

A RESOLUTION BY TRANSPORTATION COMMITTEE AUTHORIZING THE MAYOR TO EXECUTE AIRPORT CONCESSION LEASE AGREEMENT FC-6347 SLEEP UNITS ON CONCOURSES “E” AND “F” WITH MINUTE SUITES, LLC FOR SLEEP UNITS AT HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT; AND FOR OTHER PURPOSES.

Workflow List:

Jeff Strickland	Completed	05/29/2014 4:52 PM
Miguel Southwell	Completed	05/30/2014 3:09 PM
Procurement	Completed	06/02/2014 12:26 PM
Adam Smith	Completed	06/02/2014 12:31 PM
Mayor's Office	Completed	06/02/2014 1:28 PM
Office of Research and Policy Analysis	Completed	06/03/2014 9:36 AM
Transportation Committee	Pending	
Atlanta City Council	Pending	
Mayor's Office	Pending	

Certified by Presiding Officer	Certified by Clerk
Mayor's Action <i>See Authentication Page Attachment</i>	

LEGISLATION HISTORY – BLUE BACK

A RESOLUTION BY TRANSPORTATION COMMITTEE AUTHORIZING THE MAYOR TO EXECUTE AIRPORT CONCESSION LEASE AGREEMENT FC-6347 SLEEP UNITS ON CONCOURSES “E” AND “F” WITH MINUTE SUITES, LLC FOR SLEEP UNITS AT HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta (“City”) owns and operates Hartsfield-Jackson Atlanta International Airport (“Airport”); and

WHEREAS, the Department of Procurement solicited proposals for FC-6347, Sleep Units on Concourses E and F on behalf of the Department of Aviation; and

WHEREAS, two (2) qualified firms submitted proposals for FC-6347 in response to the solicitation for the right to provide Sleep Units on Concourses E and F; and

WHEREAS, the proposals were received and evaluated and the Aviation General Manager and the Chief Procurement Officer have recommended that FC-6347, Sleep Units on Concourses E and F Concession Lease Agreement be awarded to Minute Suites, LLC; and

WHEREAS, the City has determined that it is desirable and in the best interest to make such recommended awards.

NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, that the Mayor is authorized to execute a Concessions Lease Agreement FC-6347, Sleep Units on Concourses E and F with Minute Suites, LLC.

BE IT FURTHER RESOLVED this Concessions Lease Agreement will have an initial term of seven (7) years, with a single option to renew for an additional three (3) years, to be exercised at the City’s sole discretion.

BE IT FURTHER RESOLVED that the City Attorney is directed to prepare an appropriate agreement for execution by the Mayor, with same to be approved as to form by the City Attorney.

BE IT FURTHER RESOLVED that the City Attorney is directed to prepare any appropriate documentation for execution by the Mayor.

AND FINALLY BE IT RESOLVED that said agreement shall not become binding on the City, nor will the City incur any liability under it, until it has been executed by the Mayor, attested to by the Municipal Clerk, approved by the City Attorney as to form and delivered to the appropriate concessionaire.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview:

Caption:

Council Meeting Date:

Requesting Dept.:

FAC Confirmed by:

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

The purpose of this legislation is to authorize the execution of FC-6347, Sleep Units Concessions on Concourses E and F at Hartsfield-Jackson Atlanta International Airport (H-JAIA).

2. Please provide background information regarding this legislation.

A Request for Proposal was advertised December 20, 2013, proposals were received and evaluated. Two proposals were received and the recommendation of the Aviation General Manager and the Chief Procurement Officer is to award to the top ranked proponent for FC-6347, Sleep Units to Minute Suites, LLC for a seven (7) year lease agreement with a three (3) year renewal option by the City.

Minute Suites, LLC currently operates the Minute Suites on Concourse B at Hartsfield-Jackson Atlanta International Airport. Minute Suites also operates Sleep Units at Philadelphia International and Dallas Ft. Worth International airports with additional sleep units under construction at Chicago O'Hare International Airport.

The amount of the first year's Minimum Annual Guarantee (MAG) is \$90,000 with percentage rental fees of 10% for both Services rendered and Retail sold.

3. If Applicable/Known:

(a) **Contract Type:** Concessions Lease Agreement

(b) **Source Selection:** Request for Proposals

- (c) **Bids/Proposals Due:** March 12, 2014
- (d) **Invitations Issued:** December 20, 2013
- (e) **Number of Bids:** N/A
- (f) **Proposals Received:** Two (2)
- (g) **Bidders/Proponents:** Aeropods.com LLC and Minute Suites, LLC
- (h) **Term of Contract:** Seven years with a three year renewal at City's sole option

4. **Fund Account Center (Ex. Name and number):** N/A

Fund: _____ Account: _____ Center: _____

5. **Source of Funds:** *Example: Local Assistance Grant* N/A

6. **Fiscal Impact:** N/A

7. **Method of Cost Recovery:** N/A

This Legislative Request Form Was Prepared By: Deven Judd

CONCESSIONS LEASE AGREEMENT

SLEEP UNITS ON CONCOURSES "E" AND "F"

AT THE

HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT

Atlanta, Georgia



Landlord: City of Atlanta

Concessionaire: Minute Suites, LLC

Contract No. FC-6347

Attachment: Sleep Units Contract Document (14-R-3734 : Sleep Units on Concourses E and F Concessions Lease Agreement)

CONCESSIONS LEASE AGREEMENT

This Concessions Lease Agreement (“**Agreement**”) is entered into and made effective on this ___ day of _____, 2014 (“**Commencement Date**,” as further defined at Section 2.1 herein), between the City of Atlanta (“**City**”) and Minute Suites, LLC (“**Concessionaire**”), who agree as follows:

1. PREMISES

1.1 Description of Premises.

1.1.1 Concessionaire shall be entitled to occupy and use, for the purposes set forth herein, the following premises (“Premises” hereinafter refer to the total square feet under this Agreement on the Commencement Date) consisting of approximately 2,691 square feet on Concourse E and approximately 887 square feet on Concourse F of the Hartsfield-Jackson Atlanta International Airport (the “**Airport**”), and as further depicted in **Exhibit A**, as follows:

Space	Location	Approximate Square Footage
E-SX	Concourse E	2,691 square feet
F-S2	Concourse F	887 square feet
Total square footage:		3,782 square feet

1.1.2 No easement for light, air or view is granted, given or implied in this Agreement. Upon completion of the construction contemplated by the Section entitled “**Improvements**,” Concessionaire must submit to City a current, more detailed description based on final, as-built drawings, which will be incorporated by reference into this Agreement as a supplement to **Exhibit A**, without the need for the parties to formally amend this Agreement.

1.2 Relocation, Expansion and Contraction; Reimbursement of Certain Costs.

1.2.1 City’s Right to Require. City may require that Concessionaire relocate all or part of the Premises within the Airport, or expand or contract the size of the Premises. Concessionaire must accomplish any such relocation, expansion or contraction expeditiously upon a timetable approved or directed by the Aviation General Manager.

1.2.2 Reimbursements.

1.2.2.1 In the event the City requires Concessionaire to relocate all or part of the Premises or contract the size of the Premises, City agrees to reimburse Concessionaire for the reasonable unamortized construction costs for Concessionaire’s improvements within such portion of the Premises affected (based on the current book value of furniture, fixtures and improvements using the straight-line method of depreciation), and moving costs incurred due to relocation.

1.2.2.2 The amount of reimbursed costs allowed by City pursuant to this Section is at the City's sole determination. Proof of unamortized costs must be provided to and verified by the Aviation General Manager prior to reimbursement.

1.2.2.3 City will amortize the construction and moving costs over the remaining term of the Agreement. This amortization may result in rental credits to future rental payments. No cash reimbursements or credits for any outstanding indebtedness will be provided by City as reimbursement for allowable construction and/or moving costs.

1.2.2.4 Affect on Rental Payment Obligations in the Event of Relocation, Contraction or Expansion. Any such relocation, contraction or expansion required of Concessionaire under this Section may change Concessionaire's obligation to pay rent pursuant to the terms of the Agreement as follows:

1.2.2.4.1 Relocation. If the relocated Premises is deemed unsatisfactory by Concessionaire, then Concessionaire will have the right to terminate this Agreement with no additional obligation on the part of either Concessionaire or City; except that City agrees to reimburse Concessionaire for the reasonable unamortized construction costs for Concessionaire improvements within the Premises (based on the current book value of furniture, fixtures and improvements using the straight-line method of depreciation). Concessionaire must exercise its limited right to terminate under this Section by tendering written notice to City no later than thirty (30) days after Concessionaire receives notice from City of the required relocation, date of relocation and the location of the new Premises.

1.2.2.4.2 Contraction. If contraction of the Premises is required and the amount of contraction is greater than ten percent (10%) of the gross square footage of the Premises, then the Minimum Annual Guarantee will be decreased in proportion to the amount of the percentage contraction of the gross square footage of the Premises. Contractions of the Premises are deemed cumulative in the aggregate and are to be compared with the area of the Premises as originally let on the Commencement Date.

1.2.2.4.2.1 For example, assuming the Premises of this Agreement on the Commencement Date is one thousand (1,000) square feet. If, in contract year three (3), the City requires a contraction of the Premises to nine hundred and fifty (950) square feet, the MAG related to the Premises will not be adjusted because the contraction is less than ten percent (10%) of the original square footage. If, in contract year four (4), the City requires a contraction of an additional one hundred (100) square feet, the MAG related to the Premises will be reduced by fifteen percent (15%) because the resulting Premises will have contracted by fifteen percent (15%), in the aggregate, as compared to the original square footage.

1.2.2.4.3 Expansion. If expansion of the Premises is required and the amount of expansion is greater than ten percent (10%) of the gross square footage of the

Premises, then the Minimum Annual Guarantee will be increased in proportion to the amount of the percentage expansion of the gross square footage of the Premises. Expansions of the Premises are deemed cumulative in the aggregate and are to be compared with the area of the Premises as originally let on the Commencement Date.

1.2.2.4.3.1 For example, assuming the Premises of this Agreement on the Effective Date is one thousand (1,000) square feet. If, in contract year three (3), the City requires an expansion of the Premises to one thousand and fifty (1,050) square feet, the MAG related to the Premises will not be adjusted because the expansion is less than 10% of the original square footage. If, in contract year four (4), the City requires an expansion of an additional one hundred (100) square feet, the MAG related to the Premises will be increased by fifteen percent (15%) because the resulting Premises will have expanded by fifteen percent (15%), in the aggregate, as compared to the original square footage.

1.3. Concourse Closure. If a concourse in which any part of the Premises is located is permanently closed to passenger use, upon such closure this Agreement will terminate as to the portion of the Premises on that concourse and City will reimburse Concessionaire for the reasonable unamortized construction costs for Concessionaire's improvements within the Premises (based on the current book value of furniture, fixtures and improvements using the straight-line method of depreciation). Upon such reimbursement to Concessionaire, title to all such furniture, fixtures and improvements will be deemed conveyed to City and Concessionaire may be required to execute such further documents and instruments to evidence such conveyance. Proof of unamortized costs must be provided to and verified by the Aviation General Manager prior to reimbursement.

1.4. Support Space and Access. Throughout the Airport there are certain spaces that may be available to Concessionaire for lease as support space for offices, storage or other similar support uses. Concessionaire may request the use of a portion of such available additional space for purposes relating to the business conducted at the Premises. Such request must state the specific intended use of the space by the Concessionaire. If the Aviation General Manager determines that space is available for the purpose requested, such space may be provided to Concessionaire on a thirty (30) day revocable basis, at the then current rate charged by City for comparable space at the Airport. To memorialize the use of any such additional space, the parties will execute a permit outlining the terms of use. Such space may be unfinished and Concessionaire may be required, as a condition to using such space, to develop and improve the space at its sole cost and without rental credit according to the terms and conditions contained in the permit.

1.5. Deliveries.

1.5.1 Standard Delivery Policies. Regular deliveries to the Premises and other spaces at the Airport used by Concessionaire under a permit will be allowed during hours designated by the Aviation General Manager only and will be scheduled to minimize circulation conflicts with aircraft activity. Concessionaire is responsible for arranging for the delivery of all goods

required for the operation of the business at the Premises. The Aviation General Manager must approve deliveries and delivery schedules.

1.5.2 Exceptional Delivery Circumstances. City acknowledges that certain exceptional circumstances may require variations from the designated hours for regular deliveries. Such deliveries will require the express prior written approval of the Aviation General Manager. Concessionaire is prohibited from using the Automated Guide Way Transit System or any of its moving sidewalks.

1.5.3 Approval of Delivery Companies. Only companies approved by the Aviation General Manager with required training, such as Airport security class and drivers' training, insurance and security clearance will be authorized to make deliveries at the Airport.

1.5.4 City's Right to Use Third-Party Contractor.

1.5.4.1 The City may procure a third-party contractor to provide all receiving, handling and transfer/delivery services for all or any portion of the concessionaires operating at the Airport in accordance with policies the Aviation General Manger believes at his/her discretion to be in the best interests of the City.

1.5.4.2 If the City chooses this option, it may direct the Concessionaire to exclusively utilize the services of such third-party contractor for all receiving, handling and transfer/delivery services required by Concessionaire concerning the business it operates in the Premises. Concessionaire will be required to promptly pay all invoices provided to Concessionaire by such third-party contractor for receiving, handling and transfer/delivery services.

1.5.4.3 Charges paid by Concessionaire for these services will be developed by the selected contractor based upon actual costs and will be subject to annual audit by the Aviation General Manager. It is anticipated that a flat rate will be developed and approved by the Aviation General Manager for these services according to concession category, frequency of deliveries, volume of goods delivered, amount of waste handled, etc. These charges are subject to change. Concessionaire should anticipate a charge of up to fifty dollars (\$50.00) per square foot of the Premises and other spaces at the Airport used by Concessionaire under a Permit per year if a third-party contractor is used by the City and Concessionaire is directed to use such services.

2. TERM

2.1 Commencement Date. Pursuant to the City of Atlanta Code of Ordinances ("Code"), this Agreement will not become binding upon the City and the City will incur no liability under it until it has been duly executed by the Concessionaire, returned to the City with all required submittals, including insurance and bonding, executed by the Mayor, attested to by the

Municipal Clerk, approved by the City Attorney as to form and delivered to the Concessionaire, which shall be the effective date of this Agreement (“**Commencement Date**”).

2.2 Term. The term (“**Term**”) of this Agreement is seven (7) years from the Commencement Date at the end of which the Agreement will immediately and automatically terminate, unless renewed by the City of Atlanta pursuant to the Section entitled “Renewals.” All rights and obligations of the parties under this Agreement shall commence on the Commencement Date of the Agreement, except for, to the extent that City is unable to turn over possession of any part of the Premises to Concessionaire on the Commencement Date: (1.) the City’s obligation to deliver such portion of the Premises to Concessionaire; (2.) Concessionaire’s obligation to pay rent for such portion of the Premises; (3.) Concessionaire’s obligation to improve such portion of the Premises; and (4.) Concessionaire’s obligation to operate such portion of the Premises. These four (4) specific obligations shall all commence on the date the City makes such portion(s) of the Premises available to the Concessionaire.

2.3 Renewals. This Agreement is subject to a single three (3) year renewal at the sole option of the City. Notice of the City’s intention to renew the Agreement will be provided to Concessionaire within thirty (30) days of the end of the fifth (5th) anniversary of the Commencement Date. Renewal shall require the approval of the City Council and, if granted, will require the execution of an appropriate Renewal document.

2.4 Holding Over. If Concessionaire remains in possession of the Premises after the expiration of the Term, or any renewals, without written permission from the City, such holding over will not be deemed to operate as a renewal or extension of this Agreement, nor will it create a tenancy at will. Such holding over will create a month-to-month tenancy at a monthly rate equal to twice the monthly rate existing during the last month of the Term or the renewal period. During such month-to-month tenancy, the terms of this Agreement and any amendments hereto will continue to govern the relationship of the Parties.

3. USE

3.1 Non-Exclusive. Concessionaire will have the exclusive rights to provide sleep units on the Premises. However, the parties hereto agree that Concessionaire’s rights hereunder are not exclusive to the Airport.

3.2 Use of Premises. Concessionaire must use the Premises only in accordance with the terms and conditions contained herein, including but not limited to the Scope of Services delineated on the attached **Exhibit A**.

3.3 Pricing. Concessionaire must submit all of its proposed prices to the Aviation General Manager for review at least thirty (30) days prior to Concessionaire offering its services to the public. Concessionaire may not charge any prices that have not been approved in writing by the Aviation General Manager, once Concessionaire’s initial proposed prices are approved in

writing. Concessionaire must submit any proposed price changes to the Aviation General Manager for approval prior to implementation.

3.3.1 Street Plus Ten Percent (10%) Pricing. To determine Street Plus Ten Percent (10%) Prices, the Aviation General Manager may, at any time, conduct a Market Basket Pricing Survey. This survey shall consist of at least three (3) and up to six (6) Metropolitan Atlanta area same store or similar store locations where residents, travelers or visitors normally shop. Concessionaire's price on any specific item may not exceed the average price of those locations plus an additional ten percent (10%). The Aviation General Manager has the sole discretion to determine whether a price is reasonable.

3.3.2 Same Store Pricing. For any operations where Concessionaire currently operates the same or similar store in the Metropolitan Atlanta area, Concessionaire may not charge higher prices at the Airport for like or similar items. The Aviation General Manager has the right to survey prices at those stores and to use these prices for same or similar items as the primary basis for pricing in the Premises. If the same brand does not exist in Metropolitan Atlanta area, the Concessionaire shall charge Street Plus Ten Percent (10%) Price.

3.4 Continuous Operation of Premises. Concessionaire must operate the Premises without interruption, throughout the Term, including renewals, and provide all required Services to the extent permitted by law and provided that Concessionaire is lawfully entitled to possession of the Premises.

3.5 Hours of Operation. The Premises must be open for business three hundred sixty-five (365) days a year and at least two (2) hours before the first scheduled departing flight from Concourses T and F unless otherwise specified by the Aviation General Manager.

3.5.1 The Hours of Operation must be posted at each store location in a format approved by Aviation General Manger. Concessionaire may be required to keep its stores open for additional hours, including without limitation, up to twenty-four (24) hours a day, with very limited notice, under circumstances warranting such additional hours, as determined by the Aviation General Manager in his/her sole discretion.

3.6 Customer Service.

3.6.1 The Aviation General Manager shall have the right to make reasonable objections to the quality of articles sold, the character of the service rendered to the public, the prices charged and the appearance and condition of the Premises. Concessionaire agrees to promptly discontinue or remedy any objectionable practice. Concessionaire must also comply with the Concessions Compliance Standards established by the Aviation General Manager. A copy of the Concessions Compliance Standards, which are by this reference incorporated herein and are subject to amendment by City at any time, are available on the Airport's website (www.atlanta-airport.com) under Business Information.

3.6.2 Customer Service Quality Assurance and Mystery Shopper Standards. The City's mission is to operate the world's best airport by exceeding customer expectations. Well-defined and highly effective customer service programs are expected from all concessionaires. All Concessionaires will undergo scheduled and unscheduled monthly quality assurance audits in order to ensure optimal customer service performance. Basic standards of customer service include and are not limited to the following: promptly greeting the customer with a smile; making eye contact; being friendly and knowledgeable about the Airport; listening and responding politely; presenting a receipt and the correct change to the customer; and thanking the customer with a smile. In addition, the Concessionaire must understand and agree that its operation at the Airport necessitates the rendering of the following passenger services: making reasonable change; offering passengers directions and assistance; and accepting four (4) major credit cards (Visa, MasterCard, Discover, and American Express) as payment for any debit or credit transaction. Further, the Department of Aviation ("DOA") highly encourages and may ultimately require the implementation of expedited payment options, which may include but is not limited to MasterCard PayPass® technology as well as "Mystery Shopper Services" to ensure consistent performance.

