



**DEPARTMENT OF AIRPORTS**

**PASSENGER SERVICE CONCESSION  
AGREEMENT**

*SACRAMENTO INTERNATIONAL AIRPORT*

**COMPANY NAME**

# TABLE OF CONTENTS

<b>ARTICLE 1</b>	<b>3</b>
<b>DEFINITIONS</b>	<b>3</b>
1.01 AGREEMENT YEAR	3
1.02 AIRPORT	3
1.03 ANNIVERSARY DATE	3
1.04 ASSIGNED PREMISES	3
1.05 COMMENCEMENT DATE	3
1.06 CONCESSIONAIRE	3
1.07 DATE OF BENEFICIAL OCCUPANCY (DBO)	3
1.08 DIRECTOR	3
1.09 DOT	3
1.10 FAA	3
1.11 GROSS REVENUES	3
1.12 PROPOSAL	4
1.13 RENT COMMENCEMENT DATE	4
1.14 SACRAMENTO COUNTY DEPARTMENT OF AIRPORTS	4
1.15 SIGN	4
1.16 TSA	4
<b>ARTICLE 2</b>	<b>5</b>
<b>SPECIAL CONDITIONS</b>	<b>5</b>
2.01 ASSIGNED PREMISES	5
2.02 TERM	5
2.03 RENT	5
A. <i>Time and Manner of Payment</i>	5
B. <i>Percentage Rent</i>	5
C. <i>Annual Reconciliation and Adjustment of Concession Fee</i>	6
2.04 SECURITY DEPOSIT	6
2.05 AUTHORIZED USE	6
2.06 NOTICE ADDRESS AND FACSIMILE	7
2.07 UTILITIES	7
2.08 CHARGING EQUIPMENT INSTALLATION	8
2.09 OPERATION OF CONCESSION	8
2.10 APPEARANCE OF PERSONNEL	9
2.11 PRICING	9
2.12 REFUND POLICY	9
2.13 ADVERTISING	9
<b>ARTICLE 3</b>	<b>10</b>
<b>GENERAL CONDITIONS</b>	<b>10</b>
3.01 ACCEPTANCE OF ASSIGNED PREMISES	10
3.02 ACCORD AND SATISFACTION	10
3.03 ADDITIONAL FEES, CHARGES AND RENTS	10
3.04 AIRPORT SECURITY	10
3.05 AMENDMENT REQUIRED BY FAA OR TSA	11
3.06 APPLICABLE LAW	11
3.07 ASSIGNMENT AND SUBLETTING	12
3.08 ASSURANCES REQUIRED BY FAA	12
3.09 AUDIT	12
3.10 AUTHORITY OF THE DIRECTOR	12

3.11	COMPLIANCE WITH CHILD, FAMILY, AND SPOUSAL SUPPORT REPORTING OBLIGATIONS .....	12
3.12	CONCESSIONAIRE INDEMNIFICATION OF COUNTY .....	12
3.13	CONFLICTS BETWEEN CONCESSIONAIRES .....	13
3.14	CONSENT .....	13
3.15	COUNTY'S REMEDIES .....	13
3.16	COUNTY'S RIGHT TO PERFORM CONCESSIONAIRE'S OBLIGATIONS .....	14
3.17	CREDIT CARDS AND DEBIT CARDS .....	14
3.18	CUMULATIVE REMEDIES.....	14
3.19	DAMAGE OR DESTRUCTION OF ASSIGNED PREMISES .....	14
	A. <i>Restoration of Equipment</i> .....	14
	B. <i>Removal of Damaged Property</i> .....	15
	C. <i>Option to Terminate Concessionaire's Interest Upon Damage or Destruction</i> .....	15
	D. <i>Adjustment of Rent</i> .....	15
3.20	DELIVERY OF EQUIPMENT .....	16
3.21	ENTIRE AGREEMENT.....	16
3.22	EARLY TERMINATION BY CONCESSIONAIRE.....	16
3.23	EARLY TERMINATION BY COUNTY.....	17
3.24	FORCE MAJEURE .....	17
3.25	HAZARDOUS MATERIALS.....	17
	A. <i>Concessionaire's Compliance with Environmental Laws</i> .....	17
	B. <i>Hazardous Material Storage Permit</i> .....	18
3.26	HEADINGS.....	18
3.27	HOLDING OVER .....	18
3.28	IMPROVEMENTS BY CONCESSIONAIRE .....	18
	A. <i>General</i> .....	18
	B. <i>Title to Equipment Installed</i> .....	19
	C. <i>Liquidated Damages for Failure to Complete the Project</i> .....	19
3.29	IMPROVEMENTS BY COUNTY .....	19
3.30	INDEPENDENT CONTRACTOR.....	19
3.31	INSURANCE .....	19
3.32	INVALID PROVISIONS .....	19
3.33	LICENSES AND PERMITS .....	20
3.34	LIMITATIONS ON USE OF ASSIGNED PREMISES.....	20
3.35	LIQUIDATED DAMAGES FROM LATE PAYMENTS .....	20
3.36	NEGATION OF PARTNERSHIP .....	20
3.37	NET LEASE .....	21
3.38	NONEXCLUSIVE RIGHTS.....	21
3.39	NONWAIVER OF RIGHTS.....	21
3.40	NOTICE OF CLAIMS AND SUIT .....	22
3.41	NO WARRANTY RE AIRPORTS .....	22
3.42	NUISANCE AND WASTE.....	22
3.43	PATENTS AND TRADEMARKS .....	22
3.44	PRIOR DAMAGES AND VESTED RIGHTS.....	22
3.45	PROHIBITION OF LIENS .....	22
3.46	RECORDS AND REPORTS .....	22
	A. <i>Monthly Report</i> .....	23
	B. <i>DELINQUENT MONTHLY REPORT</i> .....	23
	C. <i>ANNUAL REPORT</i> .....	23
	D. <i>DELINQUENT ANNUAL REPORT</i> .....	23
3.47	REGULATIONS AND RESTRICTIONS .....	24
3.48	RELEASE OF LIABILITY .....	24
3.49	RETENTION OF RECORDS .....	24
3.50	RIGHT OF ACCESS.....	24
3.51	RIGHT TO NONEXCLUSIVE USE OF AIRPORT .....	25
3.52	RISK REDUCTION .....	25
3.53	SIGNS.....	25
3.54	STATEMENT REGARDING A CERTIFIED ACCESS SPECIALIST .....	25
3.55	SUCCESSORS AND ASSIGNS .....	25
3.56	SURRENDER OF ASSIGNED PREMISES .....	25

3.57	TAXES .....	26
A.	<i>Possessory Interest and Property Taxation</i> .....	26
B.	<i>Right to Contest Taxes</i> .....	26
3.58	TIME OF THE ESSENCE .....	26
3.59	TITLE TO THE ASSIGNED PREMISES.....	26
3.60	TRANSPORTATION OF EQUIPMENT WITHIN THE TERMINALS.....	26
3.61	TRASH AND GARBAGE .....	27
3.62	VEHICLE AND EQUIPMENT PARKING.....	27
3.63	EXECUTION OF AGREEMENT .....	28

**Exhibits:**

- Exhibit A - Concessionaire's Proposal
- Exhibit B - Assigned Premises
- Exhibit C - Equipment and Services
- Exhibit D - FAA Assurances
- Exhibit E - Insurance Requirements

**PASSENGER SERVICE CONCESSION AGREEMENT  
SACRAMENTO INTERNATIONAL AIRPORT**

**THIS AGREEMENT** is made and entered into by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereafter "County," and XXXXXXXX, a XXXXX company organized and existing under the laws of the State of XXXXX, and authorized to do business in the State of California, hereafter "Concessionaire."

**WHEREAS**, County is owner of the Sacramento International Airport (Airport), located in the County of Sacramento and such Airport is operated by the Sacramento County Department of Airports (Department); and

**WHEREAS**, County has solicited competitive proposals through the XXXXX, 2014 public Request for Statements of Interest for provision and operation of electronic device charging services program for passengers and the installation of related charging equipment within the passenger terminals at the Airport.

**WHEREAS**, pursuant to the described solicitation, Concessionaire submitted a proposal to County, dated XXXXXXXX, 2015, attached hereto and incorporated herein by this reference as EXHIBIT A, or "the proposal"; and

**WHEREAS**, as a result of the selection process, Concessionaire was selected as the firm which would best meet the needs of the traveling public for the desired installation and operation of electronic device charging services in the terminals at the Airport; and

**WHEREAS**, on XXXXXXXX, 2014, by Resolution 2015-XXXX, the Sacramento County Board of Supervisors (Board) approved the Department's recommendation to direct negotiate a an agreement for installation and operation in the terminals at the Airport and authorized the Director of Airports to execute this Agreement on behalf of the County; and

**WHEREAS**, under Government Code Section 25536, for commercial business purposes incidental to Airport or not inconsistent with the commercial development of the Airport, County is authorized to execute a concession agreement at Airport; and

**NOW, THEREFORE**, in consideration of the promises, terms, conditions, and covenants set forth herein below, County and Concessionaire hereby mutually agree as follows:

## ARTICLE 1

### Definitions

As used herein, the following words and phrases shall have the meanings set forth below:

**1.01 Agreement Year**

“Agreement Year” means a period of twelve (12) consecutive calendar months beginning XXXXX 1 through XXXXX 3X.

**1.02 Airport**

“Airport” means the Sacramento International Airport which is owned by the County of Sacramento and operated by the Sacramento County Department of Airports as a public airport.

**1.03 Anniversary Date**

“Anniversary Date” means the first day of an Agreement Year.

**1.04 Assigned Premises**

“Assigned Premises” means those certain premises at Airport, more particularly described in Section 2.01 and shown on EXHIBITS BXX and XXXX.

**1.05 Commencement Date**

“Commencement Date” means the date the Agreement is effective which shall be upon the date the Agreement is executed by the Director as indicated on page 29 herein.

**1.06 Concessionaire**

“Concessionaire” means the Airport tenant or lessee, or its authorized representatives, whose business is non-airline related, sells goods and or services for a profit, and is performing under this Agreement.

**1.07 Date of Beneficial Occupancy (DBO)**

“Date of Beneficial Occupancy” (DBO) means the first day which the electronic device charging equipment is installed and available for public use in the terminals.

**1.08 Director**

“Director” means the Director of Airports of the Sacramento County Department of Airports, and his authorized representatives.

**1.09 DOT**

“DOT” means the United States Department of Transportation and any federal agency succeeding to its jurisdiction.

**1.10 FAA**

“FAA” means the Federal Aviation Administration of the United States government and any federal agency succeeding to its jurisdiction.

**1.11 Gross Revenues**

“Gross Revenues” means all monies received by or due to Concessionaire, for a profit in, at or from the Assigned Premises for cash, credit or otherwise, without reservation or deduction for uncollected amounts, credit card fees or charges, or collection costs, including, but not limited to:

- a. All sales and services occurring on the Assigned Premises, including all orders that originate in, at, or from the Assigned Premises, regardless of where delivery or performance is made;
- b. Orders that are made to and/or filled from the Assigned Premises pursuant to mail, telephone, fax, catalog, internet, or otherwise received, filled, or distributed from the Assigned Premises.
- c. Any income resulting from transactions originating in, at, or from the Assigned Premises, and deposits not refunded to customers; and
- d. Compensation of any kind received from a distributor or manufacturer for promoting or advertising any product on the Assigned Premises or elsewhere on the Airport.

