



## **DEPARTMENT OF AIRPORTS**

# ***REQUEST FOR PROPOSALS***

**Development and Operation of Hotel, Travel Center, and  
Commercial Mixed Use Development**

**Interstate 5 Corridor at Sacramento International Airport**

**Mandatory Pre-Proposal Meeting**

**April 18, 2018**

**10:00 A.M. to 12:00 P.M.**

**Proposals Due:**

**Wednesday, May 23, 2018**

**2:00 P.M. Pacific Time**

April 5, 2018

TO: Commercial Developers

FROM: Sacramento County Department of Airports

SUBJECT: **Request for Proposals**

**Sacramento County Department of Airports**

**Development and Operation of Hotel, Travel Center, and Mixed Use  
Development along the Interstate 5 Corridor at Sacramento  
International Airport**

Sacramento County Department of Airports (Department) is issuing this Request for Proposals (RFP) to allow firms to submit their qualifications and proposals to develop and operate hotel(s), travel center, and commercial mixed use development along the Interstate 5 corridor at the Sacramento International Airport (SMF or Airport). Based on qualifications and experience, the successful Proposer(s) will be responsible for determining the highest and best use of the land through conceptual design and a comprehensive plan to develop all or portions of the Site(s) identified in this RFP.

The Department will consider proposals for the development for all or part of the SMF Amenities District and up to 30 acres of development in the SMF South District. The Amenities District is approximately 98 acres located at the "front door" of the Airport, situated at the main entrance and is intended for retail, office, food and beverage, and hospitality. The SMF South District is located within approximately 295 acres conveniently located along the south side of Interstate 5 allowing for high visibility and access for a travel center.

Following receipt of the proposals, a Selection Team will review the proposals, conduct Proposer interviews (if necessary) and select the development team(s) to enter into the Agreement(s) (Agreement) with the County. The approval of the selected Proposer(s) will be subject to the execution of the Agreement(s) and approval by the Sacramento County Board of Supervisors (BOS). A timeline for this entire process is provided herein and may be subject to change.

The Department reserves the right in its sole and absolute discretion to choose or reject any or all proposals either on the basis of evaluation of the factors listed in the RFP or for other reasons deemed appropriate. All costs associated with submitting a proposal shall be borne solely by the Proposer(s) and will not be reimbursed by the Department.

All responses to this RFP shall be considered valid for six (6) months following the last day for submitting a proposal.

# Table of Contents

A.	Airport and Area Information .....	1
B.	Project Purpose and Summary .....	3
C.	RFP Award Schedule and Due Dates .....	4
D.	Key Development Requirements.....	5
E.	Construction of Project.....	5
F.	Taxes.....	5
G.	Mandatory Pre-Proposal Meeting.....	6
H.	Proposal Requirements .....	7
I.	Minimum Requirements .....	7
J.	Proposal Submittals .....	8
K.	Proposed Rental Structure.....	13
L.	Financial Projections.....	14
M.	Financial Background Information.....	14
N.	Proposal Checklist .....	14
O.	Evaluation Criteria.....	15
P.	Evaluation Factors .....	15
Q.	Disclaimers .....	16
R.	Conditions.....	18

## **Attachments:**

Attachment 1	Development Site & Utilities
Attachment 2	Draft Agreement Exhibits A – F to Draft Agreement
Attachment 3	Addenda Acknowledgement Form
Attachment 4	Qualifications Statement
Attachment 5	Business Organizations
Attachment 6	Project Cost Analysis
Attachment 7	Financial Projections - Pro-Forma
Attachment 8	Proposal Checklist
Attachment 9	FAA Contract Provisions

## **A. Airport and Area Information**

The Department is responsible for planning, developing, operating and maintaining the County's four airports: Sacramento International Airport (SMF), Executive Airport, Mather Airport and Franklin Field. SMF offers more than 162 daily nonstop flights on 11 domestic and international carriers to 35 destinations. The regional economic impact of the Sacramento County Airport System is more than \$4 billion annually. For more information, visit <http://www.smf.aero>

Consisting of approximately 6,000 acres of land, SMF is strategically located at the confluence of major transportation and commerce corridors that feed into one of the most prosperous mega regions in the county. This makes development at SMF positioned to attract businesses in a wide variety of markets. Within fifteen minutes of SMF, visitors will discover aviation and aerospace developments as well as logistical and warehouse resources. Being the State capitol, Sacramento is also home to a heavy concentration of governmental establishments and land uses.

### ***Airport Passenger Data:***

The Airport, which is classified as a medium air traffic hub by the Federal Aviation Administration (FAA), is the primary commercial airport facility serving Sacramento County and six (6) neighboring counties (Sacramento Area). Passengers from an eleven (11) county outlying area provide a secondary air service area.

- 30,000 Average Daily Passengers through SMF
- 3,000 On-site Employees
- 10,900,000 passengers in 2017
- 94% origin-destination passengers
- 48% business travelers
- 52% leisure travelers

### ***Airport Transportation Data:***

- 16,000 Northbound Ramp Volume to Airport (2015 ADT)
- 4,700 Southbound Ramp Volume to Airport (2015 ADT)
- 79,700 Interstate 5 at Airport Boulevard Traffic Count (2015 AAD)
- 43,178 On-Call Van Service Trips
- 116,867 Taxi Service Trips
- 523,293 TNC Trips

**Industries:**

- Amazon Distribution Center located adjacent to Airport
- FedEx Air Cargo at Airport
- United Parcel Service Hub located in West Sacramento
- The Port of Sacramento deep-water shipping located in West Sacramento
- Healthcare: UC Davis Healthcare, Sutter Health, Kaiser Permanente, Dignity Health
- Technology: Apple (Elk Grove); Intel (Folsom); Hewlett Packard (Roseville)
- Blue Diamond Almond Growers (Downtown Sacramento)

**Community:**

- Sacramento is a Northern California Megaregion with a competitive marketplace of 12.2 million people, with a regional GDP that is the highest of any US Megaregion.
- Direct access to a system of universities anchored by the top UC Schools gives the Sacramento region a powerful workforce, including 318,000 students currently enrolled at 4-year universities including California State University Sacramento, University of San Francisco Sacramento Campus, University of Phoenix, and University of California. Additionally, about 75,000 students are enrolled in the Los Rios Community Colleges.
- Several neighborhoods in the Sacramento Area offer a wide variety of housing options within 34 miles of the Airport, including: Natomas (5 miles), Downtown/Midtown (11 miles), Land Park area (14 miles), Pocket area (18 miles), Carmichael (20 miles), Elk Grove (21 miles), Rancho Cordova (24 miles), Roseville (24 miles) and Folsom (34 miles). There are numerous low income housing apartment complexes offering affordable housing options within 15 miles of the Airport.

**Lifestyle:**

- The Sacramento Area provides employees with an exceptional quality of life and access to the best that California has to offer, including the 32 mile American River Bike Trail running from Old Sacramento to Folsom, the 400 mile Sacramento River (the largest river in California), the recreational Lake Natoma for rowing, kayaking, swimming and is home to the Sacramento State Aquatic Center, more than 40 farmers markets, Farm-To-Fork restaurants and festivals, as well as more than 40 craft beer breweries.
- Sacramento enjoys mild year-round temperatures. Summers are dry with an abundance of sunshine and moderated by a sea breeze known as the “delta breeze” cooling the nights down.
- Award-winning school districts throughout the Sacramento Area.
- Workforce transportation options include a light-rail system, Regional Transit bus system, Amtrak passenger rail service, and Greyhound intercity bus service.

**B. Project Purpose and Summary**

In an effort to maximize airport revenues and to expand economic benefits for the Sacramento region by encouraging related business developments that are consistent with the Airport’s Master Plan, the Department is issuing this RFP to enter into an Agreement(s) with the selected Proposer(s) for development and operation of commercial development.

Potential Target Uses (but not limited to):

<b>SMF Amenities District</b>	<b>SMF South District</b>
Strip center/retail park	Full service travel center
Restaurants	24-Hour food and beverage services
24-Hour food and beverage services	
Hotel	
Pet hotel	

Other land uses that will accomplish the Project purpose as stated above will be considered. Any proposed development may include an integrated cell phone waiting lot to serve Airport customers.

***Note: residential / multi-family uses are not compatible on Airport property and may not be included in proposals.***

**C. RFP Award Schedule and Due Dates**

The anticipated RFP process schedule is shown below. The schedule is subject to change as determined by the Department.

Event	Date
Issuance of RFP	Thursday, April 5, 2018
Mandatory Pre-Proposal Meeting at: Sacramento International Airport Terminal B Administration Meeting Room 6900 Airport Boulevard, 4 <sup>th</sup> Floor Sacramento, CA 95837-1109	Wednesday, April 18, 2018 10:00 – 12:00 p.m. <ul style="list-style-type: none"> <li>• Questions Due</li> <li>• Tour of Site</li> <li>• RSVP by April 17, 2018</li> </ul>
Issue Addenda (if necessary)	Friday, April 27, 2018
<b>Proposals Due</b>	<b>Wednesday, May 23, 2018</b> <b>By 2:00 p.m. PST</b>
Evaluation of Proposals	Week of May 29-June 1, 2018
Interviews (if necessary)	Week of June 11-15, 2018
BOS approval of selection (anticipated)	Tuesday, July 24, 2018
Finalize and Execute Agreement	August 2018
Design Review & Permit Process	September – December 2018
Phased Construction Begins	Spring 2019

**D. Key Development Requirements**

- See Section 2.16 of the Draft Agreement for Special Flood Designation A99.
- All construction shall be done in accordance to the County's Standard Construction Specifications which can be found at <http://www.saccountyspecs.net>.
- The existing utility infrastructure in the vicinity of the site(s) is described in Attachment 1. The selected Proposer is required to install all meters for electricity, water, sewer, gas, storm drainage, required Internet and phone services, and any other utilities required to construct and operate the development in its entirety.
- In an effort to encourage using sustainable measures to help the environment, the Department is interested in exploring opportunities to implement alternative energy sources and methods of conserving energy into the Project construction and operation, and will consider Proposals that utilize solar energy, geothermal or other energy saving components. Proposals should also consider the Department's goals of minimizing waste/increasing diversion from landfills, reducing energy and Greenhouse Gases (GHG), and improving water conservation. In addition, Proposers are encouraged to apply the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) and the Institute for Sustainable Infrastructure's (ISI) Envision rating systems for design and construction of facilities and infrastructure, respectively. While specific strategies are not prescribed, Proposers shall contribute to and demonstrate commitment to the Project Purpose including social, economic and environmental sustainability.

**E. Construction of Project**

Construction of the Project may begin following the:

1. Execution of the Agreement by all parties; and
2. Contingent upon release and availability of the land; and
3. Approval of Proposer's design, construction drawings and construction schedule by the Department and the County's Building Inspection Division; and
4. Proposer's receipt of all necessary approvals and permits from local, State and federal agencies.

--See the Draft Agreement (Attachment 2) for more specific construction requirements.

**F. Taxes**

Operator is responsible for sales, occupancy, and other tax levies associated with development and subsequent activity to occur on the project site.



### ***Transient Occupancy Tax***

Pursuant to Section 3.08 of the Sacramento County Code, the operator of any proposed hotel is required to collect a Transient Occupancy Tax for each guest room rental transaction for the privilege of occupancy in the current amount of twelve percent (12%) of the room rental rate charged by the hotel operator.

The tax constitutes a debt owed by the transient to the County which is extinguished only by payment to the hotel operator or to the County. The transient shall pay the tax to the hotel operator at the time the rent is paid.

### ***Possessory Interest Tax***

The Operator shall pay any and all taxes, assessments, and other charges of whatsoever character that may be levied or charged upon the Operator's interest as herein may be created, improvements, operations or right to use the Leased Premises, including possessory interest taxes assessed by the County Assessor.

### **G. Mandatory Pre-Proposal Meeting**

A mandatory Pre-Proposal Meeting is scheduled for Wednesday, April 18, 2018 at the Airport Terminal B Administration Meeting Room, 4<sup>th</sup> Floor, a tour of the Site is included. This meeting will be held from 10:00 AM to 12:00 PM, Pacific Time. The purpose of the meeting will be to discuss the requirements and objectives of this RFP. Airport representatives will be available to answer questions.

Proposers are required to submit any questions or requests for clarification in writing prior to the Pre-Proposal Meeting. All questions and requests for clarification shall be submitted to [air-development@sacounty.net](mailto:air-development@sacounty.net). Questions are to be received by the Airport no later than April 18, 2018. Please call (916) 874-0911 to make reservations to attend the Pre-Proposal Meeting.

At the Pre-Proposal Meeting, the Department representatives will attempt to answer all written questions received in advance. Any clarifications or changes in the RFP requirements or Agreement that result from the Pre-Proposal Meeting will be made by written Addendum to this RFP. Included in the Addendum will be all questions and answers submitted prior to, and during the Pre-Proposal Meeting. The Addendum will also include a list of meeting attendees. The County is not responsible for any explanation, clarification, interpretation or approval made or given in any manner except by written Addendum. Each Addendum will be posted at [www.sacramento.aero](http://www.sacramento.aero). Any Addenda so issued are to be considered a part of this RFP document. Therefore, receipt of all Addenda issued during this RFP must be acknowledged on the Addenda Acknowledgement Form (Attachment 3) and included with your Proposal. Any Proposer failing to sign the Addenda Acknowledgement Form and submit with Proposal will be deemed non-responsive and will be disqualified from the Proposal process.

## **H. Proposal Requirements**

Written Proposals must clearly define the proposed development and operation, services offered, financial terms and other elements requested below. Format, organization and content are all important in order for the selection committee to conduct an accurate and complete review of the Proposal. Be sure to include all information requested in this RFP. Include any other information to clarify any unique differences of your Proposal.

The RFP evaluation process will include a specific focused review of each Proposal. Each Proposal will be evaluated in addition to and/or against the other Proposals received. Please prepare your written proposal in the order requested. Refrain from including excessive brochures, attachments and materials outside of the requirements of the RFP.

The following section describes the minimum required information that must be submitted with each Proposal. Incomplete Proposals will be rejected. The Proposal requirements in this section are not meant to limit creativity in the presentation of a Proposal, rather to list the minimum elements that must be included in the Proposal. It is the Proposer's responsibility to incorporate all pertinent information to effectively present a Proposal for the design, construction and operation of a commercial development and to communicate the Proposer's qualifications.

## **I. Minimum Requirements**

Proposers must:

1. Submit a complete and timely proposal.
2. Include a non-expiring Proposal Deposit with the original Proposal of Ten Thousand Dollars and 00/100 (\$10,000.00).
3. Clearly demonstrate how Proposer meets or exceeds the minimum qualifications of three (3) years of commercial development project experience, including design, construction and operation experience within the last ten (10) years. Size and scope of experience must be equal to or greater than the Project proposed.
4. Attend the Pre-Proposal Meeting  
Date: April 18, 2018  
Time: 10:00 AM Pacific Time  
Location: Sacramento International Airport  
Terminal B – Administration Conference Room, 4<sup>th</sup> floor  
6900 Airport Boulevard  
Sacramento, CA 95837
5. Submit full and complete answers in response to questions in this RFP, numbered consecutively, with all requested information attached (requirements detailed on pages 7-14 of this RFP). Use additional forms and renderings to provide as much

information as necessary to effectively communicate the proposed development and operation and the Proposer's qualifications.

6. Provide written clarification or additional information within two (2) business days to any written request for such information by the Department during the Proposal review and evaluation process.

**J. Proposal Submittals**

Responses to this RFP must be submitted as follows:

- One (1) original marked "ORIGINAL" and four (4) copies of the Proposal must be submitted, plus one electronic copy on a flash drive.
- Titled "Commercial Development Proposal"
- Delivered to:  
Sacramento County Department of Airports  
6900 Airport Boulevard  
Sacramento, CA 95837  
Attention: Jennifer Simkins
- Proposal due date is May 23, 2018, by 2:00 PM, Pacific Time. Late proposals will not be accepted.

The Proposal submittal shall be securely bound and consist of the following documents in the sequence shown below. In order to have a Proposal considered by the Department, the Proposer must submit a complete Proposal. Please insert a set of tabs to identify each part of the Proposal to facilitate quick reference. Proposals must be typed or printed in a font no smaller than 11 point, on 8.5" by 11" paper. The Proposal shall not exceed forty (40) pages.

**1. Cover Letter**

The cover letter shall identify the Proposer and state other general information which the Proposer desires to include regarding the Proposer's business organization. Please include the point of contact and contact information (including e-mail address) on the cover letter.

**2. Proposal Deposit**

All Proposers are required to provide a non-expiring Proposal Deposit in the amount of \$10,000. Enclose the Proposal Deposit with the original Proposal marked "ORIGINAL".

The Proposal Deposit shall be provided in immediately available funds, in the form of a certified check, a cashier's check, or a proposal bond in such form and substance

acceptable to the County. Checks must be made payable to the "County of Sacramento". The Proposal Deposit must not expire.

No Proposal will be reviewed unless accompanied by a Proposal Deposit.

The Proposal Deposit will be held by the Department until the selection process is complete. If you are notified that you have been unsuccessful or disqualified, your Proposal Deposit will be returned to you. If you are selected to design, develop and operate the Project at the Airport, your Proposal Deposit will be held as a security/performance deposit until the signing of the Agreement, the construction of the development, and the substitution of the Proposal Deposit with any Surety Bond/Performance Security that may be required, as noted in the attached Draft Agreement. No interest will be paid to Proposer on the Proposal Deposit.

Should a Selected Proposer fail to timely execute the Agreement, or refuse to enter into an Agreement with the County, or fail to construct the Project, the entire sum of the Proposal Deposit submitted by the Selected Proposer shall be immediately payable to the County, not as a penalty, but as liquidated damages. If the County and the Selected Proposer enter into and execute an Agreement, but the Selected Proposer subsequently is considered in default and subject to such penalties as provided in the Agreement, the Selected Proposer may be required to, but not necessarily limited to, forfeit all bonds, security deposits and other funds on deposit with the Department.

### **3. Executive Summary**

The executive summary will list important features of the Proposal and must include a statement certifying that the Proposer meets or exceeds the minimum requirements of this RFP and has the ability to carry out all of the required elements of the proposed Project throughout the entire term of the Agreement. Included in this summary shall be a statement indicating that the Proposer has reviewed the local, State and federal agency requirements and considered these requirements in developing the timeline submitted in the proposal.

### **4. Executed Addenda Acknowledgement Form (Attachment 3)**

Enclose a signed original Addenda Acknowledgement Form with the original Proposal. Proposer must include documentation of the requisite signature authority for the person or persons signing on behalf of Proposer.

