fails to make the payments due City under this Contract after having received written notice from City advising of Concessionaire’s failure to make payments, and after City has given Concessionaire ten (10) days to make the payments that are due.

(5) Concessionaire fails to keep any covenant, agreement, or obligation in this Contract after having received a written notice from City advising of its failure to perform and, except for failure to make payments which is provided for in the preceding clause, after City has given Concessionaire thirty (30) days to correct the failure called to Concessionaire’s attention.
(6) A majority of the ownership interest of Concessionaire under this Contract is transferred, passes to, or devolves upon, by operation of law or otherwise, any other person, firm or corporation without the written consent of City.

(7) Concessionaire fails to cooperate with any inspection of books and records or fails to maintain its books and records as required under this Contract.

(8) Deterioration of service for a period which, in the sole opinion of City, materially and adversely affects the operation of service required to be performed by Concessionaire under this Contract.

(9) Concessionaire fails to comply with the requirements of Section 8 of this Contract.

B. Immediate Termination with Notice. City, through its City Manager, may immediately terminate or cancel this Contract by giving written notice to Concessionaire upon the occurrence of any one or more of the following:

(1) Concessionaire fails to provide and maintain a performance bond, all as required in this Contract, and does not correct the default within ten (10) days after the giving of written notice by City of such failure.

(2) Any lien is filed against the Assigned Premises arising by or through the Concessionaire or because of any act or omission of Concessionaire and such lien is not removed, enjoined, or a bond for satisfaction of such lien is not posted within thirty (30) days after notice thereof.

(3) Concessionaire abandons, deserts, vacates, or discontinues its operation of the business herein authorized for a period of ten (10) days without prior written consent of the Director.

C. Immediate Termination without Notice. Notwithstanding any other provision of this Contract, City, through its City Manager, may immediately terminate or cancel this Contract if Concessionaire makes a willful false report of revenue.

D. Termination for Convenience. The right to terminate this Contract, in whole or in part, for the convenience of City, without cause any time, with ninety (90) days notice in the public interest is expressly retained by City; provided, however, such right may only be exercised by City with the express approval of the Dallas City Council. The notice given by City shall stipulate the conditions for removal of all non-capital items such as Trade Fixtures and Personal Property. The conditions set out in Sections 16.E-16.J of this Contract shall also govern the circumstances of termination for convenience, to the extent applicable. Upon receipt of a notice of termination, Concessionaire shall promptly cease all further work pursuant to this Contract, with any exceptions specified in the notice of termination. If City exercises its right to terminate this Contract under this Section 16.D, City shall reimburse Concessionaire for the unamortized costs of Concessionaire’s
initial Capital Investment, as defined in Section 9.A(1) of this Contract, amortized on a straight-line basis over the Primary Term. No amount will be due Concessionaire for lost or anticipated profits as a result of any termination for convenience by City.

E. Acceptance by City of any rentals or other payments specified herein after a breach of any of the terms of this Contract shall not be deemed a waiver of any right on the part of City to cancel this Contract on account of any breach.

F. On or before the termination or reentry dates set forth in the written notice by City to Concessionaire as, Concessionaire shall surrender the Assigned Premises. Concessionaire shall immediately remove all Trade Fixtures and Personal Property from the Assigned Premises and shall return such Assigned Premises in good condition, reasonable wear and tear excepted. City may reenter the Assigned Premises and may remove all persons and property from same upon the date of reentry. Upon any removal of Concessionaire’s or any Suboperator’s Trade Fixtures and Personal Property by City hereunder, at the sole option of City: (a) said property may be stored at a public warehouse or elsewhere at Concessionaire’s sole cost and expense or (b) title to such Trade Fixtures and Personal Property shall vest in City at no cost to City.

G. In the event of termination before the termination date provided in this Contract, or default and failure to cure, City may reassign Assigned Premises and any improvements thereon or any part thereof to be operated by one or more Suboperators or any other party acceptable to City at such rentals, fees, and charges and upon such other terms and conditions as City, in its sole discretion, may deem advisable, with the right to make alterations, repairs, or improvements on the Assigned Premises, unless the Suboperator assumes the performance obligations of the Concessionaire under a guaranty agreement approved by City.