3.6.2.1 The DOA requires Concessionaire and its staff to attend customer service training and all other such classes at the Concessionaire's expense, and/or as directed by the Aviation General Manager. All training as provided by the Concessionaire to its associates must comply with the Airport's compliance standards of customer service. Any costs associated with such additional training is the sole responsibility of Concessionaire.

3.6.2.2 A high quality and stable work force is key to providing outstanding customer service. Concessionaire is expected to maintain a positive work environment that encourages the development and growth of all employees. Concessionaire is expected to maintain favorable turnover rates compared to like businesses in the industry. Failure to do so may result in non-renewal or termination of this Agreement.

3.6.2.3 Concessionaire's staff must be aware of the time sensitive nature of Airport patrons. Concessionaire's employees shall be courteous and helpful to the public.

3.6.2.4 Concessionaire shall conduct its operation in a business-like manner. Concessionaire must carry a sufficient quantity of inventory to ensure that the Premises will be fully stocked and available to passengers at all times. All inventories must be top quality and displayed in an "opening day fresh" manner. In addition, a dress code should be strictly adhered to for all operating staff.

3.6.2.5 Concessionaire agrees to offer "take out" packaging to enable customers to more easily transport items through the Airport. Environmentally friendly and/or innovative packaging or transportation devices that facilitate travel are highly encouraged.

3.7 Marketing. In order to support and fuel the Airport's concessions program, Concessionaire shall pay a marketing fee equivalent to one-half of one percent (0.5%) of

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Concessionaire's Gross Revenues. The marketing fee will cover development of signage and other promotional materials and programs including, but not limited to, advertising, employee incentives and brochures/informational materials and technology to communicate the program offerings. The use and application of the marketing fees will be at the sole discretion of the Aviation General Manager. Concessionaire must support marketing programs by providing concept information, logos or initiating promotional materials as requested. Costs for any new materials will be supported by the collected marketing fees. Tenant will not be required to offer discounts outside of the established pricing policy.

3.8 Prohibition of Solicitation. Concessionaire is strictly prohibited from engaging in any activities outside the Premises within the Airport for the recruitment or solicitation of business. Concessionaire may not place or install any carts, kiosks, inline store, racks, or stands, or display merchandise or trade fixtures outside the boundaries of the Premises without the express written consent of the Aviation General Manager.

3.9 Representative of Concessionaire. Concessionaire must at all reasonable times retain in the Airport at least one (1) qualified representative, authorized to represent and act for it in matters pertaining to this Agreement and its operations at the Airport and must keep the Aviation General Manager informed in writing of the identity of each such person.

3.10 Investigation Reports. Concessionaire must, if required in writing by the Aviation General Manager, employ, at its own cost and expense, an investigative organization approved by the Aviation General Manager for the purpose of making investigations and observations and preparing a written report on the carrying out of any pricing policies, revenue control and operational techniques being used at the Premises. Concessionaire must cause such investigation and observation to be made at reasonable times and in the manner set forth in the Aviation General Manager's written directive to Concessionaire, and the investigator must deliver to the Aviation General Manager a true and complete written copy of any such report made to Concessionaire within the timeframe designated by the Aviation General Manager.

3.11 Ingress and Egress; Security Regulations. Concessionaire possesses the right of ingress to and egress from the Airport as may be necessary to fulfill its obligations under this Agreement, subject to Airport rules and regulations, and agrees that the exercise of such right must not impede or interfere unduly with the operation of the Airport by City, its tenants, contractors, airline passengers, the public or other authorized occupants. Concessionaire agrees that its rights under this Agreement are subject to all security regulations or restrictions that may exist or come into existence and be imposed by any governmental entity having jurisdiction over the Airport and security matters pertaining to it. Concessionaire will have no claim for relief of rent or other remedies as a result of the imposition of such security regulations, other than as specifically identified in the Section entitled "Reduction in Rent Due to Change in Enplanements," or as otherwise allowed herein.

3.12 Reservations by City.

3.12.1 City has the right, without any obligation to do so, at any reasonable time and as often as it considers necessary:

3.12.1.1 to inspect any portion of the Premises;

3.12.1.2 to enter the Premises and make ordinary repairs;

3.12.1.3 to take such action in the event of an emergency concerning the Premises as may be required for the protection of persons or property. In the event the need to take such emergency action is caused by acts or omissions of Concessionaire, Concessionaire will reimburse City for the City's costs associated with such emergency actions. Further, Concessionaire must assure City of emergency access to the Premises by providing emergency telephone numbers at which Concessionaire's representative(s) may be reached on a twenty-four (24)-hour basis.

3.13 Compliance with Laws and Regulations; Licenses and Permits.

3.13.1 Concessionaire must at all times during the Term and any renewal term comply with all the applicable federal and state laws, local ordinances, codes, rules and regulations respecting Concessionaire's use and occupation of the Premises issued by any governmental entity having jurisdiction over the Airport, including, but not limited the City and the Aviation General Manager.

3.13.2 Concessionaire shall be solely responsible for the cost of obtaining and maintaining all licenses and permits necessary to operate at the Airport and perform all required Services.

3.14 Prohibited Uses. The Premises may not be used except for the purposes specified in the Section entitled "Use." Concessionaire may not do, or cause or permit anything to be done in or about the Premises, or bring or keep anything on the Premises:

3.14.1 increasing in any way the rate of fire insurance or other insurance applicable to the Airport or its concourses, or any of its contents;

3.14.2 creating a nuisance;

3.14.3 in any way obstructing or interfering with the rights of others in the Airport, or injuring or annoying them;

3.14.4 allowing any sale by auction on the Premises;

3.14.5 committing any waste upon the Premises;

3.14.6 using or allowing the Premises to be used for any improper, immoral, unlawful or objectionable purpose;

3.14.7 placing any loads upon the floor, walls or ceiling which endanger the structure;

3.14.8 obstructing the sidewalk, passageways, stairways or escalators in front of, within or adjacent to the Airport, its concourses or other facilities; or

3.14.9 doing or permitting to be done anything in any way tending to injure the reputation of City or the appearance of the Airport, its concourses or other facilities.

3.15 Trash Removal. All waste matter must be stored and disposed of in a manner satisfactory to the Aviation General Manager, and Concessionaire agrees to arrange for the timely disposal of all waste material at its own expense. Concessionaire will be responsible for the removal of Concessionaire's trash from the Premises and transfer to designated waste receptacles. Concessionaire will be billed proportionately for all costs associated with trash removal from designated waste receptacles.

4. ASSIGNMENT OR SUBLETTING

4.1 Concessionaire may not assign, transfer or encumber its interest in this Agreement or any other right, privilege or license conferred by this Agreement, either in whole or in part, without the prior written consent of City. Furthermore, Concessionaire may not sublet or encumber the Premises, or any part of it, without the prior written consent of City. Any attempted assignment, transfer, encumbrance or sublease without the prior written consent of City is voidable at City's election.

4.2 If Concessionaire is a partnership or joint venture, a withdrawal or change (whether voluntary, involuntary or by operation of law) of the partner/joint venturer or partners/joint venturers owning more than fifty percent (50%) (as measured by interests in capital, profits or such other measurement as City may reasonably designate) of the partnership/joint venture, or the dissolution of the partnership/joint venture, will be deemed an assignment subject to this Section.

4.3 If Concessionaire is a corporation, any dissolution, merger, consolidation or other reorganization of Concessionaire, or the sale or other transfer of a controlling percentage of the capital stock of Concessionaire, or the sale of more than fifty percent (50%) of the value of the assets of Concessionaire, will be deemed an assignment subject to this Section. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing more than fifty percent (50%) of the total combined voting power of all classes of Concessionaire's capital stock issued, outstanding and entitled to vote for the election of directors. This paragraph will not apply to corporations the stock of which is publicly traded through an exchange or over the counter.

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5. RENTAL PAYMENTS

5.1 Rental Payments.

5.1.1 The total rental payment for the first year of this Agreement shall be the greater of Concessionaire's Minimum Annual Guarantee ("MAG") of NINETY THOUSAND DOLLARS (\$90,000) or TEN PERCENT (10%) of the Concessionaire's Gross Receipts ("Percentage Rent") over the first year. In each subsequent year during the Term of this Agreement (including any years during a renewal Term) the MAG for the applicable year will be adjusted to equal the higher of (1) the previous year's MAG; or (2) eighty-five percent (85%) of the total rent owed by Concessionaire during the previous year.

5.1.2 Rent to be paid each month under this Agreement will be the higher of one twelfth (1/12th) of the MAG or Percentage Rent (Percentage of Gross Receipts) as stated above.

5.1.3 The term "Gross Receipts" shall include and/or all monies paid or payable to Concessionaire or concessionaire's subconcessionaire for sales made or services rendered at or from the Airport, regardless of when, where, or whether the business transaction occurs on or off of the Airport property as well as any other revenues of any type arising out of or in connection with Concessionaire's operations at the Airport under this Agreement, provided, however, that any taxes imposed by law which are separately stated to and paid by the customer and directly payable to the taxing authority by Concessionaire shall be excluded.

5.1.4 Rent will be paid monthly in advance, beginning on the Commencement Date. Concessionaire will pay one-twelfth (1/12th) of the MAG on the first day of each month. By the tenth (10th) day of each month, Concessionaire will submit a report, in a form provided by DOA, of actual Gross Receipts received during the previous month along with the calculation of Percentage Rent for such previous month and if greater than the previously paid MAG a check representing the additional rent owed to it as a result of such Percentage Rent calculation.

5.1.4.1 Annual Rent for each contract year will be trued up in the first quarter of the following contract year in conjunction with the annual report due from Concessionaire to City under Section 5.2.4 of this Agreement. Any overpayments made to the City will be reimbursed in the following year through rent credits.

5.1.5 Minimum Annual Guarantee rental paid after the tenth (10th) of the month and Percentage Rent and marketing fee paid after the twenty-fifth (25th) day of the following month will be deemed a late payment and shall incur interest as additional rent at the rate of one-tenth (1/10th) of one percent (0.1%) compounded daily from the date due until the date received by the City.

5.1.6 The Marketing Fee is due by the twentieth (20th) day of the each month and shall be paid to the City separately from any payment of rent.

5.1.7 Method of Payment.

5.1.7.1 Rental for any partial month shall be prorated, if applicable. Rental payments shall be made in lawful money of the United States, free from all claims, demands, set-offs abatement or counterclaims of any kind against City. All rental payments shall be payable at:

City of Atlanta
 Department of Aviation
 P.O. Box 920500
 Atlanta, Georgia 30392

5.1.7.2 City may require payment at such other place as the Aviation General Manager may from time to time designate to Concessionaire in writing.

5.1.7.3 No payment by Concessionaire or receipt by City of a lesser amount than the correct rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction. City may accept such check or payment without prejudice to City's right to recover the balance or to pursue any other remedy in this Agreement or otherwise provided by applicable law or equity.

5.2 Books and Records.

5.2.1 Concessionaire must maintain throughout the Term of this Agreement and for a three (3) year period after the Term, including renewals, or, in the event of a claim by City, until such claim of City for payments hereunder shall have been fully ascertained, fixed and paid, separate and accurate, daily records of Gross Revenues from all activity conducted under this Agreement in accordance with generally accepted accounting principles, showing in detail all business on or transacted in, about, from or pertaining to the Premises, and Concessionaire must enter all receipts arising from such business in regular books of account, and all entries in any such records shall be made at or about the time the transactions occur.

5.2.2 In addition, Concessionaire shall maintain weekly, monthly and annual reports of Gross Revenues and transactions derived from its operations under this Agreement, using a form and method as directed by the Aviation General Manager. Concessionaire, throughout the Term of this Agreement, including renewals, shall employ such forms and methods. Upon the Aviation General Manager's written request, Concessionaire must make available immediately at the Airport, for inspection and copying by the Aviation General Manager, any and all books, records and accounts pertaining to its operations or performance of its obligations under this Agreement. The intent and purpose of the provisions of this Section are that Concessionaire must keep and maintain records which will enable City to ascertain, determine and audit, if so desired by City, clearly and accurately, Concessionaire's obligations under this Agreement and the share of Gross Revenues received by City, and that the form and

method of Concessionaire's reporting of Gross Revenue will be adequate to provide a control and test check of all Gross Revenue derived by Concessionaire under this Agreement.

5.2.3 Should any examination, inspection or audit of Concessionaire's books and records by City disclose an underpayment by Concessionaire in excess of 2% of the total annual consideration due, Concessionaire must promptly pay City the amount of such underpayment, plus interest thereon at the rate of one and one-half percent (1.5%) per month, from the date due until the date collected, and shall reimburse City for all costs incurred in the conduct of such examination, inspection or audit. If City deems it necessary to utilize the services of legal counsel in connection with collecting the reimbursement for such examination, inspection or audit, then Concessionaire must reimburse City for reasonable attorneys' fees and litigation expenses as part of the costs incurred.

5.2.4 Not later than 90 days after each annual anniversary of the Commencement Date, Concessionaire must furnish to the Aviation General Manager an unqualified report, certified by a Certified Public Accountant of the Gross Revenues. Concessionaire must also furnish the Aviation General Manager with such other financial or statistical reports as the Aviation General Manager from time to time may request. Concessionaire's obligation under this Section shall survive termination, cancellation or expiration of this Agreement.

5.2.5 Upon request by the Aviation General Manager, Concessionaire must furnish to City copies of its quarterly State of Georgia sales and use tax returns covering the Premises as well as Concessionaire's Georgia and federal income tax returns at the time of filing, and any amendments. All copies of such returns must be certified as exact copies of the original documents by a Certified Public Accountant. Tenants shall also promptly notify the Aviation General Manager of and furnish to City copies of any audit reports covering the Premises conducted by the Department of Revenue of the State of Georgia or the Internal Revenue Service. All of the books, records and accounts required by this Section to be maintained by Concessionaire, or true and complete copies of them, shall be maintained by Concessionaire in the Metropolitan Atlanta area.

5.3 Revenue Control.

5.3.1 All business transactions, which occur in the Premises, must be completed by an approved Point of Sale ("POS") system (e.g., transaction register) and a receipt must be offered to each customer. However, during the Term of the Agreement, including any renewals, the City reserves the right, at its expense, to purchase and/or implement a computerized POS system and to further modify the system from time to time. Concessionaire must cooperate fully in the development and implementation of such a system. Upon implementation, the Aviation General Manager may dictate a new method of collection and payment by providing written notice to Concessionaire. Concessionaire must cooperate with the City in implementing such modified collection procedures. If the new POS system requires replacement of existing cash registers within the Premises, the City will reimburse Concessionaire for the unamortized cost thereof (based on the then current book value, using the straight-line method of

depreciation) less the salvage value of such cash registers. The City will determine the type of registers to be used in the newly implemented POS system.

5.3.2 In order to facilitate implementation of the POS system, all POS terminals used in the operation of businesses within the Premises must have, at a minimum, the features outlined below:

5.3.2.1 A minimum of sixty (60) segregated sales categories;

5.3.2.2 The input device may either be a keyboard, scanner, touch screen, other approved input technology or any combination thereof;

5.3.2.3 The patron fee display shall be of sufficient size and legibility to be readily observed by the patron during the processing of the transaction;

5.3.2.4 The POS register, terminal or POS control server(s) shall be capable of secure, encrypted data transmission using TCP/IP or RS-232 communications protocol; and

5.3.2.5 The register or data collection device shall have a secure transaction audit tape or a detailed digital ASCII transaction journal log file stored on a USB (flash) drive or other suitable media.

5.3.3 Concessionaire must also comply with the most current Payment Card Industry Data Security Standard (PCI-DSS) requirements as detailed at https://www.pcisecuritystandards.org/security_standards/pci_dss.shtml

6. TAXES AND LIENS. Concessionaire is liable for all taxes levied or assessed against any interest of Concessionaire in the Premises and any improvements, personal property, furniture or fixtures or equipment placed by Concessionaire in the Premises. Concessionaire agrees not to permit or suffer any liens to be imposed upon the Premises, the Airport or any other part of them as a result of its activities without promptly discharging them, provided, however, that Concessionaire may, if Concessionaire so desires, contest the legality of any such liens. In the event of a contest, Concessionaire must provide a bond in an amount and form acceptable to City in order to clear the record of any such liens.

6.1 Notwithstanding the foregoing, the Aviation General Manager may authorize Concessionaire to pass through to the customer certain possessory interest taxes payable by Concessionaire directly to various taxing authorities, provided that such pass-through is reflected as a separate line itemization on each invoice or receipt issued to the customer. Concessionaire must follow the following guidelines in implementing the collection of such taxes at point of sale.

6.1.1 In year one, to determine the possessory interest tax (% of sales receipts) to collect at each transaction in the upcoming 12-month period, divide the tax assessment received by the taxing authority by the projected annual sales receipts for the same time period

Tax assessment /projected annual sales receipts = possessory tax.

6.1.1.1 The calculation along with tax assessment invoices must be submitted to, and approved by, the Department of Aviation prior to implementation of collection of taxes at point of sale related to these taxes.

6.1.2 Apply the calculated possessory tax to all sale receipts. The collection of this tax may only be used to pay possessory interest tax obligations only.

6.1.3 Tax collection in subsequent years:

6.1.3.1 In the situation where one year's collections exceed the amount of possessory interest taxes due ("collection surplus"), the remaining balance must be used as a credit against the following year's taxes. Therefore Concessionaire must deduct the previous year's collection surplus from the following tax assessment received before dividing it by the applicable projected annual sales.

(Tax assessment –collection surplus) / projected annual sales receipts = applicable possessory tax for the upcoming year

6.1.3.2 In the situation where one year's collections fail to raise the amount of possessory interest taxes due ("collection shortfall"), the collection must be used as a debit against the following year's taxes. Therefore Concessionaire must add the previous year's collection shortfall to the current year's tax assessment received before dividing it by the applicable projected sales.

(Tax assessment + collection shortfall) / projected annual sales receipts = applicable possessory tax for the upcoming year

6.1.3.3 Reconciliation of prior year taxes collected along with calculation of new tax rate and supporting tax assessment notices must be submitted to, and approved by, the Department of Aviation prior to any adjustment being made to the tax rate at the point of sale. Such reconciliation must occur no later than August 1st annually.

6.2 Concessionaire and all of its subconcessionaires shall complete and execute Georgia Department of Revenue ("GDOR") Form RD-1062, which shall be attached to this Concessions Agreement as **Exhibit C** and incorporated herein, authorizing the GDOR to disclose to the City information regarding delinquent payment or nonpayment of State Income and Sales and Use taxes related to the Concessionaire's operations under this Agreement.

7. IMPROVEMENTS

7.1 Approval of Conceptual Design.

7.1.1 The initial layout and design of all Concessionaire Improvements to be made or installed within the Premises and any subsequent refurbishments shall conform to the Department of Aviation Airport Design Criteria ("**Airport Design Criteria**") which shall be made available to Concessionaire upon the Airport's website (www.atlanta-airport.com) and shall be subject to amendment from time to time by the Aviation General Manager.