### **5. Proposer's Qualifications Statement (Attachment 4)**

Describe the Proposer's specific experience with the design, construction, and operation of a project similar in size and scope to the proposed Project. Proposer's Qualifications Statement must include a representative list of its locations, the length of time for each phase of the development for each project, sub-contractor(s) involved and their experience,

and the gross revenues for the operation at each location over three (3) years within the last ten (10) years. Provide a valid and current reference contact familiar with the Proposer's performance for each location.

## **6. Business Organization (Attachment 5)**

Describe the Proposer's business organization by completing the applicable Business Entity Forms.

## **7. Development Plan/Financing Plans**

Proposals must include the following:

### **a. Development & Operating Management Team Experience**

Describe the experience, credentials and qualifications of key team members in developing and operating commercial center(s). Provide examples of three (3) completed project(s) within the last ten (10) years.

### **b. Development Schedule**

Provide a conceptual master plan for the Site including access roads and parking. Include a detailed schedule/timeline depicting commencement and completion of the development of the Project, opening activities and ongoing operation of the Project. Highlight major construction milestones and activities. Selected Proposer will be held liable for any delays in the proposed opening date of the Project. Include any phased development plans.

### **c. Proposed Facility Build-Out Investment**

Provide the estimated level of capital investment to develop the Site. List the proposed facility build-out investment in real property improvements.

Not less than 85% of the Proposed Facility Build-Out Investment must be expended on construction "hard costs" of materials, direct labor, equipment, finishes, signage, lighting, HVAC, and other construction costs exclusive of "soft costs" of design, engineering, construction supervision, permitting, specialist consultants, overheads, corporate construction administration, and other fees.

### **d. Financial Plan and Proposer's Capability**

Provide a Project Cost Analysis Form (refer to Attachment 6) to detail the proposed financial plan including funding types and sources. The preferred financing plan should be based on Proposer's cost estimates for the Project.

Each proposal should include a detailed description of sources of funds for the Project. The proposed approach to financing should include the following items:

- (1) Private Equity – describe the amounts, sources, and timing of private equity to be secured for the Project. Determine the required rate of return for equity investors in this deal.
- (2) Private Lending – describe the amounts, sources, and timing of the private construction and permanent loans to be secured for the Project. Determine the required rate of return for short-term and long-term lenders in this deal.
- (3) Public Incentives – describe the amounts, and timing of public incentives requested, if any, that will be required to close a potential gap in funding.
- (4) Other Types of Public Participation – identify and explain other proposed types of public participation. Specify the type and amount of public participation.
- (5) Ownership – describe the proposed ownership entity for the Project assuming that the Department does not intend to participate in the ownership in an amount greater than the present land value of the sites proposed for development.
- (6) Lease –Proposers should include proposed terms for a land lease for the Project as instructed in Section K of this RFP.
- (7) Proposer must clearly demonstrate its capacity to undertake, execute, complete and operate the planned Project. Proposers must submit information regarding how the development will be financed and supported.
- (8) Letters of reference from financial institutions confirming Proposer’s ability to secure financing for the Project must be submitted with the Proposal.

## **8. Facility Design and Quality of Improvements**

Proposers shall submit the following preliminary plans in sufficient detail to facilitate evaluation of the quality and design of the Project.

A preliminary architectural rendering of the proposed Project, indicating:

- The overall design

- Proposed uses
- Phasing for the ultimate development

## **9. Operating Plan & Conceptual Submittal:**

Proposer is required to provide a narrative detailing the proposed operating and management plan, as well as provide visual renderings describing the Proposer's proposed Development. The narrative and renderings must include the "brand" of each facility, physical attributes, amenities, level of proposed services, information technology services, and any additional information necessary to fully describe the proposed facility, including, at a minimum, the following:

### **Hotel:**

- Provide a detailed proposal of Proposer's concept for the Hotel.
- Identify the specific location of proposed Hotel in the SMF Amenities and/or South Districts.
- Identify any design or construction features that the Proposer represents will set the facility apart as an iconic Hotel.
- Provide the general color scheme, fixtures, casework, furniture and décor and the image sign and graphic elements.
- Submit a maximum of twenty-five (25) different color sketches depicting the proposed facility. Sketches may be 11" X 17" but must be folded to 8½" x 11" when submitted and should include:
  - The overall design of the Hotel.
  - The typical guest room sizes with listing of standard features.
  - The lobby area, meeting rooms, and key common area amenities.
  - A site plan, including:
    - typical floor plans of major areas,
    - floors with total number of guest rooms per floor,
    - room floor plans,
    - meeting facilities,
    - concessions areas,
    - exterior elevation,
    - parking facilities and access roadways,
    - pedestrian/patron flow within the facility.
- Provide the expected timing and value for Hotel mid-term refurbishments.

- Provide the hotel brand you are proposing for this Site and the relationship between the developer and operator.

**Travel Plaza:**

- Provide a detailed proposal of Proposer’s concept for the Travel Plaza.
- Identify the specific location proposed within the SMF Amenities and/or South District
- Provide the fuel/plaza brand you are proposing for this Site.
- Identify the types of fuel (e.g., gasoline, diesel, compressed natural gas) to be dispensed at the facility.
- Describe the food services to be provided at the facility.
- Describe any other amenities (e.g., car wash with zero discharge recycling system) that may be offered at the facility.
- Submit a maximum of ten (10) different color sketches depicting the proposed facility. Sketches may be 11” X 17” but must be folded to 8½” x 11” when submitted.
- Provide the expected timing and value for Travel Plaza mid-term refurbishments.
- Describe any proposed development(s) that include an integrated cell phone waiting lot to serve Airport customers, if proposed.

**Mixed-Use Commercial Development:**

- Provide a detailed proposal of Proposer’s concept for the Mixed-Use Commercial Development.
- Identify the specific location proposed within the SMF Amenities and/or South District
- Identify any other facilities the Proposer intends propose to construct and operate within the Mixed-Use Development.
- Submit a maximum of ten (10) different color sketches depicting the proposed facilities. Sketches may be 11” X 17” but must be folded to 8½” x 11” when submitted.
- Provide any brands you are proposing for this Site and the relationship between the developer and operator(s).

**K. Proposed Rental Structure**

As detailed in the Agreement, for the privilege of operating at the Airport, the Project Operator is required to pay fair market value throughout the Term of the Agreement. The Department may also consider alternative rental structures from that detailed in the Agreement.

Proposer must provide a summary of proposed lease terms for the entire Term of the Agreement including lease type, term, rent and other special conditions. Estimate the revenue to the Department after the completion of this Project, as well as the projected revenue share structure proposed.



**L. Financial Projections**

The Proposer shall provide a Pro-Forma Operating Statement for each facility within the proposed Project. The Pro-Forma shall include the Proposer's projected gross revenues and expenses during the first five (5) years of the Term (refer to Attachment 7). The Pro-Forma shall be evaluated by the selection committee in terms of reasonableness, demonstrated understanding of the industry, viability of the proposed Project, and ability to fund continuing operations from cash flow generated by the business.

Include proposed rental rates and projected occupancy rates for hotel and show cash flow from rents and other sources.

Please submit in writing the underlying assumptions and any additional documentation supporting revenue projections for the Project. Such information should not exceed one (1) 8.5" by 11" type-written page.

**M. Financial Background Information**

Include the following historical financial information for the Proposer. If Proposer is a joint venture, partnership or LLC, then the following information must be submitted for each separate entity in the joint venture, partnership or LLC:

1. Proposer must attach audited financial statements for the past two years if available. If audited financial statements are not available, then all financial statements shall be certified by the Proposer's Controller, or Officer of the Company. Financial Statements shall include, at a minimum: balance sheet and income statements prepared in accordance with generally accepted accounting principles, reflecting the current financial condition of Proposer. Also include an interim balance sheet and income statement of any significant financial events occurring subsequent to the closing date of the most recent financial statements.
2. Describe ownership of the Proposer.
3. At least three (3) business and two (2) financial references.
4. Detail any changes in financial position for the past two (2) years.
5. Provide current Dun & Bradstreet or Standard and Poor's Summary, if available. If a summary is unavailable, state the reason.

**N. Proposal Checklist**

The Proposer shall include the Proposal Checklist (Attachment 8) as the first page of the Proposal. The Proposal shall include tabs and page numbers as indicated on the Proposal Checklist.

**O. Evaluation Criteria**

1. No Late Proposals

Any Proposal received after the Proposal due date will be considered late and will not be considered by the Department.

2. No Changes to Proposal

Except as specifically provided in this RFP, during the evaluation period changes may not be made by the Proposer.

3. Evaluation of Proposal

- a. Proposals failing to meet Minimum Qualifications, including completeness, format and content of the Proposal, will be rejected without further evaluation and Proposer will be so informed in writing.
- b. Each Proposal accepted by the Department will be evaluated by a selection committee designated by the Department.
- c. Each Proposal will be evaluated to determine how well it meets the evaluation criteria outlined in this RFP.
- d. The Department reserves the right to request additional information from Proposers to clarify the meaning of any portion of the written Proposal and Proposers shall provide the requested information within two (2) days of receiving the request from the County.
- e. Finalists may be required to make a presentation to the selection committee to explain the design, construction and operational aspects of the Proposal and to respond to questions which might arise before and/or during the presentation.

**P. Evaluation Factors**

The Department and a selection committee will evaluate proposals to determine which Proposer offers the best overall development plan, services and amenities for guests and passengers at the Airport. The evaluation factors listed below are not in any particular order of importance and are not of equal value or decision weights. The maximum point values are indicated for each factor below.

**1. Demonstrated experience of Proposer and associated contractors**

**(20 max. points)**

- a. Commercial development experience and demonstrated on-time project success
- b. Commercial facility operation and management experience

c. References

**2. Development Plan, Facility Design and Quality of Improvements  
(25 max. points)**

- a. Level and quality of the facility design and improvements
- b. Proposed development schedule
- c. Amount of initial proposed investment per facility within the proposed Project

**3. Investment Structure/Financing Plan  
(20 max. points)**

- a. Demonstrated experience/ability of Proposer to successfully carry out Project
- b. Funding structure, including funding source(s)

**4. Proposed Rent and Revenue Share Paid to County  
(20 max. points)**

- a. Proposed rent and revenue share structure

**5. Development Operating Plan  
(15 max. points)**

- a. Services and amenities
- b. Operation plan(s) and operator relationship to developer

**Q. Disclaimers**

1. The County reserves the right in its sole and absolute discretion to choose to reject any or all Proposals which are in response to this RFP either on the basis of an evaluation of the factors listed in the preceding sections of this RFP or for other reasons deemed necessary.

2. Without limiting any of the foregoing statements and provisions of the preceding paragraphs, selection of a Lessee either from among the Proposers responding to this RFP, or otherwise, as herein set forth will be made solely at the Sacramento County Board of Supervisors' discretion regardless of the data submitted by any Proposer. The selection committee will evaluate the criteria listed, and such other factors as it considers appropriate, and will act with respect to its discussions, negotiations, and determinations as to whether or not to recommend a Lessee in accordance with its judgment and in its sole discretion in its determination of its interests and regardless of whether any Proposer or any other interested person regards the County's determination as unreasonable, unfair, arbitrary, discriminatory or capricious.

**3.** Neither the expression of a Proposer's interest, nor the submission of a Proposer's qualifications and any other information, nor the acceptance thereof by County staff or the selection committee, nor any correspondence, discussions, meetings or other communications between Proposer and County or the selection committee, nor a determination that a Proposer is qualified hereunder shall impose any obligation to include Proposer in any such further procedures which may be utilized prior to the final selection of a developer/operator, shall be construed or interpreted by Proposer to impose any obligations whatsoever to select Proposer as the developer/operator, to discuss any proposal which the Proposer may submit, to enter into negotiations with Proposer, or shall entitle Proposer to any compensation or reimbursement for any costs or expenses incurred by Proposer in connection with the expression of Proposer's interest and the submission of Proposer's qualifications hereunder.

**4.** Neither the furnishing of this RFP to Proposer, the submission of any materials, documents, or other information by the Proposer, nor the acceptance thereof by County staff or selection committee, nor any correspondence, discussions, meetings or other communications between Proposer and County staff or selection committee, nor anything stated by County staff or selection committee in or at any such correspondence, discussions, meetings or other communications shall be construed or interpreted by Proposer to mean that the County has made a determination that Proposer is qualified to be an operator or shall be deemed to impose any obligations whatsoever to approve Proposer or to compensate or reimburse Proposer for any costs or expenses incurred in responding to the RFP.

**5.** The County may consult all personal, business and financial references familiar with Proposer's prior operations and construction or management of prior projects. Submission of Proposer's response to the RFP shall constitute permission for the County to make such inquiries and authorization to third parties to respond thereto and Proposer shall take all actions necessary to facilitate County making such authorizations to third parties.

**6.** Any information given to County staff or the selection committee in any correspondence, discussion, meeting or other communications between the Proposer and County staff before, with or after the submission of Proposer's response to this RFP, either orally or in writing, will not be or be deemed to have been, given in confidence and may be used or disclosed to others for any purpose at any time without obligation or compensation and without liability by the County of any kind whatsoever. The foregoing applies to any information, whether or not given at the invitation of the County or selection committee. Any statement which is inconsistent with the foregoing provisions of this paragraph whether made as a part of, or in connection with, any information received from Proposer or otherwise made at any time in any fashion, and whether made orally or in writing, shall be deemed null and void and of no force or effect. Neither

the County, nor any officer, agent nor employee thereof shall be liable to Proposer as a result of any statements made.

7. Proposers are not to rely on oral instructions or clarifications to this RFP. Any request for clarification of any of the contents of this RFP shall be made in writing. The County will respond to all such requests in writing and issued via an addendum.

8. The County reserves the right to waive minor irregularities.

9. Collusion is prohibited. More than one Proposal for the Design, Construction and Operation from any individual, company, corporation, partnership or other entity under the same or different names will not be considered. Reasonable grounds for believing that any Proposer has a business or financial interest in more than one Proposal will cause rejection of all Proposals in which such Proposer has such interest. If there is reason to believe that collusion exists among Proposers, none of the participants in such collusion will be considered.

**Please note:**

Any contact, initiated by any Proposer, between the Proposer, its agent(s), employee(s) or others on the Proposer's behalf, and the County and/or Department staff which could influence the Agreement award process, outside of the process as provided in this RFP, may result in rejection or disqualification of the Proposer's response.

**R. Conditions**

**FAA General Contract Provisions for Solicitations**

The Proposer shall, at all times during the term of the Agreement, comply with the provisions, of the "FAA General Contract Provisions for Solicitations" (FAA Contract Provisions) and any subsequent revisions, updates or amendments hereto. A copy of the current FAA Contract Provisions is provided as Attachment 9 to this RFP and incorporated herein.

**Disadvantaged Business Enterprise (DBE)**

The County encourages all businesses, including those owned and controlled by one (1) or more socially and economically disadvantaged individuals that can provide the desired product or service, to submit a Proposal. If you are currently certified as a DBE, please include a copy of your DBE certification letter along with your Proposal. This information will be used for DBE utilization tracking purposes only.

If you are a business owned and controlled by one or more socially and economically disadvantaged individuals and you are not currently certified as a DBE firm, but you wish to receive information on how to become certified, please contact the State of California,

Department of Transportation, Civil Rights Program at either (916) 324-1700 or (866) 810-6346. You may also visit their website at <http://www.dot.ca.gov/hq/bep/index.htm>.

### **Department's Right to Negotiate Agreements**

The Department reserves the right to negotiate Agreements with companies outside of the RFP process, even if such companies did not participate in this RFP process.

### **Americans with Disabilities Act**

The Department is required by the Americans with Disabilities Act to make all of its public meetings accessible to persons with disabilities.

### **California Public Records Act**

Notwithstanding any other claim of confidentiality or assertion that information is proprietary in an entity's submission, any entity submitting their Proposal acknowledges that Sacramento County is subject to the disclosure requirements of the California Public Records Act (Government Code Section 6251, et seq) (CPRA) and that any documents provided to the County will ultimately be considered public records, as defined in Government Code Section 6252 subject to disclosure under the CPRA, provided, however, that County shall give written notice to the entity at the address included in its submission of any request for the disclosure of such records, together with a copy of the CPRA request. If the entity does not consent to such disclosure, then the entity shall have five (5) days from the date it receives such notice to enter into an agreement with the County, satisfactory to the County Counsel, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by County in any legal action to compel the disclosure of such information under the CPRA. The entity shall have sole responsibility for providing the defense against disclosure of such documents. The parties understand and agree that any failure by the entity to respond to the notice provided by County and / or to enter into an agreement with County shall constitute a complete waiver by the entity of any rights regarding the nondisclosure of such documents and such information shall be disclosed by County pursuant to applicable procedures required by the CPRA.

Without regard to the foregoing, it is the County's policy that responses submitted by Proposer(s) are public records once a recommendation from the selection committee has been made to the County Board of Supervisors.

### **No Confidential or Proprietary Information**

All information given to the Department or the Selection Committee in any correspondence, discussion, meeting or other communication before, with or after submission of a Proposal, either orally or in writing, will not be deemed to have been given in confidence and may be used or disclosed to others for any purpose at any time without obligation or compensation and without liability by the Department of any kind whatsoever. Under the laws of the State of California and the federal Freedom of Information Act, a Proposal submitted may be considered

a public record after the selection of a Proposer(s) and execution of the Agreement and, will be available for inspection and copying by any person after award of the Agreement. Evaluation scoring forms used by the Selection Committee are likewise considered public information subject to the California Public Records Act (California Government Code Sections 6250 through 6276.48) and the federal Freedom of Information Act, and will be available upon request after execution of an Agreement for services pursuant to this RFP.