H. No reentry or reassignment of Assigned Premises by City shall be construed as an election on City’s part to terminate this Contract unless a written notice of termination is given to Concessionaire.

I. In the event City, without terminating this Contract, re-enters, regains, or resumes possession of the Assigned Premises, all of the obligations of Concessionaire hereunder shall survive and shall remain in full force and effect for the full term of this Contract. Subject to City’s obligation to mitigate damages, the amount or amounts of rental charges shall become due and payable to City to the same extent, at the same time or times and in the same manner as if no termination, re-entry, regaining, or resumption of possession had taken place. City may maintain separate actions each month to recover any monies then due, or at its option and at any time, may sue to recover the full deficiency.

J. Unless otherwise directed by City, at termination of this Contract by expiration, cancellation, or otherwise, Concessionaire shall immediately remove all Trade Fixtures and Personal Property from the Assigned Premises and its Suboperators and return such Assigned Premises in good condition, reasonable wear and tear excepted.

K. In the event of termination by City for default or convenience, City reserves the
right, at its sole option, to direct Concessionaire in writing to assign any or all Suboperator contracts or subleases to City and to deliver to City true and correct originals and copies of the assigned contracts or subleases with amendments, if any. Notwithstanding any other provision to the contrary, City reserves the right to further assign such contracts or subleases without further amendment to any third party as City determines to be in the best interest of the Airport.

L. On the date set forth in the notice of termination, the term of this Contract and all right, title, and interest of Concessionaire shall expire. Failure of City to take any authorized action upon default by Concessionaire shall not constitute waiver of City’s right of termination.

SECTION 17. CHANGED CIRCUMSTANCES

A. **Need for Additional Food and Beverage Locations.** If during the Term of this Contract, City determines that additional food and beverage locations are needed at the Airport, City has the right to negotiate with other food and beverage operators to provide food and beverage products and services at said additional locations.

B. **National Emergency.** City and Concessionaire agree that the United States Government has the right under a national emergency to utilize all or any part of the Airport. If the United States Government exercises its rights under a national emergency, which results in restriction of the airline service through, or general public access to, the Terminal, then City hereby agrees to make a fair and reasonable revision in the MAG applicable under this Contract. However, if the United States Government exercises its rights under a national emergency, which results in no restriction of the airline service through, or general public access to, the Terminal, then City hereby agrees to make a fair and reasonable revision in the MAG applicable under this Contract.

C. **Decrease in Enplanements.** City, through the Director, reserves the right to temporarily decrease the MAG. If enplanements at the Airport decrease by more than 20% compared to the same period for the previous year for at least two (2) consecutive months, a pro rata formula will be used. Any such decrease will not affect the annual percentage of Gross Revenues paid to City.

SECTION 18. ASSIGNMENT, DELEGAITION, OR CHANGE OF OWNERSHIP

A. **Assignment.** Concessionaire agrees that it shall not assign, mortgage, pledge, or transfer this Contract or any other right, privilege, or license conferred by this Contract, either in whole or in part, or permit use of any Assigned Premises by another, or in any manner encumber the Assigned Premises or any part thereof, without prior written approval from the City Manager.

B. **Change of Ownership.** Concessionaire shall obtain the written consent of City, through its Director, prior to any change, transfer or merger of ownership between Concessionaire and any other person, corporation, or company. Any change, transfer, or merger of ownership without such consent of City shall constitute a breach of this Contract under
Section 16.

C. **Best Interest of the Airport.** City reserves the right to deny any assignment, subcontract, or transfer of ownership for any reason it deems in the best interest of the Airport.

**SECTION 19. LOAN SECURITY INSTRUMENTS PERMITTED**

A. Concessionaire shall, subject to the written approval of the City Manager, which approval shall not be unreasonably withheld, have the right to enter into loan security instruments involving Concessionaire’s interest in this Contract; and, in such event, upon Concessionaire’s written request to City, City, through its City Manager, will execute and deliver a reasonable estoppel certificate addressed to the holder of the loan security instrument confirming, among other things, the terms of this Section 19 and agreeing to recognize the holder of the loan security instrument in the same manner as an assignee of this Contract. Notwithstanding the foregoing, no person or entity that claims by, through, or under such a loan security instrument shall, by virtue thereof, acquire any greater right in the Assigned Premises and in any improvement thereon than Concessionaire then had under this Contract, and provided further that any holder of the loan security instrument and the indebtedness secured thereby shall at all times be and remain inferior and subordinate to all of the conditions, covenants, and obligations of this Contract and to all of the rights of City hereunder. In no event shall Concessionaire have the right to encumber, subordinate, or render inferior in any manner City’s fee simple title in and to the Assigned Premises.