7.1.2 Prior to the commencement of initial construction, or subsequent refurbishment of, or other work with respect to Concessionaire Improvements, Concessionaire must submit detailed plans and specifications to the Aviation General Manager for approval. Concessionaire must include with its plans and specifications schematic renderings of the Premises, materials, a color board or boards and a detailed layout of the overall merchandising plan. Approval by City will extend to and include architectural and aesthetic matters and City reserves the right to reject any designs submitted and to require Concessionaire to resubmit designs and layout proposals until they meet City's approval. The Commencement Date shall not be extended if City elects to reject any designs or layout Proposals submitted. If City and Concessionaire fail to agree on plans and specifications for Concessionaire Improvements within thirty (30) days after the Commencement Date, City may terminate this Agreement.

7.1.3 In the event of disapproval by City of any portion of the plans and specifications, Concessionaire will promptly submit necessary modifications and revisions. Concessionaire will make no changes or alterations in the plans or specifications after approval, and no structural alterations or improvements will be made to or upon the Premises without the prior written approval of the Aviation General Manager. City agrees to act promptly upon such plans and specifications and upon requests for approval of changes or alterations in the plans or specifications. One copy of plans and specifications for all Concessionaire Improvements or subsequent changes or alterations will, within 15 days after approval by the Aviation General Manager, be signed by Concessionaire and delivered to the City.

7.2 Minimum Investment; Base Building Improvements; Reinvestment.

7.2.1 Minimum Investment.

7.2.1.1 Within the Premises defined by demising partitions and/or other boundaries described in the Agreement, Concessionaire shall perform all demolition required and shall at its own expense construct all improvements and install all trade fixtures according to the procedures and standards specified in the Airport Design Criteria.

7.2.1.2 Within thirty (30) days of receiving a certificate of occupancy, Concessionaire is required to submit to the Aviation General Manager as-built drawings.

7.2.1.3 Within one hundred twenty (120) days of the Commencement Date, or otherwise pursuant to a transition plan approved by the Aviation General Manager, Concessionaire shall decorate and finish to approved standards the interior and exterior of the Premises. The design and theme must be submitted to the Aviation General Manager, and he/she must approve them prior to implementation. The public visible area of the Premises shall be improved at a Minimum Investment of three hundred and fifty dollars (\$350.00) per square foot. In addition, Concessionaire is responsible for demolition necessary to accommodate all improvements. The three hundred and fifty dollar (\$350.00) Minimum Investment calculation shall include all construction costs, mechanical, electrical and plumbing (whether in areas visible to the public or not), finishes, furnishings, furniture, casework, or other fixtures, signs, store fronts, as well as all architectural and engineering fees.

7.2.1.4 Within thirty (30) days of receiving a certificate of occupancy, Concessionaire shall provide the City a statement certified by its architect, setting forth the total construction costs, with appropriate detail showing the costs and useful lives of elements of decoration, furnishings or fixtures. Concessionaire shall make available to Aviation General Manager paid invoices for labor and materials covering all construction and trade fixtures, including furniture, fixtures and architectural and engineering fees. The three hundred and fifty dollar (\$350.00) Minimum Investment may not include financial costs, interest, inventory, pre-opening expenses or intra-company charges related to construction. If the actual Investment cost incurred by the Concessionaire is less than the Minimum Investment required, in addition to any other remedy available to the City, Concessionaire will pay the difference to City within sixty (60) days after receipt of Certificate of Occupancy. If the City disputes the amount of investment claimed by Concessionaire, the City may, at its expense, hire an independent appraiser to determine the cost of the investment. If the independent appraiser determines that the investment is less than the minimum required, the difference, as well as City's costs of hiring such independent appraiser, will be paid to the City by Concessionaire within sixty (60) days of the appraiser's determination.

7.2.1.5 Notwithstanding the work to be performed pursuant to this Section Concessionaire shall begin paying rent on the Commencement Date, and Concessionaire must document any and all costs of Concessionaire Improvements made to the Premises subsequent to the Commencement Date. The documentation must be in a form and detail satisfactory to the Aviation General Manager, and must be submitted for review and approval within thirty (30) calendar days following completion of the work, for the purpose of establishing the unamortized costs of improvements to be reimbursed to Concessionaire in the event of termination for convenience by the City.

7.2.2 Base Building Improvements. Concessionaire shall pay all costs for required modifications and/or construction of certain base building conditions necessary to bring the base building concession spaces to a condition ready to receive Concessionaire Space Improvements. Improvements shall include but not be limited to the following: demolition of existing storefronts and finishes and removal of debris, construction or relocation of demising partitions, construction of servicing/delivery corridors or other support spaces, and extension

or modification of building systems or other work. In locations in which construction of service corridors will be necessary to improve operations at the Airport, the required corridors shall be constructed by the Concessionaire.

7.2.3 Minimum Reinvestment. As provided in the Section entitled "Renewals," this Agreement shall be subject to a single three (3) year renewal at the option of the City. If the renewal option is exercised, the City will notify the Concessionaire of its intention to renew within thirty (30) days of the end of the fifth (5th) anniversary of the Commencement Date. In such case, Concessionaire will be required to refurbish the public areas of the Premises at a minimum cost of two hundred dollars (\$200.00) per square foot within one hundred and twenty (120) days of the execution of the Renewal or within such longer time period as may be approved by the Aviation General Manager. In the event this Agreement is not renewed, Concessionaire will be required to refurbish the public areas of their Premises at a minimum investment of one hundred dollars (\$100.00) per square foot by the earlier occurring of: (1.) One hundred and fifty (150) days after the fifth (5th) anniversary of the Commencement Date; or (2.) One hundred and twenty (120) days from the date the City notifies Concessionaire in writing that the Agreement will not be renewed. If the City disputes the amount of reinvestment claimed by Concessionaire, the City may, at its expense, hire an independent appraiser to determine the cost of the reinvestment. If the independent appraiser determines that the reinvestment is less than the minimum required, the difference, as well as City's costs of hiring such independent appraiser, will be paid to the City by Concessionaire within sixty (60) days of the appraiser's determination.

7.2.4 Liquidated Damages. Failure by Concessionaire to complete the construction in the timeframe as outlined in section 7.2.1.3 as required during the term and the renewal shall result in the payment of liquidated damages of Five Thousand Dollars (\$5,000.00) per day, which shall be in addition to the payment of the required Rent and which the parties acknowledge is a reasonable estimate of the damage incurred by the City for such delay. Failure by the Concessionaire to complete the construction in the timeframe as outlined in section 7.2.3 as required during the renewal shall result in the payment of liquidated damages of Three Thousand Dollars (\$3,000.00) per location per day, which shall be in addition to the payment of the required Rent and which the parties acknowledge is a reasonable estimate of the damage incurred by the City for such delay.

7.3 Construction of Concessionaire Improvements.

7.3.1 Concessionaire must, at its sole cost and expense, design, erect, construct and install all of the following ("**Concessionaire Improvements**"): fixtures, furnishings, carpeting, decorations, finishings, equipment, counters, and all other improvements for the operation of business within the Premises pursuant to this Agreement.

7.3.2 Concessionaire must perform all demolition required and construct and install all Concessionaire Improvements at its own expense and shall hire contractors that are acceptable to City. Prior to the commencement of any construction work, Concessionaire must provide to

City a fixed price contract or contracts for all work to be performed within the Premises, which contract(s) shall be insured by, and Concessionaire must provide to City, a payment and performance bond in an amount equal to one hundred percent (100%) of the total contract value of such contract. Concessionaire must also comply with all other requirements of **Exhibit D**.

7.3.3 City's sole responsibility with regard to improvements within the Premises shall be to deliver the Premises to Concessionaire in the condition set forth in the Airport Design Criteria. Concessionaire may not undertake any work within or about the Premises unless City, pursuant to the Airport Design Criteria, approves such work. Prior to the commencement of any work, Concessionaire must confirm to the Aviation General Manager in writing that: (1) Concessionaire accepts the Premises for the intended uses; and (2) the Premises are in the condition set forth in the Airport Design Criteria.

7.3.4 All aspects of Concourse F concessions build-out must:

7.3.4.1 comply with the Gold standard in Energy and Environmental Design (LEED) Certification; and

7.3.4.2 comply with **Appendix D** and **Appendix E** attached hereto and incorporated herein.

7.4 Utilities.

7.4.1 Utility Connections. The City will provide the source for certain utility connections for the concession spaces as specified in the Airport Design Criteria. Generally, electrical service will be provided to each concession's rear or side demising wall and stubbed off. Connection and distribution throughout the concession space shall be at the Concessionaire's expense. All utilities to the concession space will be separately metered.

7.4.2 Concessionaire must pay the whole cost for all utility services as invoiced to Concessionaire by the Airport or its designee and for such other special services which it may require in the Premises, and Concessionaire expressly waives the right to contest any utility rates; provided that Concessionaire will not be charged for the supply of heat, ventilation, and air conditioning for the Premises, except as may be otherwise required as referenced below.

7.4.3 Heating, Ventilation and Air Conditioning ("HVAC"). The City will provide the base system for HVAC. However, Concessionaire will be required to install separate equipment for HVAC requirements specifically related to Concessionaire's operations. In such event, Concessionaire will pay for utility usage in the concession spaces for HVAC requirements. Concessionaire will pay for all utilities without exception necessary in the operation of its business including telephone, electricity, water, sewage, gas and other fuels. All charges including but not limited to deposits and all service charges for utility services metered directly

to the concession space must be paid by Concessionaire, regardless of whether such utility services are furnished by the City or other utility service corporations.

7.5 Waiver of Damages. Concessionaire expressly waives all claims for damages arising out of or resulting from failures or interruptions of utility services furnished by City including, but not limited to, electricity, water, plumbing, sewage, telephone, communications, heat, ventilation, air conditioning, or for the failure or interruption of any public or passenger conveniences.

7.6 Maintenance and Repair. Concessionaire agrees, at its own expense, to keep the Premises and all Concessionaire Improvements in good repair and in a clean, neat, safe and sanitary condition and in good order at all times. If it becomes reasonably necessary during the Term of this Agreement, as determined by the Aviation General Manager, Concessionaire will, at its own expense, redecorate and paint fixtures and the interior of the Premises and improvements, and replace fixtures, worn carpeting, curtains, blinds, drapes, or other furnishings. Additionally, Concessionaire shall pay its pro rata share of Airport Operations and Maintenance (“O&M”) costs to be billed monthly by the City or its designee.

7.6.1 Janitorial Service. Concessionaire will provide sufficient janitorial services to ensure that the Premises is at all times maintained in a clean attractive and sanitary manner including, but not limited to, equipment, utensils, fixtures, grease traps, service counters and display units.

7.6.2 Pest Control. At any time during the Term of this Agreement, the Aviation General Manager may require Concessionaire to use the pest-exterminating contractor engaged by the Airport to implement a comprehensive, ongoing pest control program. In such case, Concessionaire shall be required to provide the City with reports indicating compliance with pest control standards, in such form as the Aviation General Manager may dictate from time to time and shall be required to maintain manifest reports on file at each store, at all times.

7.7 Advertising. Concessionaire may, at its own expense, install and operate necessary and appropriate identification signs on the Premises, subject to the approval of the Aviation General Manager as to the number, size, height, location, color and the general type and design. Such approval shall be subject to revocation by the Aviation General Manager at any time. Without express written consent of the Aviation General Manager, Concessionaire may not display any advertising, promotional or informational pamphlets, circulars, brochures or similar materials.

8. LIABILITY AND INDEMNITY

8.1 City's Liabilities. City will not be liable or responsible to Concessionaire for any loss, damage or expense that Concessionaire may sustain or incur if either the quantity or character of any services to be provided by City is changed or is no longer available or is no longer suitable for Concessionaire's requirements. City will not be liable or responsible to

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Concessionaire for any loss, damage or expense arising out of, resulting from, relating to or concerning, directly or indirectly, acts of terrorism, including, but not limited to, any loss, damage or expense sustained or incurred by Concessionaire as a result of:

8.1.1 a change in the Airport's or Concessionaire's business resulting from such terrorist acts;

8.1.2 the enactment of laws responding to or concerning such terrorist acts; or

8.1.3 any other detrimental effect upon Concessionaire or its business resulting from such terrorist acts.

8.2 Indemnity and Hold Harmless. Concessionaire agrees to defend, indemnify and hold harmless City, including, but not limited to, its officers, agents, officials and employees (collectively, "**Indemnified Parties**") from and against:

8.2.1 any liability for injuries to or deaths of persons or damage to property arising from Concessionaire's activities under this Agreement or in or about the Premises; and

8.2.2 any loss, expense, demand, suit or claim against the Indemnified Parties sustained or alleged to have been sustained arising out of or relating to the negligence or willful misconduct of Concessionaire or any other individual or entity under Concessionaire's control (contractual or otherwise) and their officers, agents or employees; and

8.2.3 any loss, expense, demand, suit or claim against the Indemnified Parties sustained or alleged to have been sustained arising out of or relating to any liens or charges of any kind that may at any time be established against the Premises or this Agreement, or any part of it, as a consequence of any act or omission of Concessionaire or as a consequence of the existence of Concessionaire's interest under this Agreement; and

8.2.4 any loss, expense, demand, suit or claim against the Indemnified Parties sustained or alleged to have been sustained arising out of or relating to Concessionaire's violation or alleged violation of the Section entitled "Hazardous Materials." This indemnification obligation includes, but is not limited to fines assessed against Concessionaire, City, or others for whom City may be responsible, diminution in value of the Airport, damages for the loss of use of rentable or usable space or of any amenity of the Airport, damages arising from any adverse impact on marketing of space in the Airport, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees which arise during or after the Term of this Agreement, including any renewals, as a result of such violation. This indemnification of City by Concessionaire also includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal, or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Airport which results from such a violation; and

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8.2.5 any loss, claim, damage, action or suit alleging that any good and/or service sold by Concessionaire infringes upon one or more United States Patents, copyrights or trademarks owned by anyone other than Concessionaire, or violates any provision of the Lanham Act.

8.3 Indemnity Not Limited by Applicable Insurance. Concessionaire further agrees that this agreement to indemnify and hold harmless the Indemnified Parties will not be limited to the limits or terms of the liability insurance, if any, required under this Agreement.

8.4 Survival. This Section entitled "Indemnity and Hold Harmless" shall survive any cancellation, termination or expiration of this Agreement.

9. INSURANCE AND BONDING. Concessionaire must comply with all insurance and bonding requirements set forth in **Exhibit D**.

10. DAMAGE OR DESTRUCTION

10.1 Partial Destruction of the Premises.

10.1.1 Insured Damage. If the Premises is damaged by any casualty which is insurable and insured under an insurance policy of the type required to be maintained by Concessionaire pursuant to this Agreement, regardless of whether the Premises is tenantable or practically usable for the purpose for which it was formerly used, then Concessionaire must repair such damage as soon as reasonably possible and this Agreement will continue in full force and effect.

10.1.2 Uninsured Damage. If the Premises is damaged by any casualty not insurable under an insurance policy of the type required to be maintained pursuant to this Agreement, and such casualty is not caused by an act or omission of Concessionaire, its agents, servants or employees, then City's options are, either:

10.1.2.1 repair such damage as soon as reasonably possible at City's expense, in which event this Agreement will continue in full force and effect; or

10.1.2.2 give written notice to Concessionaire within thirty (30) days after the date of occurrence of such damage of City's intention to terminate this Agreement effective as of the date of the occurrence of the damage. If City elects to terminate this Agreement, Concessionaire will have the right, within ten (10) days of the date of the City's notice to notify, City in writing of Concessionaire's intention to repair such damage. If Concessionaire fails to repair the damage to City's satisfaction within a reasonable period of time, this Agreement will automatically terminate effective as of the date of the occurrence of such damage.

10.1.3 In no event shall City be required to repair any injury or damage of fire or other cause, or to make any restoration or replacement of any paneling, decorations, office fixtures, partitions, railings, ceilings, floor covering, equipment, machinery or fixtures or any other

improvements or property installed in the Premises by Concessionaire or at the direct or indirect expense of Concessionaire. Concessionaire must restore or replace the same in the event of damage provided that this Agreement is not terminated pursuant to this Section.

10.1.4 If the Premises is damaged by any casualty not insurable under an insurance policy of the type required to be maintained pursuant to this Agreement, and such casualty is caused by an act or omission of Concessionaire, its agents, servants or employees, then Concessionaire must repair the damage to the City's satisfaction within a reasonable period of time, in which event this Agreement will continue in full force and effect.

10.2 Total Destruction of Premises. If the Premises is totally destroyed during the Term of this Agreement, including any renewals, from any cause whether or not covered by the insurance required under this Agreement (including any destruction required by any authorized public authority), this Agreement will automatically terminate, effective as of the date of such total destruction.

10.3 Partial Destruction of Concourse. If fifty percent (50%) or more of any concourse on which the Premises is located is damaged or destroyed by an insured risk, or if fifteen percent (15%) or more of any concourse on which the Premises are located is damaged or destroyed by an uninsured risk, notwithstanding that the Premises may be unaffected, City may, but is not obligated to, terminate this Agreement within ninety (90) days from the date of occurrence of such damage or destruction. If the City elects to terminate this Agreement within such ninety (90) day period, it will notify Concessionaire in writing and the termination will be effective upon the date of such notice. After the Agreement is terminated, Concessionaire must surrender the Premises to City within ten (10) days.

10.4 Damage During Last Year of Term or Renewal Period. If during the last year of the Term, including any renewal term, the Premises are partially destroyed or damaged and are not covered under an insurance policy required to be maintained pursuant to this Agreement, City may terminate this Agreement, effective as of the date of occurrence of such damage, by giving written notice to Concessionaire within thirty (30) days after the date of occurrence of such damage. If City elects to terminate this Agreement, Concessionaire will have the right, within ten (10) days of the date of the City notice, to notify City in writing of Concessionaire's intention to repair such damage at Concessionaire's expense, without reimbursement from City, in which event this Agreement shall continue in full force and effect and Concessionaire must proceed to make such repairs as soon as reasonably possible.

10.5 Reduction of Rent; Concessionaire's Remedies.

10.5.1 If the Premises are partially destroyed or damaged physically and the City is obligated to repair the Premises pursuant to this Agreement, the rent attributable to such partially destroyed or damaged Premises and payable for the period during which such damage and repair continues will be reduced in proportion to the extent to which Concessionaire's use of the Premises is impaired, calculated on a square foot basis, in accordance with the discretion

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and determinations of the Aviation General Manager. For example, if one-half (1/2) of the Premises is unusable by Concessionaire as a result of such physical damage or destruction, then the rent payable for each month during which it exists and is being repaired will be reduced by one-half (1/2). Except for a reduction rent (if any), Concessionaire shall have no claim against the City for any damage suffered by reason of any such damage, destruction or repair.

10.5.2 If the City shall be obligated to repair the Premises under this Section and shall not commence such repair or restoration within forty-five (45) days after such obligation shall accrue, Concessionaire at Concessionaire's option may cancel and terminate this Agreement by written notice to the City at any time prior to the commencement of such repair. In such event this Agreement shall terminate as of the date of such notice.

11. Reduction in Rent Due to Changes in Enplanements.

11.1 Definitions: These definitions apply to this Section entitled "**Reduction in Rent Due to Changes in Enplanements**":

11.1.1 "Affected Concourse" means a Concourse in which Concessionaire operates Concessions under the Agreement and is limited to Concourses E and F, and the Atrium, if applicable.

11.1.2 "Atrium" means the facility at the Airport located between the North and South Terminals at which the Airport's Main Security Checkpoint is located.

11.1.3 "Enplaned Passenger" means and includes each passenger boarding an airplane from an Affected Concourse, whether such passenger has paid a fare for his/her ticket, is flying on frequent flyer miles, boards under a buddy pass, or otherwise.