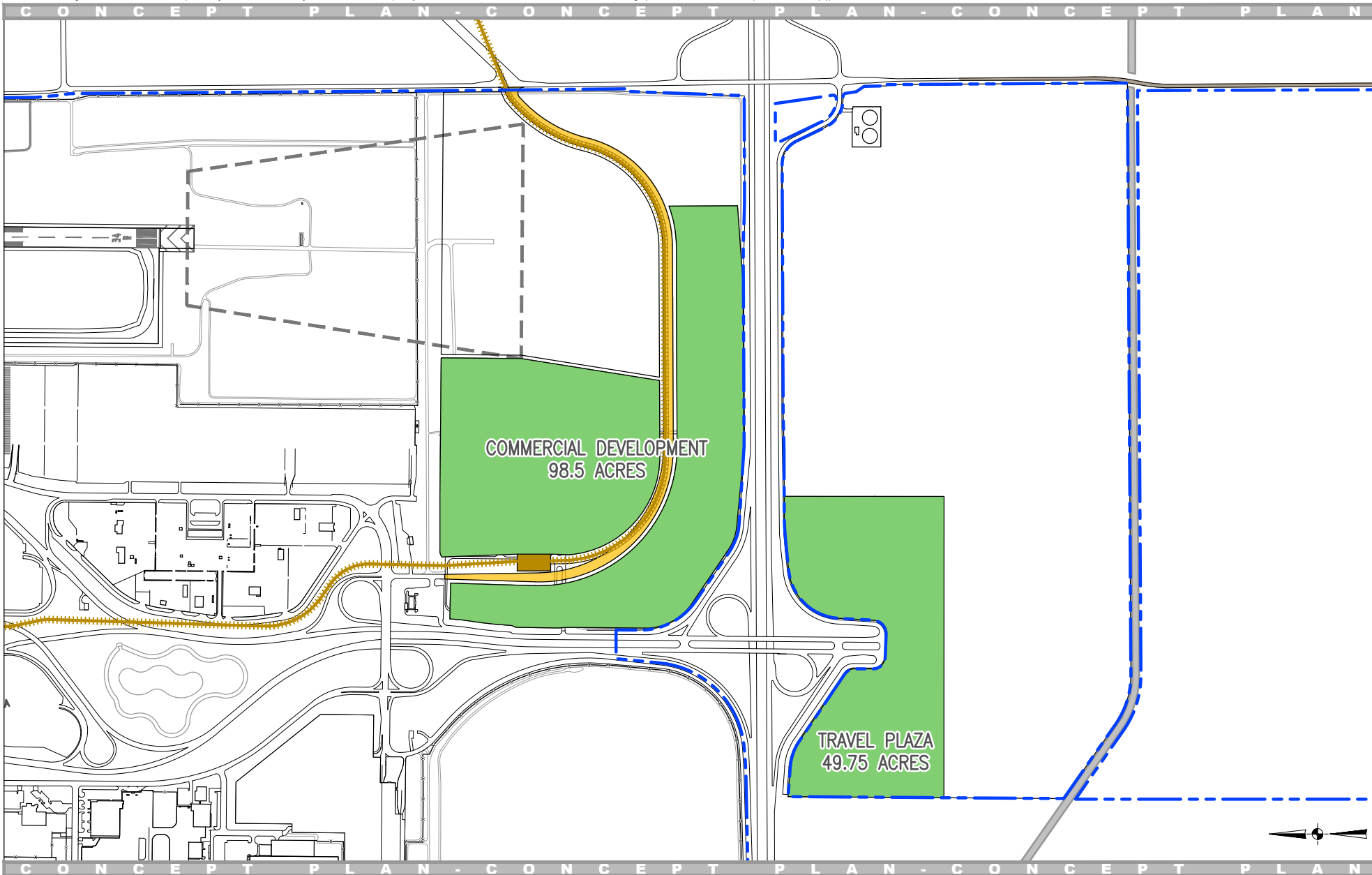
## **ATTACHMENT 1**

### **Development Site & Utilities**

[Utilities attached as separate link at

[https://sacramento.aero/scas/opportunities/bids\\_and\\_requests](https://sacramento.aero/scas/opportunities/bids_and_requests)]





THIS PLAN IS FOR CONCEPTUAL PURPOSES ONLY.  
ENGINEERING FOR THIS CONCEPT HAS NOT BEEN  
PERFORMED AT THIS TIME.

Figure 1  
SMF  
SOUTH DEVELOPMENT PHASES

**ATTACHMENT 2**

**Draft Commercial Development and Operating Agreement**



**DEPARTMENT OF AIRPORTS**

**INTERSTATE 5  
COMMERCIAL DEVELOPMENT  
AND OPERATING DRAFT AGREEMENT**

COMPANY NAME

SACRAMENTO INTERNATIONAL AIRPORT

**INTERSTATE 5 COMMERCIAL DEVELOPMENT AND OPERATING DRAFT AGREEMENT  
SACRAMENTO INTERNATIONAL AIRPORT  
TABLE OF CONTENTS**

<b>ARTICLE 1 DEFINITIONS</b> .....	<b>2</b>
1.01 AGREEMENT YEAR .....	2
1.02 CONSTRUCTION COST STATEMENT.....	2
1.03 COUNTY .....	2
1.04 COUNTY BUILDING CODE .....	2
1.05 DATE OF BENEFICIAL OCCUPANCY.....	2
1.06 DEVELOPMENT PERIOD .....	2
1.07 DIRECTOR .....	2
1.08 DOT .....	2
1.09 EXECUTION DATE.....	3
1.10 FAA.....	3
1.11 FACILITY BUILD-OUT INVESTMENT .....	3
1.12 GROSS REVENUES.....	3
1.13 LEASED PREMISES.....	3
1.14 MID-TERM REFURBISHMENT .....	4
1.15 PRE-CONSTRUCTION PERIOD.....	4
1.16 RISK MANAGER.....	4
1.17 RENTAL COMMENCEMENT DATE .....	4
1.18 SIGN .....	4
1.19 TENANT IMPROVEMENTS .....	4
1.20 TRADE FIXTURES .....	4
1.21 TSA.....	4
<b>ARTICLE 2 SPECIAL CONDITIONS</b> .....	<b>5</b>
2.01 TERM .....	5
A. <i>Pre-construction Period</i> .....	5
B. <i>Development Period</i> .....	5
C. <i>Operation Term</i> .....	5
2.02 LEASED PREMISES.....	5
2.03 IMPROVEMENTS BY LESSEE .....	5
A. <i>Preliminary Plans</i> .....	6
B. <i>Review of and Comment on Preliminary Plans</i> .....	6
C. <i>Final Plans</i> .....	7
D. <i>Approval of Final Plans</i> .....	7
E. <i>Environmental Review and Approval</i> .....	7

<i>F. Notice to Proceed</i> .....	7
<i>G. Modification of Final Plans</i> .....	8
<i>H. Duty to Construct</i> .....	8
<i>I. Notice of Completion</i> .....	9
<i>J. As-Constructed/Record Drawings</i> .....	9
<i>K. Removal of Unapproved Improvements</i> .....	9
<i>L. Liquidated Damages for Failure to Timely Complete the Project</i> .....	9
<i>M. Certification of Facility Build-Out Investments and Mid-Term Refurbishment</i> .....	10
2.04 USE OF THE LEASED PREMISES .....	10
<i>A. Authorized Use</i> .....	10
<i>B. Limitations on Use</i> .....	11
2.05 RENT.....	11
<i>A. Consideration for Site</i> .....	11
2.06 SECURITY DEPOSIT.....	12
<i>A. Initial Deposit Amount</i> .....	12
2.07 ADDITIONAL FEES, CHARGES AND RENTALS.....	12
2.08 INTEREST CHARGES APPLIED TO LATE PAYMENTS.....	13
2.09 UTILITIES.....	13
2.10 MAINTENANCE OF LEASED PREMISES .....	13
<i>A. Responsibility of County</i> .....	13
<i>B. Responsibility of Lessee</i> .....	13
2.11 MID-TERM REFURBISHMENT.....	15
2.12 INSURANCE.....	15
2.13 NOTICES.....	15
2.14 OPERATING AGREEMENT.....	15
2.15 SPECIAL STANDARDS FOR THE OPERATION OF RETAIL DEVELOPMENT .....	15
2.16 SPECIAL FLOOD HAZARD A99 AREA .....	16
<b>ARTICLE 3 GENERAL CONDITIONS.....</b>	<b>18</b>
3.01 ACCEPTANCE OF LEASED PREMISES.....	18
3.02 ACCORD AND SATISFACTION.....	18
3.03 AIR QUALITY.....	18
3.04 AIRPORT REGULATIONS .....	18
3.05 AIRPORT SECURITY.....	18
3.06 AMENDMENT REQUIRED BY FAA/TSA.....	19
3.07 ASSIGNMENT, TRANSFER, AND SUBLETTING.....	19
<i>A. Assignment and Transfer</i> .....	19
<i>B. Subletting</i> .....	19
<i>C. Information Required by County</i> .....	20
<i>D. No Release of Lessee's Liability</i> .....	20

<i>E. Airport Processing Fee</i> .....	21
3.08 ASSURANCES REQUIRED BY FAA .....	21
3.09 AUTHORITY OF AGREEMENT .....	21
3.10 AUTHORITY OF THE DIRECTOR .....	21
3.11 CALIFORNIA LAW .....	21
3.12 CHRONIC DELINQUENCY .....	22
3.13 COMPLIANCE WITH LAW .....	22
3.14 CONTRACT PROVISIONS REQUIRED BY FAA .....	22
3.15 COUNTERPARTS .....	22
3.16 COUNTY’S REMEDIES .....	22
3.17 CUMULATIVE REMEDIES .....	23
3.18 DAMAGE OR DESTRUCTION OF LEASEHOLD IMPROVEMENTS .....	23
<i>A. Lessee Repair and Restoration</i> .....	23
3.19 EARLY TERMINATION BY COUNTY .....	25
3.20 EARLY TERMINATION BY LESSEE .....	26
3.21 ENTIRE AGREEMENT .....	26
3.22 ENVIRONMENTAL REQUIREMENTS .....	26
<i>A. Lessee’s Compliance with Environmental Laws</i> .....	26
<i>B. Hazardous Material Storage Permit</i> .....	27
<i>C. Director’s Consent Required</i> .....	27
<i>D. Indemnification by Lessee</i> .....	27
<i>E. Notices</i> .....	27
<i>F. Right of Entry</i> .....	28
<i>G. Environmental Audit</i> .....	28
<i>H. Hazardous Materials Spill Release Reporting and Cleanup Policies</i> .....	28
3.23 EXECUTION AND APPROVAL OF AGREEMENT .....	28
3.24 FORCE MAJEURE .....	28
3.25 HEADINGS .....	29
3.26 HOLD OVER .....	29
3.27 INDEMNIFICATION OF COUNTY – DESIGN, DEVELOPMENT & CONSTRUCTION PERIOD .....	29
3.28 INDEMNIFICATION OF COUNTY – DEVELOPER/OPERATOR/AND ALL OPERATIONS .....	29
3.29 INDEPENDENT CONTRACTOR .....	30
3.30 INDUSTRIAL WASTE DISPOSAL .....	30
3.31 INTERPRETATION OF AGREEMENT .....	30
3.32 INVALID PROVISIONS .....	30
3.33 LICENSES AND PERMITS .....	30
3.34 MORTGAGES .....	31
3.35 NEGATION OF PARTNERSHIP .....	31
3.36 NOISE CONTROL .....	31

3.37	NONDISCRIMINATION .....	32
3.38	NONEXCLUSIVE RIGHTS .....	32
3.39	NONWAIVER OF RIGHTS .....	32
3.40	NOTICE OF CLAIMS AND SUIT.....	32
3.41	NO WARRANTY.....	32
3.42	NUISANCE AND WASTE .....	33
3.43	PEACEABLE USE AND ENJOYMENT.....	33
3.44	RECORDS AND REPORTS.....	33
	A. <i>Monthly Report</i> .....	33
	B. <i>Annual Report</i> .....	33
	C. <i>Delinquent Annual Report</i> .....	34
	D. <i>Delinquent Monthly Report</i> .....	34
3.45	RELEASE OF LIABILITY.....	34
3.46	REMOVAL OF LESSEE'S PROPERTY.....	34
3.47	RETENTION OF RECORDS .....	34
3.48	RIGHT OF ENTRY .....	35
3.49	RISK REDUCTION .....	35
3.50	SIGNS .....	35
3.51	STATEMENT REGARDING A CERTIFIED ACCESS SPECIALIST .....	35
3.52	STORM WATER POLLUTION PREVENTION PLAN .....	36
3.53	SUCCESSORS AND ASSIGNS .....	36
3.54	SURRENDER OF LEASED PREMISES .....	36
3.55	TAXES.....	36
	A. <i>Transient Occupancy Taxes</i> .....	36
	B. <i>Possessory Interest and Property Taxation</i> .....	37
	C. <i>Right to Contest Taxes</i> .....	37
3.56	TIME OF THE ESSENCE.....	37
3.57	TITLE TO TENANT IMPROVEMENTS .....	37
3.58	TRASH AND GARBAGE .....	38
3.59	EXECUTION OF AGREEMENT .....	39

**EXHIBITS:**

- A. Legal Description (to be inserted upon completion of improvements)
- B. Leased Premises – Project Site
- C. Insurance Requirements
- D. Operating Agreement
- E. FAA Assurances
- F. FAA Contract Provisions



**INTERSTATE 5 COMMERCIAL DEVELOPMENT AND OPERATING  
DRAFT AGREEMENT  
SACRAMENTO INTERNATIONAL AIRPORT**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California, (hereinafter "County"), and XXXXXX, a XXXXXXXXXXXX (corporation or LLC), incorporated in the State of XXXXXXXXXXXX, and authorized to do business in the State of California (hereinafter "Lessee").

**W I T N E S S E T H**

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

**WHEREAS**, on April 5, 2018, Airports issued a Request for Proposals (RFP) to solicit proposals from companies to design, construct and operate a commercial facility at Airport; and

**WHEREAS**, on XXXXX, Lessee submitted a written proposal in response to the RFP; and

**WHEREAS**, Lessee desires and is fully qualified to design, construct and operate a commercial retail facility at Airport, together with certain privileges, rights, uses and interests therein as hereinafter set forth; and

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

**NOW, THEREFORE**, for consideration of the promises, terms, conditions, and covenants contained herein, County and Lessee hereby 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 commencing on the Rental Commencement Date of the Agreement.

### **1.02 Construction Cost Statement**

“Construction Cost Statement” means the verified statement of cost as approved by the Director. Said Construction Cost Statement shall be certified by Lessee’s duly appointed Chief Financial Officer or an independent Certified Public Accountant, in detail satisfactory to the Director, showing the actual cost to Lessee as a result of Lessee’s construction of the Tenant Improvements.

### **1.03 County**

“County” means Sacramento County, a political subdivision of the State of California, as represented by the Sacramento County Board of Supervisors.

### **1.04 County Building Code**

“County Building Code” means that set of codes, standards and regulations as adopted by County from time to time that is applicable to the construction of Lessee’s Tenant Improvements at Airport. Said Code may be revised from time to time as necessary by County.

### **1.05 Date of Beneficial Occupancy**

“Date of Beneficial Occupancy” means the first day on which the Tenant Improvements are: 1) substantially complete as certified by the engineer of the construction project; and 2) are ready to be used for its intended purpose.

### **1.06 Development Period**

“Development Period” means the period of time from the date of the Notice to Proceed to the Date of Beneficial Occupancy.

### **1.07 Director**

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

### **1.08 DOT**

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

### **1.09 Execution Date**

“Execution Date” means the date this Agreement is fully executed.

### **1.10 FAA**

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

### **1.11 Facility Build-Out Investment**

“Facility Build-Out Investment” means the minimum build-out investment to be spent by Lessee and is XXXX (\$XXXXX) per square foot or per acre.

### **1.12 Gross Revenues**

“Gross Revenues” means all monies received by or due to Lessee, subtenants, or any other person selling goods or services for a profit in, at or from the Leased 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:

1. All sales, facility charges, fees and other services occurring on the Leased Premises as authorized pursuant to this Agreement;
2. Any income resulting from transactions originating in, at, or from the Leased Premises, including deposits not refunded to customers; and
3. Compensation of any kind received from a distributor or manufacturer for promoting or advertising any product on the Leased Premises or elsewhere at Airport.

“Gross Revenues” of Lessee, and any other person selling goods or services for a profit in, at or from the Leased Premises shall exclude:

1. All sums or credits received in settlement of claims for loss or damage to merchandise.
2. All transient occupancy taxes, sales taxes, retailers’ excise taxes, Gross Revenues taxes, transaction taxes, or similar equivalent taxes paid to or collected by or payable by Lessee, or any other person selling goods or services for a profit in, at or from the Leased Premises, as are first approved in writing by the County as excludable items.
3. The amount of any gratuities paid or given by patrons or customers to or for employees of Lessee, or any other person selling goods or services for a profit in, at or from the Leased Premises.

### **1.13 Leased Premises**

“Leased Premises” means those certain Leased Premises assigned to Lessee at Airport, more particularly described in Section 2.02.

#### **1.14 Mid-Term Refurbishment**

“Mid-Term Refurbishment” means the minimum investment to be spent by Lessee as described in Section 2.11.

#### **1.15 Pre-construction Period**

“Pre-construction Period” means the period of time from the Execution Date to the date of the Notice to Proceed.

#### **1.16 Risk Manager**

“Risk Manager” means the Risk and Loss Control Division Manager of the County of Sacramento and authorized representatives.

#### **1.17 Rental Commencement Date**

“Rental Commencement Date” means the date Lessee is obligated to commence payment of Rent under this Agreement, which shall be the Date of Beneficial Occupancy or the first day of the twenty-fourth (24<sup>th</sup>) month immediately following the date of the Notice to Proceed issued to Lessee by Airports, whichever occurs first.

#### **1.18 Sign**

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

#### **1.19 Tenant Improvements**

“Tenant Improvements” means all improvements or alterations constructed and installed on the Leased Premises by Lessee, its agents, employees, Subtenants, contractors, subcontractors, licensees and/or representatives that are affixed in any manner to the Leased Premises and that have been approved by the County.

#### **1.20 Trade Fixtures**

“Trade Fixtures” means, but will not be limited to: all fixtures, furnishings, equipment, and machinery used in connection with Lessee’s required or permitted activities pursuant to this Agreement, whether or not such machinery or equipment is bolted or otherwise attached to the Leased Premises; and all other miscellaneous personal property affixed in such a manner that they can be readily removed without damage to the remainder of the Leased Premises and without substantially changing the character of the improvements. All non-affixed items, including point of sale equipment, moveable furnishings, safes, racks, telephone equipment, and non-affixed display fixtures, shall be deemed to be Trade Fixtures for the purposes of this Agreement.

#### **1.21 TSA**

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

## Article 2 Special Conditions

### 2.01 Term

#### A. Pre-construction Period

The Pre-construction Period shall commence upon the Execution Date of this Agreement and continue for not more than eight (8) months unless otherwise notified by the Director in writing. During the Pre-construction Period, Lessee shall perform all requirements in Section 2.03 A through G.

#### B. Development Period

The Development Period shall commence upon the date the Notice to Proceed is issued to Lessee by the Department. Such Development Period shall be used for the construction of Lessee's facility only. In no event shall the Development Period extend beyond twenty-four (24) months following the date of the Notice to Proceed as otherwise extended herein.