“Gross Revenues” shall exclude:

- a. All credits or refunds made by Concessionaire to customers under such generally acceptable terms and conditions as are first approved in writing by Director.
- b. All sums or credits received in settlement of claims for loss or damage to merchandise.
- c. All sales taxes, retailers’ excise taxes, Gross Revenues taxes, transaction taxes, or similar equivalent taxes paid to or collected by or payable by Concessionaire, as are first approved in writing by Director as excludable items.

**1.12 Proposal**

“Proposal” means the \_\_\_\_\_, 2015 proposal submitted by Concessionaire to the County referenced in EXHIBIT A.

**1.13 Rent Commencement Date**

“Rent Commencement Date” means the date Concessionaire is obligated to commence payment of rent under this Agreement, which shall be DBO or 2015, whichever occurs first.

**1.14 Sacramento County Department of Airports**

“Sacramento County Department of Airports” means the Department of Airports and any County agency succeeding to its jurisdiction.

**1.15 Sign**

“Sign” means any advertising sign, billboard, identification sign or symbol, poster, or other similar device, regardless of content.

**1.16 TSA**

“TSA” means the Transportation Security Administration of the United States government and any federal agency succeeding to its jurisdiction.



**ARTICLE 2**  
**Special Conditions**

**2.01 Assigned Premises**

County hereby assigns to Concessionaire the following premises at Airport more particularly described below and shown on EXHIBITS BXX through XXX, attached hereto and incorporated herein by this reference:

<b>Locations</b>	<b>Square Feet</b>

**2.02 Term**

The term of this Agreement shall be for a period of three (3) Agreement Years commencing on XXXXX, and terminating on XXXXX. The Director shall have the option to extend the term of the Agreement for two (2) separate one-year option periods by providing no less than sixty (60) days prior written notice of such extended option period.

Either party may, upon thirty (30) calendar days prior written notice to the other, terminate this Agreement without cause. If Concessionaire is in default of its obligations herein, County or Director may, in addition to all other rights, give written notice terminating this Agreement at any time, such termination to be effective ten (10) calendar days from the date of receipt of such notice. If Director reasonably believes that continuing operation by Concessionaire will threaten the security, safety or health of others, or if Concessionaire fails to maintain the insurance coverage required herein, or if Concessionaire does not comply with applicable law, this Agreement may be terminated without notice and the permitted activities may be immediately halted.

**2.03 Rent**

Beginning on the Rent Commencement Date Concessionaire shall pay Rent in the amount and manner described below.

**A. Time and Manner of Payment**

Throughout the term hereof, Concessionaire shall pay all rents required hereunder by first class mail, postage prepaid, payable to "Sacramento County Department of Airports," at County's Airport Accounting Office, at the address shown for County in Section 2.06. The Percentage Rental will be delivered no later than the fifteenth (15<sup>th</sup>) day of the calendar month immediately following the month the Gross Revenue was generated.

**B. Percentage Rent**

Percentage Rent payable shall be equal to        percent (XX%) of Concessionaire's Gross Revenues as defined in Section 1.11.

Said Percentage Rent shall be computed for each month and, on or before the fifteenth (15th) day of the calendar month immediately following the month in which such Gross Revenues were generated at Airport.

Payment to County in each monthly instance for Percentage Rent shall be accompanied by a monthly report, as described in Section 3.46 herein. Such report shall show Gross Revenues for the concession at the Airport and shall include a revenue

summary of all activities for the previous month. Such reports shall be in a form and detail as required by the Director and which permits a proper audit.

**C. Annual Reconciliation and Adjustment of Concession Fee**

Rent as set forth in this Section shall be subject to reconciliation at the end of each Agreement Year pursuant to the terms of this Agreement. If said reconciliation shows a balance due to County or an excess paid by Concessionaire, the appropriate adjustment, either payment by Concessionaire of the balance due or credit or repayment by County to Concessionaire of the excess payment, shall be made within thirty (30) days after an approved Annual Report is received by County. However, Concessionaire shall not be entitled to interest on the amount credited or repaid by County to Concessionaire.

**2.04 Security Deposit**

Prior to the Rent Commencement Date, Concessionaire shall provide a security deposit to the Director initially established at one thousand dollars and 00/100ths (\$1,000.00).

Said security deposit shall be in the form of a letter of credit or a performance bond obtained from a company that has an A.M. Best's rating of no less than A:VII or has been approved by the Director. Said security deposit shall be provided at Concessionaire's sole cost and expense. In lieu of such security deposit, Concessionaire may deposit with County, in a form acceptable to the Director, an irrevocable letter of credit ("at sight" draft) from a bank acceptable to the Director as security for faithful performance by Concessionaire as hereinabove provided.

Said security deposit shall be kept in full force throughout the term and for three additional months beyond the expiration of this Agreement to ensure the faithful performance by Concessionaire of all the covenants, terms and conditions of this Agreement, including the payment of all consideration provided herein.

Said security deposit shall continue to be retained by County as security for the timely performance by Concessionaire of each and every obligation of Concessionaire hereunder, and shall not be subject to the claim of any creditor of County or Concessionaire. Within three (3) months following expiration or earlier termination of this Agreement, the amount of said security deposit, less any amounts due or owing to County by Concessionaire, shall be refunded by County to Concessionaire, provided, however, County shall have no obligation whatsoever to pay any interest on the amount of said security deposit to Concessionaire.

Within fifteen (15) calendar days following the application of said security deposit to correct any default by Concessionaire, or to pay any amount due or owing upon expiration or earlier termination of this Agreement, County shall provide Concessionaire with an accounting of such application.

**2.05 Authorized Use**

Subject to all applicable laws, regulations and limitations set forth in this Agreement, Concessionaire shall install and operate the charging equipment from the Assigned Premises in accordance with the Concessionaire's Proposal referenced in EXHIBIT A. Concessionaire is also granted the following use/rights, in connection with the Concessionaires operation at the Airport, listed below:

- a. The right of ingress to and egress from the Assigned Premises over and across roadways servicing the Airport for Concessionaire, its agents, patrons, guests or suppliers.
- b. The right to install appropriate charging equipment on the Assigned Premises, provided that all such design and installation shall have the prior written approval of the Director.
- c. The nonexclusive right and privilege to offer the types of goods or services listed in EXHIBIT C, in accordance with the provisions of this Agreement. All merchandise or services provided by Concessionaire must be approved in writing by the Director prior to installation in the Airport. In addition the Director, in his sole discretion, may change this list upon written notice to Concessionaire. All merchandise or services shall be in good

taste and in accordance with all applicable health or service codes and presented in such manner as to be well received by the public. The County reserves the right to allow others to conduct the same or similar operations and/or to sell the same or similar merchandise and services within the terminals.

**2.06 Notice Address and Facsimile**

Notices required herein shall be in writing and served personally, sent by certified mail, return receipt requested, postage prepaid, overnight courier or facsimile. Any notice mailed pursuant to this Agreement, shall be deemed received by the addressee five (5) business days after deposit of same in the mail. Either party shall have the right, by giving fifteen (15) days written notice to the other, to change the addressee, address or facsimile number at which its notices are to be deemed received. Until any such change is made, notices shall be addressed and delivered as follows:

**County:**  
Sacramento County Department of Airports  
Properties and Business Development  
6900 Airport Boulevard  
Sacramento, CA 95837-1109

**Concessionaire:**

If sent by facsimile, said notice shall be deemed received by the recipient upon confirmation by facsimile machine provided that the following facsimile numbers are used:

**County:**  
(916) 874-0920

**Concessionaire:**

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 in this Section. All notices shall be effective upon receipt and shall be deemed received upon delivery, if personally delivered. Unless otherwise notified by the Director, payments and communications regarding billing and invoicing shall be directed to the following address and facsimile number:

Sacramento County Department of Airports  
Airport Accounting  
6900 Airport Boulevard  
Sacramento, CA 95837-1109

Facsimile: (916) 874-0766

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 in this Section. All notices shall be effective upon receipt and shall be deemed received upon delivery, if personally delivered.

**2.07 Utilities**

County shall provide, at its cost, electrical connections to the Assigned Premises; provided that the Director reserves the right to not approve any proposed location based on the cost of locating electrical service to the area. Throughout the term of this Agreement County may determine that it will charge Concessionaire for electricity. If the County determines that it will charge Concessionaire for electricity, written notice of the proposed fee and implementation date will be provided to Concessionaire.

Concessionaire must provide its own telecommunications connection if such a connection is required for doing business. The County authorizes Concessionaire to contract with a telecommunications corporation to install one (1) or more communication lines to transmit any and all data required for the operation of the charging equipment. Additional hardware, software, subscription, internet access and/or special network connection may be required; and it is the sole responsibility of Concessionaire for arranging or obtaining any such requirements.

The County does not authorize the use of the Airport's wireless network or grant access to the Parking and Revenue Control System (PARCS) for the transmission of any personal data or the processing of credit card transactions in connection with the operation of the charging equipment. Concessionaire may not use the County free wireless internet (WiFi) system to conduct business as the WiFi system is unsecured and not Payment Card Industry Data Security Standards (PCI DSS) compliant nor does the County warrant that it is. The County is not responsible for any consequential damages caused in any way by the preceding hardware, software or other items/requirements for the operation of business in connection with this agreement.

## **2.08 Charging Equipment Installation**

Concessionaire shall install and maintain the charging equipment at the Airport in the type and number of locations described in the attached 2.01 and as approved by the Director throughout the Agreement Term.

Unless otherwise expressly approved in writing by the Director, all equipment installed by the Concessionaire shall be of the year, make, model, and appearance acceptable to the Director. Each equipment installation shall be a late model in good condition. All equipment shall accept U.S. dollar bills, provide change and accept credit cards. The charging equipment installed by Concessionaire shall not have any sound producing device as a part of the normal operation thereof.

Concessionaire shall not add, remove or relocate any equipment installed at the Airport without the prior written approval of the Director. The Director may, upon ten (10) calendar days advance written notice, require Concessionaire to remove or relocate any of its equipment. The Director may, upon thirty (30) calendar days advance written notice, require Concessionaire to install additional equipment, and thereafter stock and maintain said equipment in accordance with the provisions of this Agreement. Any such charging equipment addition, removal or relocation required by the Director shall be at Concessionaire's sole cost and expense.

Concessionaire is aware of and understands that additional equipment may be required by the Director throughout the Agreement Term. Each piece of equipment installed in the Airport shall be new and in first class condition. Prices for products and services offered for sale shall be clearly posted and shall be approved in writing by the Director prior to installation.

Concessionaire shall regularly maintain all of its equipment at the Airport in good mechanical working order, and in safe, sanitary, clean and undamaged condition, in accordance with the requirements of the California Health and Safety code, federal and State Americans with Disabilities Act (ADA) and all other applicable laws and administrative regulations.

Concessionaire shall perform said maintenance in accordance with the maintenance schedule in Concessionaire's Proposal attached as EXHIBIT A, incorporated herein by this reference. Additionally, Concessionaire shall provide maintenance and service whenever requested by the Director or his designee.