B. Subject to Concessionaire’s authorization, any such holder of the loan security instrument, at its option, at any time before the rights of Concessionaire shall have been terminated, may pay any of the rents due hereunder or may effect any insurance, or may pay any taxes, or may do any other act or thing or make any other payment required of Concessionaire by the terms of this Contract, or may do any act or thing which may be necessary and proper to be done in the observance of the covenants and conditions of this Contract, or to prevent the termination of this Contract and may use insurance proceeds to pay any sum required to be paid by Concessionaire hereunder; and all payments so made and all things so done and performed by any such holder of the loan security instrument shall be as effective to prevent a forfeiture of the rights of Concessionaire hereunder as the same would have been if done and performed by Concessionaire instead of by such holder of the loan security instrument.

C. The holder of the loan security instrument, an assignee of this Contract or otherwise, or any other party who shall acquire any rights and interest of Concessionaire under the terms of the Contract through a conveyance, assignment (“conveyance” and “assignment” does not mean Concessionaire’s granting of the loan security instrument), foreclosure, or any other appropriate proceedings thereof, shall become liable to City for the payment or performance of any obligation of Concessionaire under the Contract, including without limitation, any of Concessionaire’s indemnification obligations to City.

**SECTION 20. FORCE MAJEURE**

Food and Beverage Concession Contract – Dallas Love Field  
04/22/10
Neither City nor Concessionaire shall be deemed in violation of this Contract if either party is prevented from performing any of the obligations in this Contract due to a “force majeure”. For purposes of this Contract, “force majeure” shall mean any contingency or cause beyond the reasonable control of the parties including, without limitation: acts of God or the public enemy; war; riot; civil commotion; insurrection; state, federal, or municipal government, or de facto governmental action, unless caused by acts or omissions of Concessionaire; fires; explosions; and floods.

SECTION 21. COMPLIANCE

A. Concessionaire, its officers, agents, servants, employees, contractors, licensees, Suboperators, and any other person over which Concessionaire has the right to control shall comply with all present and future laws, ordinances, orders, directives, codes, rules, and regulations of the federal, state and local governmental agencies, including City, which may be applicable to its operations at the Airport.

B. Concessionaire shall pay or in good faith contest, on or before their respective due dates, to the appropriate collecting authority, all federal, state, and local taxes and fees, which are now or may hereafter be levied upon the Assigned Premises, or upon Concessionaire, or upon the business conducted at the Airport, or upon Concessionaire’s interest hereunder, or upon any of the Concessionaire’s property used in connection therewith and shall have and maintain in current status all federal, state, and local licenses and permits required or the operation of the business conducted by Concessionaire.

C. Concessionaire agrees to pay, or guarantees payment of, all lawful fines and penalties as may be assessed by City or against City for violations of federal, state, or local laws, ordinances, rulings, or regulations or Airport rules, regulations, directives, or orders by Concessionaire or its officers, agents, servants, employees, contractors, licensees, Suboperators, or any other person over which Concessionaire has the right to control within thirty (30) days of written notice of such fines or penalties, unless otherwise provided by law.

D. Concessionaire will operate its concessions hereunder in a safe manner and without interfering with the airlines’ use of the Terminal, for themselves and for their passengers and other business invitees.

E. Concessionaire shall not advertise an individual airline’s transportation services or other goods or services offered in connection therewith on or in the Assigned Premises without the written approval of the Director.

SECTION 22. NON-DISCRIMINATION

A. This Contract is subject to the requirements of the DOT regulations 49 CFR Part 23, as may be amended. Concessionaire agrees that it will not discriminate against any business owner.
because of the owner’s race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract or subcontract, purchase or lease agreement, covered by 49 CFR Part 23. Concessionaire agrees to include the above statement in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters into and shall cause those businesses that it contracts with to similarly include the statement in further agreements.