#### C. Operation Term

The Operation Term of this Agreement shall be for a period of XXXX (XX) Agreement Years beginning on the Rental Commencement Date and shall terminate on the last day of XXXX (XX<sup>th</sup>) full calendar month following the Rental Commencement Date.

### 2.02 Leased Premises

County hereby leases to Lessee those certain Leased Premises at Airport, described as "Site" and shown in Exhibit A and Exhibit B attached hereto and incorporated herein by this reference.

- Site – Approximately (Site acres) of land for commercial development and operation (may be in whole or in part depending on proposals received).

### 2.03 Improvements by Lessee

During the Development Period, Lessee shall, at its sole cost and expense, construct a commercial retail facility on the Site as further described throughout this Agreement (hereafter Project). Project shall include new utilities and connections, Tenant Improvements and Trade Fixtures, Signs, and any additional items necessary for the operation of the Commercial Development. Lessee shall ensure that the Project meets the Facility Build-Out Investment required in this Agreement. Except as otherwise provided herein, Lessee shall make and maintain, at Lessee's own expense, all Tenant Improvements necessary to operate the completed Project.

Lessee shall supply all Trade Fixtures contained within the Leased Premises. Trade fixtures must be of first-class quality, safe, fire resistant, and attractive materials. All materials used by Lessee to construct its Tenant Improvements require the County's prior written approval.

Not less than eighty-five percent (85%) of the total Facility Build-Out Investment must be expended on construction "hard costs" of materials, direct labor, equipment, finishes, signage,

lighting, heating, venting, air conditioning, and other construction costs exclusive of “soft costs” of design, engineering, construction supervision, permitting, specialist consultants, overheads, corporate construction administration, and other fees.

If the total Project cost does not meet the Facility Build-Out Investment, Lessee is required to pay the County one hundred and twenty-five percent (125%) of any difference between the Facility Build-Out Investment and the actual facility build-out costs, as demonstrated by the Construction Cost Statement required herein. Lessee shall cause the Project to be constructed in accordance with this Section. The Department will not be responsible for costs that exceed the Facility Build-Out Investment.

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

Lessee shall cause all improvements authorized herein to be constructed only by a contractor properly licensed by the State of California to construct such improvements.

Lessee shall be solely responsible for payment to such contractor for all elements of such construction, and shall keep the Leased Premises free and clear of all mechanics liens resulting from any construction thereto by or on behalf of Lessee. Lessee may contest the correctness or validity of any such lien, but shall indemnify, defend, and hold harmless County, its elected representatives, officers, agents, and employees, and the Leased Premises from any and all claims and liability for payment of any such lien. Department may file notice(s) of non-responsibility for its lien protection.

#### **A. Preliminary Plans**

Not more than sixty (60) days after the Execution Date, Lessee shall contact the Department to schedule a pre-Project meeting to brief County staff on the proposed improvement. Preliminary plans shall show the full extent of the improvements to be constructed including structural details and utility locations showing the relationship of the proposed improvements to current buildings and utility connections. A minimum of seven (7) full sets of preliminary plans plus one (1) Compact Disc (CD) containing a pdf, dwf, or tif set matching the prints, plus all the CAD related data used to create the plans in AutoCAD’s “dwg” format, shall be submitted for approval to the Department coordinator.

Civil engineering plans shall include plan drawings submitted on a scale not smaller than one (1) inch equals fifty (50) feet. Architectural plans shall include plan drawings at a suitable scale but in no case shall the scale be smaller than 1/16 inch equals one (1) foot. Plans shall include complete specifications in sufficient detail for the Department to determine compatibility with Department objectives for the overall aesthetic character and quality of the improvements. Architectural plans shall include an accurate architectural perspective color rendering including the proposed exterior color, scheme, style, materials, wording and placement of all Signs and fixtures.

#### **B. Review of and Comment on Preliminary Plans**

Within thirty (30) days of the date of receipt of the preliminary plans, the Department will return two (2) sets of plans with comments. Department review and comment on the preliminary plans does not mean or infer that the proposed

improvement has been approved by the Department. Additional plans, specifications or design features beyond those submitted with the preliminary plans may be required and shall be prepared by Lessee at the request of the Department.

**C. Final Plans**

A minimum of seven (7) copies of final plans and specifications showing responses to comments received and setting forth in all necessary detail the requirements for construction of the Project shall be submitted to the Department for approval prior to submitting plans to other applicable agencies so that the Department may check them for design conformance with the preliminary plans. A CD containing a pdf, dwf, or tif set matching the prints, plus all the CAD related data used to create the plans in AutoCAD's "dwg" format must be included in the submittal.

**D. Approval of Final Plans**

Within thirty (30) days of the date of receipt of the final plans, if final plans are approved, the Department will return final plans to Lessee with the Departments' approval stamp on the plans. The Department will retain one (1) full set of final plans. Department approval of the final plans shall only mean that the proposed improvement is consistent with Department goals and objectives for development projects and does not infer that the proposed improvement is approved by the County of Sacramento Municipal Services Agency.

**E. Environmental Review and Approval**

Lessee shall, prior to the installation and as a condition of this Agreement, obtain all approvals required by federal, State (including California Environmental Quality Act) or local laws and comply with any adopted Mitigation Monitoring and Reporting Program (MMRP), as necessary to comply with the provisions of this Agreement.

**F. Notice to Proceed**

The Director's approval of such final plans and specifications will be delivered to Lessee in a formal Notice to Proceed with the Project, provided that all the following requirements have been satisfied:

1. Lessee has filed a Notice of Proposed Construction or Alteration with the FAA as required by 14 Code of Federal Regulations, part 77 pursuant to 49 U.S.C., Section 44718.
2. Lessee has delivered to the Director and Risk Manager for approval, and the Director and Risk Manager have approved, certificates of insurance and required endorsements for coverage evidencing Lessee's and Lessee's construction contractor's Insurance Coverage to be in compliance with the applicable insurance provisions in Exhibit C attached hereto and incorporated by this reference.
3. Lessee shall submit to the Director a copy of the building permits issued to Lessee by the Sacramento County Building Inspection Division; and
4. Lessee shall notify the Director of Lessee's intention to commence construction of the Project at least forty-eight (48) hours before commencement of such work or delivery of any material to be used in such work at the Leased Premises.

5. Lessee's construction contractor has duly executed and delivered to the Director a payment bond in a sum not less than 100 percent (100%) of the total project cost as set forth in the Proposal to guarantee the payment of wages and of bills contracted for materials, supplies, or equipment used in the performance of the contract during the design and construction phase of the Agreement. The bond shall be in accordance with the provisions of California Civil Code Sections 3225, 3226, and 3247 to 3252, inclusive, and any acts mandatory thereof, and shall, by its terms, inure to the benefit of all persons, companies, or corporations entitled to file claims under California Civil Code Section 3181 and California Unemployment Insurance Code Section 13020. Said bond shall contain a provision that the surety thereon expressly waives the provisions of California Civil Code Sections 2819 and 2845.

6. Lessee's construction contractor has duly executed and delivered to the Director a Performance Bond in a sum not less than one hundred percent (100%) of the final total project cost as set forth in the Proposal, to guarantee the faithful performance of all covenants and stipulations of the Agreement during the design and construction phase. The bond shall contain a provision that the surety thereon expressly waives the provisions of California Civil Code Sections 2819 and 2845.

The surety company(s) shall be familiar with all the provisions and conditions of this Agreement. It is understood and agreed that it waives notice of change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or to the specifications accompanying the same, or any other act or acts by the Department or the Department's authorized agents under the terms of the Agreement; and failure to so notify the surety company of changes shall in no way relieve the surety company of its obligations under the Agreement.

#### **G. Modification of Final Plans**

Any modifications to the approved final plans including environmental mitigation measures, modifications imposed by the County of Sacramento Municipal Services Agency, or construction change orders shall be submitted to the Department for approval prior to construction.

#### **H. Duty to Construct**

Lessee shall cause the Project to be constructed and installed in accordance with the County's Standard Construction Specifications, this Agreement, and all applicable laws, regulations, and permit requirements, including those of the County. If any portion of the underlying required documentation for the Project is non-compliant in any way, Lessee, at its sole expense, shall modify the Project plans and specifications until compliance is achieved. County shall have the right to inspect the construction and installation of the Project for compliance with the approved Project plans and specifications and Lessee, at Lessee's sole expense, shall modify any construction or installation found by Department not to be in accordance with the approved Project plans and specifications.

Any review or approval by the Director of Lessee's plans and specifications and construction schedule, or any inspection by County of the Project work or materials, shall not be deemed to constitute a waiver or release by Department of any obligation or responsibility of Lessee under this Agreement, or assumption of any risk or liability by Department with respect thereto, and Lessee shall make no claim against County on account of such review, approval, or inspection. Department reviews, approvals and



inspections shall not constitute assumption by Department of any responsibility for the adequacy of the design or the construction. Such responsibility shall remain totally with Lessee and Lessee's architects, engineers and contractors.

Lessee shall cause the Project and any other repair, alteration or improvement authorized herein to be constructed only by a contractor licensed for such work by the State of California. Lessee shall be solely responsible for payment to such contractor for all elements of such construction.

Lessee shall be responsible for connecting to all utilities at a location designated by Department.

**I. Notice of Completion**

Within ten (10) days of construction completion, Lessee shall submit a Notice of Completion to Airports. Within ten (10) days of receipt of Notice of Completion, the County may schedule an inspection of the improvements to be accompanied by Lessee for purposes of confirming compliance with the final plans and any subsequent modifications to the final plans. This inspection tour may be scheduled at the same time Lessee schedules a final inspection in accordance with any requirements imposed by the County of Sacramento Municipal Services Agency.

**J. As-Constructed/Record Drawings**

Within sixty (60) days after filing a Notice of Completion, which is due within ten (10) days after construction completion, Lessee shall furnish to the County one (1) complete set of electronic AutoCAD format Record Drawings and one (1) complete set of either pdf, dwf, or tif files showing the "as-constructed" improvements. Record Drawings shall be dated and stamped by the engineer or architect of record. If by the sixty-first (61<sup>st</sup>) day after construction has been completed Lessee fails to submit "as-constructed" drawings, Lessee will pay penalties in the amount of One Hundred Dollars and 00/100ths (\$100.00) per day until such a time when drawings have been submitted.

**K. Removal of Unapproved Improvements**

Improvements made on Lessee's Leased Premises without the approval of final plans for said improvements as outlined herein are hereby determined to be unapproved improvements constructed or installed in violation of the conditions, restrictions and requirements of this Agreement. Unapproved improvements shall be immediately removed at Lessee's sole expense, unless otherwise approved in writing by the Department. Portions of improvements that are not constructed as indicated and specified on approved plans are also hereby determined to be unapproved improvements and shall be immediately removed or corrected at Lessee's sole expense.

**L. Liquidated Damages for Failure to Timely Complete the Project**

It is imperative that Lessee is ready to open for business at the commencement of the Operation Term hereof in order serve the public. The failure of the Lessee to complete the Project by the commencement of the Operation Term shall result in damages as a result of this failure. Therefore, it is agreed that as liquidated damages, Lessee agrees to pay to the County the amount of Five Hundred Dollars and 00/100ths (\$500.00) per day until its Date of Beneficial Occupancy, if Lessee fails to complete the Project and obtain all approvals necessary for opening of the Commercial Development at the commencement of the Operation Term. This amount shall be in addition to all

Rent and other charges and fees due. Such liquidated damages shall be due thirty (30) days after notice is given by Department.

**M. Certification of Facility Build-Out Investments and Mid-Term Refurbishment**

Lessee shall provide the Department with verifiable receipts and certified lien releases for its Facility Build-Out Investments and Mid-Term Refurbishment within ninety (90) days of the completion of the construction/refurbishment to confirm the amount of the investments.

**2.04 Use of the Leased Premises**

**A. Authorized Use**

Subject to all applicable laws, regulations and limitations set forth in this Agreement, Lessee shall design, construct and operate a Commercial Development on the Site. Lessee is also granted the following use/rights in connection with Lessee's operation at Airport listed below:

1. The right to inspect and survey site to determine condition of Leased Premises in order to install appropriate Tenant Improvements on the Leased Premises, provided that all such inspection, design and installation shall have the prior written approval of the Department as required herein.
2. Lessee shall have the right and privilege to operate a Commercial Development on the Site designated in Exhibit B, including the right to rent retail space, facilities and provide other services incidental to and normally provided by an operator.
3. If Lessee assigns the Operation to a franchisee or corporate Operator, Lessee shall provide the Director an executed copy of the license or franchise agreements within sixty (60) days of execution of this Agreement. All license and franchise agreements are subject to the Director's prior approval.
4. The right of ingress to and egress from the Leased Premises over and across roadways servicing Airport for Lessee, its subtenants, agents, employees, patrons, guests and suppliers.
5. The nonexclusive right and privilege to offer the types of products and services in accordance with the provisions of this Agreement. All products provided by Lessee must be approved in writing by the Director prior to being offered for sale within the Site. In addition, the Director, in its sole discretion, may change the approved product and services list upon written notice to Lessee. All products shall be in good taste and in accordance with all applicable health and service codes and presented in such manner as to be well received by the public. The Department reserves the right to allow others to conduct the same or similar operations and/or to sell the same or similar products elsewhere at Airport.
8. The nonexclusive right and privilege to use "Sacramento International Airport" or "Airport" or any parts thereof in the name of the development.

## **B. Limitations on Use**

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

1. Sublease all or substantially all of the Leased Premises, without obtaining prior written approval by the Director.
2. Interfere with, or disturb the effectiveness or accessibility of the drainage and sewage system, fire hydrants and hoses at Airport;
3. Do anything that may invalidate, conflict with, or increase the rate of any insurance policy(s) covering the County or any part thereof. The Department, in its sole discretion, may limit, modify, or require removal of any materials, parts or equipment which the Department reasonably determines are not incidental to Lessee's operations by written notification to Lessee. Lessee shall have forty-eight (48) hours from the mailing date of such notice to remove and properly dispose of any items identified;
4. Interfere with the County staff, businesses, or patrons;
5. Use or allow the use of the Leased Premises or any other facilities at Airport for any improper, immoral, or unlawful purpose;
6. Obstruct the roadways or passageways adjacent to or at Airport;
7. Conduct any business at Airport other than that authorized by this Agreement;
8. Advertise, solicit, or distribute materials at Airport in any manner without the advance written permission of the Director.
9. Install or allow others to install cameras on the exterior of building(s) for any reason other than security without obtaining prior written approval by the Director. Additionally, Lessee shall not use or allow others to use the Site to film Airport operations.

### **2.05 Rent**

Lessee shall pay Rent to County for the Operation Term hereof, in accordance with the following:

Lessee shall pay all Rent at County's Airport accounting office, at the address shown for County in Section 3.44 herein throughout the Operation Term hereof. Calculation of Rent hereunder on the basis of amounts payable per Agreement Year is for purposes of convenience only, and shall not be construed as affecting Lessee's obligation to pay County Rent for the entire Operation Term hereof.

#### **A. Consideration for Site**

[To be negotiated with selected Proposer(s).]

## **2.06 Security Deposit**

### **A. Initial Deposit Amount**

Upon the Rental Commencement Date, Lessee shall deposit with the County a Security Deposit in the sum equivalent to three (3) month's Rent, initially XXXX Dollars (\$XXXXXX). Upon request of County, Lessee will increase the amount on deposit with County to an amount equivalent to at least three (3) months of monthly Rent due.

Such Security Deposit shall be in the form of an irrevocable, automatically renewing, bank letter of credit or performance bond obtained from a Surety company that has an A.M. Best's rating of no less than A:VII or other security satisfactory to the County, in a form approved by the Director. Documents evidencing this Security Deposit must provide that the same shall remain in full force and effect for a period extending four months following any termination or cancellation of this Agreement as herein provided.

The sum paid by Lessee for the Security Deposit shall be held by County for Lessee, and shall not be subject to the claim of any creditor of County. County may use such deposit, or any portion thereof, for payment of any sum owed to County by Lessee with respect to this Agreement, and such use may be without prior notice to Lessee. If any portion of such deposit is used to correct such a default, Lessee shall pay to County, upon demand therefore, such sums as are needed to return the full amount of the deposit with County to an amount equivalent to three months' Rent or other amount as stated in this Agreement, and such payment shall be made to County by Lessee within fifteen (15) days of such demand. County shall not be responsible for paying any interest or additional charges or costs during the period in which such deposit is held.

Within fifteen (15) days of applying such deposit to correct a default or to pay amounts due or owing upon termination of this Agreement, County shall provide Lessee with an accounting of such deposit application. Upon termination of this Agreement, such deposit, less any amounts due or owing to County by Lessee for any rent due or costs for damages to the Leased Premises shall be refunded to Lessee.

## **2.07 Additional Fees, Charges and Rentals**

Lessee shall pay to County additional fees, charges and rentals 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 Lessee has agreed to pay or reimburse County, or for which Lessee 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 Lessee to perform or fulfill any of the promises, terms, conditions or covenants required of it herein;
- C. Pursuant to any separate agreement between the parties not contained herein;  
or
- D. Pursuant to any ordinance, resolution or minute order of County.

Lessee'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, which may be added by County to any installment of fees, charges, and rents payable herein. Each and every part of such payment by County shall be recoverable by County in the same manner and with like remedies as if it were expressly set forth herein.

For all purposes under this Section, and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum or sums by County for or in connection with any work done or material furnished shall be prima facie evidence against Lessee that the amount of such payment was necessary and reasonable.

Lessee shall pay County pursuant to this Section within thirty (30) days following demand therefor, or within the time specified by applicable ordinance, resolution, or minute order of County.

## **2.08 Interest Charges Applied To Late Payments**

If Lessee 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 Lessee shall pay as a reasonable interest charge for the late payment the amount of eighteen percent (18%) computed as an annual percentage rate, applicable from the date such payment was due to the date the actual payment is received by the County. 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 interest charges shall be calculated and posted on a monthly basis, and shall be prorated by the number of days in the month.

## **2.09 Utilities**

Lessee, at Lessee's sole cost and expense, shall install any required utilities on the Site that will support the Project and any operation incidental to the Project. Lessee shall include installation of meters in its plans for construction of the Project and shall pay all costs for the utilities used during construction whether invoiced by County or directly by the utility provider.

Lessee agrees that any and all such charges for any and all such services shall be paid before their delinquency and that County shall be protected and held harmless by Lessee therefrom. County shall not be liable to Lessee for any interruption in or curtailment of any utility service, nor shall any such interruption or curtailment constitute a constructive eviction or grounds for rental abatement in whole or in part herein.