## **2.09 Operation of Concession**

a. Concessionaire shall furnish all services provided hereunder on a fair and reasonable basis to all users of the Airport and the general public. Concessionaire shall maintain and operate the installed equipment in a first class manner and shall keep the Assigned Premises in a safe, clean, orderly and inviting condition at all times, satisfactory to the County.

b. Concessionaire shall operate its business at the Airport under the trade name set forth in the Agreement so long as, (1) the same shall not be held to be in violation of any applicable law; and, (2) shall not change the advertised name or character of the business operated at the Assigned Premises without the prior written approval of the County, which approval may be withheld at the County's sole option.

c. Concessionaire shall not give samples, approach customers or otherwise solicit business in the common areas, terminals, or any other location at the Airport, nor shall

Concessionaire distribute any handbills or other advertising material at the Airport. In the event that Concessionaire violates the foregoing, Concessionaire shall, at Concessionaire's sole cost and expense, be responsible to clear the area of any such materials.

d. At the Director's request, Concessionaire shall meet with the Director to review any complaints or concerns and shall promptly correct any deficiencies. The Director's determination as to the quality of operation or services shall be conclusive and curative measures shall be implemented by Concessionaire as expeditiously as possible.

e. The Director may monitor, test, or inspect Concessionaire's service at any time through the use of a responsible shopping service or by other commercially reasonable means that do not unduly interfere with Concessionaire's business.

f. Concessionaire shall provide, at Concessionaire's sole cost and expense, any and all equipment, materials, etc., necessary for the operation.

### **2.10 Appearance of Personnel**

The operations of Concessionaire, its employees, and those doing business with it shall be conducted in an orderly and proper manner and so as to not annoy, disturb or be offensive to others at the Airport. Concessionaire's employees shall wear uniforms and other suitable means of identification. The Director shall have the right to object to Concessionaire regarding the demeanor, conduct and appearance of Concessionaire's employees, and those doing business with it at the Airport, whereupon Concessionaire will take all steps necessary to remove the cause of the objection.

### **2.11 Pricing**

The price of all services offered for sale by Concessionaire through its equipment within the Airport shall be clearly marked and displayed within the public view on the equipment from which the services are sold. The Airport's pricing policy requires that Airport prices are within five percent (5%) of similar facilities in the Sacramento Metropolitan area. Concessionaire will be responsible for periodically providing product price comparisons to the Airport for similar services provided at similar facilities in the Sacramento Metropolitan area to assure compliance with this policy.

Concessionaire shall request approval from the Director not less than thirty (30) days in advance of any proposed increase in the sales price of the services offered for sale by Concessionaire through its charging equipment at the Airport. Concessionaire shall not charge a price higher than the suggested retail price without the prior written approval of the Director.

When an item does not have a suggested retail price, the service shall be sold in accordance with the prices identified in Concessionaire's Proposal attached EXHIBIT A or at a price approved in writing by the Director.

### **2.12 Refund Policy**

Concessionaire shall provide refunds in accordance with Concessionaire's refund policy described in Concessionaire's Proposal attached as EXHIBIT A. Any proposed changes to the refund policy must first be approved in writing by the Director prior to implementation.

### **2.13 Advertising**

Concessionaire shall not install or display, without the prior written approval of the Director, any sign, or other display of advertising media, including materials supplied by manufacturers of equipment, on Concessionaire's charging equipment, on other equipment free standing or attached, or on the Assigned Premises. Concessionaire understands County has a contract for in-terminal advertising services.

## ARTICLE 3

### General Conditions

#### **3.01 Acceptance of Assigned Premises**

Concessionaire hereby accepts the Assigned Premises in its “as-is” condition existing on the commencement of the Agreement and such area shall not be subject to recalculation. Taking possession of the Assigned Premises by Concessionaire shall be conclusive evidence that the condition thereof is satisfactory to Concessionaire. County makes no expressed or implied representation or warranty of any kind whatsoever that the Assigned Premises are suitable for the uses to which Concessionaire shall be restricted pursuant to this Agreement.

#### **3.02 Accord and Satisfaction**

No payment by Concessionaire or receipt by County of a lesser amount than the rent, fees and/or charges due to be made by Concessionaire hereunder shall be deemed to be other than on account of the rent, fees and/or charges due, and no endorsement or statement on any check or in any letter accompanying any check or payment as rent, fees and/or charges shall be deemed an accord and satisfaction, and County may accept such check or payment without prejudice to County's right to recover the balance of such rent, fees and/or charges or to pursue any other remedy provided in this Agreement.

#### **3.03 Additional Fees, Charges and Rents**

Concessionaire shall pay County additional fees, charges and rents in the event of any of the following:

- a. If County has paid any sum or sums, or has incurred any obligation or expense, for which Concessionaire has agreed to pay or reimburse County, or for which Concessionaire is otherwise responsible;
- b. If County is required or elects to pay any sum or sums, or incur any obligation or expense, because of the failure, neglect or refusal of Concessionaire to perform or fulfill any of the promises, terms, conditions or covenants required of it hereunder;
- c. If charges accrue pursuant to any separate agreement between the parties not contained herein;
- d. If fees or charges are due for other services rendered, such as, but not limited to, utilities, trash removal, telephone and internet, delivery access charges and similar charges.

Concessionaire's obligations pursuant to this Section shall include all interest, cost, damages, and penalties in conjunction with such sums so paid or expenses so incurred by County.

#### **3.04 Airport Security**

- a. Concessionaire shall comply with all security regulations at Airport pursuant to all local, State and federal law, including, but not limited to, any and all directives issued by the Director. If required, Concessionaire shall obtain an Airport Tenant Security Program (“ATSP”) document approved by TSA within sixty (60) days of receipt of written notice from the Director or as otherwise directed by TSA. If required, Concessionaire shall maintain any TSA-approved ATSP throughout the term of this Agreement.
- b. Concessionaire's principals, as determined by Director, must be able to pass a security background access investigation consisting of a fingerprint based criminal records check (CHRC) and a Homeland Security “watch list” check (collectively, “Background Check”). All of Concessionaire's employees, contractors, or other persons doing business

with Concessionaire requiring unescorted access to the secured area of the Assigned Premises will require a badge and are also subject to Background Check. Badges are issued by the County subject to each individual's successful completion of the Background Check in compliance with 49 CFR Part 1542/1540 and all other applicable regulatory directives.

c. Concessionaire is responsible for completing and submitting all necessary documentation required for any Background Check necessary for their operations. If a badge is lost, stolen, or if the recipient fails to return the badge to the County when required by the Director, Concessionaire shall be subject to a non-refundable reissuance fee, if applicable, and any other damages directly caused by the loss, theft or retention of the badge.

d. If required, Concessionaire shall establish and implement written procedures ("Security Procedures") acceptable to the Director for the control of and prevention of unauthorized access to, all areas within the Assigned Premises. Concessionaire's Security Procedures shall also incorporate activities designed to assist the Director in safeguarding all other secured areas of Airport. The Security Procedures shall include, but are not limited to, the following procedures:

1. Gates, doors, fences or other parts of the Assigned Premises shall be kept locked by Concessionaire at all times when not in use by or when not under the security surveillance of Concessionaire.
2. Lock malfunctions or other deficiencies, which would permit unauthorized access, shall be reported by Concessionaire at once to the Director, and the unsecured access point shall be maintained under constant security surveillance by Concessionaire until Concessionaire has repaired the same and security through such point has been restored, and, or the County assumes security and repair of the access point.
3. Loss, misplacement, theft or failure to comply with the return of any badge shall be immediately reported to the Director.

e. Concessionaire shall be solely responsible for the control and movement of persons moving from the Assigned Premises onto all secured areas of the Airport. Concessionaire shall be solely responsible for the payment of any and all penalties and fines which may be levied by the TSA or other local, state or federal agencies for violation of any security regulations arising from or relating to Concessionaire's failure to perform its security responsibilities.

f. If required, Concessionaire shall install, maintain and operate, at no cost to County, access prevention and surveillance devices on the Assigned Premises at access points to secured areas and along the secured perimeter of the Assigned Premises, as determined by the Director to be necessary for the safety or security of Airport. The Director shall have unrestricted access to all access control devices or systems developed by Concessionaire.

### **3.05 Amendment Required by FAA or TSA**

This Agreement may be amended without further consideration for the purpose of satisfying FAA or TSA requirements.

### **3.06 Applicable Law**

This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, and shall be deemed to have been made, and shall be performed, in the State of California.

**3.07 Assignment and Subletting**

Concessionaire shall have no right to assign, mortgage, pledge, or otherwise transfer this Agreement, either voluntarily or by operation of law, in whole or in part without prior written consent of the Director. Likewise, Concessionaire shall not subcontract any rights authorized hereunder or sublease any or all of the Assigned Premises.

**3.08 Assurances Required by FAA**

Concessionaire will, at all times during this Agreement, comply with the provisions of the "Assurances required by the Federal Aviation Administration" and any subsequent amendments. A copy of these Assurances is attached as EXHIBIT D and incorporated herein by this reference.

**3.09 Audit**

Concessionaire shall, upon request, make all or any part of its records pertaining to this Agreement available to the Director, or any other authorized representative of County during normal business hours throughout the term of this Agreement, for the purposes of inspection, copying, or audit. Except as otherwise expressly provided herein, the cost of such inspection, copying, or audit shall be borne by County.

In the event that the results of any such audit by County show any discrepancy as compared to the amount of Concessionaire's Gross Revenues at Airport, as reported to County by Concessionaire, Concessionaire shall pay the County the difference in rent payments or County shall reimburse Concessionaire, as the case may be, within thirty (30) calendar days following discovery of such discrepancy.

In the event that any such discrepancy exceeds the amount of such Gross Revenues reported by Concessionaire to County by more than two percent (2%), Concessionaire shall reimburse County for all of County's costs in connection with such audit, plus a fifteen percent (15%) administrative charge of the cost of such audit from Concessionaire.

**3.10 Authority of the Director**

The Director shall administer this Agreement on behalf of County. Unless otherwise provided herein or required by applicable law, the Director shall be vested with all rights, powers, and duties of County hereunder. With respect to matters hereunder subject to the approval, satisfaction, or discretion of County or the Director, the decision of the Director in such matters shall be final.

**3.11 Compliance with Child, Family, and Spousal Support Reporting Obligations**

Concessionaire's failure to comply with State and federal child, family and spousal support reporting requirements regarding a Concessionaire's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment relating to child, family and spousal support obligations shall constitute a default under this Agreement.

Concessionaire's failure to cure such default within ninety (90) days of notice by County shall be grounds for termination of this Agreement.

**3.12 Concessionaire Indemnification of County**

Concessionaire shall indemnify, defend, and hold harmless County, its elected representatives, officers, agents, and employees from any and all loss, cost, damage, fine or expense (including but not limited to attorney's fees, court costs and expert fees), or liability of any kind or character to any person or property arising from or relating to any act or omission of Concessionaire, its officers, agents, employees, invitees, licensees, customers, contractors, subcontractors or any other person doing business with Concessionaire, or on the Assigned Premises or at the Airport with the consent of Concessionaire. Concessionaire shall also use



counsel reasonably acceptable to County in carrying out its obligations hereunder. The provisions of this Section shall survive the expiration or early termination of this Agreement.