B. City and Concessionaire hereby covenant and agree that they will take all necessary action to insure that in connection with any work or activities conducted under the Contract, neither City nor Concessionaire or their agents, employees, or consultants or their consultants agents and employees, will directly or through contractual or other arrangements discriminate in the treatment or employment of any individual or groups on the grounds of race, color, religion, national origin or sex. Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Concessionaire assures that its covered sub-organizations shall be required to provide assurances to Concessionaire that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect. Concessionaire agrees to comply with any affirmative action plan or steps for equal employment opportunity required by 14 CFR Part 152, Subpart E, as part of the affirmative action program, or by any federal, state, or local agency or court, including those resulting from a conciliation agreement, a consent decree, court order, or similar mechanism. Concessionaire agrees to obtain similar assurances from its covered sub-organizations, as required by 14 CFR Part 152, Subpart E.

C. Concessionaire assures that no person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the conduct or performance of Concessionaire’s activities at the Airport on the grounds of age, race, color, national origin, sex, or handicap unrelated to job performance either directly, indirectly, or through contractual or other arrangements. Concessionaire shall comply with all applicable requirements of the Americans with Disabilities Act, 42, U.S.C.A. SS12101-12213, as amended.

D. Both parties acknowledge that they have read the applicable federal regulations, 14 CFR Part 152, Subpart E, and 49 CFR Parts 21, 23 and 26 as applicable.

E. Concessionaire, its personal representatives, successors in interest, and assignees, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the Assigned Premises for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Concessionaire shall maintain and operate the Assigned Premises and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.
F. Concessionaire, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:

(1) No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, and

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

(3) That Concessionaire shall use the Assigned Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation Effection of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

G. In the event of breach of any of the above nondiscrimination covenants, City has the right to terminate this Contract and to re-enter, repossess, and hold the Assigned Premises as if this Contract was never made or issued.

H. Concessionaire shall make good faith efforts, as defined in 49 CFR Part 23, Sub-Part D, to meet or exceed the Airport Concession Disadvantaged Business Enterprise (“ACDBE”) annual percentage goal, i.e., to subcontract an established percentage of the dollar value of this Contract, on an annual basis, to disadvantaged small business concerns owned and controlled by socially and economically disadvantaged individuals or form joint ventures with such disadvantaged small business concerns. Such percentage will be established annually as required by Federal Aviation Administration (“FAA”) and DOT regulations. The annual percentage goal may be met via annual purchase of goods and services used for business conducted at the Airport from a certified Disadvantaged Business Enterprise (“DBE”). In the event that Concessionaire qualifies annually as a DBE, the annual contract goal shall be deemed as having been met. Individuals who are presumed to be socially and economically disadvantaged include women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. Concessionaire will be required to submit information concerning the certified DBEs that will participate in the Contract within thirty (30) days of the award of this Contract. The information shall include: (1) the name, address, and phone number of each DBE; (2) a description of the work to be performed by each DBE; and (3) a copy of the DBE Certificate and agency name that certified the DBE. If Concessionaire is unable to achieve any annual percentage goal, it will be required to provide documentation demonstrating that it made good faith efforts in attempting to do so as required for the period that the annual percentage goal was not met.

I. ACDBE requirements of 49 CFR Part 23, as may be amended, apply to this Contract.
As such, Concessionaire agrees to submit regular ACDBE utilization reports in the manner prescribed, on a timely basis, in accordance with the fiscal year timetable established, detailing ACDBE contracting and purchasing activities in achievement of annual percentage goals in compliance with 49 CFR Part 23.

J. City and Concessionaire agree to ensure that DBEs, as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Contract. In this regard, Concessionaire shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that DBEs have the maximum opportunity to compete for and perform on contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts. All bidders, potential contractors, or subcontractors for this DOT-assisted contract are hereby notified that failure to carry out the DOT policy and the ACDBE obligation, as set forth above, shall constitute a breach of contract which may result in termination of this Contract or such other remedy as deemed appropriate by the recipient and the FAA.