## **2.10 Maintenance of Leased Premises**

### **A. Responsibility of County**

County shall have no maintenance responsibilities for the Project Site.

### **B. Responsibility of Lessee**

1. During the Operation Term of this Agreement, Lessee shall at its sole cost and expense perform all maintenance and repair for the Site, including but not limited to:

- a) Maintain, repair and perform all ordinary preventative maintenance and upkeep. Such maintenance and repair shall include all appliances and fixtures within the Project.
- b) Maintain, repair and replace any improvements, alterations, or additions caused by Lessee in accordance with this Agreement whether Lessee has or has not obtained advance authorization from County.
- c) Repair and patch roof, as necessary. Clean and clear gutters as necessary.
- d) Provide structural maintenance and/or structural repair to the Tenant Improvements, including exterior walls, sidewalks, roof, roof vents/penetrations, foundation and exterior doors and windows.
- e) Provide structural maintenance and/or structural repair to Tenant Improvements and any areas of the Project.
- f) Maintain, repair and perform preventative maintenance of heating, ventilation, air conditioning equipment and filters.
- g) Maintain, repair, and perform all ordinary preventative maintenance of electrical (including relamping and ballast replacement).
- h) Maintain and repair all plumbing systems, including repair of pipe obstructions and system backups.
- i) Clean, maintain, repair and replace exterior doors, finishes and windows.
- j) Provide for trash/garbage collection and disposal.
- k) Clean and perform all janitorial services on the Site.
- l) Perform pest control services necessary to maintain the Site in a pest and vermin free condition.
- m) Maintain all landscaping on the Site, including the control and/or eradication of wildlife attractants.

2. During the Operation Term of this Agreement, Lessee shall clean, maintain and perform all ordinary preventative maintenance for the Project pavement, including but not limited to sealing concrete cracks and restriping.

Lessee shall be solely responsible for the cost of any repair or maintenance to the Leased Premises resulting from the negligent acts or omissions of Lessee, its officers, agents, employees, invitees, suppliers, or contractors. In the event of such damage, County may elect to perform such repair or maintenance itself, at Lessee's sole cost and expense, or require Lessee to perform the same at Lessee's sole cost and expense. Provided, however, if such repair or maintenance is not of an emergency nature, as determined by the Director, in his sole discretion, County shall give Lessee five (5) days advance written notice of its election in such matter.

Lessee agrees to take good care of the Leased Premises and to return the same at the termination of this Agreement in as good order and condition as when received, excepting ordinary wear and tear and natural decay.

### **2.11 Mid-Term Refurbishment**

Lessee shall make, at its own expense, mid-term refurbishment of the Project consisting of a minimum investment of XXXXXX Dollars (\$XXXX). This is a firm commitment to reinvest in the facilities and replace worn and damaged finishes. The refurbishment minimum is not for ordinary or deferred maintenance, which is an ongoing requirement, but is a commitment to renew and replace worn surfaces such that it would constitute additional capital investment. The refurbishment requirement, which is an obligation to be satisfied between the XX (XX<sup>th</sup>) and XX (XX<sup>th</sup>) Agreement Year of the Operation Term, is subject to prior consultation and approval by the County.

### **2.12 Insurance**

Throughout the entire term of this Agreement, Lessee and/or Operator for itself and its officers, directors, representatives, agents, suppliers, guests, patrons, employees, and contractors, shall maintain or cause to maintain in full force and effect the forms of insurance specified in Exhibit C.

In the event Lessee or Operator do 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 shall be immediately terminated at the discretion of the Director.

### **2.13 Notices**

Any notice, demand, request, consent or approval required pursuant to this Agreement shall be in writing and either served personally or sent by U.S. Mail, or overnight courier. Such matters shall be addressed to the other party at the following address:

**When to County:**

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

**When to Lessee:**

or to any other address as either party may designate to the other by giving fifteen (15) days prior written notice. All communications shall be deemed received upon delivery if personally delivered or when delivered by recognized overnight delivery service, or within five (5) business days following deposit in the mail, if sent by mail. 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.

### **2.14 Operating Agreement**

[An Operating Agreement, to be Attached as Exhibit D, will be necessary for the operations of the facility and will be negotiated with the selected operator(s).]

### **2.15 Special Standards for the Operation of Retail Development**

Lessee or Operator shall conduct the development facility on and from the Leased Premises, in accordance with the following:

- A. All operations and services authorized hereunder shall be performed to the highest accepted industry standard and in a manner deemed acceptable to the Director.
- B. Lessee shall provide a sufficient number of personnel to adequately and safely carry out such services in a courteous, prompt and efficient manner adequate to meet the reasonable demands of the public seeking such services on the Leased Premises.
- C. Lessee shall provide such services on a fair, equal and non-discriminatory basis to all users of Airport and at fair, reasonable and non-discriminatory discounts, rebates and other similar types of price reductions may be made to like types of purchasers and users.

## **2.16 Special Flood Hazard A99 Area**

Lessee hereby acknowledges the following:

The Leased Premises is located within the Natomas Special Flood Hazard A99 Area (“Natomas Zone A99 Area”). On May 19, 2015, the Board of Supervisors adopted Resolution 2015-0392 containing finding that the Zone A99 designation is reasonably safe from flooding so as to issue Floodplain Management Permits for new construction, substantial improvements, and entitlements consistent with the Zoning Code without special building flood-proofing measures in the Natomas Zone A99 Area for currently entitled development, existing lots, and ministerial permits, as long as the property is not subject to localized interior flooding and certain additional requirements are fulfilled, including the notice and acknowledgment of the flood hazard, insurance requirements and levee uncertainties.

Lessee is required to obtain a Floodplain Management Permit (“Permit”) before Lessee is able to construct the Leasehold Improvements contemplated by this Commercial Development and Operating Agreement. The issuance of the Permit is conditioned upon Lessee warranting the following (“Lessee Warranties”):

Lessee acknowledges it has received notice that the Leased Premises is located within the Natomas Zone A99 Area; and

Lessee acknowledges the risk associated with constructing the Leasehold Improvements within the Natomas Zone A99 Area and the potential for loss, damage and injury to the Leasehold Improvements and at the Leased Premises due to a flood event occurring in the Natomas Zone A99 Area; and

Lessee acknowledges the need for flood insurance and that if Lessee does not elect to carry flood insurance that Lessee may not have adequate insurance during a flood event; and

Lessee acknowledges the assumption of risk in and for constructing the Leasehold Improvements at the Leased Premises; and Lessee assumes the risk of loss at or to the Leased Premises, Lessee’s Leasehold Improvements, Personal Property and any resulting bodily injury at the Leased Premises due to flooding event(s) at the Leased Premises. Lessee waives any right to recourse against County at law or in equity as a result of a flooding event at the Leased Premises.

Lessee acknowledges and agrees to indemnify and hold harmless the County of Sacramento (County) and the Sacramento County Water Agency (Agency), governing Boards, officers, employees, and agents from any and all claims, actions, suits,



procedures, costs, expenses, damages and liabilities, including bodily injury or death, and including attorney's fees, brought by Lessee or its successors in interest, heirs, or assignees, or any third party, arising out of, pertaining to, or resulting from a flooding event(s) at the Leased Premises and to reimburse them for any such expenses incurred; excepting the gross negligence of County and/or Agency. The term "claims" as used in this paragraph includes all direct or class actions or subrogation or inverse condemnation lawsuits brought by any person, entity or governmental agency.

Nothing in this Section 2.16 shall be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise to any third party.

The provisions of this Section 2.16 shall survive the expiration or termination of the Agreement.

Lessee acknowledges that a Zone A99 designation is provisional and subject to revision by future federal action. Therefore, the County does not warrant or represent that the Zone A99 designation for the Natomas A99 Zone Area will continue in place.

Lessee agrees to expressly include the language of this Section 2.16 in any sublease or assignment of the Leased Premises.

## **Article 3 General Conditions**

### **3.01 Acceptance of Leased Premises**

Lessee hereby accepts the Leased Premises in its “as-is” condition upon Execution Date. Taking possession of the Leased Premises by Lessee shall be conclusive evidence that the condition thereof is satisfactory to Lessee. County makes no representation or warranty that the Leased Premises are suitable for the uses to which Lessee shall be restricted pursuant to this Agreement.

### **3.02 Accord and Satisfaction**

No payment by Lessee or receipt by County of a lesser amount than the rent, fees and/or charges due to be made by Lessee herein 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 Air Quality**

Lessee recognizes that the County consistently encourages Airport users to work with the County to improve air quality in the Sacramento region. Lessee agrees to exercise good faith and make reasonable efforts to work with the County to improve air quality in the Sacramento region.

### **3.04 Airport Regulations**

In the use of the Leased Premises, Lessee agrees to observe, obey and abide by 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 Lessee's operation at Airport. In addition to the foregoing, Lessee shall comply immediately with any and all directives issued by the Director. County shall prescribe penalties and injunctive remedies for violations of any Airport rules and regulations that govern conduct or operations not specifically addressed by this Agreement. These penalties and injunctive remedies may be applied by Director to Lessee for violations by any of Lessee's officers, representatives, agents, employees, guests, patrons, contractors, licensees, subtenants, invitees, or suppliers.

### **3.05 Airport Security**

Lessee shall comply with all security regulations at Airport pursuant to all applicable federal, State, and local laws, regulations and ordinances. In addition to the foregoing, Lessee shall comply immediately with any and all directives issued by the Director. If required, Lessee shall obtain a security program document approved by the TSA within sixty (60) days of receipt of written notice from the Director. Lessee shall maintain such approved security program throughout the Term of this Agreement pursuant to all applicable federal, State, and local laws, regulations, ordinances, and any directives issued by the Director.

If required, Lessee and its agents requiring unescorted access to restricted areas of Airport must be able to pass a security background investigation consisting of a fingerprint-based criminal records check (CHRC) and a TSA Security Threat Assessment (STA) to receive a SCAS-issued ID badge. Badges are issued by the County subject to each individual's successful completion of the Background Checks in compliance with 49 CFR Part 1542/1540 and all other applicable regulatory directives. It is Lessee's responsibility to complete and submit all necessary paper work. Lessee shall be subject to a non-refundable reissuance fee if any such badge is lost or not returned to County when required.

Gates, doors, fences or other parts of such Leased Premises shall be kept locked by Lessee at all times when not in use by, or when not under the constant security surveillance of, Lessee. Lock malfunctions or other deficiencies, which would permit unauthorized access, shall be reported by Lessee at once to the Director by calling 916-929-5000 and following up by written notification, and the unsecured access point shall be maintained by Lessee under constant security surveillance until it has repaired the same and security through such point has been restored.

Subject to Airport security procedures, Lessee shall be solely responsible for the control and movement of persons and equipment from its Leased Premises onto all secured areas of Airport. Lessee shall be solely responsible for the payment of any and all penalties and fines which may be levied by the TSA for violation of any Transportation Security Regulation, arising from or relating to Lessee's failure to perform its security responsibilities. Lessee must require of its contractors, and other persons doing business with Lessee, minimum liability insurance coverage as required by the Risk Manager.

### **3.06 Amendment Required by FAA/TSA**

This Agreement may be amended without further consideration for the purpose of satisfying FAA or TSA requirements. In the event that the FAA requires, as a condition precedent to granting of funds for the improvement of Airport, modifications or changes to this Agreement, Lessee agrees to such modifications or changes as may be required to enable County to obtain FAA funds.

### **3.07 Assignment, Transfer, and Subletting**

#### **A. Assignment and Transfer**

Lessee 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 the prior written consent of the Director in each instance. Such consent shall be subject to the standards and conditions specified in this Section, provided, however, that this Agreement may be assigned in its entirety without such consent to any successor in interest of Lessee with, or into which, the Lessee may merge or consolidate, or which may succeed to the assets of the Lessee or the major portion of its assets; provided further, that such succeeding entity or purchaser executes and delivers to Director an instrument in a form satisfactory to the Director assuming the obligations of Lessee as if it were the original Lessee herein and a transfer to such entity shall not defeat or undermine the purposes of this Agreement.

#### **B. Subletting**

Lessee shall have no right to sublease all or any part of the Leased Premises without the prior written consent of Director. As to such a sublease, the Director is

authorized to give or revoke such written consent as the agent of the County. Each Agreement shall be in a form satisfactory to the Director. The Director's consent shall be subject to the standards and conditions specified in this Section.

**C. Information Required by County**

In connection with any proposed assignment or Agreement, Lessee shall submit an initial request to the Director in writing, which shall be accompanied by the following:

1. The name and legal composition of the proposed assignee or Lessee;
2. The proposed effective date of such assignment or Agreement;
3. The proposed assignee's or Lessee's intended use and operations at Airport, and any other information Director may reasonably require relating to the impact of the intended use and operations, including the impact on the future development of Airport;
4. Such information as to the proposed assignee's or Lessee's financial responsibility, standing, and financing capability as is available;
5. A written consent of the proposed assignee or Lessee to all the Terms and conditions of this Agreement and said assignee's or Lessee's consent to the incorporation of the Terms and conditions of this Agreement into any assignment or Agreement;
6. All the Terms and conditions upon which the proposed assignment or Agreement is to be made; and
7. Such other information as the Director may reasonably require to make a judgment regarding an assignment or Agreement.

Within thirty (30) days of receipt of such written request, the Director may give written notice to Lessee of any additional information as may be reasonably required in order to make a determination regarding the proposed assignment or Agreement.

**D. No Release of Lessee's Liability**

No assignment shall release Lessee of Lessee's obligation herein or alter the primary liability of Lessee to pay Rent and other payments required herein, and to perform all other obligations to be performed by Lessee herein. County may accept Rent from any person other than Lessee pending approval or disapproval of such assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent shall constitute a waiver or estoppel of County's right to exercise its remedies for the breach of any of the terms or conditions of this Section of this Agreement. Consent to one assignment shall not be deemed a waiver of the necessity for consent for any subsequent assignment. In the event of default by any assignee or sublessee of Lessee, or any successor of Lessee, in the performance of any of the terms hereof, County may proceed directly against Lessee without the necessity of exhausting remedies against said assignee or sublessee. County may consent to subsequent assignments of this Agreement or amendments or modifications to this Agreement with assignees of Lessee without notifying Lessee, or any successor of Lessee, and without its or their consent thereto and such action shall not relieve Lessee of liability under this Agreement.

## **E. Airport Processing Fee**

In the event that Lessee, or a mortgagee of Lessee, requires or requests County's review, investigation, processing, recordation, or any other consideration of Lessee's proposed Agreement, assignment or other transfer permitted in accordance with this Section, estoppel certificates, documentation regarding Lessee's financing of its leasehold interest, or any other documentation, Lessee agrees that as a condition precedent to the County's review, Lessee shall reimburse County for all County's reasonable costs, including but not limited to, all of County's staff labor, which shall include any consultants and attorney fees, all postage (both first class and express mail) and all materials used or expended in completing County's review. Lessee shall make said reimbursement to County within thirty (30) days after County's written request is received by Lessee.

### **3.08 Assurances Required By FAA**

Lessee shall, at all times during the Term of this Agreement comply with the provisions of the "Assurances required by the Federal Aviation Administration" (Assurances) and any subsequent amendments. A copy of these Assurances is attached as Exhibit E and incorporated by this reference. Lessee shall include compliance with these Assurances in all other agreements it enters into with third parties, pertaining to, referencing or otherwise related to activities regarding the Leased Premises.

### **3.09 Authority of Agreement**

Lessee warrants and represents that it has the right, power, and legal capacity to enter into, and perform its obligations under this Agreement, and no approvals or consents of any persons are necessary in connection with it. The execution, delivery, and performance of this Agreement by the undersigned Lessee representatives have been duly authorized by all necessary corporate action of Lessee, and this Agreement will constitute a legal, valid, and binding obligation of Lessee, enforceable in accordance with its terms.

### **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 herein. With respect to matters herein 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 California Law**

This Agreement shall be interpreted and enforced in accordance with the statutory and decisional law of the State of California. In the event of a dispute between the parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement shall be deemed to have been drafted by the parties in equal parts so that no presumption or inferences concerning its terms or interpretation may be construed against any party to this Agreement. Any litigation filed by Lessee or County against the other regarding the terms of this Agreement, performance of a party's obligations under this Agreement, or any other reason related in any way to this Agreement, shall be filed in a federal or State court of competent jurisdiction located in Sacramento, California.

### **3.12 Chronic Delinquency**

In the event of a Chronic Delinquency (as hereinafter defined), at County's option, County shall have the right, in addition to all other remedies under this Agreement and pursuant to applicable law, to increase the Security Deposit to twelve month's Rent and require that Rent be paid from the Security Deposit. This provision shall not limit in any way nor be construed as a waiver of the rights and remedies of County provided herein or by law in the event of delinquency. "Chronic Delinquency" shall mean failure by Lessee to pay Rent, or any other payments required to be paid by Lessee under this Agreement, within three (3) days after written notice thereof for any three (3) months (consecutive or nonconsecutive) during any twelve (12) month period.

### **3.13 Compliance with Law**

Lessee shall not, in connection with any of its activities or operations, use the Leased Premises or any of Airport's facilities or permit the same to be used by any of its officers, representatives, agents, employees, contractors, subcontractors, licensees, subtenants, invitees, or suppliers for any illegal purpose. Lessee is responsible for obtaining all licenses, permits, and other governmental and private permissions necessary for, or related to, all Lessee's activities on Airport.

Lessee shall comply with all applicable ordinances, laws, rules, and regulations of any city, county, state, federal government or agency that has jurisdiction to pass laws or ordinances or to make and enforce rules and regulations governing conduct on and operations at Airport and the use of its facilities.

### **3.14 Contract Provisions Required By FAA**

Lessee will, at all times during this Agreement, comply with all applicable provisions of the FAA Contract Provisions (Provisions) and any subsequent revisions, updates, or amendments thereto. A copy of the current Provisions are attached as Exhibit F and incorporated herein by this reference. The provisions of the Provisions may change during the term of this Agreement, and those changes will be incorporated into this Agreement without the necessity of a formal amendment. County is not responsible for notifying Lessee of any changes to the Provisions. Lessee is required to contact the FAA for any updates or revisions.

### **3.15 Counterparts**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, by all of which, together, shall constitute on and the same instrument.

### **3.16 County's Remedies**

Pursuant to Section 1951.2 of the California Civil Code:

A. In the event that Lessee breaches this Agreement and abandons the property before the end of the Term hereof, or if Lessee'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 Lessee:

1. The "worth at the time of award" of the unpaid Rent which had been earned at the time of termination;

2. The “worth at the time of award” of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided;

3. Any other amount necessary to compensate County for all the detriment proximately caused by Lessee's failure to perform its obligations under this Agreement, or which in the ordinary course of things would be likely to result therefrom.