### **3.13 Conflicts Between Concessionaires**

In the event of a conflict between Concessionaire and any other concessionaire as to the goods or services sold by respective concessionaires, the Director shall decide which goods or services may be sold by each concessionaire and Concessionaire agrees to be bound by such decision, and shall not be entitled to any compensation or damages as a result of such decision.

### **3.14 Consent**

Whenever the consent or approval of either party hereto is required or authorized hereunder, such consent or approval shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.

### **3.15 County's Remedies**

Pursuant to Section 1951.2 of the California Civil Code:

- a. In the event that Concessionaire breaches this Agreement and abandons the Assigned Premises before the end of the term hereof, or if Concessionaire's right to possession is terminated by County because of a breach of this Agreement, this Agreement terminates. Upon such termination, the County may recover from Concessionaire:
  1. Any and all of the unpaid rent which had been earned at the time of termination;
  2. The amount of unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rent loss that Concessionaire proves could have been reasonably avoided;
  3. The amount by which the unpaid rent for the balance of the term hereof after the time of award exceeds the amount of such rent loss that Concessionaire proves could reasonably be avoided; and
  4. Any other amount necessary to compensate the County for all the detriment approximately caused by Concessionaire's failure to perform its obligations under this Agreement, or which in the ordinary course of things would be likely to result therefrom.
- b. The amounts referred to in Subsections A. 1 and 2 are computed by allowing interest at the rate of eighteen percent (18%). The amount referred to in Subsection A. 3 is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).
- c. Damages which County may recover pursuant to Subsection A. 1 of this Section include the "worth at the time of award" of the amount by which the unpaid rent for the balance of the term hereof exceeds the amount of such rent loss for the same period that Concessionaire proves could be reasonably avoided; or County may recover damages pursuant to Subsection A. 1 of this Section in the event that County re-lets the Assigned Premises prior to the time of award and proves that in re-letting the property it acted reasonably and in a good-faith effort to mitigate the damages.
- d. Efforts by County to mitigate the damages caused by Concessionaire's breach of this Agreement do not waive County's right to recover damages pursuant to said Section 1951.2 and this Section.
- e. Nothing in this Section affects the right of County under this Agreement to indemnification for liability arising prior to the termination of this Agreement for personal injuries or property damage, as herein provided.

Notwithstanding the foregoing, in the event of Concessionaire's breach of this Agreement and abandonment of the Assigned Premises, pursuant to Section 1951.4 of the California Civil Code, County may, at its sole option, elect to continue this Agreement and enforce all its rights and remedies herein against Concessionaire, including the right to recover the rent as it becomes due.

### **3.16 County's Right to Perform Concessionaire's Obligations**

If Concessionaire fails to make any payment required of it hereunder, or defaults in the performance of any other promise, term, covenant, or condition required of it hereunder, County may, at its sole option, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default, for the account of and at the expense of Concessionaire. County may do so immediately and without notice to Concessionaire in the case of an emergency or in any other case if Concessionaire fails to make such payment or remedy such default with all reasonable dispatch after County has notified Concessionaire in writing of the same.

County shall bill Concessionaire for such payments made by County and for any and all expenses incurred by County in connection therewith, together with interest on the total sum billed, at the rate of eighteen percent (18%) per annum. Concessionaire shall pay County the total amount billed not later than the date specified in such billing.

County shall not be limited in the proof of any damages which County may claim against Concessionaire arising out of or relating to Concessionaire's failure to perform its obligations hereunder. County may restrain any breach or threatened breach by Concessionaire of any promise, term, condition or covenant required of Concessionaire hereunder, but the mention herein of any particular remedy shall not preclude County from any other remedy it might have, either in law or in equity.

### **3.17 Credit Cards and Debit Cards**

At all times during the term of this Agreement, Concessionaire shall accept as payment for goods and services at least two (2) of the following major credit cards: American Express, Master Charge, or VISA. No minimum credit card or debit card purchase amount shall established by Concessionaire, without the Director's prior written approval.

### **3.18 Cumulative Remedies**

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

### **3.19 Damage or Destruction of Assigned Premises**

#### **A. Restoration of Equipment**

In the event of the damage or destruction of a portion of the Assigned Premises, or of the structural portion of the terminal building containing such Assigned Premises, County shall not be required to repair, rebuild, or restore Concessionaire's equipment, such excluded items being the sole responsibility of Concessionaire.

If County elects to repair and rebuild structural portions of the terminal building containing the Assigned Premises, Concessionaire shall be obligated to repair any damage to, or replace, any equipment, installed by Concessionaire, irrespective of the cause and whether or not such damage or destruction shall have been insured. Concessionaire shall proceed to restore, repair, replace, such items with materials of a quality equivalent to that originally installed at Concessionaire's own cost and expense. Such restoration, repair and replacement shall be performed by Concessionaire in accordance with the provisions of Section 3.28.

## **B. Removal of Damaged Property**

In the event of damage to, or partial or total destruction of, the Assigned Premises, the Concessionaire shall within thirty (30) days of the occurrence commence to remove from the Assigned Premises, or from the portion thereof destroyed, all damaged property (and all debris thereof) belonging to the Concessionaire or to any third person whatsoever. Concessionaire shall diligently continue such removal until complete. In the event Concessionaire does not perform its obligation hereunder, the County may remove such debris and dispose of the same and may remove such property to a public warehouse for deposit or may retain the same in its own possession and sell the same at public auction, the proceeds of which may be applied first to the expenses of removal, storage and sale, and second to any sums owed by the Concessionaire to the County, with any balance remaining to be paid to the Concessionaire; if the expenses of such removal, storage and sales shall exceed the proceeds of sale, the Concessionaire shall pay such excess to the County upon demand. Without limiting any term or provision of this Agreement, the Concessionaire shall indemnify and save harmless the County, its officers, representatives, employees, contractors and subcontractors, from and against any and all claims of third persons arising out of the exercise of the County of its right to remove property as hereinabove provided including all claims for conversion, all claims for damage or destruction of property, all claims for injuries to persons (including death), and all other claims for damages, consequential or otherwise.

## **C. Option to Terminate Concessionaire's Interest Upon Damage or Destruction**

If (1) the terminal containing the Assigned Premises shall be damaged to the extent of more than 25% of the cost of repair or replacement thereof, or (2) the proceeds of County's insurance recovered or recoverable as a result of the damage shall be insufficient to pay fully for the cost of repair or replacement of the terminal in which the Assigned Premises is located, or (3) the terminal containing the Assigned Premises shall be damaged as a result of a risk which is not covered by the County's insurance, or (4) the terminal containing the Assigned Premises shall be damaged in whole or in part during the last three (3) years of the term of this Agreement; then in any such event, County may, at County's option, either (a) rebuild or repair such damage, exclusive of Concessionaire's vending machine equipment, with due diligence or (b) give written notice to Concessionaire within sixty (60) days after the occurrence of such damage terminating Concessionaire's rights and interest in the Assigned Premises contained in such damaged building as of the date of occurrence of such damage.

In the event County elects to terminate Concessionaire's right and interest in the Assigned Premises pursuant hereto, Concessionaire shall have the right within ten (10) days after receipt of the required notice to notify County in writing of Concessionaire's intention to repair such damage or destruction at Concessionaire's expense, without reimbursement from County in which event this Agreement shall remain in effect. If Concessionaire does not give such notice within the ten (10) day period, Concessionaire's right and interest in the Assigned Premises will terminate as of the date of such damage or destruction.

If County elects to terminate Concessionaire's right and interest in the Assigned Premises as provided in this Section C, then any insurance of said Assigned Premises shall be paid to County and Concessionaire as their interests appear retained by Concessionaire.

## **D. Adjustment of Rent**

The rent payable under this Agreement shall be equitably adjusted for the period from the occurrence of any damage to the structural portion of the terminal containing the

Assigned Premises to the completion of repairs to such building, or for the period from the occurrence of the damage to the effective date of termination, provided such damage materially adversely affects the efficient operation of the concession; except that Concessionaire shall not be entitled to any adjustment of the rental if any damage shall have been caused or contributed by the fault of the Concessionaire, its officers, employees or others on or at the Assigned Premises with the consent of the Concessionaire.

### **3.20 Delivery of Equipment**

Concessionaire shall arrange for the timely delivery of all equipment at such times, in such location(s) and in a manner satisfactory to the Director. The Director may issue schedules of acceptable delivery times and the delivery location/point of access by written notice to Concessionaire, which the Director may adjust from time to time, and from which Concessionaire shall not deviate without the Director's prior written consent.

Concessionaire shall use its best efforts to complete, or cause to be completed, all deliveries, loading, unloading, and services to the Assigned Premises during such times as the Director may reasonably require from time to time. Concessionaire shall not allow delivery trucks or other vehicles servicing the Assigned Premises to park or stand in front of, or at the rear of terminal. Vehicles shall use such other areas at Airport as the Director may reasonably require.

### **3.21 Entire Agreement**

This Agreement, together with all exhibits attached hereto, constitutes the entire Agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein. This Agreement may be amended only by written instrument duly executed by the parties hereto.

### **3.22 Early Termination by Concessionaire**

At any time Concessionaire is not in default in its payments or other obligations to County hereunder, Concessionaire may terminate this Agreement prior to expiration of the term hereof only upon the happening of one or more of the following events:

- a. Permanent abandonment of Airport by County;
- b. Assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of Airport, or any substantial part thereof, in such manner as to substantially restrict Concessionaire in its operations hereunder for a period of ninety (90) consecutive calendar days;
- c. Issuance by a court of competent jurisdiction of a permanent injunction which in any way prevents or restrains use of Airport in a manner substantially restricting Concessionaire's operations at Airport hereunder;
- d. Default by County in the performance of any promise, term, condition or covenant required of it to be performed hereunder, provided County fails to cure such default within sixty (60) calendar days following receipt of written notice of such default from Concessionaire. However, if the nature of such default is such that it cannot reasonably be cured within such period, County shall be deemed to have cured such default if within such period County commences performance thereof and thereafter diligently prosecutes the same to completion.

Early termination by Concessionaire pursuant to this Section shall be upon not less than fifteen (15) days advance written notice to the Director, which notice shall state the basis of such termination and the effective date thereof.

In the event of early termination by Concessionaire pursuant to this Section, Concessionaire shall pay rent to County to and through the date of such termination.

**3.23 Early Termination by County**

County may terminate this Agreement prior to expiration of the term hereof upon the happening of one or more of the following events:

- a. Concessionaire remains in arrears in any payment of rent or fees required by this Agreement for a period of at least fifteen (15) days following receipt of written notice of such arrearage from County;
- b. Concessionaire makes a general assignment for the benefit of its creditors;
- c. Concessionaire files a voluntary petition, or becomes the subject of an involuntary petition, in any proceeding in Bankruptcy Court;
- d. Concessionaire abandons the Assigned Premises;
- e. Concessionaire fails to replace any improvements or equipment which have been destroyed by fire, explosion or other catastrophe, within six (6) months from the date of such destruction;
- f. Concessionaire fails to maintain any of the forms of insurance required by EXHIBIT E. The Director may, in his sole discretion, immediately terminate this Agreement if Concessionaire fails to maintain the required insurance.
- g. Except as otherwise provided in Subsections a., e. and f. of this Section, and EXHIBIT E, the default by Concessionaire in performance of any promise, term, condition, or covenant required of it hereunder, provided Concessionaire fails to cure such default within thirty (30) calendar days following receipt of written notice of such default from County. However, if the nature of such default is such that it cannot reasonably be cured within such period, Concessionaire shall be deemed to have cured such default if within such period Concessionaire commences performance thereof and thereafter diligently prosecutes the same to completion.