SECTION 23. SUBORDINATION TO FEDERAL REQUIREMENTS

This Contract is subject and subordinate to the provisions of any agreement heretofore or hereafter made between City and the United States government relative to the financing, operation, or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of rights or property to City for Airport purposes, or the acquisition or expenditure of funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as amended from time to time. The federal government may require modifications or changes to this document as a condition precedent to granting of funds for the improvement of the Airport. Should the federal government require such changes, Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Contract as may be reasonably required to enable City to obtain

SECTION 24. RIGHT TO DEVELOP AIRPORT

City reserves the right to further develop or improve the Airport and all landing areas and taxiways as it may see fit, regardless of the desires or views of Concessionaire and without interference or hindrance.

SECTION 25. NOTICES

Any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or deposited in the United States mail by certified letter, return receipt requested. Mailed notices shall be addressed
to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this Section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If intended for City, to:
Attn: Director of Aviation
City of Dallas
Department of Aviation
Love Field Airport Terminal Building
8008 Cedar Springs Road
Lock Box 16
Dallas, Texas 75235

If intended for Concessionaire, to:
Gilbert Aranza
c/o Love Field Partners I, Ltd.
Love Field Airport Terminal Building
8008 Cedar Springs Road
Suite 301, Lock Box 19
Dallas, Texas 75235

With copy to:
David Weatherbie
Carrie, Cramer & Weatherbie
5956 Sherry Lane, #1204
Dallas, Texas 75225

SECTION 26. AGENT FOR SERVICE OF PROCESS

It is expressly understood and agreed that if Concessionaire is not a resident of the State of Texas, or is an association or partnership without a member of partner resident of the State of Texas, or is a foreign corporation, Concessionaire will appoint an agent for service of process in the State of Texas. Due to any failure on the part of said agent, or the inability of said agent to perform, or Concessionaire’s failure to appoint an agent when required, Concessionaire does hereby designate the Secretary of State of Texas, its agent for the purpose of service of process in any court action between it and City, arising out of or based upon this Contract, and the service shall be made as provided by the laws of the State of Texas for service upon a non-resident. It is further expressly agreed, covenanted and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, Concessionaire may be personally served with such process out of the State of Texas by the registered mailing of such complaint and process to Concessionaire at the address set forth herein. Any such service out of the State of Texas shall constitute valid service upon Concessionaire as of the date of mailing. It is further expressly agreed that Concessionaire is amenable to and hereby agrees to the process so served, submits to the jurisdiction, and waives any and all obligations an protest thereto, any laws to the contrary notwithstanding.

SECTION 27. CONFLICT OF INTEREST OF CITY EMPLOYEES

The following Section of the Charter of City of Dallas shall be one of the conditions, and a part of, the consideration of this Contract, to wit:
"CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED --

(a) No officer or employee shall have any financial interest, direct or indirect, in any contract with City or be financially interested, directly or indirectly, in the sale to City of any land, materials, supplies or services, except on behalf of City as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit the officer’s or employee’s office or position with City. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with City shall render the contract involved voidable by City Manager or The City Council.

(b) The alleged violations of this section shall be matters to be determined either by the Trial Board in the case of employees who have the right to appeal to the Trial Board and by The City Council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by City employees in federally-funded housing programs, to the extent permitted by applicable federal or state law."

SECTION 28. GIFT TO PUBLIC SERVANT

A. City may terminate this Contract immediately if Concessionaire has offered, agreed to confer, or conferred any “benefit” upon a City employee or official that City employee or official is prohibited by law from accepting. City has been advised by the prosecuting authorities that the Section 36.10(4) exception to Section 36.08 and 36.09 of the Texas Penal Code is not available to public servants who have no legal reporting requirements.

B. For purposes of this Section, “benefit” means anything reasonably regarded as economic gain or economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.

C. Notwithstanding any other legal remedies, City may require Concessionaire to remove any employee of Concessionaire who has violated the restrictions of this Section or any similar state or federal law, and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

SECTION 29. NOTICE OF CONTRACT CLAIM

This Contract is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Contract as if written word for word in this Contract. Concessionaire shall comply with
the requirements of this ordinance as a precondition of any claim relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

SECTION 30. REPRESENTATIVE OF CITY

Unless otherwise stated in this Contract, the Director shall be designated as the official representative of City in all matters pertaining to this Contract and shall have the right and authority to act on behalf of City with respect to all actions required of City in this Contract.