B. Efforts by County to mitigate the damages caused by Lessee's breach of this Agreement do not waive County's right to recover damages pursuant to said Section 1951.2 and this Section 3.16.

C. Nothing in this Section 3.16 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.

D. Notwithstanding the foregoing, in the event of Lessee's breach of this Agreement and abandonment of the Leased 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 Lessee, including the right to recover the Rent as it becomes due.

### **3.17 Cumulative Remedies**

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

### **3.18 Damage or Destruction of Leasehold Improvements**

#### **A. Lessee Repair and Restoration**

If at any time during the Term, the Project or other improvements constructed by Lessee upon the Leased Premises, or any part thereof, shall be damaged or destroyed by fire or other occurrence, (including an occurrence for which insurance coverage was not obtained, or unobtainable), of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Lessee, at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, shall proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting the insurance loss), to repair, alter, restore, replace or rebuild the same as nearly as possible to its value, condition and character immediately prior to such damage or destruction (including temporary repairs and work necessary to protect the Project and Leasehold Improvements from further damage), subject to such changes or alterations as may be approved by County in conformity with the provisions of Section 2.03 (collectively referred to below as “the work”).

Notwithstanding the above provisions of this Section 3.18., if (i) the Project or other improvements constructed by Lessee at the Leased Premises are damaged or destroyed by casualty during the last four (4) years of the Term, and (ii) the cost of repairing, restoring, replacing, or rebuilding exceeds seventy-five percent (75%) of the replacement value of the Project and other improvements constructed by Lessee at the Leased Premises, Lessee may terminate this Agreement by giving a termination notice to County within ninety (90) days after the occurrence of the damage or destruction.

Any such notice of termination shall be accompanied by payment of Rent for the unexpired Term of the Agreement. If termination of the Agreement occurs on a date other than the first or last day of a Lease Year, Rent and fees for the partial Agreement Year will be prorated.

**B. Condition of Work**

Except as otherwise provided in this Section 3.18, the conditions under which the work is to be performed and the method of proceeding with and performing the same shall be governed by the provisions of Section 2.03, as applicable. The cost of the work for which Lessee shall be responsible under this Section 3.18 shall include reasonable fees of an architect or engineer, if any, employed by County for the purpose of examining and passing upon Lessee's plans and specifications and seeing that the work conforms therewith, and such other reasonable costs as may be incurred by County in connection with the work.

**C. Payment of Insurance Proceeds**

All insurance money paid on account of such damage or destruction under the policies of insurance required by Section 2.12, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof (referred to below as the "insurance proceeds"), shall be applied to the payment of the cost of the work to the extent that the insurance proceeds shall be sufficient for the purpose, and shall be paid out to or for the account of Lessee from time to time as such work progresses.

**D. Deficiency**

If the insurance proceeds shall not be sufficient to pay the entire cost of the work, Lessee shall supply the amount of any such deficiency and shall apply the same to the payment of the cost of the work. Under no circumstances shall County be obligated to make any payment, reimbursement or contribution towards the cost of the work.

**E. Failure to Commence Repairs**

County may terminate this Agreement pursuant to Section 3.19 herein if the work shall not have been commenced within one hundred twenty (120) days after the damage or destruction has occurred or if the work, after commencement, shall not proceed expeditiously. Provided, however, that any delay resulting from causes beyond the control of Lessee shall extend the time for commencement or completion of the work. On such termination, the insurance proceeds received by or payable to Lessee shall be paid to Lessee's mortgagee, if applicable, in connection with Leasehold Improvements on the Leased Premises, and then to Lessee, and County as their respective interests may appear.

**F. Lease Obligation Continues**

In no event shall Lessee be entitled to any abatement, allowance, reduction or suspension of Rent because part or all of the Project or other improvements upon the Leased Premises shall be untenable or unusable owing to the partial or total damage or destruction thereof. No such damage or destruction shall affect in any way the obligation of Lessee to pay the Rent and other charges herein reserved or required to be paid, nor release Lessee from any obligation imposed upon Lessee herein, except as otherwise provided in Subsection A. of this Section 3.18.



### **G. Uninsurable Risk**

In the event the cause of the damage or destruction is by a risk which is or was uninsurable, then Lessee shall have the same responsibility to provide the funds necessary to pay the cost of the work as set forth in this Section 3.18.

### **3.19 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. Lessee fails to make any payment of Rent or any other required payment, as and when due herein, where such failure continues for a period of forty-five (45) days following service of notice thereof upon Lessee by County;
- B. Lessee makes a general assignment for the benefit of its creditors;
- C. Lessee files a voluntary petition, or becomes the subject of an involuntary petition, in any proceedings in Bankruptcy Court;
- D. Lessee vacates or abandons the Leased Premises for a period of sixty (60) days or more excluding Force Majeure as defined in Section 3.24;
- E. Lessee breaches the covenants contained in the Assurances set forth on Exhibit E; or
- F. Lessee fails to obtain or maintain any of the insurance coverage set forth on Exhibit C attached hereto and incorporated herein by reference in this Agreement. If Lessee fails to cure such default within thirty (30) calendar days following receipt of written notice, the Director may, in his sole discretion, immediately terminate this Agreement;
- G. Lessee defaults in performance of any promise, Term, condition, or covenant required of it herein (other than those expressly set forth in Subsections (A) (E) and (F) above, wherein no further default notice is required and the cure period is limited to the fifteen (15) days contained in the original default notice), provided Lessee 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, Lessee shall be deemed to have cured such default if within such period Lessee 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 thirty (30) days advance written notice to Lessee, with the exception of 3.19 (F) and (G) herein above, 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 Leased Premises, without further notice or demand to Lessee. 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.

### **3.20 Early Termination by Lessee**

If Lessee is legally compliant, and not in default of its payments or any other obligations under the Agreement to the County herein, Lessee may terminate this Agreement prior to expiration of the Term under the following terms and conditions:

- A. If Airport is permanently abandoned by the County for a period of ninety (90) days, then Lessee may terminate its Agreement with thirty (30) days written notice to the Director.
- B. If assumption is made by the United States Government, or a permanent injunction issued by a court of competent jurisdiction, which in any way prevents or restrains use of Airport, or any substantial part thereof, in such manner as to substantially restrict Lessee in its operations herein for a period of ninety (90) consecutive calendar days, then Lessee may terminate its Agreement with sixty (60) day written notice to the Director.
- C. If the County defaults in the performance of any promise, term, condition or covenant required of it to be performed herein, provided County fails to cure such default within sixty (60) calendar days following receipt of written notice of such default from Lessee, Lessee may terminate its Agreement with thirty (30) days written notice to the Director. 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.
- D. Lessee may exercise early termination by giving written notice thereof to County, as described in Section 2.13, served not more than ninety (90) days and not less than sixty (60) calendar days prior to the termination.

In the event of early termination by Lessee pursuant to this Section, Lessee shall pay Rent to County, up to and including the date of such termination.

### **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, except as stipulated in Section 3.06 herein.

### **3.22 Environmental Requirements**

#### **A. Lessee's Compliance with Environmental Laws**

Lessee shall at all times in all respects comply with all environmental laws, and any amendments thereto affecting Lessee's operation on Airport, including, but not limited to, all federal, State and local laws, ordinances and regulations relating to Hazardous Material. The meaning of 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. Lessee is held to the highest level of legal knowledge concerning current and applicable environmental law.

**B. Hazardous Material Storage Permit**

Lessee shall be required to obtain all applicable Hazardous Material Storage permits from all appropriate government agencies if it, at any time, places or stores Hazardous Material liquid, Hazardous Material solids, compressed gas, or any other regulated substances on Airport.

**C. Director's Consent Required**

In addition to any permit requirement and except as provided otherwise in this Section, Lessee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about Airport by Lessee, its agents, employees, contractors or invitees without the prior written consent of the Director (which the Director shall not unreasonably withhold as long as Lessee demonstrates to the Director's reasonable satisfaction that such Hazardous Material is necessary or useful to Lessee's business and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Material so brought upon, used or kept in or about Airport). With respect to Hazardous Materials normally and routinely used in Lessee's operations, the Director's approval shall be a continuing approval subject to review on such periodic basis as the Director determines is appropriate.

**D. Indemnification by Lessee**

Lessee shall indemnify, defend and hold County harmless from any claims, judgments, damages, penalties, fines, costs, liabilities or losses which arise during or after the Term of this Agreement as a result of its handling or transporting of Hazardous Materials or as a result of Lessee's use or storage of Hazardous Materials. This indemnification of County by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean up, remedial, removal or restoration work required by any federal, State or local governmental agency or political subdivision due to the presence or impact of Hazardous Material. Without limiting the foregoing, if the presence of any Hazardous Material on Airport caused or permitted by Lessee results in any contamination of Airport, Lessee shall promptly take all actions at its sole expense as are necessary to render the Leased Premises in compliance with all applicable environmental laws; provided that County's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on Airport.

**E. Notices**

Lessee shall promptly notify County, verbally and in writing, of: (1) any enforcement, clean up, removal or governmental or regulatory action instituted, completed or threatened pursuant to any Hazardous Materials laws; (2) any claim made by any person against Lessee relating to damage, contribution, cost recovery compensation, loss or injury resulting from or claiming to result from any Hazardous Materials in its operations; and (3) any reports made to any environmental agency arising out of or in connection with any Hazardous Materials in or removed from Airport, including any complaints, notices, warnings or asserted violations in connection

therewith (but excluding routine manifests, records or receipts that are submitted to environmental agencies for purposes of documenting waste disposal or product receipt activities). Lessee shall also supply to County as promptly as possible, and in any event within ten (10) business days after Lessee first receives or sends the same, copies of all claims, reports, complaints, notices or warnings or asserted violations relating in any way to Lessee's operations at Airport thereof.

#### **F. Right of Entry**

During the Term of this Agreement the Director, or those authorized by the Director, shall have the right of entry to test and determine the extent of any contamination of the Leased Premises provided that any such testing shall not unreasonably disrupt or interfere with Lessee's operations. The results of such tests (including any reports, documents or test results) shall be simultaneously provided to the Director and Lessee.

#### **G. Environmental Audit**

County shall have the right to conduct an environmental audit immediately after the contamination of the Leased Premises, one year prior to the expiration of this Agreement, or upon early termination of this Agreement. Said audit shall be conducted at Lessee's expense according to procedures and by a person or entity approved by the Director. If contamination is found, Lessee shall be required to perform corrective action to remove contamination generated by Lessee or its representatives during Lessee's Term, if and to the extent required by any environmental agency, as approved by the County. Lessee shall, in consultation with County, determine the schedule, technique, method, and design of the mitigation and/or remediation, subject to the then current environmental requirements as identified in this Section.

#### **H. Hazardous Materials Spill Release Reporting and Cleanup Policies**

At all times during the Term of the Agreement, Lessee shall comply with the County's policies for the reporting and cleanup of Hazardous Materials spills or releases.

### **3.23 Execution and Approval of Agreement**

Submission of this document by County for review, examination or execution by Lessee does not constitute a reservation of an option to Agreement space on Airport, and this document shall not be effective as a lease agreement, or otherwise, unless and until approved by the Board of Supervisors of the County and/or executed by the officer authorized by said Board.

### **3.24 Force Majeure**

Neither County nor Lessee shall be deemed to be in breach of this Agreement if either is prevented from performing any of its obligations herein 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, which is not within its control and which cannot be modified or overcome by reasonable efforts of the prevented party.

### **3.25 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.

### **3.26 Hold Over**

If Lessee remains in possession of the Leased Premises following the expiration or sooner termination of this Agreement, such hold 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) days advance written notice to the other. In the event of such hold over, Lessee 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.

### **3.27 Indemnification of County – Design, Development & Construction Period**

To the fullest extent permitted by law, Lessee shall indemnify, defend, and hold harmless County, the County Board of Supervisors, Boards, officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses (including death), liabilities, damages, and all costs incidental thereto, including cost of defense, settlement, arbitration, and reasonable attorneys' fees arising out of, pertaining to, or resulting from the acts or omissions of the Lessee, its officers, agents, representatives or employees, or the acts or omissions of anyone else directly or indirectly acting on behalf of the Lessee, or for which the Lessee is legally liable under law, regardless of whether caused in part by a party indemnified hereunder. Lessee shall not be liable for any claims, demands, actions, losses, liabilities, damages, and costs to the extent caused by the active negligence or willful misconduct of County, the County Board of Supervisors, officers, employees, agents or authorized volunteers where such indemnification would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

This indemnity shall not be limited by the types and amounts of insurance maintained by the Lessee or the Lessee's Contractor or Subcontractors.

Nothing in this indemnity shall be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party.

The provisions of this Indemnity shall survive expiration or termination, for default or otherwise, of any agreement between Lessee, Lessee's Contractors and County.

### **3.28 Indemnification of County – Developer/Operator/and All Operations**

To the fullest extent permitted by law, Developer and/or Operator shall indemnify, defend, and hold harmless County, the County Board of Supervisors, officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses (including death), liabilities, damages, and all costs incidental thereto, including cost of defense, settlement, arbitration, and reasonable attorneys' fees arising out of, pertaining to, or resulting from the acts or omissions of the Developer/Operator, its officers, agents or employees, or the acts or omissions of anyone else directly or indirectly acting on behalf of the Developer/Operator, or for which the Developer/Operator is legally liable under law, regardless of whether caused in part by a party indemnified hereunder. Developer/Operator shall not be

liable for any claims, demands, actions, losses, liabilities, damages, and costs to the extent caused by the active negligence or willful misconduct of County, the County Board of Supervisors, officers, employees, agents or volunteers.

This indemnity shall not be limited by the types and amounts of insurance maintained by the Developer/Operator or the Developer/Operators Contractor's or Subcontractors.

Nothing in this indemnity shall be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party.

The provisions of this Section shall survive expiration or termination, for default or otherwise, of any agreement between Developer/Operator and County.

### **3.29 Independent Contractor**

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

### **3.30 Industrial Waste Disposal**

All disposal of storm, sanitary sewage and industrial waste shall be in accordance with the Sacramento County Regional Sanitation District, the National Pollutant Discharge Elimination System (NPDES) and all federal, State and local laws. Lessee shall comply with all federal and State regulations governing the NPDES including all future amendments of said regulations, and procedures as may be adopted by federal, State or local agencies.

### **3.31 Interpretation of Agreement**

Nothing herein contained shall be construed or interpreted, in any manner whatsoever, as limiting, relinquishing or waiving any of the rights of ownership enjoyed by County in and to Airport, or in any manner waiving or limiting County's control over the operation and maintenance of Airport property or in derogation of such governmental rights as County possesses, except as is specifically provided for herein.

### **3.32 Invalid Provisions**

In the event of 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**

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

### **3.34 Mortgages**

Subject to the conditions set forth herein, Lessee may mortgage its leasehold interest created herein, solely for the purpose of obtaining financing for the construction of the Tenant Improvements and/or operation of the Leased Premises.

As used herein, "mortgage" means any mortgage, deed of trust, or other indenture consisting of a lien on Lessee's leasehold interest created herein, together with a promissory note or obligation which it secures.

Prior to entering into any such mortgage, Lessee shall submit a true and complete copy of the terms thereof, to the Director for review and approval, and shall promptly submit such supplemental information as may be requested by the Director within thirty (30) days following receipt of such data, the Director shall review the same and shall notify Lessee in writing of approval or rejection thereof, in whole or in part. In the event of such rejection, the parties shall negotiate in good faith to reach agreement respecting the terms of such mortgage; provided, however, Lessee understands and agrees as follows:

1. Such mortgage shall in no way affect or diminish County's interest in the Leased Premises, or its rights under this Agreement, nor relieve Lessee of any of its obligations herein;
2. Under no circumstances shall County's interest in the Leased Premises be subordinate to such mortgage, nor shall the term of such mortgage exceed the Term of this Agreement, as set forth in Section 2.01.
3. The principal sum of the note or obligation which such mortgage secures shall not exceed the amount of Lessee's total cost for construction of the Tenant Improvements and or operation of the Leased Premises.
4. Such mortgage shall cover no interests in any real property other than Lessee's leasehold interest in the Leased Premises herein, and shall contain provisions permitting the disposition and application of insurance proceeds as provided herein; and
5. The making of such a mortgage by Lessee shall not be deemed to constitute an assignment or transfer of this Agreement, nor shall any mortgagee, as such, be deemed an assignee or transferee of this Agreement. Lessee shall submit to the Director a fully executed, true and complete copy of any such mortgage, within forty-eight (48) hours following the execution thereof.

### **3.35 Negation of Partnership**

Nothing in this Agreement shall be construed to render County in any way or for any purpose, a partner, joint venture party, or associate in any relationship with Lessee other than that of landlord and tenant, nor shall this Agreement be construed to authorize either County or Lessee to act as agent for the other.

### **3.36 Noise Control**

Lessee shall not conduct any operation or activity on the Leased Premises, or elsewhere at Airport, in which the sound emitting therefrom is of such volume, frequency or intensity at such time as to constitute a nuisance. The Director shall have the sole and exclusive authority to determine what constitutes a nuisance under the provisions of this Section, except that operations and activities having noise levels not in violation of federal, State or local governmental standards shall not be deemed a nuisance.

### **3.37 Nondiscrimination**

Lessee, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, creed, national origin, sex, age or handicap shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Lessee's facilities pursuant to its operations hereunder; (2) that in the furnishing of services on Airport, no person on the grounds of race, color, creed, national origin, sex, age, or handicap shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination; (3) that Lessee shall use Airport in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as such Regulations may be amended.

### **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 Airport. However, subject to the terms and provisions of this Agreement, Lessee shall have the right to exclusive possession of the Leased Premises described by Section 2.02.

### **3.39 Nonwaiver of Rights**

No waiver of default by either party hereto of any of the terms, promises, covenants, or conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, promises, covenants, or conditions herein contained, to be performed, kept, and observed by such other party.

### **3.40 Notice of Claims and Suit**

Lessee shall give County prompt and timely written notice of any personal injury or other accident claims in excess of One Million Dollars and 00/100ths (\$1,000,000.00), 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 Leased Premises, the operations of Lessee hereunder, or 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**

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, Lessee shall neither claim, nor have entitlement to, any damages whatsoever from County.



### **3.42 Nuisance and Waste**

Lessee shall not erect, nor permit to be erected, any nuisance on the Leased Premises, or permit any waste thereof. Lessee shall not permit any trash or garbage to accumulate on or about the Leased Premises.