Early termination by County pursuant to this Section shall be upon not less than fifteen (15) days advance written notice to Concessionaire, which notice shall state the basis of such termination and the effective date thereof. Upon the effective date of such termination, County may take possession of the Assigned Premises, without further notice or demand to Concessionaire. Failure to serve notice of termination upon the happening of any of the events described in this Section shall not operate to bar or destroy County’s right to thereafter declare such termination upon the subsequent happening of any such event.

**3.24 Force Majeure**

Neither County nor Concessionaire shall be deemed to be in breach of this Agreement if either is prevented from performing any of its obligations hereunder by reason of strike, boycott, labor dispute, embargo, shortage of energy or materials, act of God, act of a public enemy, act of a superior governmental authority, weather conditions, rebellion, riot, sabotage, or any other circumstance for which it is not responsible, or which is not within its control.

**3.25 Hazardous Materials**

**A. Concessionaire’s Compliance with Environmental Laws**

Concessionaire shall at all times in all respects comply with all environmental laws, and any amendments thereto affecting Concessionaire’s operation on the Airport, including all federal, State and local laws, ordinances and regulations relating to Hazardous Material. As used herein, the term “Hazardous Material” includes, without limitation, any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States government.

## **B. Hazardous Material Storage Permit**

Concessionaire shall be required to obtain a Hazardous Material Storage Permit from the County of Sacramento, Environmental Management Office if it, at any time, has on the Airport, places or stores Hazardous Material liquid, or Hazardous Material solids.

### **3.26 Headings**

The headings of the articles and sections of this Agreement are inserted only as a matter of convenience and for reference, and do not define or limit 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.

### **3.27 Holding Over**

If Concessionaire remains in possession of the Assigned Premises following the expiration or sooner termination of this Agreement, such holding over shall not be deemed to constitute an extension or renewal of this Agreement, but shall merely create a tenancy from month-to-month which either party hereto may terminate upon thirty (30) calendar days advance notice to the other. In the event of such holding over, Concessionaire shall perform all terms, promises, conditions and covenants required of it hereunder, but shall pay rent to County in such amounts as may be designated by the Director, which in no case shall be less than that in effect immediately prior to such expiration or sooner termination of this Agreement.

### **3.28 Improvements by Concessionaire**

By \_\_\_\_\_, Concessionaire shall at its sole cost and expense, commence and complete the installation of the equipment as described throughout this Agreement on the Assigned Premises, (hereafter "Project"). The Project shall include the equipment installation, electrical and telecommunications installations and hookups required by Concessionaire, and any additional equipment necessary to the operation. Such Project shall be completed and installed as described in Concessionaire's Proposal attached as Exhibit A unless otherwise approved in writing by the Director. Concessionaire shall cause the Project to be completed in accordance with this Section.

Except as otherwise provided herein, Concessionaire shall make and maintain at Concessionaire's own expense, all installations necessary for the proper conduct of Concessionaire's business at the Airport. Concessionaire shall supply and install all equipment within the Assigned Premises. Such equipment shall be of first-class quality, safe, fire resistant, attractive, and may be installed only with the County's prior written approval. Further, throughout the Term, all equipment installed within the Assigned Premises shall meet all current and future requirements of the federal and State Americans with Disabilities Act (ADA).

The Project and any future projects shall be constructed in accordance with this Agreement and all applicable laws, regulations, and permit requirements, including those of the County.

Any review or approval by the Director of Concessionaire's plans or an inspection by County of the Project work or materials shall not be deemed to constitute a waiver or release by County of any obligation or responsibility of Concessionaire hereunder, or an assumption of any risk or liability by County with respect thereto, and Concessionaire shall make no claim against County on account of such review, approval, or inspection.

## **A. General**

No equipment installations of any kind shall be erected, placed, assembled, constructed or permitted on the Assigned Premises until preliminary plans showing the type of equipment, location, size, design, signage and electrical requirements have been approved by County. Prior to the preparation of preliminary plans, Concessionaire shall contact the Director to schedule a pre-project meeting to brief County staff on the proposed installations.

## **B. Title to Equipment Installed**

All the equipment installed by Concessionaire and associated with this Project pursuant to this section shall remain on the Assigned Premises throughout the term of this Agreement. Upon expiration or sooner termination of the Agreement, title to Concessionaire's equipment shall remain with Concessionaire and shall be removed by Concessionaire at Concessionaire's sole cost and expense.

## **C. Liquidated Damages for Failure to Complete the Project**

It is imperative that Concessionaire is ready to open for business as expeditiously as possible in order serve the traveling public. The failure of the Concessionaire to complete improvements within six (6) months of Commencement Date shall result in damages as a result of this failure. Therefore, it is agreed that as liquidated damages, Concessionaire agrees to pay the amount of Five Hundred Dollars and 00/100ths (\$500.00) per month to the County, if Concessionaire fails to complete the Project and obtain all approvals necessary for opening of the concession prior to the end of the six (6) month period immediately following the Commencement Date.

### **3.29 Improvements by County**

The County and Concessionaire agree and acknowledge that, from time to time, the County may undertake improvements to the terminals during the term of this Agreement. The County will attempt to make those improvements in a manner that does not interfere unreasonably with the operations of Concessionaire authorized under this Agreement. Concessionaire expressly waives any and all claims for damages of any kind, including but not limited to, loss of profits as a result of the interruption of business of Concessionaire that may arise as a result of such improvements undertaken by the County.

### **3.30 Independent Contractor**

Concessionaire is not an employee or agent of County by reason of this Agreement, or otherwise. Concessionaire is an independent contractor, and as between County and Concessionaire, Concessionaire shall be solely responsible for its acts and omissions arising from or relating to its operations at Airport and lease of property hereunder.

### **3.31 Insurance**

Throughout the term of this Agreement, Concessionaire for itself and its officers, representatives, agents, employees, guests, patrons, contractors, subcontractors, licensees, invitees, and suppliers shall maintain in full force and effect the forms of insurance specified in EXHIBIT E attached hereto and incorporated by this reference.

In the event Concessionaire does not have the required certificate(s) of insurance and/or binder(s) evidencing the proper insurance coverage, or the required insurance coverage lapses, this Agreement may be immediately terminated at County's option by the Director giving written notice to Concessionaire.

### **3.32 Invalid Provisions**

In the event any covenant, condition or provision of this Agreement, or the application thereof to any person, entity, or circumstances, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person, entity, or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, provided that such invalidity, voiding or unenforceability of such covenant, condition or provision does not materially prejudice either party in its respective rights and obligations contained in the then remaining valid covenants, conditions or provisions of this Agreement.

### **3.33 Licenses and Permits**

Concessionaire shall obtain at its sole expense all necessary licenses and permits required for construction of improvements or installation of equipment on the Assigned Premises, and any other licenses or permits necessary for the conduct of Concessionaire's operations at Airport.

### **3.34 Limitations on Use of Assigned Premises**

In connection with the exercise of Concessionaire's rights and duties under this Agreement, Concessionaire or any of its officers, representatives, agents, employees, guests, patrons, contractors, subcontractors, licensees, subtenant, invitees, or suppliers shall not:

- a. Interfere with, or disturb the effectiveness or accessibility of the drainage and sewage system, electrical system, air conditioning system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses within the Airport;
- b. Do anything that may invalidate, conflict with, or increase the rate of any insurance policy(s) covering the County or any part thereof. The Director, in his sole discretion, may limit, modify, or require removal of any materials, parts or equipment which the Director reasonably determines are not incidental to Concessionaire's operations by written notification to Concessionaire. Concessionaire shall have forty-eight (48) hours from the mailing date of such notice to remove and properly dispose of any items identified;
- c. Interfere with the Airport staff, businesses, or patrons;
- d. Use or allow the use of the facilities within the Airport for any improper, immoral, or unlawful purpose;
- e. Obstruct the roadways or passageways adjacent to or within the Airport;
- f. Conduct any business within the Airport other than that authorized by this Agreement;
- g. Advertise, solicit, or distribute materials within the Airport in any manner without the advance written permission of the Director;
- h. Sell airline trip insurance over the counter or by machine;
- i. Install pay telephones. County specifically reserves the right to arrange for the installation of such pay telephones as Concessionaire may desire and to secure the income from such installations;
- j. Selling any goods or service not approved in writing by the Director that shall include but not be limited to threatening devices or weapons;
- k. Soliciting or advertising goods or services which are not authorized by the Director under this Agreement.

### **3.35 Liquidated Damages from Late Payments**

If Concessionaire is in arrears for seven (7) days or more following the due date of any amount payable to the County herein, the parties acknowledge that additional clerical, accounting and other work will be performed which would not otherwise be needed absent the late payment. In addition, because the actual charges as a result of the late payment are difficult to identify, the parties hereby agree that Concessionaire shall pay as a reasonable charge, liquidated damages for the late payment in the amount of eighteen percent (18%) annual percentage rate, applicable from the date such payment was due to the date of actual payment. If the maximum charge permitted by law is less than the foregoing amount, then the rate shall be such amount determined to be the maximum legal amount. These liquidated damages will be calculated and posted on a monthly basis, and shall be prorated by the number of days in the month.

### **3.36 Negation of Partnership**

Nothing in this Agreement shall be construed to render County in any way or for any purpose, a partner, joint venture, or associate in any relationship with Concessionaire other than



that of landlord and tenant, nor shall this Agreement be construed to authorize either County or Concessionaire to act as agent for the other.

### **3.37 Net Lease**

It is the intent and purpose of County and Concessionaire that all rent payable by Concessionaire hereunder shall be absolutely net to the County so that this Agreement shall yield to the County the entire rent herein specified, in each Agreement Year hereunder, free of any charges, assessments, impositions or deductions of any kind or character which may be charged, assessed, or imposed on or against Concessionaire of the Assigned Premises, without abatement, deduction or set-off by Concessionaire.

County shall not be expected or required to pay any such charge, assessment or imposition, or be under any obligation or liability hereunder with respect thereto. All loss, costs, expenses and obligations of any kind relating to the maintenance, development and improvement of the Assigned Premises, including the renovation of the building and other improvements thereupon, and all alterations, repairs, reconstruction and replacements as hereinafter provided which may arise or become due during the term hereof, shall be paid by Concessionaire and Concessionaire shall indemnify, defend, and hold harmless County, its officers, agents, and employees, from any and all such loss, costs, expenses and obligations.

### **3.38 Nonexclusive Rights**

Nothing herein shall be construed to grant or authorize the granting of any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act for the conduct of any activity on the Airport. Subject to the terms and provisions of this Agreement, Concessionaire shall have the right to exclusive possession of the Assigned Premises described by Section 2.01 hereinabove.