11.1.4 "Year" means a three hundred and sixty-five (365) day period beginning on the effective date of the Agreement. For example, a Year under an Agreement effectively dated January 1, 2010, will be the period from January 1, 2010, through December 31, 2010, and a Year under an Agreement effectively dated August 1, 2010, will be the period from August 1, 2010, through July 31, 2011.

11.2 Reduction in Enplaned Passengers; Reduction of MAG.

11.2.1 Rules Applicable to Concessions Located in Concourses.

11.2.1.1 If the total number of Enplaned Passengers departing an Affected Concourse, as documented by the City's Department of Aviation in monthly reports received from Airlines departing flights from such Affected Concourse, for any whole month in the second or any subsequent Year during the term of the Agreement decreases by more than twenty-five percent (25%) from the same month of the previous Year, then MAG rent payments due under this Agreement will be reduced (the "Reduction") in the following manner:

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11.2.1.1.1 MAG Monthly Installment: the monthly installment of the MAG due for the following month (and for that month only) will be reduced by the month over month percentage decrease in the number of Enplaned Passengers for the month experiencing the decrease; and

11.2.1.1.2 Agreement Year MAG: the Minimum Annual Guarantee for the Agreement Year in which the reduced monthly payment amount falls will also be reduced by the dollar amount by which the monthly installment of the MAG was reduced. The same test and calculation shall apply each month thereafter until the first month that the reduction in Year over Year monthly enplanements is less than twenty-five percent (25%) at which time the adjusted MAG in effect prior to the adjustment provided for herein shall be reinstated.

11.3 Calculation Examples. For example, if the number of Enplaned Passengers for the month of July 2011 declined by thirty percent (30%) over the number of Enplaned Passengers for the month of July 2010, then:

11.3.1 the MAG amount payable for the month of August 2011 will reduce by thirty percent (30%);

11.3.2 the MAG for the Agreement Year in which August 2011 falls will decrease by the dollar amount of the reduction.

11.4 Submission of Claim for Reduction; Reduction Only Available if Concessionaire is Paying MAG; Reduction Not Available if Concessionaire is Paying Percentage Rent. Claims for a Reduction may only be submitted quarterly and may only include entire monthly periods. Reduction in Enplaned Passengers for partial monthly periods will not qualify for a Reduction. If, during any month in which Enplaned Passengers are reduced, Concessionaire is required to pay percentage rent, a claim for a Reduction will not be available. A claim for a Reduction must be submitted by the last day of the month following the last month in the quarter for which a Reduction is sought. For example, if there is a reduction in the number of Enplaned Passengers for an Affected Concourse or the Airport as a whole (depending on the location of the affected Premises) beginning on August 15, 2014, and continuing through December 31, 4 a claim for a Reduction may only be made for the months of September, October, November and December 2014, and must be submitted by January 31, 2015.

11.5 Certification of Claim for a Reduction. If Concessionaire desires to submit a claim for a Reduction, it must submit on forms developed by DOA.

12. DEFAULT BY TENANT

12.1 Events of Default. Concessionaire will be in default under this Agreement if:

12.1.1 Concessionaire fails to pay rent or any other payment required under this Agreement when due to City, and that failure continues for a period of thirty (30) days after such rent or other payment is due whether or not the City has invoiced or provided Concessionaire with notice of any amount due or overdue; or

12.1.2 Concessionaire does any of the following:

12.1.2.1 becomes insolvent, or seeks the benefit of any present or future insolvency statute.

12.1.2.2 makes a general assignment for the benefit of creditors.

12.1.2.3 files a voluntary petition in bankruptcy.

12.1.2.4 files a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or of any other State.

12.1.2.5 consents to the appointment of a receiver, trustee, or liquidator of any of its property.

12.1.2.6 files a petition under any part of the federal bankruptcy laws, or an action under any present or future insolvency law or statute, is involuntarily filed against Concessionaire and not dismissed within sixty (60) days after the filing.

12.1.2.7 transfers its interest under this Agreement, without the prior written approval of City, by reason of death, operation of law, assignment, sublease agreement or otherwise, to any other person, firm or corporation.

12.1.2.8 abandons, deserts or vacates the Premises, including, but not limited to, ceasing to provide its services at the Premises for thirty (30) days or more.

12.1.2.9 files any lien against the Premises because of any act or omission of Concessionaire, and is not discharged by Concessionaire by payment, bond or otherwise within twenty (20) days after receipt of notice of the lien by Concessionaire.

12.1.2.10 fails to comply with the requirements set forth in **Exhibit D**; Insurance and Bonding Requirements.

12.1.2.11 fails to keep, perform or observe any term, covenant or condition of this Agreement.

12.1.2.12 uses or gives its permission to any person to use any portion of Premises for any illegal purpose or purpose in violation of this Agreement.

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12.1.2.13 (including any venture partner of Concessionaire), or any of their respective officers, directors, principal shareholder(s) or affiliates, is convicted of or pleads guilty to any crime in any way related to the operation of the Premises or the Airport or a public sector, governmental or quasi-governmental project or contract or related to the safety and/or security of any Airport, governmental entity or its citizens. For purposes of this Agreement:

12.1.2.13.1 "Principal Shareholder" means an owner of shares (or equity interest, if other than a corporation) representing 10% of the voting control and/or participation (through dividends or other distributions) in the profits of an entity.

12.1.2.13.2 "Affiliate" means any person or entity which directly or indirectly controls or is controlled by, or is under common control with an entity.

12.1.2.13.3 "Control" or "Controlling" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity whether through the ownership of voting securities, by contract or otherwise.

12.1.2.14 intentionally or willfully misrepresents to City any material fact.

12.1.2.15 made any material misrepresentation or failed to make full and accurate disclosure to City in the documents, questionnaires and other materials submitted by Concessionaire with its Proposal pursuant to which this Agreement was awarded to Concessionaire, or failed to comply with all requirements, including without limitation, the ethical standards policy, set forth in the RFP.

12.1.2.16 acts or fails to act results in the suspension or revocation of, for a period of more than thirty (30) days, of any rights, powers, licenses, permits or authorities necessary for the operation of its business at the Premises.

12.1.2.17 fails to pay any lawful tax or assessments required to be paid under this Agreement.

12.2 City's Remedies. If Concessionaire is in default, City will notify Concessionaire in writing of the nature of the default. If Concessionaire, where a specific time period for the cure is provided in the applicable subsection of this Agreement, does not cure the default within that period or, where a time period for the cure is not specifically provided in the applicable subsection, does not cure the default within seven (7) days from receipt of notice from City, City may, without notice to Concessionaire's sureties, if any, elect to exercise any of the following remedies:

12.2.1 Allow this Agreement to continue in full force and effect and to enforce all of City's rights and remedies under it, including, without limitation, the right to assess fines and

the right to collect rent as it becomes due together with interest at the rate of one and one half percent (1.5%) per month.

12.2.2 Continue this Agreement in full force and effect and enter the Premises and relet all or any portion of it to other parties for Concessionaire's account. Concessionaire must pay to City on demand all costs City incurs in entering the Premises and reletting it, including, without limitation, brokers' commissions, and expenses for repairs and remodeling, attorneys' fees and all other actual costs. Reletting may be for a period shorter or longer than the remaining Term. During the term of any reletting, Concessionaire must pay to City the rent due under this Agreement on the date due, less any net rents City receives from any reletting.

12.2.3 Terminate Concessionaire's rights under this Agreement at any time and recover from Concessionaire all costs, expenses, losses and damages recoverable under this Agreement or applicable law as a result of Concessionaire's default and the termination.

12.2.4 Cure any default at Concessionaire's cost. If City at any time, by reason of Concessionaire's default, pays any sum to cure any default, the sum paid by City shall be immediately due from Concessionaire to City on demand, and shall bear interest at the rate of one and one-half percent (1.5%) per month from the date paid by City until the date City is fully reimbursed by Concessionaire.

12.2.5 Exercise any and all other rights or remedies available under this Agreement or at law or in equity.

12.3 Concessionaire Not in Default. If, after termination for default, it is determined for any reason that Concessionaire was not in default, the rights and obligations of the parties will be the same as if the Agreement had been terminated pursuant to the Section entitled "Termination for Convenience."

12.4 Security Interest.

12.4.1 In addition to the statutory landlord's lien, Concessionaire grants to City a valid security interest in all goods, wares, equipment, fixtures, furniture, improvements and other personal property located now or in the future within the Premises, including the proceeds of such items, to secure payment of all rentals and other sums of money becoming due from Concessionaire under this Agreement, and to secure payment of any damages or losses that City may suffer by reason of the breach by Concessionaire of this Agreement. Concessionaire may not remove such goods, wares, equipment, fixtures, furniture, improvements and other personal property located now or in the future within the Premises from the Premises without the written consent of City until all arrearages in rent, as well as any other sums of money then due to City under this Agreement, have been paid and discharged and all the covenants, agreements and conditions of this Agreement have been fully complied with and performed by Concessionaire.

12.4.2 Upon the occurrence of an event of default by Concessionaire, City may, in addition to any other remedies provided in this Agreement, enter upon the Premises and take possession of any goods, wares, equipment, fixtures, furniture, improvements and other personal property of Concessionaire situated on the Premises, without liability for trespass or conversion, and sell them at public or private sale, with or without having such property at the sale, after giving Concessionaire reasonable notice of the time and place of any public sale or of the time after which any private sale is to be made, at which sale City or its assigns my purchase the property unless otherwise prohibited by law. The requirement of reasonable notice to Concessionaire will be met if such notice is given in the manner prescribed in the Section entitled "Notices", at least 5 days before the date of the sale.

12.4.3 The proceeds from any such sale, less any expenses of the City connected with the taking of possession, holding and selling of the property (including reasonable attorneys' fees and other expenses), will be applied as a credit against the debts payable by Concessionaire, or as otherwise required by law; and Concessionaire will pay any deficiencies immediately.

12.4.4 Upon request by City, Concessionaire agrees to execute and deliver to City a financing statement in a form sufficient to perfect the security interest of City in the property and the proceeds under the provisions of the Uniform Commercial Code in force in the State of Georgia. By accepting a grant of the security interest set forth herein, the parties agree that the City is not waiving its rights under any statutory lien for the payment of rent granted under this Agreement or applicable law.

13. TERMINATION

13.1 Termination by City for Cause. City may at its option, by giving written notice to Concessionaire, terminate this Agreement:

13.1.1 for a material breach of the Agreement by Concessionaire that is not cured by Concessionaire within seven (7) days of the date on which City provides written notice of such breach;

13.1.2 immediately for a material breach of the Agreement by Concessionaire that is not reasonably curable within seven (7) days;

13.1.3 immediately upon written notice for numerous breaches of the Agreement by Concessionaire that collectively constitute a material breach or reasonable grounds for insecurity concerning Concessionaire's performance; or

13.1.4 immediately for engaging in behavior that is dishonest, fraudulent or constitutes a conflict of interest with Concessionaire's obligations under this Agreement or is in violation of any City Ethics Ordinances.

13.2 Re-procurement Costs. In addition to all other rights and remedies City may have, if this Agreement is terminated by City pursuant to the above subsection entitled "**Termination by City for Cause,**" Concessionaire will be liable for all costs in excess of the Charges for all terminated Services reasonably and necessarily incurred by City in the completion of the Services, including the cost of administration of any agreement awarded to other Persons for completion. If City improperly terminates this Agreement for cause, the termination for cause will be considered a termination for convenience in accordance with the provisions of the Section entitled "**Termination by City for Convenience.**"

13.3 Termination by City for Insolvency. City may terminate this Agreement immediately by delivering written notice of such termination to Concessionaire if Concessionaire: (a) becomes insolvent, as that term may be defined under Applicable Law, or is unable to meet its debts as they mature; (b) files a voluntary petition in bankruptcy or seeks reorganization or to effect a plan or other arrangement with creditors; (c) is adjudicated bankrupt or makes an assignment for the benefit of its creditors generally; (d) fails to deny or contest the material allegations of an involuntary petition filed against it pursuant to any Applicable Law relating to bankruptcy, arrangement or reorganization, which is not dismissed within sixty (60) days; or (e) applies for or consents to the appointment of any receiver for all or any portion of its property.

13.4 Termination by City for Convenience.

13.4.1 The City shall have the right to terminate the Agreement without cause at any time during the Term by giving written notice to Concessionaire at least 30 days prior to the date such termination is to be effective. Should the City terminate the Agreement prior to its expiration, the City shall reimburse the Concessionaire for the reasonable and proper unamortized costs of the capital Improvements, made by or at the cost of the Concessionaire, and approved in writing by the Aviation General Manager. Concessionaire must document the costs of any and all capital Improvements in a form and detail satisfactory to the Aviation General Manager and submit same within thirty (30) calendar days following completion of the work for review and approval, for the purpose of establishing the unamortized costs of the Improvements. The capital costs of the Improvements shall be amortized based upon a straight-line depreciation schedule over the initial Term of the Agreement, with zero salvage value.

13.4.2 Reimbursement for unamortized costs of capital improvements shall be the Concessionaire's sole remedy in the event of Termination by City for Convenience. Concessionaire hereby waives any claims for damages, including loss of anticipated profits, in the event that the City terminates the Agreement for convenience.

13.5 Termination for Lack of Appropriations. If, during the Term of this Agreement, legislation establishing a Maximum Payment Amount for the following year is not enacted, this Agreement will terminate in its entirety on the last day of the term for which a Maximum Payment Amount has been legislatively authorized.

13.6 Effect of Termination. Unless otherwise provided herein, termination of this Agreement, in whole or in part and for any reason, shall not affect: (a) any liabilities or obligations of either Party arising before such termination or out of the events causing such termination; or (b) any remedies to which a Party may be entitled under this Agreement, at law or in equity. Upon termination of this Agreement, Concessionaire shall immediately: (i) discontinue Services on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of the terminated Services; (ii) inventory, maintain and turn over to City all work product, licenses, equipment, materials, plant, tools, and property furnished by Concessionaire or provided by City for performance of the terminated Services; (iii) promptly obtain cancellation, upon terms satisfactory to City, of all purchase orders, subcontracts, rentals or any other agreements existing for performance of the terminated Services, or assign those agreements, as directed by City; (iv) comply with all other reasonable requests from City regarding the terminated Services; and (v) continue to perform in accordance with all of the terms and conditions of this Agreement any portion of the Services that are not terminated.

14. FINES FOR VIOLATIONS

14.1 If Concessionaire defaults under or violates material provisions of this Agreement, in lieu of, or in addition to, any other available remedy, the Aviation General Manager may elect to impose the charges described below on a per diem basis per infraction, as follows:

14.1.1 Violation of Premises Use;

14.1.2 Failure to maintain required hours of operation;

14.1.3 Failure to submit required documents and reports;

14.1.4 Failure to remedy Customer Service, Cleanliness, Quality Assurance, Operations, and/or Facility standard;

14.1.5 Infractions within 48 hrs.' notice (as measured from the date of each written notification);

14.1.6 Failure to provide pest control records on a monthly basis and/or display manifest reports on file in each store;

14.1.7 Unauthorized Advertising Signage (defined as written, printed blade or storefront); or

14.1.8 Destruction of Airport public facility deemed caused by associates or associate travel in unauthorized areas;

14.1.9 Failure to comply with any and all published DOA, basic terms of the Agreement, federal, state, local policies, regulations, the Code, directives or standards.

First offense of any infraction listed above may result in a charge of \$500, second offence may result in a charge of \$750, and third offense may result in charge of \$1,000. Repeated violation of the above-listed infractions may result in the Concessionaire being in default of the Agreement.

15. UNAUTHORIZED ACCESS. Concessionaire is responsible for preventing unauthorized persons from gaining access to restricted areas of the Airport or any other part of the Airport through the Premises or any door under Concessionaire's control. If federal security regulations are violated as a result of trespass by unauthorized persons into restricted areas of the Airport or any other part of the Airport through the Premises or any door under Concessionaire's control, or if such door is left unsecured in violation of federal security regulations, and City is subjected to any liability, including, but not limited to, a fine(s) by the Transportation Security Administration, Concessionaire must reimburse City for the full amount of such fines promptly upon receipt of an invoice from City and pay for any liability assessed against City as a result of such unauthorized access.

16. SURRENDER OF PREMISES

16.1 Concessionaire must yield and deliver peaceably to City possession of the Premises and all Concessionaire improvements in good condition, reasonable wear and tear accepted, upon the expiration or earlier termination of this Agreement.

16.2 Concessionaire must remove Concessionaire's signs and trade fixtures from the Premises and must surrender the Premises in clean, orderly and presentable condition. City will retain Concessionaire's Performance and Payment Bond(s) or other securities required under **Exhibit D** until such time as all conditions of this Agreement have been satisfied, all keys to the Premises are delivered to the Aviation General Manager by Concessionaire, the Aviation General Manager determines that the Premises are clean and in good repair and the applicable period for filing liens or other claims has passed. Concessionaire will be liable to City for City's costs for storing, removing and disposing of any alterations or Concessionaire's personal property, and of restoration of the Premises.

17. OWNERSHIP OF INFORMATION; CONFIDENTIALITY

17.1 All reports, information, data or other documents given to, prepared by or assembled by Concessionaire arising out of the work performed under this Agreement are the exclusive property of City – with the exception of employee data covered under the Privacy Act – and will be kept confidential and may not be made available to any individual or organization by Concessionaire without the prior written approval of City, provided however that these provisions shall not apply to data that is in the public domain; was previously known to Concessionaire; or was independently acquired by Concessionaire from third parties who are

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under no obligation to City to keep said data and information confidential. These provisions shall not apply to information in whatever form that comes into the public domain through no fault of Concessionaire, nor shall they be interpreted in any way to restrict Concessionaire from complying with a legally enforceable court order to provide information or data; provided, however, Concessionaire shall immediately place City on notice of such court order to permit City the opportunity to determine whether a protective order shall be filed. This restriction includes, but is not limited to, press releases, presentations, promotional materials and other public disclosures.

17.1.1 Except as provided in the preceding paragraph, Concessionaire shall keep confidential, and shall require its employees, agents, subordinates, subcontractors, or sublessees to keep confidential all information disclosed by City or its consultants to Concessionaire or developed by Concessionaire or Concessionaire's employees, agents, subordinates, subcontractors, or sublessees in the performance of services hereunder. Disclosure of any such information shall constitute a material breach of this Agreement and shall entitle City to recover from Concessionaire any damages City incurs because of such breach.

17.1.2 City shall have the right to any specifications, computer programs, technical reports, operating manuals and similar work product developed and paid for under this Agreement. If research or development is furnished in connection with the performance of this Agreement and if in the course of such research or development patentable subject matter is produced by Concessionaire, its officers, agents, employees, subcontractors, or sublessees, City shall have, without cost or expense to it, an irrevocable, nonexclusive royalty-free license to make, have made and use, either itself or by anyone on its behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by City. Promptly upon request by City, Concessionaire shall furnish or obtain from the appropriate person a form of license satisfactory to City, but it is expressly understood and agreed that, as between City and Concessionaire the license herein provided for shall nevertheless arise for the benefit of City immediately upon the production of said subject matter, and shall not await formal exemplification in a written license agreement as provided for above. Such license agreement may be transferred by City to its successors immediate, or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by City, but such license shall not be otherwise transferable.

17.1.3 Georgia Open Records Act. Information provided to the City is subject to disclosure under the Georgia Open Records Act ("**GORA**"). Pursuant to O.C.G.A. § 50-18-72(a)(34), "[a]n entity submitting records containing trade secrets that wishes to keep such records confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10 [O.C.G.A § 10-1-760 et seq.]."