SECTION 31. REQUIRED APPROVALS

When the approval or exercise of discretion or judgment of the Director or Concessionaire is required, such approval or exercise of discretion or judgment shall not be unreasonably requested, exercised, conditioned, delayed, or withheld.

SECTION 32. WAIVERS

Any waiver of default by either party of any term, covenant, and/or condition of this Contract shall not be construed or operate as a waiver of any subsequent default of any other terms, covenants, and/or condition of this Contract.

SECTION 33. WAIVER OF CLAIMS

Concessionaire waives any claim against City and its officers, agents, or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Contract or any part thereof, or by any judgment or award in any suit or proceeding declaring this Contract null, void or voidable or delaying the same or any part thereof from being carried out.

SECTION 34. RIGHTS CUMULATIVE

The rights and remedies of City and Concessionaire specified in this Contract are not intended to be, and shall not be, exclusive of one another or exclusive of any common law right of either of the parties hereto.

SECTION 35. NO AGENCY, PARTNERSHIP, OR JOINT VENTURE

No term or provision of this Contract or act of Concessionaire in the performance of this Contract shall be construed as making Concessionaire the agent, servant, representative, partner, or employee of City for any purpose whatsoever. In performing services under this Contract, the
relationship between City and Concessionaire is that of an independent contractor, and City and Concessionaire by the execution of this Contract do not change Concessionaire’s independent status. The parties have not formed nor are operating as a joint enterprise under Texas law.

SECTION 36. PERSONAL LIABILITY

No City Councilmember, director, officer, employee, or other agent of either party shall be personally liable under or in connection with this Contract while performing in good faith duties therein.

SECTION 37. SUCCESSORS AND ASSIGNS

The terms and conditions of this Contract are binding upon the successors and assigns, legal representatives, and sub-lessees of all parties hereto; provided, however, this Contract shall not be assigned by Concessionaire without prior written approval from the Director.

SECTION 38. HEADINGS

The headings of the Sections of this Contract are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Contract and shall not be construed to affect in any manner the terms, provisions, interpretation, or construction of the Contract.

SECTION 39. LEGAL CONSTRUCTION

In the case that any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract, and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

SECTION 40. INCORPORATION OF REQUIRED PROVISIONS

The parties incorporate herein by this reference all provisions lawfully required to be contained in this Contract by any governmental body or agency.

SECTION 41. GOVERNING LAW
This Contract is made subject to the provisions of the Charter and ordinances of City, as amended, and all applicable state and federal laws. This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state. Additionally, while performing its activities and services at the Airport, Concessionaire, Concessionaire’s agents, employees, Suboperators, and sub-contractors shall be subject to Airport rules, regulations and orders of the Director, currently in effect or hereinafter enacted.

SECTION 42. VENUE

The obligation of the parties to this Contract shall be performable in Dallas County, Texas. If legal action is necessary in connection with or to enforce rights under this Contract, exclusive venue shall lie in Dallas County, Texas.

SECTION 43. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Contract is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Contract to be executed.

SECTION 44. AMENDMENTS; ENTIRE CONTRACT

This Contract (with all referenced exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of the parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Contract. This Contract may be modified or amended only by written agreement of the parties, to be attached to and made a part of this Contract.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]
IN WITNESS WHEREOF, this Contract is executed and effective as of the ___ day of _____________, 2010 ("Effective Date"), by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. 10-______, approved on April 28, 2010, and by Concessionaire, acting by and through its duly authorized officer(s), thereby binding itself, its successors, assigns, and representatives for the faithful and full performance of the terms and provisions of this Contract.