### **3.43 Peaceable Use and Enjoyment**

Lessee shall, upon payment of the fees and charges as herein required, and subject to performance and compliance by Lessee of the covenants, conditions and agreements on the part of Lessee to be performed and complied with herein, peaceably have and enjoy the rights, uses and privileges of Airport, its appurtenances and facilities.

### **3.44 Records and Reports**

Lessee shall prepare and maintain an adequate set of records, in a format and detail acceptable to the County, documenting all of Lessee's Gross Revenues and Occupancy Rate, if applicable. Lessee shall also provide County with any other reasonable financial or statistical reports which the Director may from time to time request by written notice to Lessee.

All such reports required of Lessee shall be prepared in accordance with generally accepted accounting principles and reported on a cash basis.

#### **A. Monthly Report**

Lessee shall submit a Monthly Report concurrent with each monthly submittal of Percentage Rent payments to the County Accounting Division at the following address:

Airport Accounting  
6900 Airport Boulevard West  
Sacramento, CA 95837

Lessee shall submit a written report and an electronic Monthly Report, in a format and detail as required by the County, of all Lessee's Gross Revenues at Airport under this Agreement during the preceding calendar month. Such report shall show Gross Revenues and shall include a summary of all activities of the previous month including, but not limited to, a separate accounting of the Development Occupancy Rate. Both the written and electronic Monthly Reports shall be submitted no later than the fifteenth (15<sup>th</sup>) day of the following month in which such Gross Revenues were generated at Airport.

#### **B. Annual Report**

Lessee shall submit to the County at the address specified for Airport Accounting above, for the approval of the County, an Annual Report for each Agreement Year throughout the Operation 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 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 Airport by Lessee under the terms of this Agreement during the preceding Agreement Year, and excluding any other business transacted by Lessee. Such Annual Report shall include, but not necessarily be limited to, Lessee's Gross Revenues, Rent and other payments due to the County, the CPA's audit and examination of source documents from which

Monthly Reports are based, and a certified opinion as to the accuracy of Lessee's submitted Monthly Reports. Lessee shall bear the entire cost of such reports.

**C. Delinquent Annual Report**

If Lessee is delinquent for ten (10) days or more in furnishing to the County any annual report required under this Agreement, Lessee 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 Lessee's failure to timely provide the monthly or annual reports or pay the report late fee.

**D. Delinquent Monthly Report**

If Lessee is delinquent in furnishing to the County any monthly report required under this Agreement, Lessee shall pay the County a Ten Dollars and 00/100ths (\$10.00) late fee for 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 Lessee's failure to timely provide the monthly reports or pay the report late fee.

**3.45 Release of Liability**

County shall not be liable for, and is hereby released from any and all liability to Lessee, to Lessee's insurance carrier or to anyone claiming under or through Lessee, for any loss or damage whatsoever to the property or effects of Lessee resulting from the discharge of water or other substance from pipes, sprinklers, conduits, containers, appurtenances thereof, or fixtures thereto; or 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.

**3.46 Removal of Lessee's Property**

If Lessee is not in default as to the payment of any rent, fee, or other charge payable to County herein, Lessee may remove its inventory, Trade Fixtures and furnishings from the Leased Premises upon expiration or sooner termination of this Agreement. If Lessee does not elect, or otherwise fails to remove the same, or any part thereof, within thirty (30) days following County's regaining possession of the Leased Premises, County may, at its option, either require such removal at Lessee's sole cost and expense, or keep such property, in which latter event, title to the same shall vest in County without any obligation to pay Lessee with respect thereto.

**3.47 Retention of Records**

Lessee shall retain all its books, records of account, and supporting documents pertaining to the uses permitted under this Agreement for not less than four (4) calendar years following expiration or sooner termination of this Agreement. Lessee shall retain all such books, records of account, and supporting documents at a location within the County of

Sacramento, and shall keep and maintain the same in accordance with accepted professional accounting principles.

### **3.48 Right of Entry**

The Director shall have the right, throughout the Term of this Agreement, to enter the Leased Premises for any lawful purpose, including the purpose of determining whether Lessee is complying with its obligations herein. Lessee shall normally be given twenty-four (24) hours notice prior to exercise of such right, except in the event entry is necessary for safety or environmental purposes. Such entry by County shall not be deemed to excuse Lessee'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.

### **3.49 Risk Reduction**

Lessee shall neither use nor permit the use of the Leased Premises in such a manner as to increase the risk which would affect the rate of insurance thereon in excess of that in existence at the commencement of the Term hereof.

### **3.50 Signs**

Lessee shall not erect, maintain, or display any exterior sign on the Leased Premises, or elsewhere at Airport, without the prior written consent of the Director. Lessee shall submit drawings, sketches, designs, and dimensions of such signs to the Director when requesting such approval. All such signs shall be consistent with County's general sign policy for Airport. Any condition, restriction, or limitation as to use or appearance of such signs as may be stated by the Director in writing shall become a part of this Agreement, as if specifically set forth herein.

### **3.51 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 Premises met all applicable construction-related accessibility standards and a disability access inspection certificate has been issued 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 Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.

A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the

payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

### **3.52 Storm Water Pollution Prevention Plan**

It is required of Lessee prior to commencement of the Agreement or at any time deemed necessary, County Storm Water Quality staff shall certify Lessee's Storm Water Pollution Prevention Plan (SWPPP) which must meet all requirements of the Sacramento County Storm Water Ordinance (Sacramento Code Section 15.12). The SWPPP must include all required components and BMP's (Best Management Practices) at the Leased Premises. The Department of Water Resources (DWR) reserves the right to approve and/or revise the SWPPP. The certified SWPPP shall be submitted to the California Regional Water Quality Control Board (RWQCB) by the Lessee with a copy of the approved SWPPP delivered to the Director at the location specified in Section 2.13.

DWR staff will monitor for continued compliance with the Sacramento County Storm Water Ordinance. If a violation has occurred or is imminent, all activity other than corrective action related thereto shall be immediately suspended until the corrective action is deemed satisfactory by the County and/or the RWQCB. Time is of essence. Failure to comply may result in an immediate termination of the Agreement.

The County Department of Water Resources Storm Water Quality Program Manager is located at 827-7<sup>th</sup> Street, Room 301, Sacramento, CA 95814; phone (916) 874-8913 and can be contacted concerning any questions related to this section. The provisions of this section shall survive the expiration or termination of the Agreement.

### **3.53 Successors and Assigns**

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

### **3.54 Surrender of Leased Premises**

County is not required to give Lessee any notice to quit possession of the Leased Premises upon expiration or sooner termination of this Agreement. Lessee shall peaceably surrender possession of the Leased Premises upon expiration or sooner termination of this Agreement in as good order and condition as when received, excepting reasonable wear, destruction by lightning or other natural causes, or fire not caused by the acts or omissions of Lessee, its officers, agents, employees, subcontractors, customers, invitees, or other persons doing business with Lessee or on the Leased Premises with the consent of Lessee.

### **3.55 Taxes**

Lessee 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. Transient Occupancy Taxes**

Pursuant to Section 3.08 of the Sacramento County Code, Development Operator is required to collect a Transient Occupancy Tax from each guest room rental transaction for the privilege of occupancy in the hotel in the current amount of twelve percent (12%) of the room rental rate charged by the operator.

The tax constitutes a debt owed by the hotel guest (transient) to the County which is extinguished only by payment to the operator or to the County. The transient shall pay the tax to the operator at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Tax Collector may require that such tax shall be paid directly to the Tax Collector. (SCC 1220 § 2 (part).)

## **B. 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 possessory 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.

Lessee shall pay any and all taxes, assessments, and other charges of whatsoever character that may be levied or charged upon Lessee's interest as herein may be created, improvements, operations, or right to use the Leased Premises.

## **C. Right to Contest Taxes**

Nothing within this Section shall be deemed to limit any of Lessee's rights to appeal the amount, applicability or validity of any such taxes, assessment, or charges in accordance with the rules, regulations, statutes or ordinances governing the appeal process of the authorities making such levies or assessments; and provided, further, that if Lessee contests any assessment made by the Assessor of County, such contest shall not be initiated in the name of the 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, Lessee shall pay such tax or assessment to prevent such forfeiture or loss.

### **3.56 Time of the Essence**

Time is of the essence in the performance of this Agreement.

### **3.57 Title to Tenant Improvements**

Title to all Tenant Improvements made by Lessee shall at all times during the Term remain in Lessee. Upon expiration or sooner termination of this Agreement, title to all such Tenant Improvements shall, at the written election of the Director, vest in the County without payment of any further consideration to Lessee; except that in lieu of taking title to such Tenant Improvements, the Director shall have the option to require Lessee to remove any or all of such Tenant Improvements, at Lessee's sole cost, within sixty (60) days after such expiration or termination. Director shall exercise the County's option to require Lessee to remove any or all of such Tenant Improvements, at Lessee's sole cost, by providing notice to Lessee within sixty (60) days of expiration of this Lease. In the event of sooner termination pursuant to this Agreement, said exercise of such option shall not be required and Director may designate the disposition of the Tenant Improvements.

Lessee shall ensure that all Tenant Improvements meet applicable County Building Codes during the Term and upon expiration of the Term so that County shall not incur any expenses upon transfer of title to Tenant Improvements to County.

### **3.58 Trash and Garbage**

Lessee shall be responsible for the proper collection, transportation and placement of garbage, trash, and refuse associated with the Project. Lessee, at its sole cost and expense, shall provide a complete and proper arrangement for the adequate sanitary handling and disposal away from Airport of all other trash, garbage, and other refuse resulting from, or in any way associated with, Lessee's operations herein.

DRAFT

**3.59 Execution of Agreement**

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

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

“COUNTY”

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

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

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

COMPANY NAME

“LESSEE”

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

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

REVIEWED AND APPROVED:

\_\_\_\_\_  
County Counsel

**EXHIBIT A**

**Legal Description**

[To be inserted upon completion of improvements]



**EXHIBIT B**

**Leased Premises**

(Site Proposed)

## EXHIBIT C

between the COUNTY OF SACRAMENTO,  
hereinafter referred to as "COUNTY", and  
COMPANY NAME

hereinafter referred to as "LESSEE"

COUNTY OF SACRAMENTO

### LESSEE'S AND/OR LESSEE'S CONTRACTORS DESIGN, DEVELOPMENT AND CONSTRUCTION PERIOD

### INSURANCE REQUIREMENTS FOR DESIGN, DEVELOPMENT AND CONSTRUCTION THIS SECTION REPLACES AND SUPERCEDES SECTION 3.9 - 3.9.12 INSURANCE OF THE COUNTY'S STANDARD CONSTRUCTION SPECIFICATIONS

Without limiting Lessee's indemnification, Lessee shall procure and maintain or cause to 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 Lessee, its agents, representatives, employees, or contractors. 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 Lessee 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

Lessee 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 Lessee provide complete, 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. COMMERCIAL GENERAL LIABILITY or AIRPORT LIABILITY: Insurance Services Office's Commercial General Liability occurrence coverage form GGL04 (2/05) or CG0001 or as broad as, including, but not limited to Airport 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 Employers Liability Insurance.
4. PROFESSIONAL LIABILITY or Errors and Omissions Liability insurance applicable to Lessee's or Prime Contractor's Design and Engineering Firm.
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 Aviation General Liability, Commercial Automobile Liability, Employers' Liability, and any other liability coverage (other than Professional Liability) designated under the Minimum Scope of Insurance.
6. BUILDER'S RISK INSURANCE: For construction of all structures, equipment and any other improvements.
7. POLLUTION LIABILITY: For environmental impairment arising from all services and operations under this contract.

### **Minimum Limits of Insurance**

Lessee and Lessee's Contractor shall maintain limits no less than:

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

General Aggregate:	\$ 4,000,000
Products Comp/Op Aggregate:	\$ 4,000,000
Personal & Adv. Injury:	\$ 1,000,000
Each Occurrence:	\$ 2,000,000
Fire Damage:	\$ 1,000,000 (or value of leased space at Airport)

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, \$2,000,000 Combined Single Limit for vehicles used airside; \$1,000,000 for vehicles operated landside only.

- 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: \$5,000,000 per claim and aggregate.
6. Builders Risk and delay in start-up coverage for new construction with coverage written on a completed value non-reporting form (for total price of construction); property shall be covered against all risks of physical loss or damage including, but not limited to:
  - a. Earthquake, flood, theft, and collapse.
  - b. Loss that ensues from design error, defective materials, or faulty workmanship.
  - c. Mechanical breakdown or electrical damage including testing, if mechanical or electrical apparatus are to be installed by Lessee's Contractor.
  - d. Demolition and Increased Cost of Construction

The property covered shall include work, materials, equipment, and other items to be incorporated into buildings or structures, while the same are located at the construction site, stored off-site, while in transit or at the place of manufacture. Coverage may be provided by Lessee or Lessee's Contractor.

The policy shall contain a provision that both the interest of the County and the Lessee and/or Contractor are covered and that any loss shall be payable to the County and the Lessee/Contractor, as their interest may appear.

The County, Lessee, and/or Contractor waive all rights against each other and against all other Contractors for loss or damage to the extent reimbursed by Builder's Risk insurance or any other property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If the policies of builders' risk insurance referred to in this section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed to obtain such consent.

If not covered by Builder's Risk insurance or any other property or equipment insurance required by this Agreement, the Lessee/Contractor shall procure, maintain, and keep in force at all times during the term of the Agreement, at the Lessee's or Contractor's sole expense, property insurance for portions of the Contractor's work and/or equipment to be incorporated therein stored off-site or in transit.

7. Environmental Impairment Liability: \$2,000,000, per claim and aggregate.

### **Deductibles and Self-Insured Retention**

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

## **Claims Made Professional and/or Environmental Impairment 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 Lessee.
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 Lessee 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 Lessee 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 state that coverage shall not be canceled except after thirty (30) days' written notice for cancellation or notice for 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 Lessee; products and completed operations of the Contractor; premises owned, occupied or used by the Lessee; or automobiles owned, leased, hired or borrowed by the Lessee. The coverage shall contain no endorsed limitations on the scope of protection afforded to the County, its officers, directors, officials, employees, or volunteers.

### **Send original certificate to the Additional Insured:**

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

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 agreement, the Lessee'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 Lessee's insurance and shall not contribute with it.
4. **SEVERABILITY OF INTEREST**: The Lessee'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**: Lessee shall be responsible for the acts and omissions of all its subcontractors and subtenants and shall require all its subcontractors and subtenants to maintain adequate insurance as required in this agreement. Lessee shall also require all subcontractors and subtenants to name the County as additional insured on all contracts related to this Agreement and where appropriate.

### **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 Agreement.

### **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 Lessee.

### **Property:**

**BUILDERS RISK/ COURSE OF CONSTRUCTION (COC) WAIVER OF SUBROGATION**: Any Course of Construction (COC) policies maintained by the Lessee or Lessee's Prime Contractor in performance of the Agreement shall contain the following provisions:

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

**ALL-RISK PROPERTY AND INLAND MARINE WAIVER OF SUBROGATION**: Any All-Risk Property and Inland Marine insurance policies maintained by the Lessee or Lessee's Prime Contractor 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 Lessee or if any lawsuit is instituted against Lessee, that arise out of or are in any way connected with Lessee's performance under this Agreement and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect County, Lessee 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.

## **OPERATION TERM INSURANCE REQUIREMENTS**

Without limiting Operator's indemnification, Operator 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 Operator, 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 Operator 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**

Operator 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 Operator provide complete 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 or AIRPORT LIABILITY: Insurance Services Office's Commercial General Liability occurrence coverage form CG 0001 or as broad as. Including, but not limited to Leased Premises/Operations, Products/Completed Operations, Contractual, Personal & Advertising Injury, and Liquor Liability, without additional exclusions or limitations, unless approved by the County Risk Manager.
2. POLLUTION LIABILITY
3. AUTOMOBILE LIABILITY: Insurance Services Office's Commercial Automobile Liability coverage form CA 0001.

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.

4. WORKERS' COMPENSATION: Statutory requirements of the State of California and Employer's Liability Insurance.
5. HOTEL AND INNKEEPERS LIABILITY
6. 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 designated under the Minimum Scope of Insurance.
7. PROPERTY (REAL AND PERSONAL): All Risk, including flood and earthquake. Property coverage shall include loss of income and extra expense and boiler and machinery.

**Minimum Limits of Insurance**

Operator shall maintain limits no less than:

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

General Aggregate:	\$4,000,000
Products Comp/Op Aggregate:	\$2,000,000
Personal & Adv. Injury:	\$1,000,000
Each Occurrence:	\$2,000,000
2. Pollution liability: \$2,000,000 per claim and aggregate.
3. Automobile Liability: \$2,000,000 Combined Single Limit
4. Workers' Compensation: Statutory.
5. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
6. Hotel Innkeepers Legal Liability: Per California Statutory Requirement
7. Property: Owned Buildings, Tenant Improvements & Betterments, Structures and Contents at 100% Replacement Cost
8. Property: Loss of Income and Extra Expense: Adequate to protect the Operations at commercially available limits.
9. Boiler and Machinery: Replacement cost (100%) including business interruption

**Deductibles and Self-Insured Retention**

Any deductibles or self-insured retention that apply to any insurance required by this Agreement in excess of \$100,000 must be declared and approved by the County.



## **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:**

**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.

**MAINTENANCE OF INSURANCE COVERAGE:** The Operator shall maintain all insurance coverages and limits 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.

Operator is required by this Agreement to immediately notify County if they receive a communication from their insurance carrier or agent that any required insurance is to be canceled, non-renewed, reduced in scope or limits or otherwise materially changed. Operator shall provide evidence that such cancelled or non-renewed or otherwise materially changed insurance has been replaced or its cancellation notice withdrawn without any interruption in coverage, scope or limits. Failure to maintain required insurance in force shall be considered a material breach of the Agreement.

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

**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 Developer/Operator; products and completed operations of the Developer/Operator; Premises owned, occupied or used by the Developer/Operator; or automobiles owned, leased, hired or borrowed by the Developer/Operator. The coverage shall contain no endorsed limitations on the scope of protection afforded to the County, its officers, directors, officials, employees, or volunteers.

#### **Send original certificate to the Additional Insured:**

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

**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.

**PRIMARY INSURANCE:** For any claims related to this agreement, the Developer/Operator'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 Lessee's insurance and shall not contribute with it.

**SEVERABILITY OF INTEREST:** The Developer/Operator'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.

**SUBCONTRACTORS:** Developer/Operator shall be responsible for the acts and omissions of all its subcontractors or subtenants and shall require all its subcontractors and subtenants to maintain adequate insurance.