18. HAZARDOUS MATERIALS

18.1 Concessionaire shall not cause or permit any Hazardous Material to be brought, kept or used in or about the Premises or the Airport by Concessionaire, its agents, employees, contractors, or invitees. Without limiting the foregoing, if the presence of any Hazardous Material in the Airport caused or permitted by Concessionaire results in any contamination of the Airport, Concessionaire shall promptly take all actions at its sole expense as are necessary to return the Airport to the conditions existing prior to the introduction of such Hazardous Material to the Airport; provided that City's approval of such actions, and the contractors to be used by Concessionaire in connection therewith, shall first be obtained.

18.2 The term "Hazardous Material" means any hazardous or toxic substance, material, or waste, which is or becomes regulated by any local governmental authority or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" or similar term under any laws now or hereafter enacted by the United States or the State of Georgia or any political subdivision thereof, or (ii) designated a "hazardous substance" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1317, or (iii) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., or (iv) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.

18.3 In addition to, and independent of any other right of entry provided herein, City and its employees, representatives and agents shall have access to the Premises during reasonable hours and upon reasonable notice to Concessionaire in order to conduct periodic environmental inspections and tests of Hazardous Material contamination in the Premises.

19. AIRPORT SECURITY REQUIREMENTS. Concessionaire shall comply, at its own expense, with the TSA and the City's security requirements for the Airport including, but not limited to employee training and badging. Concessionaire shall cooperate with the TSA and the City on all security matters and shall promptly comply with any project security arrangements established by City. Compliance with such security requirements shall not relieve Concessionaire of its responsibility for maintaining proper security for the above-noted items, nor shall it be construed as limiting in any manner Concessionaire's obligation with respect to all applicable federal, state and local laws and regulations and its duty to undertake reasonable action to establish and maintain secure conditions at and around the Premises and throughout the Airport. Additional airport security information is available on the Airport Security's web site: (www.atlanta-airport/business/security). See also **Appendix D**, attached hereto and incorporated herein.

20. CITY POLICIES; Airport Concessions Disadvantaged Business Enterprise (ACDBE) BUSINESS PARTICIPATION AND NON-DISCRIMINATION PROVISIONS.

20.1 City's Required Policies. Concessionaire acknowledges that Concessionaire has reviewed, is familiar with and agrees to comply with:

20.1.1 City's Airport Concessions Disadvantaged Business Enterprise Policy (See **Appendix A**); as the same may be amended from time to time by the City, Georgia Department of Transportation or US Department of transportation ("**USDOT**").

20.1.1.1 In addition to its compliance with the ACDBE Policy as the same may be amended from time to time by the City, Georgia Department of Transportation or U.S. Department of Transportation, Concessionaire shall work in good faith the City's Office of Contract Compliance ("**OCC**") (or any other federal, state or local governmental or quasi-governmental agency) to maximize opportunities in the utilization of certified ACDBE firms during the construction build-out of the concessions space(s), as well as any on-going supply opportunities. Any submittals provided by Concessionaire to the OCC prior or subsequent to the execution of this Agreement related to the utilization of such firms shall be incorporated herein by this reference. A copy of the current OCC requirements are attached hereto as **Appendix A** and incorporated herein by this reference.

20.1.2 City's equal employment opportunity policy (See Code Sections 2-1200 and 2-1414; **Appendix A**), as follows:

Equal Employment Opportunity (EEO) Provision. During the performance of the Agreement, Concessionaire agrees as follows:

- (a) The Concessionaire shall not discriminate against any employee, or applicant for employment, because of race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, disability, or political affiliation. As used here, the words "shall not discriminate" shall mean and include without limitation the following:

Recruited, whether by advertising or other means; compensated, whether in the form of rates of pay, or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

The Concessionaire agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of the EEO clause.

- (b) The Concessionaire shall, in all solicitations or advertisements for employees, placed by or on behalf of the Concessionaire, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex,

domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, disability, or political affiliation.

- (c) The Concessionaire shall send to each labor union or representative of workers with which the Concessionaire may have a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of the Concessionaire's commitments under the equal employment opportunity program of the City of Atlanta and under the Code and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Concessionaire shall register all workers in the skilled trades who are below the journeyman level with the U.S. Bureau of Apprenticeship and Training.
- (d) The Concessionaire shall furnish all information and reports required by the contract compliance officer pursuant to the Code, and shall permit access to the books, records, and accounts of the Concessionaire during normal business hours by the contract compliance officer for the purpose of investigation so as to ascertain compliance with the program.
- (e) The Concessionaire shall take such action with respect to any sub-Concessionaire as the city may direct as a means of enforcing the provisions of paragraphs (a) through (h) herein, including penalties and sanctions for noncompliance; provided, however, that in the event the Concessionaire becomes involved in or is threatened with litigation as a result of such direction by the city, the city will enter into such litigation as is necessary to protect the interest of the city and to effectuate the equal employment opportunity program of the city; and, in the case of contracts receiving federal assistance, the Concessionaire or the city may request the United States to enter into such litigation to protect the interests of the United States.
- (f) The Concessionaire and its sub-Concessionaires, if any, shall file compliance reports at reasonable times and intervals with the city in the form and to the extent prescribed by the contract compliance officer. Compliance reports filed at such times directed shall contain information as to employment practices, policies, programs and statistics of the Concessionaire and its sub-Concessionaires.
- (g) The Concessionaire shall include the provisions of paragraphs (a) through (h) of this equal employment opportunity clause in every subcontract or purchase order so that such provisions will be binding upon each sub-Concessionaire or vendor.
- (h) A finding, as hereinafter provided, that a refusal by the Concessionaire or sub-Concessionaire to comply with any portion of this program, as herein provided and described, may subject the offending party to any or all of the following penalties:

- (i) Withholding from the Concessionaire in violation all future payments under the involved contract until it is determined that the Concessionaire or sub-Concessionaire is in compliance with the provisions of the contract;
- (ii) Refusal of all future bids for any contract with the City of Atlanta or any of its departments or divisions until such time as the Concessionaire or sub-Concessionaire demonstrates that there has been established and there shall be carried out all of the provisions of the program as provided in the Code;
- (iii) Cancellation of the public contract;
- (iv) In a case in which there is substantial or material violation of the compliance procedure herein set forth or as may be provided for by the contract, appropriate proceedings may be brought to enforce those provisions, including the enjoining, within applicable law, of Concessionaires, sub-Concessionaires or other organizations, individuals or groups who prevent or seek to prevent directly or indirectly compliance with the policy as herein provided.

20.1.3 City's business non-discrimination policy (See Code Sections 2-1358 and 2-1387; **Appendix A**).

20.1.4 City's Atlanta Workforce Agency/First Source Jobs Policy and Agreement (See Code Section 2-1655; **Appendix A**).

20.1.5 City's ethics in public contracting policy (See Code Sections 2-1481 through 2-1490);

20.1.6 City's conflicts of interest policy (See Code Section 2-1482);

20.1.7 City's prohibition against predatory lending (See Code Section 2-1213), as follows:

Prohibition against Contracting with Predatory or High Cost Lenders. By signing below, the Contractor, or its authorized agent, certifies, under penalty of perjury, that this Agreement is made by a person or business entity that is neither a predatory lender nor a high cost lender, nor is the Contractor an affiliate of a predatory lender or a high cost lender, as defined by Code Section 58-102. The undersigned Contractor, or authorized agent, further certifies that he/she is an agent duly authorized to sign this certification on behalf of the Contractor.

20.1.8 City's Green Initiatives (Atlanta Sustainable Building Ordinance (ASBO)).

20.1.9 City's prohibition against kickbacks or gratuities (See Code Section 2-1484), as follows:

Prohibition against Kickbacks or Gratuities. Concessionaire acknowledges the following prohibitions on kickbacks and gratuities:

- (a) It is unethical for any person to offer, give or agree to give any employee or former employee a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefor.
- (b) It is unethical for any employee or former employee to solicit, demand, accept or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefor.
- (c) It is also unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

20.1.10 City's prohibition against and reporting of anti-competitive practices (See Code Section 2-1210, as follows:

The Concessionaire certifies and warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Concessionaire, to solicit or secure this Agreement; and that the Concessionaire has not paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for the Concessionaire, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the above warranty, and upon a finding after notice and hearing, the City shall have the right to terminate the Agreement without liability, and, at its discretion, to deduct from the Agreement, or otherwise recover the full amount of, such fee, commission, percentage, gift or consideration.

20.2 Non-discrimination Certificates. By the execution of this Agreement, Concessionaire certifies as follows:

The Concessionaire or the Services covered by this Agreement will not discriminate in any way in connection with this Agreement against any employee or applicant for employment because of race, color, religion, sex, national origin or physical handicap, and Concessionaire will take affirmative action to ensure that applicants are employed, and those employees are treated during employment without regard to their race, color, religion, sex, national origin or physical handicap. Concessionaire shall state in all advertisements and solicitations that it is an equal employment opportunity employer.

20.3 USDOT Non-discrimination Ordinance. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, religion, sex, national origin, or physical handicap in connection with the award or performance of any agreement covered by 49 CFR part 23. Concessionaire agrees to include the above statements in any subcontract or subsequent agreement that it enters into and cause those businesses to similarly include the statements in subsequent agreements.

20.4 Public Use and Federal Grants.

20.4.1 To the best of Concessionaire's knowledge, the Premises is subject to the terms of those certain sponsor's assurances made to guarantee the public use of the Airport as incidental to grant agreements between City of Atlanta and the United States of America, as amended. City and Concessionaire represent that none of the provisions of this Agreement violates any of the provisions of the Sponsor's Assurance Agreement.

20.4.2 The parties hereto further covenant and agree that nothing contained in this Agreement shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

20.4.3 Concessionaire for itself, its sub-Concessionaires, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of said facilities; (2) in the construction of any improvements on, over, or under the Premises and the furnishings of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) Concessionaire shall use the Premises in compliance with all other requirements imposed by or pursuant to the Code of Federal Regulations for the Department of Transportation at Title 49, Subtitle A, Office of the Secretary of Transportation, Part 21, titled "Nondiscrimination in Federally Assisted Programs of the Department of Transportation — Effectuation of Title VI of the Civil Rights Act of 1964," and as said regulations

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may be amended; and (4) in the event of Concessionaire's breach of any of the above nondiscrimination covenants, City shall have the right to terminate this Agreement therefore, and hold the same as if this Agreement had never been made or issued. Provision (4) shall not be effective until the procedures of 49 CFR Subtitle A, Part 21, are followed and completed, including the exercise or expiration of appeal rights.

21. MISCELLANEOUS PROVISIONS

21.1 Award and Execution of Agreement. The award and execution of this Agreement by City is authorized by Resolution No. 14-R-_____, adopted by City's Council on _____, 2014, and approved by City's Mayor on _____, 2014, a copy of which is attached to this Agreement as **Exhibit B**. This Agreement will not become binding on City and City will incur no liability hereunder until it has been duly executed by Concessionaire, returned to City with all required submittals, including insurance and bonding, executed by the Mayor, attested to by the Municipal Clerk, approved by the City Attorney, or his or her designee, as to form and delivered to Concessionaire.

21.2 Identity of Owner and Manager. The City is the owner of record of the property of which the Premises is a part. The person authorized to manage the property, which includes the Premises, is the Aviation General Manager of the Department of Aviation.

21.3 Delegation of Authority. Any act(s), whether discretionary or ministerial, that the Aviation General Manager is authorized or required to perform under this Agreement may be performed by such person(s) as the Aviation General Manager shall designate in writing to perform such act(s).

21.4 No Partnership or Joint Venture. City and Concessionaire are not and shall not be deemed to be, for any purpose, partners or joint venturers with each other.

21.5 Independent Concessionaire; No Contractual Relationship. Concessionaire will perform under this Agreement as an independent entity and not as an agent or employee of City. No contractual relationship between City and any sub-Concessionaire or sub-consultant is created by an approval of City for use under this Agreement.

21.6 Usufruct. The rights of Concessionaire hereunder constitute a usufruct, which is not subject to levy or sale. No estate shall pass out of City.

21.7 Recording Prohibited. Neither City nor Concessionaire shall be entitled to record this Agreement, any memorandum or short form of this Agreement or any affidavit with respect to this Agreement.

21.8 Attorneys' Fees. If City should bring any action under this Agreement or consult or place this Agreement, or any amount payable to Concessionaire pursuant to this Agreement, with an attorney concerning or for enforcement of any of City's rights hereunder, then

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Concessionaire agrees in each and any such case to pay to City all costs, including, but not limited to, court costs and reasonable attorneys' fees, incurred by City in connection therewith.

21.9 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall become invalid or unenforceable to any extent, such provision shall be struck and severed and the remainder of this Agreement shall not be affected and shall continue to be enforceable to the greatest extent of the law. Each covenant and agreement contained in this Agreement shall be construed to be a separate and independent covenant and agreement and the breach of any such covenant or agreement by City shall not discharge or relieve Concessionaire from Concessionaire's obligation to perform each and every covenant and agreement of this Agreement to be performed by Concessionaire.

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

21.11 Exhibits and Attachments. All exhibits, appendices, attachments, riders and addenda referred to in this Agreement are incorporated into this Agreement and made a part hereof for all intents and purposes, including the following:

- 21.11.1 **Exhibit A** – Scope of Services and Map of Premises Locations
- 21.11.2 **Exhibit A.1** – Financial Offer Form
- 21.11.3 **Exhibit B** – City Council Resolution
- 21.11.4 **Exhibit C** – Georgia Department of Revenue Form RD-1062
- 21.11.5 **Exhibit D** – Insurance and Bonding Requirements
- 21.11.6 **Appendix A** – Office of Contract Compliance Requirements
- 21.11.7 **Appendix B** – Construction Safety and Health Plan
- 21.11.8 **Appendix C** – Airport Access, Security and Safety Measures

21.12 Time of the Essence. Time is of the essence with regard to each provision of this Agreement.

21.13 Evidence of Authority. If Concessionaire is other than a natural person, Concessionaire shall deliver to City such legal documentation as City may request to evidence the authority of those signing this Agreement to bind Concessionaire.

21.14 Drug-Free Workplace Policy. Concessionaire acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on any City property, including, but not limited to, the Premises.

21.15 Applicability of Code Provisions. All terms of this Agreement shall be governed by and shall be subject to all the provisions of the Code of Ordinances of City of Atlanta, Georgia, now and as may be amended from time to time.

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21.16 Successors and Assigns. Each and all of the conditions and covenants of this Agreement shall extend to and bind and inure to the benefit of City and Concessionaire, and the legal representatives, successors and assigns of either or both of them.

21.17 Notices. All notices required to be given to City hereunder shall be in writing and given by postage prepaid registered or certified mail, return receipt requested, addressed as follows:

Paul Brown, Concessions Director
Department of Aviation
Hartsfield-Jackson Atlanta International Airport
P.O. Box 20509
Atlanta, Georgia 30320
Office: 404-382-2217
Facsimile: 404-684-8932
E-mail: Paul.Brown@Atlanta-Airport.com

Notices hereunder may be transmitted by e-mail or other electronic delivery with confirmation of transmission, delivery and receipt.

All notices required to be given to Concessionaire hereunder shall be sent to the following address:

21.18 Interpretation. The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either City or Concessionaire. This Agreement shall be construed and performed according to the laws of the State of Georgia. In the event of a dispute with regard to interpretation of any provision of this Agreement, the parties agree to bring suit and be subject to the jurisdiction of the Fulton County Superior Court.

21.19 Section Headings. The section headings contained herein are for the convenience of City and Concessionaire and are not to be used to construe the intent of this Agreement or any part thereof, nor to modify, amplify, or aid in the interpretation or construction of any of the provisions thereof.

21.20 Reference to Clause or Section Entitled "____." When reference in this Agreement is made to a specific clause with a specific title set forth in a section heading or section number, such reference will include all sections and subsections of such clause.

21.21 Integrated Agreement, Modification. This Agreement contains all the agreements of the parties and cannot be further amended or modified except by written agreement. If the

parties hereto previously have entered into or do enter into any other lease, license, permit or agreement covering Premises or facilities at the Airport, this Agreement and the terms, conditions, provisions and covenants hereof shall apply only to the Premises herein particularly described, and this Agreement or any of the terms, conditions, provisions or covenants hereof shall not in any way or in any respect change, amend, modify, alter, enlarge, impair or prejudice any of the rights, privileges, duties or obligations of either of the parties hereto under or by reason of any other said lease, permit, license or other agreement between said parties.

21.22 Force Majeure. Neither party shall be deemed to be in breach of this Agreement by reason of a failure to perform any of its obligations hereunder to the extent that such failure is caused by strike or labor troubles, unavailability of materials or utilities, riots, rebellion, terrorist attack, insurrection, invasion, war, action or interference of governmental authorities, acts of God, or any other cause whether similar or dissimilar to the foregoing which is reasonably beyond the control of the parties (collectively "Force Majeure Event"). If either party claims the occurrence of a Force Majeure Event, such party must promptly give notice to the other of the existence of such Force Majeure Event, the nature and extent thereof, the obligation hereunder affected thereby and the actions to be taken to abate or terminate such event. Notwithstanding the existence of any Force Majeure Event, this Clause shall not apply to and Concessionaire shall not be relieved of its obligation to pay rent or other sums due hereunder, such obligation being absolute and unconditional.

[SIGNATURES BEGIN ON NEXT PAGE]



CONCESSIONAIRE:

MINUTE SUITES, LLC

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____

Title: Secretary/Assistant Secretary (SEAL)

CITY:

Mayor

ATTEST:

Municipal Clerk (SEAL)

APPROVED:

Chief Procurement Officer

APPROVED:

Aviation General Manager

APPROVED AS TO FORM:

Senior Assistant City Attorney

EXHIBIT A

SCOPE OF SERVICES AND MAP OF PREMISES LOCATIONS



Attachment: Sleep Units Contract Document (14-R-3734 : Sleep Units on Concourses E and F Concessions Lease Gareement)

Exhibit A

Scope of Services and Maps of Premises Locations

1. Scope of Services:

Concessionaire shall develop, design, operate, construct, maintain and manage two (2) sleep units (with showers on Concourse F only) concessions at the Hartsfield-Jackson Atlanta International Airport. The total square footage for this RFP is 3,578 square feet, including approximately 2,691 square feet on Concourse E and approximately 887 square feet on Concourse F, as further depicted in Exhibit A, Maps of Premises Locations.

2. Permitted Uses:

The sleep units will offer a first class private space for passengers and customers to work, be entertained or sit back and relax in comfort. The atmosphere should be similar to what one would experience at a first class hotel. These suggested concepts were chosen on the basis of airport trends and customer preference. Proponents have the flexibility to substitute other concepts so long as overall variety, quality and service are not compromised and are in line with the general scope of the RFP. The Aviation General Manager (AGM) reserves the right to approve and/or disapprove of any and all substituted service store concepts. The Proponent shall submit, in sufficient detail, a clearly defined operation believed to be the best type for the location listed above. These concepts must be clearly defined in the merchandising plan and included in the business plan submitted with the Proponent's proposal.

The successful Proponent will be required to develop, design, construct, operate, maintain and manage two locations for sleep units on a non-exclusive basis. All items sold must meet Transportation Security Administration (TSA) security regulations. Other than the items listed, no other product, merchandise or service shall be sold or offered by Concessionaire without the written consent of the AGM. In the event any question or dispute arises as to the sale of any specific item or category of items on the premises, the Concessionaire may submit a request in writing to the AGM asking that the matter be reviewed. The AGM shall give a decision in writing and such determination is the final authority in the matter. The Concessionaire shall abide by and conform to the decision of the AGM.