CITY OF DALLAS:  
MARY K. SUHM,  
City Manager

By: ___________________________  
A. C. Gonzalez  
Assistant City Manager

APPROVED AS TO FORM:  
THOMAS P. PERKINS, JR.,  
City Attorney

By: ___________________________  
Sarah F. Hasib  
Assistant City Attorney

CONCESSIONAIRE:  
Love Field Partners I, Ltd.,  
a Texas limited partnership

By: JavaStar, Inc.,  
a Texas corporation,  
its general partner

By: ___________________________  
Gilbert Alanza  
President

ATTACHMENTS & EXHIBITS

Resolution No. 10-______, approved April 28, 2010

Exhibit A  Assigned Food and Beverage Locations

Exhibit B  Assigned Support Space

Exhibit C  Permitted Food and Beverage Concepts

Exhibit D  Permitted Food and Beverage Facilities, Products, and Services

Exhibit E  Insurance Requirements
EXHIBIT A
ASSIGNED FOOD & BEVERAGE LOCATIONS

Food court 3,004 SF - 3 concepts
Burgers, Pizza, Asian
Seating 2,167 SF

Casual Dining/Bar/Walk away
3,089 SF

QSR
1,223 SF

Snacks
729 SF

Coffee
407 SF

Coffee
785 SF

Casual Dining/Bar
1,777 SF

Snack
576 SF

Snack 590 SF
(No Coffee)

Wine Bar
1,015 SF

Bistro/Cafe
1,380 SF

Casual Dining/Bar
1,470 SF

Coffee
480 SF

Casual Dining/Bar
3,069 SF

Coffee
407 SF

Snacks
729 SF

QSR
1,223 SF

Casual Dining/Bar
4,485 SF
Kitchen 589 SF

Food court 2,888 SF - 3 concepts
Deli, Barbecue, Tex Max
Seating 2,167 SF

First Floor - Landside

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*All scenarios, estimated areas, and gate assignments are subject to change based on final terminal design plans.
Merchandise concepts may not be changed without prior written approval of City.
EXHIBIT C
PERMITTED FOOD & BEVERAGE CONCEPTS

Notes:
(1) Bistro/ Café may not sell alcoholic beverages
(2) Wine Bar may offer wine and beer only
(3) Snack locations will not be designated as competing coffee concept
(4) QSR locations will not be competing Food Court concept

All scenarios and estimated areas are subject to change based on final terminal design plans.

First Floor - Landside
Exhibit E
Insurance Requirements

SECTION A. Prior to the approval of this contract by the CITY, Love Field Partners I, Ltd. (CONTRACTOR) shall procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to CITY. The insurance shall be evidenced by delivery to the CITY, at the address shown in REQUIRED PROVISIONS b.(i), certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, the CITY shall be entitled to receive without expense, copies of the policies and all endorsements. CITY HAS NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT OR AGREEMENT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY and no officer or employee shall have authority to waive this requirement.

SECTION B. The CITY reserves the right to review the insurance requirements of this section during the effective period of the contract and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Management Division of the Human Resources Department based upon economic conditions, recommendation of professional insurance advisors, changes in statutory law, court decisions or other relevant factors. The CONTRACTOR agrees to make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either party to the contract or upon the underwriter of any such policy provisions). Upon request by CITY, CONTRACTOR shall exercise reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof.

INSURANCE COVERAGE REQUIRED

SECTION C. Subject to CONTRACTOR’S right to maintain reasonable deductibles, CONTRACTOR shall obtain and maintain in full force and effect for the duration of this contract and any extension hereof, at CONTRACTOR’S sole expense, insurance coverage in the following type(s) and amounts:

1. Workers’ Compensation with statutory limits; Employers Liability with minimum limits for bodily injury: a) by accident, $100,000 per each accident b) by disease, $100,000 per employee with a per policy aggregate of $500,000.

2. Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of $500,000 per occurrence. If operating in Air Operations Area (AOA), then minimum combined limit of $3,000,000.

3. Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of $1,000,000 per occurrence, $2,000,000 general aggregate. Additional coverage shall include: $1,000,000 Fire Legal Liability limit.

4. If alcoholic beverages provided, then Liquor Liability Insurance with minimum limit of $1,000,000 each claim.
NOTE: If the insurance described in #3 or #4 above is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than thirty-six (36) months following completion of the contract and acceptance by the City. Coverage, including any renewals, shall contain the same retroactive date as the original policy applicable to this contract.