### **3.39 Nonwaiver of Rights**

No failure by County to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rents or fees during the continuance of such breach, shall constitute a waiver of any such breach or of any such covenant, agreement, term or condition. No covenant, agreement, term or condition of the Agreement to be performed or complied with by Concessionaire, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by County. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

No receipt of monies by County from Concessionaire after the termination of this Agreement, or after the giving of any notice of the termination of this Agreement (unless such receipt cures the event of default which was the basis for the notice), shall reinstate, continue or extend the term or affect any notice theretofore given to Concessionaire, or operate as a waiver of the right of County to enforce the payment of rents or fees payable by Concessionaire hereunder or thereafter falling due, or operate as a waiver of the right of County to recover possession of the Assigned Premises by proper remedy. It is expressly agreed that after the service of notice to terminate this Agreement or the commencement of any suit or summary proceedings, or after a final order or judgment for the possession of the Assigned Premises, County may demand, receive and collect any monies due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such monies collected being deemed payments on account of the use and occupation of the Assigned Premises or, at the election of County, on account of Concessionaire's liability hereunder.

**3.40 Notice of Claims and Suit**

County and Concessionaire shall each give the other prompt and timely written notice of any personal injury or other accident claim for or in excess of one thousand dollars and 00/100ths (\$1,000.00), and of any lawsuit coming to its knowledge when either such claim or lawsuit arises out of or is in any way connected with the Assigned Premises, the operations of Concessionaire hereunder, the construction or operation of Airport by County which in any way, directly, indirectly, contingently or otherwise, might reasonably affect the parties' relationship under this Agreement.

Such notice shall be deemed prompt and timely if given within thirty (30) calendar days following the date of receipt of such claim by an officer, agent, or employee of either party, and if given within ten (10) calendar days following the date of service of process upon either party with respect to any such lawsuit.

**3.41 No Warranty re Airports**

County does not warrant that Airport will continue to be used as an airport during the term of this Agreement. In the event that such airport use is terminated, whether temporarily or permanently, Concessionaire shall neither claim nor have entitlement to any damages whatsoever from County.

**3.42 Nuisance and Waste**

Concessionaire shall not conduct any operation or activity on the Assigned Premises, or elsewhere in the Airport, in which the sound emitting therefrom is of such volume, frequency or intensity at such time as to constitute a nuisance. Concessionaire shall not erect, nor permit to be erected, any nuisance on the Assigned Premises, or permit any waste thereof. Concessionaire shall not permit any trash or garbage to accumulate on or about the Assigned Premises and other common areas in or around the terminals. The Director shall have the sole and exclusive authority to determine what constitutes a nuisance and waste.

**3.43 Patents and Trademarks**

Concessionaire represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names and slogans used by it in its operations under this Agreement. Concessionaire agrees to save and hold harmless the County, its officers, employees, agents and representatives from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Concessionaire under this Agreement.

**3.44 Prior Damages and Vested Rights**

None of the provisions of this article shall operate to preclude either party from obtaining judgment for any monies due and unpaid prior to termination or for any amounts required to be paid by one of the parties on account of the other party or paid to protect the property interests of one of the parties because of the acts of the other.

**3.45 Prohibition of Liens**

Concessionaire shall pay promptly, as due, all persons supplying labor and materials for any alteration of or improvement to the Assigned Premises, and shall permit no lien or claim to be filed or prosecuted against County on account of such labor and materials furnished.

**3.46 Records and Reports**

Concessionaire shall prepare and maintain an adequate set of records, in a format and detail acceptable to the Director, documenting all Concessionaire's Gross Revenues at Airport

pursuant to this Agreement. All such reports required of Concessionaire shall be prepared in accordance with generally accepted accounting principles and reported on a cash basis.

**A. Monthly Report**

Concessionaire shall submit a monthly report concurrent with each monthly submittal of Percentage Rent payments to the County at the address specified in Section 2.06. Concessionaire shall submit a written monthly report and an electronic monthly report, in a format and detail by location as required by the Director, of all Concessionaire's Gross Revenues at Airport under this Agreement during the preceding calendar month. Both the written and electronic monthly reports shall be submitted no later than the fifteenth (15) day of the following month in which such revenues were generated at Airport. Said monthly report shall be submitted whether or not monthly Percentage Rent payments are due.

**B. Delinquent Monthly Report**

If Concessionaire is delinquent in furnishing to the County any monthly report required under this Agreement, Concessionaire shall pay the County a ten dollar and 00/100ths (\$10.00) late fee for each day, that the monthly report is delinquent, as liquidated damages for the additional administrative costs incurred by the County in processing, reviewing, and demanding the delinquent monthly report. The parties have agreed that this is a fair and reasonable estimate of the County's costs incurred in processing a delinquent monthly report. Imposition of such a late fee shall not constitute a waiver of any other remedies available to the County due to Concessionaire's failure to timely provide the monthly reports or pay the report late fee.

**C. Annual Report**

Concessionaire shall submit to the County at the address specified for Airport Accounting in Section 2.06, for the approval of the County, an Annual Report for each Agreement Year throughout the Term of this Agreement not later than sixty (60) calendar days following the last day of each Agreement Year.

Said Annual Report shall be prepared by an independent CPA or by Concessionaire's Chief Financial Officer and shall be in a format and in detail satisfactory to the County. This Annual Report shall serve as a certified annual financial statement setting forth all business transacted at the Airport by Concessionaire under the terms of this Agreement during the preceding Agreement Year, and excluding any other business transacted by Concessionaire. Such Annual Report shall include, but not necessarily be limited to, Concessionaire's Gross Revenues, Rent and other payments due to the County, the CPA's audit or by Concessionaire's Chief Financial Officer and examination of source documents from which Monthly Reports are based, and a certified opinion as to the accuracy of Concessionaire's submitted Monthly Reports. Concessionaire shall bear the entire cost of such reports.

**D. Delinquent Annual Report**

If Concessionaire is delinquent for ten (10) days or more in furnishing to the County any annual report required under this Agreement, Concessionaire shall pay the County a one hundred dollars and 00/100ths (\$100.00) late fee for each month, or partial month, that the annual report is delinquent, as liquidated damages for the additional administrative costs incurred by the County in processing, reviewing, and demanding the delinquent annual report. The parties have agreed that this is a fair and reasonable estimate of the County's costs incurred in processing a delinquent annual report. Imposition of such a late fee shall not constitute a waiver of any other remedies available to the County due to Concessionaire's failure to timely provide the monthly or annual reports or pay the report late fee.

**3.47 Regulations and Restrictions**

This Agreement, and the rights herein granted, shall be subject to any and all applicable Federal, State and County rules, regulations, orders and restrictions which are now in force or which may hereafter be adopted by any duly authorized governmental agency with respect to Concessionaire’s operation at Airport. In the use of the Assigned Premises, Concessionaire agrees to observe, obey and abide by all ordinances, field rules and other regulations of County applicable thereto. In addition to the foregoing, Concessionaire shall comply immediately with any and all directives issued by the Director or his or her authorized representative(s).

**3.48 Release of Liability**

County shall not be liable for, and is hereby released from any and all liability to Concessionaire, to Concessionaire’s insurance carrier or to anyone claiming under or through Concessionaire, for any loss or damage whatsoever to the property or effects of Concessionaire resulting from the discharge of water or other substance from pipes, sprinklers, conduits, containers, appurtenances thereof, or fixtures thereto, and from any damage resulting from the discharge or failure of electric current, regardless of cause or origin, except the active negligence of County, its employees or agents.

**3.49 Retention of Records**

Concessionaire shall keep available, for a period of three (3) years after each Agreement Year of operation, the books and records of account of Concessionaire for such year, showing the Concessionaire’s Gross Revenues from business conducted under this Agreement, the deductions therefrom, and other pertinent information required by the provisions pursuant to this Agreement. Such books and records of account shall be made available to County or its duly authorized agents or auditors during the regular business hours of County at the Airport for the purpose of verifying the information set forth in any annual report or monthly report statement of receipts or for the purpose of verifying compliance by Concessionaire with the terms of this Agreement.

**3.50 Right of Access**

County, its officers, agents, and employees shall have the right, without limitation, throughout the term of this Agreement, to enter upon the Assigned Premises for any lawful purpose, including the repair, replacement, or improvement of any underground utilities, and including the purpose of determining whether Concessionaire is complying with its obligations hereunder.

Such entry by County shall not be deemed to excuse Concessionaire’s performance of any promise, term, condition, or covenant required of it by this Agreement, and shall not be deemed to constitute waiver thereof by County.

Prior to entering on the Assigned Premises, County shall give reasonable notice of its intent to enter. However, such notice requirement shall not apply in cases of emergency, when the Concessionaire has abandoned or surrendered the Assigned Premises, or where Concessionaire, or Concessionaire’s agent, consents to such entry. Notice under this Section may be given by any means, including oral notice to an owner, officer, or employee of Concessionaire or by posting a written notice upon the Assigned Premises. Twenty-four (24) hours notice shall be deemed reasonable in absence of evidence that a shorter notice period is reasonable.

An entry obtained by County by any of the foregoing means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of the Assigned Premises, or an eviction of Concessionaire from the Assigned Premises or any portion thereof. Additionally, exercise of any right of entry by County under this Section shall not impose any obligation on County in addition to those assumed in this Agreement.

County may, during the progress of any work on the Assigned Premises, take all necessary materials and equipment onto the Assigned Premises without the same constituting an eviction, nor shall Concessionaire be entitled to any abatement of rent, while such work is in progress, nor to any damages by reason of loss or interruption of business or otherwise.

### **3.51 Right to Nonexclusive Use of Airport**

Concessionaire, throughout the term hereof, shall have the right to the nonexclusive use, in common with others, of the Airport parking area, appurtenances and improvements thereon; the right of ingress to and egress from the Assigned Premises, which right shall extend to Concessionaire's employees, guests, invitees and patrons; and the right, in common with others so authorized, to use common areas of the Airport, including roadways and other conveniences, provided, however, Concessionaire shall not impair ingress or egress to other leased or public areas of the Airport.

### **3.52 Risk Reduction**

Concessionaire shall neither use nor permit the use of the Assigned Premises in such a manner as to increase the rate of insurance thereon in excess of that in existence at the commencement of the term hereof.

### **3.53 Signs**

Concessionaire shall not erect, maintain, or display any sign on the Leased Premises, or elsewhere at Airport, without the prior written consent of the Director. Concessionaire shall request the County's approval by submitting a written request, accompanied by a detailed rendering or drawing of the proposed sign.

### **3.54 Statement Regarding a Certified Access Specialist**

Pursuant to California Civil Code §1938, the County states that the Leased Premises:

- Have not undergone an inspection by a Certified Access Specialist (CASp).
- Have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the leased Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.
- Have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the leased Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.

### **3.55 Successors and Assigns**

The provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors, assigns and personal representatives of the parties hereto.

### **3.56 Surrender of Assigned Premises**

County is not required to give Concessionaire any notice to quit possession of the Assigned Premises upon expiration or sooner termination of this Agreement. Concessionaire covenants and agrees it shall peaceably surrender possession of the Assigned Premises upon expiration or sooner termination of this Agreement in good condition, reasonable wear and tear, acts of God, fire and other casualties excepted, and County shall have the right to take possession of the Assigned Premises. Concessionaire agrees that it will use due diligence in completing the removal of its automated retail machines at no cost to the County. Such removal shall be made in such a way that the Assigned Premises (including but not limited to walls and carpet) will be left in a good, cleaned, patched, painted and to re-use condition (normal wear and tear excepted, subject to reasonable approval by the Director).