The AGM shall have the right, at his sole discretion, at any time prior to or during the term of the Lease, to expand, reduce or otherwise modify the products, service, or merchandise offerings.

The Concessionaire and its subconcessionaire(s) will also be responsible for cleaning and maintaining the "Premises" so as to provide an environment that is "opening day fresh" in appearance at all times. "Opening Day Fresh" means an appearance that is suitable to airport standards and is expected for customers upon opening for business for the length of the entire lease and respective holdover periods (if any).

3. Specific Uses:

3.1 Concept Definition and Requirements:

The sleep units operations will offer customers a first-class facility that includes private rooms, showers and personal services. This concept offers choices for customers to sleep, relax, or purchase products and services in a comfortable setting.

Services to be included in the Sleep Unit operation include:

- Private rooms
- Outfitted daybed/sofa with pillows, linen and fresh blankets
- High Definition Television (HDTV)
- Desk, Phone, chair with multiple electric and data outlets
- Internet access and fax services
- Shower and restroom facilities (if showers are offered)
- Shower caps, shoes or other personal items (if showers are offered)
- Shower slip mats (if showers are offered)
- Sound isolation system in each individual room
- Minimum of closet storage with drawers and hangers
- Movie rental
- Complimentary local phone calls
- Laundry facilities
- Toiletry items

All facilities will be non-smoking. Displays, merchandise, and facilities must meet Federal Aviation Administration (FAA) security regulations. Other than the items listed, no other product, merchandise, or service shall be sold or offered without the written consent of the AGM.

In the event any question or dispute arises as to any specific product or service provided on the premises, the Concessionaire may submit a request in writing to the AGM asking that the matter be reviewed. The AGM shall give a decision in writing and such determination is the final authority in the matter. The Concessionaire shall abide by and conform to the decision of the AGM.

3.2 Construction

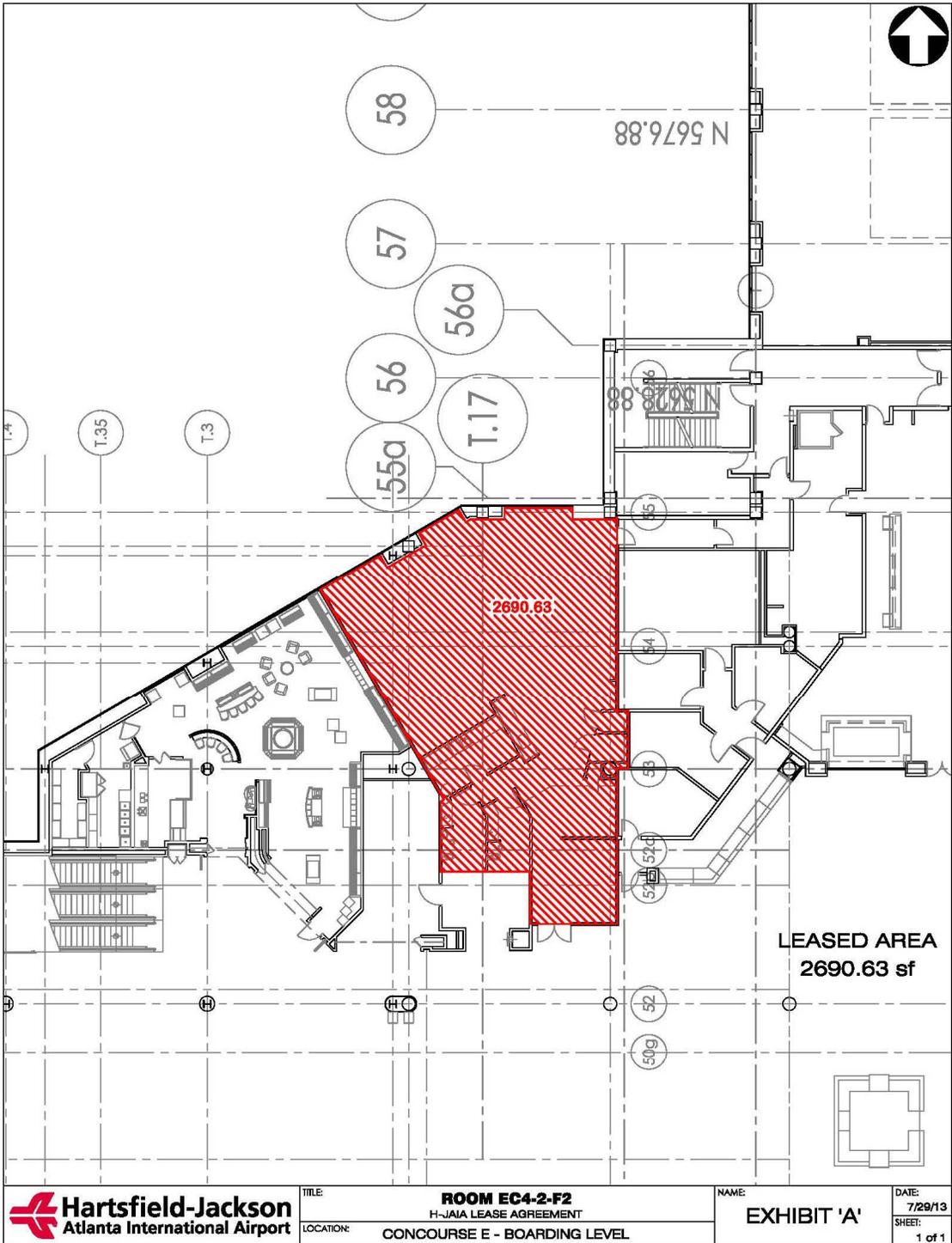
The selected Proponent will be responsible for the base build outs (mechanical, electrical, plumbing and HVAC, grease trap, etc.) necessary to bring the base building concession spaces to a condition ready to receive concessions space improvements. Additionally, all aspects of concessions build-out must comply with the Gold Leadership in Energy and Environmental Design (LEED) Certification requirements.

Exhibit A1

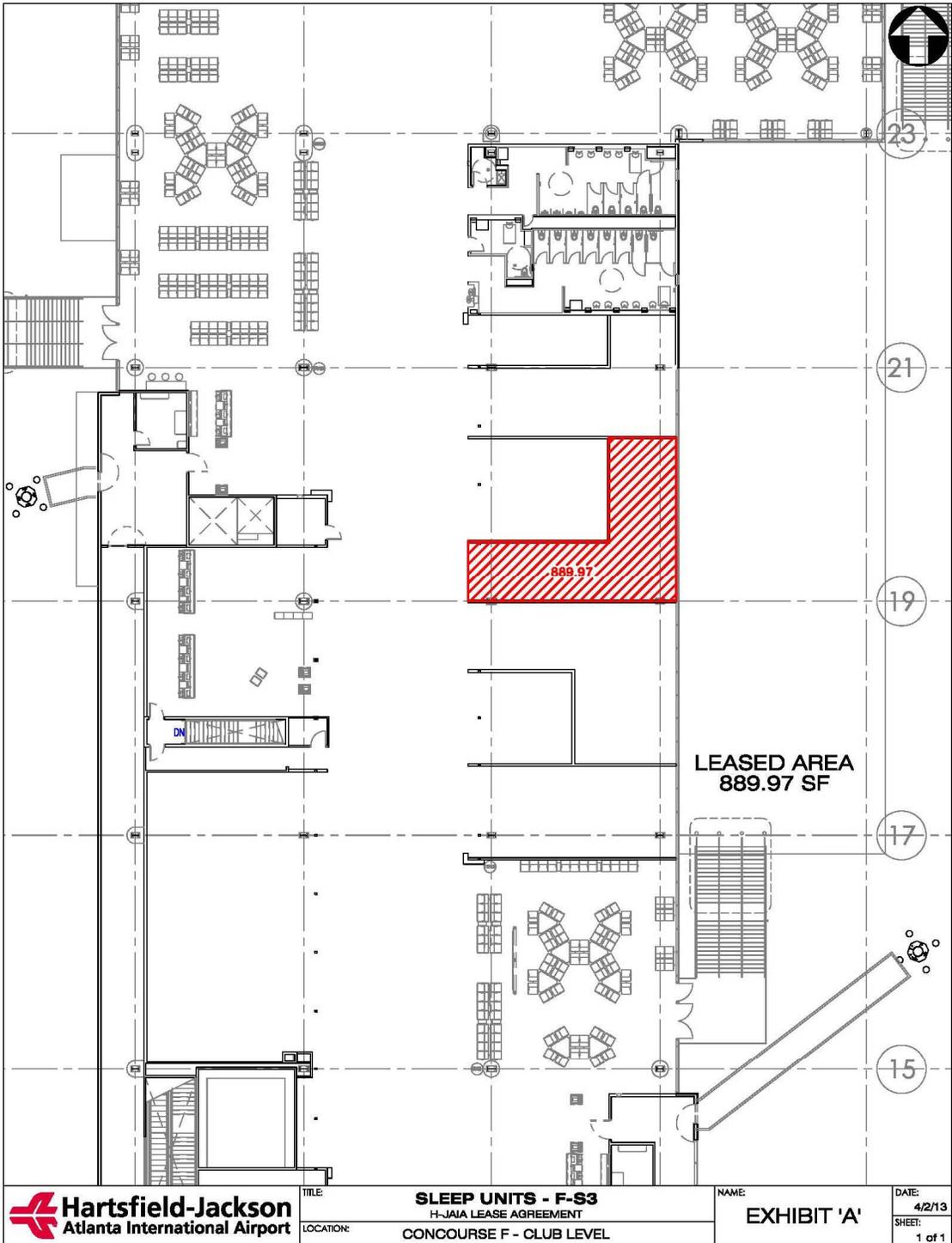
Description/Map of Premises Location



Attachment: Sleep Units Contract Document (14-R-3734 : Sleep Units on Concourses E and F Concessions Lease Agreement)



Attachment: Sleep Units Contract Document (14-R-3734 : Sleep Units on Concourses E and F Concessions Lease Agreement)



Attachment: Sleep Units Contract Document (14-R-3734 : Sleep Units on Concourses E and F Concessions Lease Agreement)

EXHIBIT A.1

FINANCIAL OFFER FORM

FC-6347: SLEEP UNIT ON Concourses E and F at
Hartsfield-Jackson Atlanta International Airport

The undersigned having (a) examined carefully the accompanying Instructions to Proponents ("Instructions"), and the form of the Concessions Lease Agreement ("Agreement") at Hartsfield-Jackson Atlanta International Airport ("Airport"), (b) visited the Airport, (c) become familiar with all terms and conditions specified in the Instructions and the Agreement and with the proposed operation of the Sleep Units on Concourses E and F, hereby submits this Financial Offer Form for compensation and privilege of performing the Services required and allowed under the Agreement at the Airport to be paid to the City by the undersigned in consideration of the execution of said Agreement by the City and the performance of all terms and conditions therein agreed by the Concessionaire on its part to be kept and performed.

The amount of the first year's Minimum Annual Guarantee (MAG) is Dollars \$_____.

Percentage Rental Fee per Category:

Category	Percentage of Gross Receipts	Forecasted Revenue
Services	10%	
Retail	10%	

Please sign the appropriate place:

Signature _____

Title _____

Company _____

Exhibit B
City Council Resolution
(place holder)



Attachment: Sleep Units Contract Document (14-R-3734 : Sleep Units on Concourses E and F Concessions Lease Agreement)

Exhibit D

INSURANCE AND BONDING REQUIREMENTS



Attachment: Sleep Units Contract Document (14-R-3734 : Sleep Units on Concourses E and F Concessions Lease Agreement)

EXHIBIT DCONSTRUCTION SAFETY AND HEALTH PLAN

- 1.0 **Safety and Health Plan.** City has established this Construction Safety and Health Plan (“Plan”) to promote safety and to minimize and control hazards and risks associated with construction projects at the Airport. In this Plan, City’s safety representative is Randy Woodall and any other individual City designates in writing to Concessionaire (collectively, “**Safety Representative(s)**”).
- 2.0 **Plan Highlights.** The substance of this Plan addresses:
- 2.1 Periodic inspection by City of Concessionaire’s Work, Jobsites and storage areas to assure safe conditions and practices.
 - 2.2 The training of all employees in all Plan requirements.
 - 2.3 Immediate reporting to City’s Safety Representative(s) of any death, injury or damage to property at any Jobsite or Work storage area on or off the Airport at which Work is performed.
 - 2.4 Full cooperation in inspections by City’s Safety Representative(s) or other governmental or non-governmental agencies exercising jurisdiction over the Work. A copy of any notice or other written documentation received by Concessionaire from any agency must be submitted to the City’s Safety Representative(s) immediately upon receipt.
 - 2.5 Use of approved regulatory and City required safety equipment and protection devices, as described in the Plan.
 - 2.6 Immediate correction by Concessionaire of any unsafe conditions or acts by its employees.
 - 2.7 Medical surveillance requirements for personnel exposed to hazardous substances, e.g. radiation badges.
 - 2.8 Safety requirements and procedures for decontamination facilities, e.g. protective clothing and warning signs.
 - 2.9 The use of forms concerning this Plan that City may direct Concessionaire to use.
- 3.0 **Pass Down Provisions.** Concessionaire must include the obligations of this Plan in all contracts or other similar documents utilized by it to obtain goods and services concerning this Contract and the Work.

4.0 General. Concessionaire must:

4.1 develop a Site-Specific Safety Plan that addresses all Work activities, i.e. fall exposures, excavations, cranes, etc., including the requirement for a 100% fall protection program for all work performed 6 feet or more above ground or finished floor level, operating criteria for motorized equipment and an emergency and evacuation plan.

4.2 This Site-Specific Safety Plan must be submitted to the Safety Representative(s) and reviewed for approval prior to start of the Work. If any Safety Representative(s) determines that the Site-Specific Safety Plan is deficient in any manner, Concessionaire must, prior to commencing any Work, correct such deficiencies upon receipt of notice from the Safety Representative(s).

4.3 Provide safety data information to the Safety Representative(s), as required.

4.4 Report all accidents and incidents to City's Representative(s) on a State of Georgia First Report of Injury Form. Incident Reports must be submitted on a Supervisor's Incident Report Form. Only City-approved forms will be accepted for reporting accidents or incidents.

4.5 Provide weekly man-hour reports to the Safety Representative(s) on the Monday following the end of each Work week.

5.0 Concessionaire's Safety Manager. Concessionaire must appoint a Safety Manager during the period when Work is performed. Concessionaire's Safety Manager must perform daily safety inspections of all Jobsites to eliminate unsafe acts and/or conditions and ensure compliance with the Contract. Concessionaire's Safety Manager must also perform the following:

5.1 Assist in investigating all accidents and implementing immediate corrective actions.

5.2 Control the availability and use of necessary safety equipment, including personal protective for all employees.

5.3 Cooperate with Safety Managers of other contractors, and take necessary steps to promptly implement appropriate safety recommendations.

5.4 Attend safety meetings.

6.0 Miscellaneous Safety Requirements.

- 6.1 **Safe Operations.** Concessionaire must conduct all operations under this Contract to avoid the risk of health endangerment health, bodily harm to individuals and damage to property. Concessionaire must continually and diligently inspect all equipment, materials and Work to discover any conditions that might involve such risks and correct those conditions.
- 6.2 **Safety Orders.** Concessionaire must have copies of appropriate Federal, State and Local Safety Regulations at all Jobsites available for employees to review.
- 6.3 **General Safety Provisions.** Concessionaire must protect the health and safety of employees, the public and other persons, prevent damage to property, materials, supplies and equipment and avoid interrupting the normal operation of the Airport.
- 6.4 **Fire Protection.** Concessionaire must establish a Fire Prevention Plan incorporating, as a minimum, OSHA and NFPA standards. Only approved safety cans may be used for flammable and combustible liquids. "No Smoking Or Open Flame" signs and fire extinguishers must be provided where required or as directed by City. Approved safety cans must be metal with flash arresters and spring-loaded tops.
- 6.5 **Scaffolding:** Concessionaire must:
- 6.5.1 Ensure that all employees working on, erecting, dismantling or modifying any scaffolding are trained by a competent Person and maintain documentation concerning all training at the Project.
 - 6.5.2 Ensure that a complete guardrail system is utilized on scaffolding at all working heights and fall protection plan implemented over six (6) feet.
- 6.6 **Protection of the Public and Property.** Concessionaire must take all steps necessary to ensure protection of the public and property.

7.0 Fall Protection Requirements. These fall protection requirements are mandatory for all trades performing Work on the Project.

- 7.1 Concessionaire must take all practical measures to eliminate, prevent and control fall hazards. The Project must be surveyed prior to the commencement of any Work to identify all hazards of Personnel falling from elevations. First consideration must be given to the elimination of those hazards. If a fall hazard

cannot be practically eliminated, second consideration must be given to implementing effective permanent means of fall protection.

- 7.2 If a fall hazard cannot be eliminated or fall prevention assured, then effective fall protection means must be planned, implemented and carefully monitored to control the risks of personal injury due to falling. Fall protection systems must be continuous by design and Concessionaire must control against intermittent or improper use.
- 7.3 All employees who are working where fall hazards cannot be eliminated or falls prevented must be uniformly equipped and trained.
- 7.4 All employees must utilize a full body harness with two (2) shock-absorbing lanyards to allow continuous protection.
- 7.5 Floor or wall openings must be properly barricaded at all times. Floor covers, on openings greater than three feet, may not be used to protect open holes without the additional protection of a complete handrail system.
- 7.6 Guardrail systems consisting of a top rail, mid-rail and toe plate must be installed on perimeter edges or scaffolding.
- 7.7 Personal fall arrest systems such as vertical lifelines, retractable and shock absorbing lanyards, full body harnesses, netting, etc. must be provided in compliance with OSHA CFR 29, 1926, Subpart M, or as directed by City.
- 8.0 **Eye, Face and Head Protection Policy.** All employees must, at all times, wear American National Standard Institute (ANSI) approved safety glasses with side shields on the Jobsite.
- 9.0 **Accident Investigation and Reporting.**
- 9.1 All accidents or incidents resulting in personal injury or property damage must be immediately reported verbally to the Safety Representative(s) and followed by a written report within 24 hours of the occurrence.
- 9.2 Emergency Telephone Numbers. Concessionaire must post a list of emergency telephone numbers; to include doctor and ambulance, fire, etc., next to telephones at the Project.
- 9.3 Critical Injuries. City must be notified immediately in the following cases utilizing the Hartsfield Emergency Notification procedures:
- 9.3.1 Spinal cord injury;
 - 9.3.2 Head trauma;

- 9.3.3 Amputations;
 - 9.3.4 Fatality;
 - 9.3.5 Severe burns;
 - 9.3.6 Heart attack; and
 - 9.3.7 Hospitalizations.
- 9.4 Concessionaire must secure the affected area immediately after the accident in order to prevent any alteration of the scene before the investigation. This includes immediately contacting the Safety Representative(s). The area is to be cordoned off and an individual posted by Concessionaire to restrict unauthorized personnel as necessary
- 9.5 Concessionaire shall not make any news releases or statements to the public regarding any matters related to the Project.
- 9.6 Witness Statements. Concessionaire must assist the City in obtaining witness statements when there has been an accident¹. All statements are to be recorded and then typed. The witness must sign and date the statement after it is typed.
- 9.7 The Incident/Accident Report form must be filed within twenty-four (24) hours of the occurrence.
- 9.8 Appropriate drug screening must be conducted after the incident or accident.
- 10.0 Fire Prevention Program.** A Fire Prevention Program must be submitted in writing to City for review and coordination with other Jobsite activities prior to commencing Work. Such program must include:
- 10.1 Restriction of burning to designated areas. No unauthorized fires shall be permitted on Jobsite.
 - 10.2 Assignment of fire watches, trained and equipped to prevent or control fires, for all welding and burning operations. Fires should be monitored for three hours after the burning.
 - 10.3 Proper identification, storing, handling and use of flammable Material to prevent accidental ignition.