CONSTRUCTION/RENOVATION INSURANCE

Prior to the commencement of construction/renovation of any permanent improvement, CONTRACTOR shall purchase and maintain, or require CONTRACTOR’S contractor to purchase and maintain, until final completion and acceptance of all work, insurance coverage written by companies approved by the State of Texas and acceptable to the CITY in the following types and amounts:

1. **Workers’ Compensation** with statutory limits; **Employers Liability** with minimum limits for bodily injury: a) by accident, $100,000 per each accident b) by disease, $100,000 per employee with a per policy aggregate of $500,000.

2. **Business Automobile Liability Insurance** covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of $500,000 per occurrence.

3. **Umbrella or Excess Liability Insurance** providing coverage to follow form of the primary liability required in #1, #2 and #4 with a minimum combined bodily injury (including death) and property damage limit of $2,000,000 per occurrence and $2,000,000 annual aggregate.

4. **Commercial General Liability Insurance** including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of $500,000 per occurrence, $500,000 products/completed operations aggregate, $1,000,000 general aggregate.

The policy shall include coverage extended to apply to products/completed operations and XCU hazards. The Completed Operations coverage must be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with Owner. Owner shall be named as additional insured using the broadest form of endorsement available, with such status extended to include the extension of the completed operations coverage as described above. The policy shall include endorsement CG2503 Amendment of Aggregate Limit per Project.

5. **All Risk Builder’s Risk/Installation Floater Insurance** covering materials, supplies and equipment required in the construction/renovation with an insured value equal to one hundred percent (100%) of the insurable value of the Project. Covered perils shall include, but not be limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Theft and Transit. The City of Dallas will be shown as an additional insured, as their interest may appear.
NOTE: If this insurance described in #3 or #4 is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than thirty-six (36) months following completion of the contract and acceptance by the City. Coverage, including any renewals, shall contain the same retroactive date as the original policy applicable to this contract.

REQUIRED PROVISIONS

CONTRACTOR agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

a. Name the City of Dallas and its officers, employees and elected representatives as additional insureds to all applicable coverages.

b. State that coverage shall not be canceled, nonrenewed or materially changed except after thirty (30) days written notice by certified mail to:
   (i) Department of Aviation, Attention: Robert Miville, Contract Compliance Manager, Dallas Love Field, 8008 Cedar Springs, LB16, Dallas, Texas 75235 and
   (ii) Assistant Director, Risk Management Division, Human Resources Department, 1500 Marilla, 6A-South, Dallas, Texas 75201.

c. Waive subrogation against the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.

d. Provide that the CONTRACTOR’S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.

e. Provide that all provisions of this contract concerning liability, duty and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

f. Ensure that all certificates of insurance identify the service or product being provided and name the City department shown in REQUIRED PROVISIONS b.(i) as the Certificate Holder.

SECTION D. (1) Without limiting any of the other obligations or liabilities of the CONTRACTOR, the CONTRACTOR shall require each Subcontractor performing work under the contract, at the Subcontractor’s own expense, to maintain during the term of the contract, levels of insurance that are necessary and appropriate for the services being performed, comply with all applicable laws and are consistent with industry standards. The Subcontractor’s liability insurance shall name the CONTRACTOR as an additional insured.

(2) The CONTRACTOR shall obtain and monitor the certificates of insurance from each Subcontractor. The CONTRACTOR must retain the certificates of insurance for the duration of the contract and shall have the responsibility of enforcing insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

SECTION E. Approval, disapproval or failure to act by the CITY regarding any insurance supplied by the CONTRACTOR or its subcontractors shall not relieve the CONTRACTOR of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency nor denial of liability by the insurance company exonerate the CONTRACTOR from liability.
INDEMNITY

The CONTRACTOR agrees to defend, indemnify and hold CITY, its officers, agents and employees, harmless against any and all claims, lawsuits, judgements, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by CONTRACTOR'S breach of any of the terms or provisions of this contract, or by any negligent or strictly liable act or omission of CONTRACTOR, its officers, agents, employees, or subcontractors, in the performance of this contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of CITY, its officers, agents or employees and in the event of joint and concurrent negligence or fault of CONTRACTOR and CITY, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to the CITY under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.