**3.57 Taxes**

Concessionaire shall, at its sole cost and expense, pay any and all taxes for which it is responsible, or which may be assessed against it.

**A. Possessory Interest and Property Taxation**

Under this Agreement a possessory interest subject to property taxation may be created. Pursuant to California Revenue and Taxation Code Section 107.6 and Government Code Section 53340.1, notice is hereby given that such property interest may be subject to property taxation and special taxation pursuant to Chapter 25, Division 2 of the Government Code (Mello Roos Community Facilities Act of 1982), and that the party in whom the possessory interest is vested may be subject to the payment of property taxes and special taxes levied on such interest. Concessionaire shall pay any and all taxes, assessments, and other charges of whatsoever character that may be levied or charged upon Concessionaire’s interest as herein may be created, improvements, operations, or right to use the Assigned Premises.

**B. Right to Contest Taxes**

Concessionaire shall have the right to contest in its own name, or, to the extent reasonably necessary, in County’s name, in good faith and by all appropriate proceedings, the amount, applicability, or validity of any tax assessment pertaining to the surface of Airport property and Concessionaire's operations thereon.

In the event Concessionaire initiates such contest, County shall reasonably cooperate with Concessionaire, provided that such contest will not subject any part of the surface of Airport property to forfeiture or loss; and provided, further, that if Concessionaire contests any assessment made by the Assessor of County, such contest shall not be initiated in the name of County, and County shall not be obligated to cooperate therewith.

If, at any time, payment of any tax or assessment becomes necessary to prevent any forfeiture or loss, Concessionaire shall timely pay such tax or assessment to prevent such forfeiture or loss.

**3.58 Time of the Essence**

Time is of the essence in performance of this Agreement.

**3.59 Title to the Assigned Premises**

Fee title to the Assigned Premises is and shall remain vested in the County. Nothing in this Agreement contained or any action or inaction by County shall be deemed or construed to mean that County has granted to Concessionaire any right, power or permission to do any act or to make any agreement which may create, give rise to, or be the foundation for, any right, title, interest, lien, charge or other encumbrance upon the estate of County in the Assigned Premises.

**3.60 Transportation of Equipment within the Terminals**

Concessionaire shall ensure that all equipment and materials being transported to and from the Assigned Premises within the Terminals is handled with care and does not interfere with the traveling public and normal airline terminal operations. All products should be packaged within containers that prevent damage or leakage during transportation and that enable X-ray inspection if required.

In transporting equipment or materials associated with operating Concessionaire’s business, Concessionaire shall use only those delivery and receiving routes established by the Director. Pallet jacks, if used, may only be utilized on the lower level of the Terminal in the shipping and receiving areas and storage areas. If delivery and receiving routes are carpeted, any carts used must be equipped with wheels suitable for operating on carpets without causing

damage to them. Concessionaire may only transport products in those service elevators designated for delivery. Under no circumstances may deliveries be taken onto the escalators. Concessionaire must always refrain from transporting operating materials, such as office supplies, inventory, merchandise, recyclables, and trash through the public common areas of the Airport whenever service corridors and delivery tunnels are available.

The County reserves the express right to further regulate the delivery and servicing activities of the Concessionaire and its suppliers to the Airport and the Assigned Premises and Concessionaire agrees to abide by such further regulations of the County.

### **3.61 *Trash and Garbage***

Concessionaire shall, at its sole cost and expense, provide a complete and proper arrangement for the adequate sanitary handling and disposal away from Airport of all trash, dry and wet garbage, and other refuse resulting from, or in any way associated with, Concessionaire's use of the Assigned Premises. Concessionaire shall take appropriate action in the handling of waste materials to prevent the presence of rodents and other vermin. Such arrangements shall include, but not be limited to, the use of suitable covered metal receptacles at the Assigned Premises for the temporary storage of all such garbage, trash, and other refuse. Concessionaire shall keep all garbage materials in durable, fly-proof and rodent-proof, fireproof containers that are easily cleaned. The containers shall have tight-fitting lids, doors, or covers, and shall be kept tightly covered when material is not being deposited in them. Concessionaire shall clean the containers, as necessary, to prevent odors. Concessionaire shall not allow boxes, cartons, barrels, or other similar items to remain within view of public. Concessionaire shall not deposit any of its trash or other refuse in any containers except those designated for Concessionaire's trash.

The County may provide this service for a fee and reserves the right to direct Concessionaire's route for garbage and other refuse removal. Concessionaire shall also be required to participate in any County recycling programs at the Airport.

### **3.62 *Vehicle and Equipment Parking***

Vehicular and equipment parking by Concessionaire, its employees, agents, licensees, suppliers, or subcontractors shall be restricted to such areas at Airport as are designated by the Director. Such parking shall be subject to the payment of such parking fees and charges as may from time to time be in effect for such designated areas.

**3.63 Execution of Agreement**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year executed by the Director.

COUNTY OF SACRAMENTO, a political  
subdivision of the State of California

“COUNTY”

Date: \_\_\_\_\_

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

John Wheat, Director of Airports  
on behalf of the Board of Supervisors  
of the County of Sacramento, California

(SEAL)

(INSERT COMPANY NAME HERE)

“CONCESSIONAIRE”

Date: \_\_\_\_\_

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

(Name) \_\_\_\_\_

(Title) \_\_\_\_\_

(SEAL)

REVIEWED AND APPROVED:

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

County Counsel



## EXHIBIT A

### Concessionaire's Proposal

Concessionaire's \_\_\_\_\_, 2015, Proposal is incorporated by this reference. The original proposal document is maintained in the Sacramento County Department of Airports Properties and Business Development Office located at 6900 Airport Boulevard, Sacramento, CA 95837

**EXHIBIT B**  
**Assigned Premises**

**EXHIBIT C**  
**Equipment and Services**

## EXHIBIT D

### ASSURANCES REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION

#### SECTION A

#### Purpose, Classes Of Activities, Applicability Of Assurances And Definition Of Terms

1. **PURPOSE:**

The County of Sacramento, California, an airport owner subject to both Federal Grant Agreement obligations at Sacramento International Airport (SMF), Sacramento Executive Airport (SAC), and Mather Airport (MHR), is required by the Federal Aviation Administration (FAA) to include specific provisions, addressing, among other things, the requirements of Title VI of the Civil Rights Act of 1964, Exclusive Rights prohibitions, and Affirmative Action items contained in Title 14 Code of Federal Regulations Part 152, within all agreements (including, without limitation, leases, licenses, permits, and contracts) between said County and any and all entities who use or perform work or conduct activities on County owned or operated airport premises for aeronautical or non-aeronautical purposes. The purpose of this Exhibit is to appropriately incorporate within the "Permit," to which it is attached and made a part of by reference therein, the eighteen (18) numbered provisions contained within Section "B," "ASSURANCES," below.

2. **CLASSES OF ACTIVITIES:**

The applicability of each of the eighteen (18) numbered provisions contained within Section "B," "ASSURANCES," below, to that certain "Permit" to which this Exhibit is attached and made a part of by reference therein, is, among other things, dependent upon the type of work to be performed and/or the type of activities to be conducted at the airport(s) by the Lessee, Permittee, Licensee, Operator, etc., named therein, pursuant to and in accordance with those certain rights, privileges, uses, and operations, expressly granted and/or authorized thereunder. The following activity classifications, as established by the FAA, are provided for the information and guidance of all concerned:

a. **Direct and Supportive Aeronautical:** The following activities, commonly conducted on airports, are AERONAUTICAL ACTIVITIES:

- (1) Air Carrier
- (2) Charter Operations
- (3) Pilot Training
- (4) Aircraft rental and sightseeing
- (5) Aerial Photography
- (6) Crop dusting
- (7) Aerial Advertising and Surveying
- (8) Aircraft Sales and Services
- (9) Sale of Aviation Petroleum products (whether or not conducted in conjunction with other included activities)
- (10) Repair and Maintenance of Aircraft
- (11) Sale of Aircraft Parts

(12) Any other activities which, because of their direct relationship to the operation of an aircraft, can appropriately be regarded as an "aeronautical activity."

b. Complementary Aeronautical: The following activities, when conducted on airports, are COMPLEMENTARY AERONAUTICAL ACTIVITIES:

- (1) Ground Transportation (taxis, car rentals, limousines)
- (2) Restaurants
- (3) Barber Shops
- (4) Auto Parking Lots
- (5) Recreational Facilities
- (6) Any other commodities, services or accommodations made available to the general public.

c. Non-Aeronautical: The following activities, when conducted on airports, being neither "Direct and Supportive Aeronautical" nor "Complementary Aeronautical," as defined above, are NON-AERONAUTICAL ACTIVITIES.

- (1) Manufacturing
- (2) Agriculture
- (3) Any other activity not appropriately falling within the above-said "Direct and Supportive Aeronautical" and/or "Complementary Aeronautical," classifications.

3. APPLICABILITY OF NUMBERED PROVISIONS WITHIN SECTION "B," "ASSURANCES," BELOW TO CLASS(ES) OF ACTIVITIES SPECIFIED WITHIN PARAGRAPH 2, ABOVE:

The applicability of the numbered provisions within Section "B," "Assurances," below, to the respective classes of activities specified within sub-paragraphs 2a, b, and c, of this Section "A," above, is as follows:

**NUMBERED PROVISIONS    ACTIVITY CLASS    APPLICABLE TO CLASS**

**SMF, SAC, and MHR AGREEMENTS**

Direct and Supportive Aeronautical	1 through 18
Complementary Aeronautical	1 through 16
Non-Aeronautical	1 through 16

4. DEFINITION OF TERMS USED WITHIN SECTION "B," "ASSURANCES," BELOW:

In order to facilitate ease of fulfillment of the requirement specified within paragraph 1 of this Section "A," this Exhibit is designed to be attached to and made a part of all County of Sacramento Airport "Agreements," including, without limitation, leases, licenses, permits, contracts, etc. Therefore, in the event the "Agreement" to which this Exhibit is attached and made a part of by reference therein shall be other than a lease or be a lease within which the parties thereto are therein called or referred to other than "Lessor" and "Lessee," then, where the terms "Lessor," "Lessee," and "Lease" appear, as shown, within the eighteen (18) numbered "ASSURANCES" listed within Section "B," below, said terms shall be deemed to mean "COUNTY OF SACRAMENTO, CALIFORNIA," "THE OTHER PARTY TO THE PARTICULAR AGREEMENT" (e.g., Licensee, Permittee, Concessionaire, Operator, etc.), and the "AGREEMENT" itself (regardless of title, type and/or description, including, without

limitation, Leases, Agreements, Licenses, Permits, and Contracts) respectively. Where the terms "LAND LEASED" and "LEASED PREMISES" (and all reasonably readily identifiable derivations thereof) appear, said terms shall be deemed to mean the land(s) and/or premises specifically identified within the "Agreement" as being that/those to which leasehold tenancies, occupancies, use(s), operation(s), and/or access(es) by the Lessee, Permittee, Licensee, Operator, Concessionaire, etc., are expressly authorized. In all cases, where the term "AIRPORT" appears, as shown, it shall be deemed to mean the particular airport(s) (i.e., either the Sacramento International Airport, the Sacramento Executive Airport, or Mather Field) as identified within the "Permit" between the parties as being the Airport(s) to which the "Permit" pertains.