- 10.4 Adequate fire extinguishing equipment appropriate for the operations being performed must be provided and employees must be trained in the maintenance and use of such equipment.
- 10.5 Evacuation procedures and fire drills as required by City.



INSURANCE/BONDING REQUIREMENTS
FC-6347 Sleep Units (Package #1)

A. General Preamble

The following general requirements apply to any and all leases at Hartsfield Atlanta International Airport. Compliance is required by all Lessees and Sub-Lessees of any tier. Insurance/Bonding requirements are based on information received as of date of lease. The City of Atlanta reserves the right to adjust or waive any or all requirements based on receipt of additional information pertinent to this contract.

1. Evidence of Insurance Required Before any modification Work Begins

No Lessee or Sub-Lessee shall commence any work of any kind under this contract until all Insurance and Bond requirements contained in this lease shall have been complied with as outlined below, and until evidence of such compliance satisfactory to the City as to form and content has been filed with the City. The Acord Certificate of Insurance or a pre-approved substitute is the required form in all cases where reference is made to a Certificate of Insurance or an approved substitute. In addition; if the Lessee or Sub-Lessee is a joint venture, the insurance certificate or pre-approved substitute should name the joint venture, rather than the joint venture partners individually, as the primary insured.

2. Minimum Financial Security Requirements

Any and all companies providing insurance required by this lease must meet certain minimum financial security requirements set forth below. These requirements conform to the ratings published by A.M. Best & Co. in the current Best's Key Rating Guide - Property-Casualty. The ratings for each company must be indicated on the Acord Certificate of Insurance Form.

For all Contracts, regardless of size, companies providing Insurance of Bonds under this contract must have a current:

- i) Best's Rating not less than A- and current
- ii) Best's Financial Size Category not less than Class IX.
- iii) Companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Georgia, furthermore, all bid, performance and payment bonds must be a U.S. Treasury Circular 570 listed company.

If the issuing company does not meet these minimum requirements, or for any other reason shall be or become unsatisfactory to the City, written notification shall be mailed by the City to the lessor who shall promptly obtain a new policy or bond issued by an insurer acceptable to the City, and shall submit evidence of the same to the City as required herein.

Upon failure of the lessor to furnish, deliver and maintain such insurance or bonds as herein provided, this lessor, at the election of the City, may be declared forthwith suspended, discontinued or terminated. Failure of the lessor to take out and/or to maintain any required insurance or bonds shall not relieve the lessor from any liability under the contract, nor shall these requirements be construed to conflict with the obligation of the lease concerning indemnification.

3. Insurance Required for Duration of Contract

Any and all Insurance and Bonds required by this lease shall be maintained during the entire length of this lease, including any extensions thereto, and until all work has been completed to the satisfaction of the City. The City shall have the right to inquire into the adequacy of the insurance coverages set forth in this lease and to negotiate such adjustments as reasonable appear necessary.

4. Mandatory 30-Day Notice of Cancellation or Material Change

The City of Atlanta shall, without exception, be given not less than thirty (30) days notice prior to cancellation for other than non-payment of premium or for material change of any Insurance or Bond required by this contract. Non-payment of premium shall require ten (10) days notice of cancellation. Confirmation of this mandatory 30 days notice of cancellation shall appear on the Acord Certificate of Insurance and on any and all Bonds and Insurance policies required by this contract. Please send cancellation notice to Risk Management at 68 Mitchell Street, Suite 9100 Atlanta, GA 30303

5. City of Atlanta as Additional Insured

The City of Atlanta shall be covered as Additional Insured under any and all Insurance and Bonds required by this contract, and such insurance shall be primary with respect to the Additional Insured. Confirmation of this shall appear on the Acord Certificate of Insurance, and on any and all applicable Bonds and Insurance policies. Contractor/Consultant must also submit to City an Additional Insured Endorsement evidencing City's rights as an Additional Insured for each policy of insurance under which it is required to be an additional insured pursuant to this Appendix B. However, this requirement does not apply to Workers' Compensation, Professional Liability Insurance or Payment and Performance Bonds.

6. Mandatory Sub-Lessee Compliance

Lessee shall incorporate a copy of these Insurance, Bond and Hold Harmless requirements in each and every contract with each and every Sub-Lessee of any tier, and shall require each and every Sub-Lessee of any tier to comply with all such requirements. Lessor agrees that if for any reason Sub-Lessee fails to procure and maintain Insurance and Bonds as required, all such required Insurance and Bonds shall be procured and maintained by lessor at Lessee's expense.

7. Authorization and Licensing of Agent

Each and every agent acting as Authorized Representative on behalf of a Company affording coverage under this lease shall warrant when signing the Acord Certificate of Insurance that specific authorization has been granted by the Companies for the agent to bind coverage as required and to execute the Acord Certificate of Insurance as evidence of such coverage. City of Atlanta coverage requirements may be broader than the original policies, these requirements have been conveyed to the Companies for these terms and conditions.

In addition, each and every agent shall warrant when signing the Acord Certificate of Insurance that the agent is licensed to do business in the State of Georgia and that the Company or Companies are currently in good standing in the State of Georgia.

B. Workers' Compensation and Employer's Liability Insurance

The Lessee shall procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits, such insurance to cover each and every employee who is or may be engaged in work under the contract:

Workers' Compensation Statutory

Employer's Liability

Bodily Injury by Accident/Disease	\$1,00,000 each accident
Bodily Injury by Accident/Disease	\$1,000,000 each employee
Bodily Injury by Accident/Disease	\$1,000,000 policy limit

C. General Liability Insurance

The Lessee shall procure and maintain General Liability Insurance on form (CG 00 00 01 or equivalent) in an amount not less than \$1,000,000 per occurrence subject to a \$2,000,000 aggregate for Bodily Injury and Property Damage. The following specific extensions of coverage shall be provided and shall be indicated on the Acord Certificate of Insurance:

1. Comprehensive Form
2. Contractual Insurance - (Blanket or specific applicable to this contract)
3. Personal Injury
4. Broad Form Property Damage
5. Premises – Operations
6. Products- Completed Operations

D. Automobile Liability Insurance

The Lessee shall procure and maintain Automobile Liability Insurance with not less than \$1,000,000 Bodily Injury and Property Damage combined single limit. The following extensions of coverage shall be provided and shall be indicated on the Certificate of Insurance:

1. Comprehensive Form.
2. Owned, Hired, Leased and Non-owned vehicles to be covered.
3. Waiver of Subrogation in favor of the City of Atlanta.

In the event the Lessee does not own any automobiles in the corporate name, non-owned vehicle coverage shall apply and must be endorsed on either the Lessee's personal automobile policy or the Comprehensive General Liability coverage (c) required under this contract.

In addition and in accordance with Section 22-181(b) of Chapter 22, Code of Ordinances of the City of Atlanta, all vehicles requiring access to the restricted areas of the airport must be covered by an automobile liability policy in the minimum amount of ten million (\$10,000,000) combined single limit for personal injury and property damage. The \$10,000,000 limit of liability will also be imposed on any parties transporting workers, materials and/or equipment to the Airport site from parking lots or similar facilities.

E. Property Insurance

Lessee shall procure and maintain Property Insurance covering all forms of risk on all Tenant Improvements and any other interests of Lessee, if applicable, in or about the Leased Premises, including inventory, supplies, and other property of Lessee located at said Premises, insuring against the perils of fire, lightning, extended coverage, perils vandalism, malicious mischief, glass breakage and sprinkler leakage, in an amount equal to the full replacement value of Tenant Improvements and any other interests of Lessee in or about said Premises.

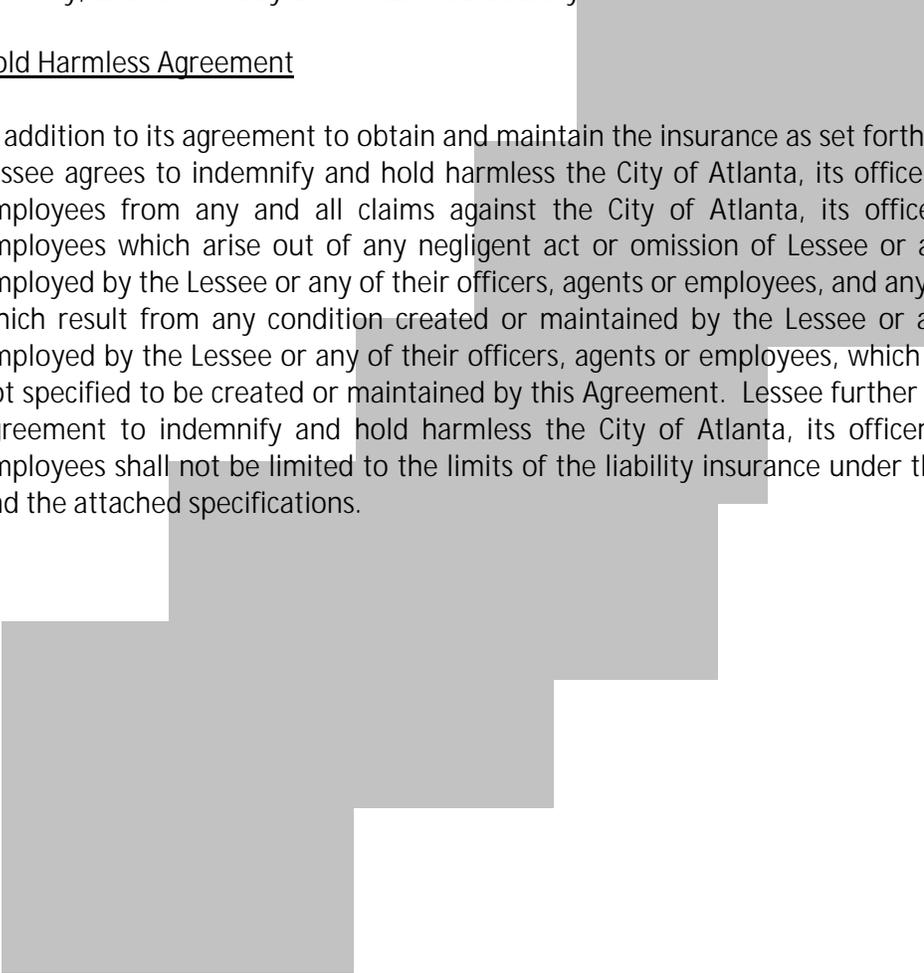
F. Performance and Payment Bond

The Lessee shall furnish a Payment Bond and Performance Bond to the City in an amount equal to twelve (12) months of the then current Minimum Annual Guarantee under the Lease.

The person executing the Bonds on behalf of the surety shall file with the Bonds a general power of attorney unlimited as to amount and type of bonds covered by such power of attorney, and certified by an official of said surety.

G. Hold Harmless Agreement

In addition to its agreement to obtain and maintain the insurance as set forth herein above, Lessee agrees to indemnify and hold harmless the City of Atlanta, its officers, agents and employees from any and all claims against the City of Atlanta, its officers, agents or employees which arise out of any negligent act or omission of Lessee or any sub-lessee employed by the Lessee or any of their officers, agents or employees, and any and all claims which result from any condition created or maintained by the Lessee or any sub-lessee employed by the Lessee or any of their officers, agents or employees, which condition was not specified to be created or maintained by this Agreement. Lessee further agrees that its agreement to indemnify and hold harmless the City of Atlanta, its officers, agents and employees shall not be limited to the limits of the liability insurance under this Agreement and the attached specifications.



Appendix A

Office of Contract Compliance Information



Attachment: Sleep Units Contract Document (14-R-3734 : Sleep Units on Concourses E and F Concessions Lease Agreement)

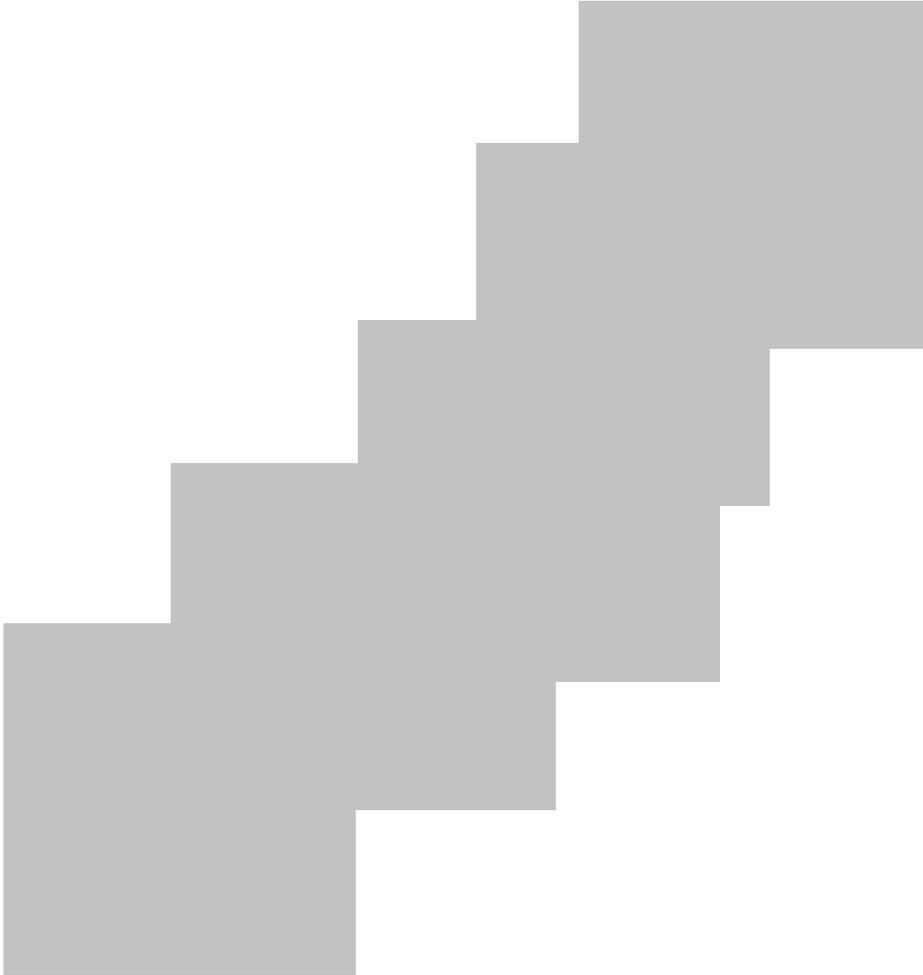






































APPENDIX C

AIRPORT ACCESS, SECURITY AND SAFETY MEASURES



Attachment: Sleep Units Contract Document (14-R-3734 : Sleep Units on Concourses E and F Concessions Lease Agreement)

APPENDIX CAIRPORT ACCESS, SECURITY AND SAFETY MEASURES

(AS APPLICABLE)

1. **Work in Progress.** Contractor shall be responsible for and shall bear any and all risk of loss or damage to work in progress and, pursuant to the Section titled "TITLE AND RISK OF LOSS," to equipment and materials.
2. **Maintenance.** Contractor shall maintain the Work including any provisionally accepted portions thereof and including any portions occupied by City or put into service until final acceptance of the Work as a whole. Use shall not constitute acceptance, relieve Contractor of its responsibilities, or act as a waiver by the City of any terms of this Agreement (see specification section SP-4B, Extended Maintenance).
3. **Material Handling.** Contractor's responsibility for materials and plant equipment required for the performance of this Agreement shall include:
 - 3.1 Receiving and unloading;
 - 3.2 Storing in a secure place and in a manner subject to City's review. Outside storage of materials and equipment subject to degradation by the elements shall be in weather tight enclosures provided by Contractor;
 - 3.3 Delivering from storage to construction site all materials and plant equipment as required; and
 - 3.4 Maintaining complete and accurate records for City's inspection of all materials and plant equipment received, stored and issued for use in the performance of this Agreement.
4. **Security.** Contractor shall at all times conduct all operations under this Agreement in a manner to avoid the risk of loss, theft, or damage by vandalism, sabotage or any other means to any equipment, materials, work or other property at the Jobsite. Contractor shall continuously inspect all equipment, materials and work to discover and determine any conditions which might involve such risks and shall be solely responsible for discovery, determination and correction of any such conditions.
5. **Airport Security Requirements.** Contractor shall comply with the Transportation Security Administration ("TSA") and the City's security requirements for the Airport. Contractor shall cooperate with the TSA and the City on all security matters and shall promptly comply with any Project security arrangements established by City. Such compliance with these security requirements shall not relieve Contractor of its responsibility for maintaining proper security for the above-noted items, nor shall it be construed as limiting in any manner Contractor's

obligation with respect to all applicable state, federal and local laws and regulations and its duty to undertake reasonable action to establish and maintain secure conditions at the Jobsite.

6. **Preventing Unauthorized Access.** The Airport has been secured to prevent unauthorized access to the Air Operations Area ("**AOA**"), the secured area, the sterile area and other controlled areas of the Airport. Contractor shall cooperate to the fullest extent with the TSA and DOA to maintain the integrity of the security system. The Contractor shall control its operations and the operations of its subcontractors and all suppliers so as to provide for the free and unobstructed movement of aircraft, aircraft operations personnel and equipment in the AOA, the secured area, the sterile area and other controlled areas of the Airport as defined herein.

7. **Transportation Security Administration/Responsibility of Contractor.** In order to comply with the TSA and DOA security requirements, Contractor shall be responsible for informing itself as to current, ongoing, and changing requirements, and for remaining in compliance with those requirements throughout this Agreement. The security requirements are as follows and from time to time may change as required by the TSA and/or DOA.

7.1 **Security Identification Display Area (SIDA).** The Security Identification Display Area ("**SIDA**") is defined in the Airport Security Program as any area that requires individuals to continuously display Airport issued or Airport approved identification badges. Personnel associated with construction contracts in the AOA secured area or sterile area of the Airport shall display SIDA badges at all times. The TSA and the DOA require all personnel to display SIDA badges in areas controlled for security purposes at all times.

7.2 **FBI/CHRC Checks.** To obtain a SIDA badge, each individual must successfully undergo a Security Threat Assessment and a Federal Bureau of Investigation ("**FBI**") fingerprint based Criminal History Records Check ("**CHRC**") which must reveal no convictions of disqualifying crimes within the last ten years as defined in Transportation Security Regulation, TSR Part 1542.209. Each individual must also attend a security awareness course conducted by the DOA Security Division. Each employee must present two proper forms of identification and citizenship/employment eligibility documents if necessary. Contractor shall be responsible for all fees associated with obtaining a SIDA badge (i.e., badge and fingerprint fees as determined by DOA). The current cost for the CHRC is \$50.00 per individual. The current cost for badge is \$60.00 per individual. Cost for lost badges is \$60.00 for each replacement badge.

7.2.1 In order to obtain up-to-date costs for the CHRC and for badging, Contractor shall contact the DOA Security office at (404) 530-6667 prior to sending individuals to the DOA Security office for badging. Contractor/Escorting Requirements are specified in subsection below.

7.3 Displaying Badges. Employees and those of all subcontractors must display a DOA issued badge showing Contractor's name and an employee number. All personnel shall be required to wear this badge at all times while within the secured areas of the Airport.

7.4 Badging Records and Process. Contractor shall maintain an up-to-date record of all badge holders showing name, address, sex, height, weight, color of eyes and badge number. Contractor will be required to furnish this information to the DOA upon request.