**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 Operator.

**Property:**

**BUILDERS RISK/ COURSE OF CONSTRUCTION (COC) WAIVER OF SUBROGATION:** Any Course of Construction (COC) policies maintained by the Lessee or Lessee's Prime Contractor in performance of the Agreement shall contain the following provisions:

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

**ALL-RISK PROPERTY AND INLAND MARINE WAIVER OF SUBROGATION:** Any All-Risk Property and Inland Marine insurance policies maintained by the Lessee or Lessee's Prime Contractor 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 Developer/Operator or if any lawsuit is instituted against Developer/Operator, that arise out of or are in any way connected with Developer/Operator's performance under this Agreement and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect County, Developer/Operator 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.

**EXHIBIT D**

**OPERATING AGREEMENT**

**EXHIBIT E**

**ASSURANCES REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION**



## **ASSURANCES**

### **Airport Sponsors**

---

#### **A. General.**

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

#### **B. Duration and Applicability.**

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

### 3. Airport Planning Undertaken by a Sponsor.

Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Airport Revenue so long as the airport is used as an airport.

## C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

### 1. General Federal Requirements.

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

#### Federal Legislation

---

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.<sup>1</sup>
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act – 5 U.S.C. 1501, et seq.<sup>2</sup>
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.<sup>1 2</sup>
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).<sup>1</sup>
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.<sup>1</sup>
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.<sup>1</sup>
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.<sup>1</sup>
- s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.<sup>1</sup>
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.<sup>1</sup>
- u. Copeland Anti-kickback Act - 18 U.S.C. 874.1
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.<sup>1</sup>
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.<sup>2</sup>
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

### **Executive Orders**

---

- a. Executive Order 11246 - Equal Employment Opportunity<sup>1</sup>
- b. Executive Order 11990 - Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 - Intergovernmental Review of Federal Programs
- e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction<sup>1</sup>
- f. Executive Order 12898 - Environmental Justice

### **Federal Regulations**

---

- a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].<sup>4, 5, 6</sup>
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
- d. 14 CFR Part 13 - Investigative and Enforcement Procedures 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- e. 14 CFR Part 150 - Airport noise compatibility planning.
- f. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
- g. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- h. 29 CFR Part 1 - Procedures for predetermination of wage rates.<sup>1</sup>
- i. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.<sup>1</sup>
- j. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).<sup>1</sup>
- k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).<sup>1</sup>
- l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.<sup>3</sup>
- m. 49 CFR Part 20 - New restrictions on lobbying.
- n. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.

- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.<sup>1 2</sup>
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.<sup>1</sup>
- s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- t. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
- v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.

### **Specific Assurances**

---

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

### **Footnotes to Assurance C.1.**

---

- <sup>1</sup> These laws do not apply to airport planning sponsors.
- <sup>2</sup> These laws do not apply to private sponsors.
- <sup>3</sup> 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- <sup>4</sup> On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.



<sup>5</sup> Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

<sup>6</sup> Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

## **2. Responsibility and Authority of the Sponsor.**

### **a. Public Agency Sponsor:**

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

### **b. Private Sponsor:**

It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

## **3. Sponsor Fund Availability.**

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

## **4. Good Title.**

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

## **5. Preserving Rights and Powers.**

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

**6. Consistency with Local Plans.**

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

**7. Consideration of Local Interest.**

It has given fair consideration to the interest of communities in or near where the project may be located.

**8. Consultation with Users.**

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

**9. Public Hearings.**

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

**10. Metropolitan Planning Organization.**

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

**11. Pavement Preventive Maintenance.**

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

**12. Terminal Development Prerequisites.**

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and

has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

**13. Accounting System, Audit, and Record Keeping Requirements.**

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

**14. Minimum Wage Rates.**

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

**15. Veteran's Preference.**

It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

**16. Conformity to Plans and Specifications.**

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans,

specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

**17. Construction Inspection and Approval.**

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

**18. Planning Projects.**

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

**19. Operation and Maintenance.**

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal,

state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

- 1) Operating the airport's aeronautical facilities whenever required;
  - 2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
  - 3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

#### **20. Hazard Removal and Mitigation.**

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

#### **21. Compatible Land Use.**

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

#### **22. Economic Nondiscrimination.**

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or

to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

- 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
  - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
  - d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
  - e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
  - f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
  - g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
  - h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
  - i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

### **23. Exclusive Rights.**

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

### **24. Fee and Rental Structure.**

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

### **25. Airport Revenues.**

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
  - 1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or



operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

- 2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
  - 3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
  - c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

## **26. Reports and Inspections.**

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
  - 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
  - 2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

**27. Use by Government Aircraft.**

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

**28. Land for Federal Facilities.**

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

**29. Airport Layout Plan.**

- a. It will keep up to date at all times an airport layout plan of the airport showing
  - 1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
  - 2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and

roads), including all proposed extensions and reductions of existing airport facilities;

- 3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and
  - 4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.
- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

### **30. Civil Rights.**

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.
- b. Applicability
  - 1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
  - 2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.

- 3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- 1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- 2) So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

“The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

e. Required Contract Provisions.

- 1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
- 2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
- 3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
- 4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a

covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:

- a) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

### **31. Disposal of Land.**

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.
- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another

eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.

- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

**32. Engineering and Design Services.**

It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

**33. Foreign Market Restrictions.**

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

**34. Policies, Standards, and Specifications.**

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated \_\_\_\_\_ (the latest approved version as of this grant offer) and included in this grant, and in accordance

with applicable state policies, standards, and specifications approved by the Secretary.

**35. Relocation and Real Property Acquisition.**

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

**36. Access By Intercity Buses.**

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

**37. Disadvantaged Business Enterprises.**

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its DBE and ACDBE programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

**38. Hangar Construction.**

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

### **39. Competitive Access.**

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
  - 1) Describes the requests;
  - 2) Provides an explanation as to why the requests could not be accommodated; and
  - 3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.



## EXHIBIT F

### CONTRACT PROVISIONS REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION REQUIRED FEDERAL LANGUAGE FOR NON-AIP CONTRACTS

#### A. GENERAL CIVIL RIGHTS PROVISIONS

The Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessor.

This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

#### B. TITLE VI SOLICITATION NOTICE:

The (Name of Sponsor), in accordance with the provisions of Title VI of the A6. A6.3.1 Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

#### C. COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS:

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-discrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection

and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

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

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

5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the contractor under the contract until the contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is

threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

## **CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM**

A. The Lessee for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

In the event facilities are constructed, maintained, or otherwise operated on the property described in this lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, (Title of Sponsor) will have the right to terminate the Lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Lease had never been made or issued.\*

C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the (Title of Sponsor) will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the (Title of Sponsor) and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

#### **D. TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

#### **E. FEDERAL FAIR LABOR STANDARDS ACT**

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The [contractor | consultant] has full responsibility to monitor compliance to the referenced statute or regulation. The [contractor | consultant] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

#### **F. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

#### **G. ASSURANCES REQUIRED BY THE FAA:**

The Contractor shall, at all times during the term of this Contract, comply with the provisions of the "Airport Sponsor Assurances" (Assurances) and any subsequent revisions, updates or

amendments hereto. A copy of the current Assurances is Exhibit E. The provisions of the Assurances may change during the term of this Contract, and those changes will be incorporated into this Contract without the necessity of a formal amendment. County is not responsible for notifying Contractor of any changes to the Assurances. Contractor is required to contact the FAA for any updates or revisions. The Assurances document is available on the FAA's website. Please see [http://www.faa.gov/airports/aip/grant\\_assurances/media/airport-sponsor-assurances-aip.pdf](http://www.faa.gov/airports/aip/grant_assurances/media/airport-sponsor-assurances-aip.pdf)

## ATTACHMENT 3

### Addenda Acknowledgement Form

Proposer acknowledges receipt of the following Addenda to the Request for Proposals:

Addendum Number	Signature	Date
1.		
2.		
3.		
4.		
5.		

**ATTACHMENT 4**  
**Qualifications Statement**

The proposer has Design, Development and/or Operating experience at the following locations:

Project Name and Location: \_\_\_\_\_

Dates: \_\_\_\_\_ To \_\_\_\_\_

Contact's Name: \_\_\_\_\_

Phone number and E-mail address: \_\_\_\_\_

Operation annual gross revenues for last 3 years (if applicable)

-----

Project Name and Location: \_\_\_\_\_

Dates: \_\_\_\_\_ To \_\_\_\_\_

Contact's Name: \_\_\_\_\_

Phone number and E-mail address: \_\_\_\_\_

Operation annual gross revenues for last 3 years (if applicable)

\_\_\_\_\_

(use additional sheets for other locations)

-----

The proposer has operated under its current name since \_\_\_\_\_,

a period of \_\_\_\_\_ years and \_\_\_\_\_ months,

and the proposer (if such be the case) formerly operated under the name:

\_\_\_\_\_



**ATTACHMENT 5**  
**Business Organization**

Fill in the following information **exactly** as it is to appear on the Agreement; if operating under a fictitious name, so indicate.

Name of Firm: \_\_\_\_\_

\_\_\_\_\_

Business Purpose \_\_\_\_\_

of Proposer: \_\_\_\_\_

Principal Office Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone #: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Please check the box that describes your business entity and complete the applicable form below.

- Individual       Corporation       Limited Liability  
 Partnership       Joint Venture       Business Association or Joint Venture  
 Other (explain) \_\_\_\_\_

**ATTACHMENT 5 (continued)**

**Partnership Statement**

If your business is operating as a partnership, please provide the following information.

Date of Organization: \_\_\_\_\_

Type of Partnership: \_\_\_\_\_ General \_\_\_\_\_ Limited

Business Purpose of Partnership: \_\_\_\_\_

Is Partnership Agreement recorded: \_\_\_\_\_ Yes \_\_\_\_\_ No

Recorded: \_\_\_\_\_

Date Book Page County State

Has the Partnership done business in California? \_\_\_\_\_ Yes \_\_\_\_\_ No

If so, when? \_\_\_\_\_

Please provide the following information for each General Partner (attach additional pages, if necessary).

General Partner's Name and Address	% of Ownership

## ATTACHMENT 5 (continued)

### Corporation Statement

If your business is operating as a corporation, please answer the following questions:

When incorporated? \_\_\_\_\_

Where incorporated? \_\_\_\_\_

Is the corporation authorized to do business in California?

\_\_\_\_ Yes      \_\_\_\_ No

If yes, as of what date? \_\_\_\_\_

Is the corporation held: \_\_\_\_ Publicly?    \_\_\_\_ Privately?

Please supply the following information for each and every Director (attach additional pages, if necessary).

Director Name & Address	Principal Business Affiliation (Other than Proposer's directorship)

Please supply the following information for each officer (attach additional pages, if necessary).

Officer Name	Position

Please attach a certified copy of the relevant portion of the bylaws or resolution of the Board of Directors of the corporation showing the signature authority of the Officer signing the proposal and other contracts on behalf of the corporation.

## ATTACHMENT 5 (continued)

### Joint Venture Statement

If your business is operating as a joint venture, please provide the following information.

Is Joint Venture Agreement recorded? \_\_\_ Yes \_\_\_ No

Recorded: \_\_\_\_\_  
Date Book Page County State

Purpose of Joint Venture: \_\_\_\_\_

Has Joint Venture done business in California? \_\_\_ Yes \_\_\_ No

When? \_\_\_\_\_

Provide the name and address of each member of the Joint Venture and percentage of ownership of each (attach additional pages, if necessary).

Joint Venture Member Name & Address	% Of Ownership

Please attach the signature authority document showing the signatories are authorized to execute the proposal and bind the joint venture.

## ATTACHMENT 6

### Project Cost Analysis Form

Submit one page for the proposed Development Project.

COST CATEGORY	AMOUNT
Planning and Development (design, construction, inspection, etc.)	
Furniture, Fixtures and Equipment	
Opening Inventory of products	
Working Capital	
Miscellaneous Opening Expenses (deposits, licenses, badging, etc.)	
Pre-Opening Payroll & Training Expenses	
Reserve/Contingency	
Other (please list):	
<b>Total Estimated Project Cost</b>	\$

**ATTACHMENT 6 (continued)**  
**Project Cost Analysis Form**

<b>Sources of Funding</b>	<b>Amount</b>
<b>Total Funds Available</b>	\$

## **Attachment 7**

### **Financial Projections – Pro-Forma**

The Proposer shall provide a Pro-Forma Operating Statement (on next page) for each facility within the proposed Project.

**UNIT PRO FORMA**

Provide one pro forma for each Project

Proposer \_\_\_\_\_

GROSS REVENUES (SALES)	Year 1		Year 2		Year 3		Year 4		Year 5	
		% of sales		% of sales		% of sales		% of sales		% of sales
<b>Sales (by category):</b>										
Hotel Room Rentals		%		%		%		%		%
Food and Beverage		%		%		%		%		%
Meeting/Conference		%		%		%		%		%
Other		%		%		%		%		%
<b>Total Gross Revenues</b>	\$ -	100%	\$ -	100%	\$ -	100%	\$ -	100%	\$ -	100%
<b>OPERATING EXPENSES</b>		% of sales		% of sales		% of sales		% of sales		% of sales
Payroll		%		%		%		%		%
Payroll taxes and employee benefits		%		%		%		%		%
Percentage rent		%		%		%		%		%
Franchise or license fees		%		%		%		%		%
Repairs and Maintenance		%		%		%		%		%
Marketing		%		%		%		%		%
Utilities		%		%		%		%		%
Insurance		%		%		%		%		%
Credit card fees		%		%		%		%		%
Licenses and permits		%		%		%		%		%
Administrative & General		%		%		%		%		%
Other operating expenses (please list):		%		%		%		%		%
		%		%		%		%		%
		%		%		%		%		%
		%		%		%		%		%
		%		%		%		%		%
		%		%		%		%		%
<b>Total Operating Expenses</b>	\$ -	%	\$ -	%	\$ -	%	\$ -	%	\$ -	%
<b>EBITDA</b>		% of sales		% of sales		% of sales		% of sales		% of sales
Earnings before Interest, Taxes, Depreciation and Amortization	\$ -	%	\$ -	%	\$ -	%	\$ -	%	\$ -	%
<b>Interest, Depreciation, &amp; Amortization Expenses</b>		%		%		%		%		%
<b>NET PROFIT OR LOSS BEFORE TAXES</b>		%		%		%		%		%



## Attachment 8

### Proposal Checklist

RFP Reference	RFP Requirement	Page Number	County Use Only
Section J.1	Cover Letter with Contact Information	8	
Section J.2	Proposal Deposit	8-9	
Section J.3	Executive Summary	9	
Section J.4	Executed Addenda Acknowledgement Form (Attachment 3)	9	
Section J.5	Proposer's Qualifications Statement (Attachment 4)	9-10	
Section J.6	Business Organization (Attachment 5)	10	
Section J.7a	Development & Operation Management Team Experience	10	
Section J.7b	Development Schedule	10	
Section J.7c	Proposed Facility Build-out Investment	10	
Section J.7d	Financial Plan and Proposer's Capability <ul style="list-style-type: none"> <li>• Project Cost Analysis (Attachment</li> </ul>	10-11	

	6)		
Section J.8	<p>Facility Design and Quality of Improvements</p> <ul style="list-style-type: none"> <li>• Materials and general color scheme</li> <li>• Plans (site plan, first floor plan, typical floor plan and elevation plan)</li> <li>• Regional comparable for hotel quality</li> <li>• Minimum Requirements for hotel (quantity, guest rooms, meeting center, internet capabilities)</li> </ul>	11-12	
Section J.9	<p>Operating Plan &amp; Conceptual Submittal</p> <ul style="list-style-type: none"> <li>• Hotel Operator</li> <li>• Operational Plan</li> <li>• Parking Requirements</li> <li>• Minimum Requirements (brand and services)</li> <li>• Travel Plaza Management/Brand</li> <li>• Mixed-Use Operators</li> </ul>	12-13	
Section K	Proposed Rental Structure	13	
Section L	<p>Financial Projections</p> <ul style="list-style-type: none"> <li>• Pro-forma - including rental rates &amp; occupancy rates (Attachment 7)</li> </ul>	14	
Section M	<p>Financial Background Information</p> <ul style="list-style-type: none"> <li>• Financial Statements</li> <li>• Business and Financial References</li> <li>• Dun &amp; Bradstreet or Standard and Poor's Summary</li> </ul>	14	

# ATTACHMENT 9

## FAA GENERAL CONTRACT PROVISIONS FOR SOLICITATIONS

### NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION to

### ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

#### Timetables

Goals for minority participation for each trade: 16.1%

Goals for female participation in each trade: 6.9%

These goals are applicable to all of the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a) and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the “covered area” is Sacramento County.

### **BUY AMERICAN PREFERENCE**

The Contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

The bidder must complete and submit the Buy America certification included herein with their bid or offer. The County will reject as nonresponsive any bid or offer that does not include a completed Certificate of Buy American Compliance.

### **GENERAL CIVIL RIGHTS PROVISIONS**

49 USC § 47123; FAA Order 1400.11; U.S. Department of Transportation Order DOT 1050.2, Standard Title VI Assurances and Nondiscrimination Provisions, effective April 24, 2013.: Title VI of the Civil Rights Act of 1964, as amended, (Title VI) prohibits discrimination on the grounds of race, color, or national origin under any program or activity receiving Federal financial assistance. The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the Contractor and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

### **TITLE VI SOLICITATION NOTICE**

The Sacramento County Department of Airports, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

### **DAVIS-BACON REQUIREMENTS**

The Davis-Bacon Act ensures that laborers and mechanics employed under the contract receive pay no less than the locally prevailing wages and fringe benefits as determined by the Department of Labor. 2 CFR § 200, Appendix II(D); 29 CFR Part 5.

## **CERTIFICATION OF BIDDER REGARDING DEBARMENT**

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

## **DISADVANTAGED BUSINESS ENTERPRISE**

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the County to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. The Owner encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

## **TRADE RESTRICTION CERTIFICATION**

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

1. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
2. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
3. has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC Section 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

1. who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or

2. whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or

who incorporates in the public works project any product of a foreign country on such USTR list.

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

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous. This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

### **CERTIFICATION REGARDING LOBBYING**

The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **PROCUREMENT OF RECOVERED MATERIALS**

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

1. The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or
2. The Contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at [www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products](http://www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products). Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the Contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

## **ASSURANCES REQUIRED BY THE FAA**

The Contractor agrees that, if awarded a contract resulting from this solicitation, it shall, at all times during the term of the contract, comply with the provisions of the "Airport Sponsor Assurances" (Assurances) and any subsequent revisions, updates or amendments hereto. A copy of the current Assurances is provided as Exhibit E to the Agreement, attached hereto and incorporated herein by this reference.