## **SECTION B**

### **Assurances**

1. The "LESSEE," for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (as a covenant running with the land if the "Permit" to which this Exhibit is attached is a lease) that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this "LEASE" for a purpose for which a U.S. Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the "LESSEE" shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, 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.
2. The "LESSEE," for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (as a covenant running with the land if the agreement to which this Exhibit is attached is a lease) 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, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that the "LESSEE" shall use the "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, Non-discrimination 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.
3. That in the event of breach of any of the above nondiscrimination covenants, "LESSOR" shall have the right to terminate the "LEASE" and to reenter and repossess said land and the facilities thereon, and hold the same as if said "LEASE" had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.
4. "LESSEE" shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the "LESSEE" may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.
5. Non-compliance with Provision 4 above shall constitute a material breach thereof and in the event of such non-compliance the COUNTY OF SACRAMENTO, CALIFORNIA ("LESSOR")

shall have the right to terminate this "LEASE" and the estate hereby created without liability therefore or at the election of the "LESSOR" or the United States either or both said Governments shall have the right to judicially enforce Provisions 1, 2, 3, and 4 above.

6. "LESSEE" agrees that it shall insert the above five (5) provisions in any lease, agreement, contract, etc., by which "LESSEE" grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the "premises" herein "LEASED."

7. The "LESSEE" assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The "LESSEE" 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 "LESSEE" assures that it will require that its covered suborganizations provide assurances to the "LESSEE" that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR 152, Subpart E, to the same effect.

8. The "LESSOR" reserves the right to further develop or improve the landing area of the "Airport" as it sees fit, regardless of the desires or view of the "LESSEE" and without interference or hindrance.

9. The "LESSOR" reserves the right, but shall not be obligated to the "LESSEE," to maintain and keep in repair the landing area of the "Airport" and all publicly-owned facilities of the "Airport," together with the right to direct and control all activities of the "LESSEE" in this regard.

10. This "LEASE" shall be subordinate to the provisions and requirements of any existing or future agreement between the "LESSOR" and the United States, relative to the development, operation or maintenance of the "Airport."

11. There is hereby reserved to the "LESSOR," its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the "premises" herein "LEASED." This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the "Airport."

12. "LESSEE" agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the "LEASED PREMISES," or in the event of any planned modification or alteration of any present or future building or structure situated on the "LEASED PREMISES."

13. The "LESSEE," by accepting this "LEASE," expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the "land leased" hereunder which would exceed the height limits of Part 77 of the Federal Aviation Regulations. In the event the aforesaid covenants are breached, "LESSOR" (the owner) reserves the right to enter upon the "land leased" hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the "LESSEE."

14. The "LESSEE," by accepting this "LEASE," agrees for itself, its successors and assigns, that it will not make use of the "LEASED PREMISES" in any manner which might interfere with the landing and/or taking off of aircraft at and/or from the "AIRPORT" (either Sacramento International Airport or Sacramento Executive Airport, or Mather Field, as applicable) or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the "LESSOR"

(owner) reserves the right to enter upon the “premises hereby leased” and cause the abatement of such interference at the expense of the “LESSEE.”

15. This “LEASE.” and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said “AIRPORT” or the exclusive or nonexclusive use of the “AIRPORT” by the United States during the time of war or national emergency.

16. It is the policy of the Department of Transportation (DOT) that disadvantaged and minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of leases as defined in 49 CFR 23.5. Consequently, these leases are subject to 49 CFR Part 23, as applicable. “LESSEE” hereby covenants and agrees that no person shall be excluded from participation in, denied the benefits of or otherwise discriminated against in connection with the award and performance of any contract, including leases, covered by 49 CFR Part 23 on the grounds of race, color, national origin or sex. “LESSEE” agrees that it will include the above clauses in all sub-leases and cause sublessees to similarly include the clauses in further sub-leases.

17. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

18. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, Airport is encouraged to:

- a. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
- b. Conduct workplace safety initiatives in a manner commensurate with the size of the business such as:
  - i. Establishment of new rules and program or re-evaluation of existing programs to prohibit text messaging while driving; and
  - ii. Education, awareness and other outreach to employees about the safety risks associated with texting while driving.



## EXHIBIT E

**Insurance Requirements For the Passenger Service Concession Agreement between the COUNTY OF SACRAMENTO, hereinafter referred to as "COUNTY", and \_\_\_\_\_, hereinafter referred to as "Concessionaire"**

### **INSURANCE REQUIREMENTS**

Without limiting Concessionaire's indemnification, Concessionaire shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Concessionaire, its agents, representatives or employees. County shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If in the opinion of the County Risk Manager, insurance provisions in these requirements do not provide adequate protection for County and for members of the public, County may require Concessionaire to obtain insurance sufficient in coverage, form and amount to provide adequate protection. County's requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

### **Verification of Coverage**

Concessionaire shall furnish the County with certificates evidencing coverage required below. **Copies of required endorsements must be attached to provided certificates.** The County Risk Manager may approve self-insurance programs in lieu of required policies of insurance if, in the opinion of the Risk Manager, the interests of the County and the general public are adequately protected. All certificates, evidences of self-insurance, and additional insured endorsements are to be received and approved by the County before performance commences. The County reserves the right to require that Concessionaire provide complete, certified copies of any policy of insurance including endorsements offered in compliance with these specifications.

### **Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. GENERAL LIABILITY: Insurance Services Office's Commercial General Liability occurrence coverage form CG 0001. Including, but not limited to Premises/Operations, Products/Completed Operations, Contractual, and Personal & Advertising Injury, without additional exclusions or limitations, unless approved by the County Risk Manager.
  
2. AUTOMOBILE LIABILITY: Insurance Services Office's Commercial Automobile Liability coverage form CA 0001.
  - a. Commercial Automobile Liability: auto coverage symbol "1" (any auto) for corporate/business owned vehicles. If there are no owned or leased vehicles, symbols 8 and 9 for non-owned and hired autos shall apply.
  - b. Personal Lines automobile insurance shall apply if vehicles are individually owned.

3. WORKERS' COMPENSATION: Statutory requirements of the State of California and Employer's Liability Insurance.
4. PROFESSIONAL LIABILITY or Errors and Omissions Liability insurance appropriate to the Concessionaire's profession.
5. UMBRELLA or Excess Liability policies are acceptable where the need for higher liability limits is noted in the Minimum Limits of Insurance and shall provide liability coverages that at least follow form over the underlying insurance requirements where necessary for Commercial General Liability, Commercial Automobile Liability, Employers' Liability, and any other liability coverage (other than Professional Liability) designated under the Minimum Scope of Insurance.

**Minimum Limits of Insurance**

1. General Liability shall be on an Occurrence basis (as opposed to Claims Made basis). Minimum limits and structure shall be:

General Aggregate:	\$2,000,000
Products Comp/Op Aggregate:	\$2,000,000
Personal & Adv. Injury:	\$1,000,000
Each Occurrence:	\$1,000,000
Fire Damage:	\$ 100,000 (or replacement value of portion of building you lease, whichever is greater.)

Building Trades Contractors and Contractors engaged in other projects of construction shall have their general liability Aggregate Limit of Insurance endorsed to apply separately to each job site or project, as provided for by Insurance Services Office form CG-2503 Amendment-Aggregate Limits of Insurance (Per Project).

2. Automobile Liability:
  - a. Commercial Automobile Liability for Corporate/business owned vehicles including non-owned and hired, \$1,000,000 Combined Single Limit (not for Airside Driving). Airside driving requires \$5,000,000.
  - b. Personal Lines Automobile Liability for Individually owned vehicles, \$250,000 per person, \$500,000 each accident, \$100,000 property damage.
3. Workers' Compensation: Statutory.
4. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
5. Professional Liability or Errors and Omissions Liability: Not Applicable.

**Deductibles and Self-Insured Retention**

Any deductibles or self-insured retention that applies to any insurance required by this Agreement must be declared and approved by the County.

## **Claims Made Professional Liability Insurance**

If professional liability coverage is written on a Claims Made form:

1. The "Retro Date" must be shown, and must be on or before the date of the Agreement or the beginning of Agreement performance by Concessionaire.
2. Insurance must be maintained and evidence of insurance must be provided for at least one (1) year after completion of the Agreement.
3. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "Retro Date" prior to the contract effective date, the Concessionaire must purchase "extended reporting" coverage for a minimum of one (1) year after completion of the Agreement.

## **Other Insurance Provisions**

The insurance policies required in this Agreement are to contain, or be endorsed to contain, as applicable, the following provisions:

### **All Policies**

1. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than **A-VII**. The County Risk Manager may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of the County and the general public are adequately protected.
2. **MAINTENANCE OF INSURANCE COVERAGE:** The Permittee shall maintain all insurance coverages in place at all times and provide the County with evidence of each policy's renewal ten (10) days in advance of its anniversary date. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be canceled except after thirty (30) days' written notice for cancellation or non-renewal has been given to the County. For non-payment of premium 10 days prior written notice of cancellation is required.

### **Commercial General Liability and/or Commercial Automobile Liability**

1. **ADDITIONAL INSURED STATUS:** The County, its officers, directors, officials, employees, and volunteers are to be endorsed as additional insureds as respects: liability arising out of activities performed by or on behalf of the Permittee; products and completed operations of the Permittee; premises owned, occupied or used by the Permittee; or (commercial) automobiles owned, leased, hired or borrowed by the Permittee. The coverage shall contain no endorsed limitations on the scope of protection afforded to the County, its officers, directors, officials, employees, or volunteers.
2. **CIVIL CODE PROVISION:** Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an Agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

3. **PRIMARY INSURANCE**: For any claims related to this Permit, the Permittee's insurance coverage shall be endorsed to be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, directors, officials, employees, or volunteers shall be excess of the Permittee's insurance and shall not contribute with it.
4. **SEVERABILITY OF INTEREST**: The Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. **SUBCONTRACTORS**: Permittee shall be responsible for the acts and omissions of all its subcontractors and shall require all its subcontractors to maintain adequate insurance.

### **Professional Liability**

**PROFESSIONAL LIABILITY PROVISION**: Any professional liability or errors and omissions policy required hereunder shall apply to any claims, losses, liabilities, or damages, demands and actions arising out of or resulting from professional services provided under this Permit.

### **Workers' Compensation**

**WORKERS' COMPENSATION WAIVER OF SUBROGATION**: The workers' compensation policy required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the County, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this Agreement by the Concessionaire.

### **Property**

**COURSE OF CONSTRUCTION (COC) WAIVER OF SUBROGATION**: Any Course of Construction (COC) policies maintained by the Concessionaire in performance of the Agreement shall contain the following provisions:

1. The County shall be named as loss payee.
2. The insurer shall waive all rights of subrogation against the County.

**INLAND MARINE WAIVER OF SUBROGATION**: Any Inland Marine insurance policies maintained by the Concessionaire in performance of the Agreement shall be endorsed to state that the insurer shall waive all rights of subrogation against the County.

### **Notification of Claim**

If any claim for damages is filed with Concessionaire or if any lawsuit is instituted against Concessionaire, that arise out of or are in any way connected with Concessionaire's performance under this Agreement and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect County, Concessionaire shall give prompt and timely notice thereof to County. Notice shall be deemed prompt and timely if given within thirty (30) days following the date of receipt of a claim or ten (10) days following the date of service of process of a lawsuit.