7.4.1 The Badging process may begin upon the Contractor's receipt of a formal Notice to Proceed (NTP) from the City and may take up to fourteen (14) calendar days to complete. Access to secured areas shall be denied until such time as the Contractor has completed the badging process.

7.4.2 If applicable, an Administrative NTP may be presented to the DOA Security Division by the Contractor in order to initiate the badging process for the Contractor's employees.

7.4.3 The Contractor shall appoint one of its employees as an Authorizing Agent and submit his or her name, on the Contractor's letterhead, to the DOA Security Division. The submittal letter shall indicate the Project Name, Agreement Number, Point of Contact, Telephone and Fax number, list of subcontractors including subcontractors' Authorizing Agent nature of the work to be performed by Contractor, and each subcontractor, location and duration, time frame(s), and justification for vehicle access, if required. A copy of the Contractor's Insurance Certificate shall accompany the letter. Once badged, the Contractor's Authorizing Agent shall be responsible for the badging process of his/her company employees.

7.4.4 Each Subcontractor identified in the Contractor's letter shall appoint one of its employees as an Authorizing Agent and submit his or her name through the Contractor, to the DOA Security Division. A copy of the Subcontractor's Insurance certificate shall accompany the letter. Once badged, the Subcontractor's Authorizing Agent shall be responsible for the badging process of his/her company employees.

7.4.5 Processing time for badging, at the badging office after completion of the CHRC, will last approximately one (1) hour. Processing time for Authorizing Agents will last an additional hour for briefing by the DOA Security Division. Authorizing agent briefing sessions will be conducted only on Mondays, Wednesdays and Fridays at 11 a.m. in the DOA Security office.

7.4.6 Each person applying for badging shall complete and submit all forms required by the DOA Security Division. All required forms will be provided

to the authorizing agent at the time of the briefing at the DOA Security office.

7.4.7 Each person applying for a badge shall also submit to fingerprinting upon the submittal of said forms. Fingerprints will be utilized for a ten (10) year FBI-based criminal history records check for each individual employee.

7.4.8 Pursuant to TSR § 1542.209 certain felony convictions within the most recent ten (10) year period, may cause disqualification. A list of disqualifying Felony convictions is available in the offices of the DOA Security Division and in the TSR Regulations.

7.4.9 The Authorizing Agent will be notified when the results of the fingerprint checks are completed. Upon notification and approval, Contractor's and subcontractor's approved employees may return to the DOA Security Office, during posted hours, for photographing and badging. This process may take up to sixty (60) minutes.

7.4.10 Badges issued to Contractor and subcontractor employees and agents shall expire upon the happening of one (1) of the following events, whichever occurs first:

7.4.10.1 Completion of Agreement or subcontract, unless extended by the City;

7.4.10.2 Expiration of Insurance coverage, as indicated on the Contractor's Insurance certificate;

7.4.10.3 Employee's driver's license expiration date; or

7.4.10.4 Two (2) years from the issuance of the badge.

7.4.11 Contractor and its subcontractor shall be responsible for making arrangements, ahead of time, to extend badges, when necessary. A letter, directed to both the DOA Assistant General Manager (Facilities) and the DOA Security Manager, explaining the reason(s) for the badge extension on Contractor's letterhead will be required. Extension requests must be approved in writing by the DOA prior to extension of the badges.

7.4.12 Contractor's questions concerning Airport Security shall be directed to (404) 530-6667.

8. Drivers. All drivers operating vehicles within the AOA must obtain, in addition to the DOA Security badge, a DOA Ramp Certification. Ramp Certification will be evidenced by a "D" sticker placed on the face of the badge by the DOA Security department.

- 8.1 Ramp Certification.** City will require Airport Driver Safety Training and Ramp Certification for all personnel required to operate a motor vehicle in the AOA. This can be obtained by completing an Airport Driver Safety Training Course administered by the Airport Operations Division. Contractor shall contact the Airport Security Office at (404) 530-6667 during normal business hours to schedule the training session.
- 8.2** Except as set forth below, all vehicles operating within the AOA shall carry a minimum liability insurance coverage amount of TEN MILLION DOLLARS (\$10,000,000.00).
- 8.3** Contractor shall mark all vehicles and construction equipment, including those of subcontractors, in a manner as required by the Department of Aviation and consistent with Transportation Security Regulations (TSR).
- 8.4** All vehicles operating within the AOA must display permanent signage, legible and visible from a sight distance of five hundred (500) feet on both sides of the vehicle. MAGNETIC SIGNS ARE PROHIBITED FROM USE IN THE AOA.
- 9. Protocols for Contractor Escorting.** Prime contractor must incorporate escorting protocol with Security Plan submitted for approval by the Security Manager. The Security Manager must approve any exceptions. Contractor must attach a map of work area(s) and routes to access the work area(s) to project security plan submitted to the Aviation Security Division for approval. Contractor may contact DOA Security Manager at (404) 530-6667 during normal operating hours.
- 9.1** All escorted vehicles and personnel must remain under the direction of authorized escorting personnel at all times.
- 9.2** Contractor and escorted personnel shall have no Terminal or Concourse access.
- 9.3** Escorting is limited to an Airport SIDA badged prime Contractor or an Airport SIDA badged escorting subcontractor approved by the Security and Operations Managers to perform escorting duties. The individuals involved in escorting shall perform no other services other than escorting while in service. No other subcontractors will be allowed to escort any vehicle(s).
- 9.4** Escorting person(s) must have a SIDA badge.
- 9.5** Designated badged prime Contractor employees approved or badged escorting subcontractor must escort prime Contractor employees and subcontractors' employees to all work sites. Once at the work site, badged employees, prime or subcontractors, may supervise unbadged employees, not to exceed five (5) employees per one (1) SIDA badged employee.
- 9.6** All personnel (badged or escorted) must have an employee photo ID displayed on the outermost garment, waist high or above. The employee badge must contain the

employee's name, Contractor's name and project number or name. All escorted personnel must remain under the control of person(s) with an Atlanta SIDA badge at all times while in the SIDA.

- 9.7 Maximum vehicular escort—one (1) prime contractor vehicle or approved badged escorting subcontractor is permitted to escort two (2) subcontractor vehicles.
- 9.8 All vehicles requiring escort must access and egress the AOA through Pre-approved gates. Vehicles requiring escort shall not be permitted access or egress through any other entry or exit point within the AOA for any reason whatsoever.
- 9.9 All escorted vehicles must obtain a permit, valid for up to ten (10) hours, at Gate 73. The obtaining of a permit, however, shall not relieve a vehicle from the requirement of being escorted as set forth herein.
- 9.10 In the event an escorted vehicle requires a time limit extension, the vehicle, and its original operator, must return to Gate 73 to obtain a time limit extension to complete work in the AOA secure or sterile area. Time limit extension shall not exceed an additional ten (10) hour period under any circumstances.

10. Construction Contracts Within Sterile Area (Inside Terminal, Concourses)

- 10.1 Highest level of Security required.
 - 10.2 All employees of prime Contractor, and its subcontractors, must be badged to work in the sterile area.
 - 10.3 If escorting of unbadged Contractors and or subcontractors is required, an approved sponsor agency (DOA, AATC, HACM, HCM, etc.) must perform escort full time.
 - 10.4 For any work requiring access to the sterile area (beyond the Passenger Screening Checkpoint area and on Concourses), a tool inventory must be conducted daily by the prime Contractor or designated representative. A copy of this inventory should be provided to the construction manager or project manager for verification. In general, tools will not be allowed to pass through the checkpoint area.
11. **Restricted AOA Access.** Contractor shall allow passage into the AOA or secured area through its access point to persons, vehicles, and equipment displaying identification of the DOA or provide an escort for each person or vehicle not displaying proper identification. Escort vehicles must be insured as specified per Exhibit D; Insurance. Escorted vehicles need not carry the aforementioned coverage but must carry the minimum amounts of insurance required by Georgia Law. However, Insurance coverage of escort vehicles must provide coverage as specified by **Exhibit D** for vehicles being escorted.

12. Visual Aids. In the event of the possibility of contact with the AOA or secured area, Contractor shall establish a system of visual aids for marking and delineating the limits of required clearances adjacent to active runways, taxiways, and NAVAIDS during both day and night time work, subject to City's approval prior to the start of any work under this Agreement. The approved system of marking and delineating shall be installed, maintained and protected at all times.

13. Tools and Materials. Contractor shall create and maintain an inventory of all tools and materials utilized within the SIDA, terminal building, Federal Inspection Service (FIS), and AOA.

13.1 All tools and materials shall be stored and maintained in a secured manner to prevent unauthorized use, within pre-designated areas within the secured areas of the airport. Storage designations shall be obtained by the Contractor and/or subcontractor, prior to mobilization, by contacting the DOA Properties Division at (404) 209-2945. Change requests for storage designation may be approved only through the DOA Properties Division with notification and concurrence from the DOA Security Division. Failure to comply with this requirement may result in the termination of Contractor's or subcontractor's contract and disqualification from working on construction contracts within secured areas of the Airport.

13.2 All tools and materials must be secured to prevent unauthorized use at all times within the secured areas of the Airport and/or the AOA. Failure to comply with this requirement may result in the termination of Contractor's or subcontractor's contract and disqualification from working on construction contracts within secured areas of the Airport.

13.3 Any and all job-specific or unusual tools and/or materials shall be presented to the security authority at point of entry gate when accessing and/or egressing the SIDA and/or AOA. Failure to comply with this requirement may result in the termination of Contractor's or subcontractor's contract and disqualification from working on construction contracts within secured areas of the Airport.

13.4 All vehicles shall remain subject to search while within the secured areas of the Airport and/or the AOA at all times. Vehicles may also be searched prior to entry to the secured areas of the Airport. The possession of weapons and other prohibited items may result in criminal or civil charges in accordance with applicable laws.

14. Dumpsters. Contractors and subcontractors shall be allowed no more than one (1) open dumpster per Agreement work area. Any and all other job-site dumpsters must remain securely covered and fastened at all times.

14.1 Trash must be removed daily.

14.2 No dumpster shall be permitted in the Terminal area for any reason whatsoever.

- 14.3 The Contractor shall be responsible for trash removal from dumpsters within the AOA. Contractor shall clear debris on a daily basis not later than the end of shift.
- 14.4 Dump trucks shall access and egress the AOA through pre-approved gates. Failure to comply with this requirement may result in the termination of Contractor's or subcontractor's contract and disqualification from working on projects within the secured areas of the Airport.
15. **Terminal/Curbside.** A maximum of two (2) Contractor vehicles or two (2) subcontractor vehicles may be permitted in a work area at any given time, subject to the approval of the Atlanta Police Department and the DOA Security. In the event one (1) Contractor vehicle is present, then no more than one (1) subcontractor vehicle may be present at the same time, and vice versa.
- 15.1 Debris removal may be allowed from curbside with special permission by the DOA Security Department.
- 15.2 When parked at curbside, at least one (1) badged employee must remain with the vehicle at all times. Vehicles must be removed as expeditiously as possible in all cases.
- 15.3 Areas surrounding vehicles accessing curbsides must be kept clean at all times.
- 15.4 For purposes of obtaining Terminal or Curbside access, the APD Airport Section shall be contacted by dialing (404) 530-6630 24 hours in advance of the desired access time.
16. **Staging Areas.** The Contractor's Construction staging area shall be identified on the plans.
17. **Federal Inspection Service Areas.** For any or all work conducted within Federal Inspection Service (FIS) areas, Contractor shall submit FIS Authorization requests to the **U.S. Customs Service (404) 765-2303**. The request shall detail the names of employees, description and area of work, work schedule, and any other relevant information to the DOA Security Department.
- 17.1 Contractor shall be responsible for obtaining the appropriate approvals and special SIDA badge FIS access decals from the appropriate Federal authorities. Special SIDA badge FIS access decals will not be required in if one (1) or more U.S. Customs Agent(s) are present at the work site at all times.
18. **Security Checkpoints.** Contractor and subcontractors shall maintain awareness among all employees, and at all times, that all Security Checkpoints are now under Federal jurisdiction rather than privately contracted Security agents. In general, contractors will not be allowed to carry tools and construction materials through the passenger security screening points.
- 18.1 Questions regarding Federal Security Checkpoints shall be directed to (404) 763-7437 or (404) 530-2150.

- 19. Restrictions on Operations.** Contractor shall plan and conduct its operations so as not to enter upon lands in their natural state unless authorized by City. Contractor shall not damage, close or obstruct any utility installation, highway, road or other property until permits and City's permission therefore have been obtained. Contractor shall not disrupt or otherwise interfere with the operation of any pipeline, telephone, electric transmission line, ditch or structure unless specifically authorized by this Agreement. Contractor shall not damage or destroy cultivated and planted areas, or vegetation such as trees, plants, shrubs, and grass on or adjacent to the premises which, as determined by City, do not interfere with the performance of this Agreement. The City will be responsible for furnishing all rights-of-ways upon which the Work is to be constructed in advance of the Contractor's operation.
- 20. Cooperation with Agencies.** Contractor shall cooperate with the owner of any public or private utility service, FAA or National Oceanic and Atmospheric Administration (NOAA), or a utility service of another government agency that may be authorized by the owner to construct, reconstruct or maintain such utility services or facilities during the progress of the Work. In addition, Contractor shall control its operations to prevent the unscheduled interruption of such utility services and facilities.
- 21. Location of Services.** The City does not guarantee the accuracy or the completeness of the location information relating to existing utility services, facilities, or structures that may be shown on the plans or encountered in the Work. Any inaccuracy or omission in such information shall not relieve Contractor of its responsibility to protect such existing features from damage or unscheduled interruption of service.
- 22. Notice to Owner/Operators.** Prior to commencing the work in the general vicinity of an existing utility service or facility, Contractor shall notify each owner/operator in writing of activities which might affect its interests. If, in Contractor's opinion, the owner/operator's assistance is needed to locate the utility service or facility or the presence of a representative of the owner/operator is desirable to observe the work, such advice should be included in the notification. Contractor shall furnish a copy of such written notices to City.
- 23. Excavation Methods.** Where the outside limits of an underground utility service have been located and staked on the ground, Contractor shall use excavation methods acceptable to City as may be required to insure protection from damage due to Contractor's operations.
- 24. Damage to Services.** Should Contractor damage or interrupt the operation of a utility service or facility by accident or otherwise, it shall immediately notify in writing the owner/operator, appropriate public safety authorities and City and shall take all reasonable measures to prevent further damage or interruption of service. Contractor in such events shall cooperate with the utility service of facility owner and City continuously until such damage has been repaired and service restored.
- 25. Failure to Protect Property.** Contractor shall not be entitled to any extension of time or compensation on account of Contractor's failure to protect all facilities, equipment, materials and other property as described herein. All costs in connection with any Improvements or

restoration necessary or required by reason of unauthorized obstruction, damage or use shall be borne by Contractor.

26. Utility Contractor Licensing Requirements. Contractor shall comply with the requirements of state law, including, but not limited to, O.C.G.A. § 43-14-8.2 (b)(1) which states that:

After June 30, 1994, no sole proprietorship, partnership, or corporation shall have the right to engage in the business of utility contracting unless such business holds a utility contractor license and there is regularly connected with such business a person or persons who holds a valid utility manager certificate issued under this chapter. Such utility manager must be actually engaged in the performance of such business on a full-time basis and oversee the utility contracting work of all employees of the business. In cases where a sole proprietorship, partnership, or corporation has more than one permanent office, then each permanent office shall be registered with the division and at least one person who holds a valid utility manager certificate issued under this chapter shall be stationed in each office on a full-time basis and shall oversee the utility contracting work of all employees of that office.



TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE ATTN: CANDACE L. BYRD

Dept.'s Legislative Liaison: Anita Williams

Contact Number: 404-530-6600

Originating Department: Aviation

Committee(s) of Purview: Transportation

Chief of Staff Deadline: 05/23/14

Anticipated Committee Meeting Date(s): 06/11/14

Anticipated Full Council Date: 06/16/14

Legislative Counsel's Signature: Jeffrey Strickland

Commissioner's Signature: [Signature]

Chief Financial Officer: N/A

Chief Information Officer Signature (for IT Procurements) N/A

Chief Procurement Officer Signature: [Signature]

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AIRPORT CONCESSION LEASE AGREEMENT FC-6347 SLEEP UNITS ON CONCOURSES "E" AND "F" WITH MINUTE SUITES, LLC FOR SLEEP UNITS AT HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT: (if any)

Mayor's Staff Only

Received by CPO: 5/15/14 (date)

Received by LC from CPO: (date)

Received by Mayor's Office: [Signature] 5-16-14 (date)

Reviewed by: [Signature] (date)

Submitted to Council: (date)

Attachment: Sleep Units Transmittal (14-R-3734 : Sleep Units on Concourses E and F Concessions Lease Agreement)

Legislative White Paper

Committee of Purview: Transportation

Caption:

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AIRPORT CONCESSION LEASE AGREEMENT FC-6347 SLEEP UNITS ON CONCOURSES "E" AND "F" WITH MINUTE SUITES, LLC FOR SLEEP UNITS AT HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT; AND FOR OTHER PURPOSES.

Council Meeting Date: 06/16/14

Legislation Title: Sleep Units on Concourses E and F

Requesting Dept.: Aviation

Contract Type: Concessions Lease Agreement

Source Selection: Request for Proposals

Bids/Proposals Due: March 12, 2014

Invitations Issued: December 20, 2013

Number of Bids/

Proposals Received: Two (2)

Bidders/Proponents: Aeropods.com LLC and Minute Suites, LLC

Background:

The purpose of this legislation is to authorize the execution of FC-6347, Sleep Units Concessions on Concourses E and F at Hartsfield-Jackson Atlanta International Airport (H-JAIA).

A Request for Proposal was advertised December 20, 2013, proposals were received and evaluated. Two proposals were received and the recommendation of the Aviation General Manager and the Chief Procurement Officer is to award to the top ranked proponent for FC-6347, Sleep Units to Minute Suites, LLC for a seven (7) year lease agreement with a three (3) year renewal option by the City.

Minute Suites, LLC currently operates the Minute Suites on Concourse B at Hartsfield-Jackson Atlanta International Airport. Minute Suites also operates Sleep Units at Philadelphia International and Dallas Ft. Worth International airports with additional sleep units under construction at Chicago O'Hare International Airport.

The amount of the first year's Minimum Annual Guarantee (MAG) is \$90,000 with percentage rental fees of 10% for both Services rendered and Retail sold.

Source of Funds: N/A

Fiscal Impact: N/A

Term of Contract: Seven years with a three year renewal at City's sole option

Method of Cost Recovery: N/A

Approvals:

DOF: N/A

DOL: Yes

Prepared By: Anita Williams

Contact Number: 404-382-2313



Kasim Reed
Mayor

Miguel Southwell
Interim Aviation
General Manager

Date: April 30, 2014

To: Adam L. Smith, Esq. CPPB, CPPO, CPPM, CPP
Chief Procurement Officer

From: Miguel Southwell
Interim Aviation General Manager

Subject: FC-6347- Sleep Units on Concourses E & F

Based on the attached Final Scores received from DOP for the subject project, the Department of Aviation hereby recommends award to the top-ranked, responsible, responsive proponent, **Minute Suites**.

If any additional information is required, please contact Erin Jenkins, Procurement Manager, at 404-382-2236.

Attachment

cc: V. Brown
P. Brown
D. Judd
G. Geeter
K. Walker
File



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Attachment: Sleep Units Transmittal (14-R-3734 : Sleep Units on Concourses E and F Concessions Lease Agreement)