

A RESOLUTION BY TRANSPORTATION COMMITTEE AUTHORIZING THE MAYOR TO EXECUTE AN AIRPORT CONCESSIONS LEASE AGREEMENT WITH IC BBCOA, JV FOR FC-6362, COFFEE AND BAKERY CONCESSION IN THE RENTAL CAR CENTER AT HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT; AND FOR OTHER PURPOSES.

Workflow List:

Cheryl Treadwell	Completed	05/30/2014 1:05 PM
Miguel Southwell	Completed	05/30/2014 3:09 PM
Procurement	Completed	06/02/2014 12:27 PM
Adam Smith	Completed	06/02/2014 12:32 PM
Mayor's Office	Completed	06/02/2014 1:24 PM
Office of Research and Policy Analysis	Completed	06/03/2014 9:38 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 AN AIRPORT CONCESSIONS LEASE AGREEMENT WITH IC BBCOA, JV FOR FC-6362, COFFEE AND BAKERY CONCESSION IN THE RENTAL CAR CENTER 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-6362, Coffee and Bakery Concession in the Rental Car Center on behalf of the Department of Aviation; and

WHEREAS, three (3) qualified firms submitted proposals for FC-6362 in response to the solicitation for the right to provide a Coffee and Bakery Concession at the Rental Car Center; and

WHEREAS, the proposals were received and evaluated and the Aviation General Manager and the Chief Procurement Officer have recommended that FC-6362, Coffee and Bakery Concession in the Rental Car Center be awarded to IC BBCOA, JV; 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-6362, Coffee and Bakery Concession in the Rental Car Center with IC BBCOA, JV.

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.

TRANSMITTAL FORM FOR LEGISLATION

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

Dept.'s Legislative Liaison: Anita Williams

Contact Number: 404-530-6600

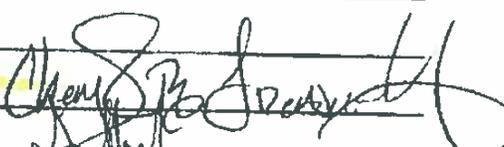
Originating Department: Aviation

Committee(s) of Purview: Transportation

Chief of Staff Deadline: 05/23/14

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

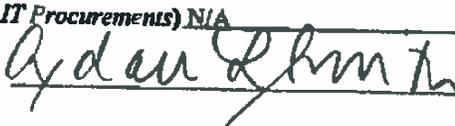
Anticipated Full Council Date: 06/16/14

Legislative Counsel's Signature: Cheryl Treadwell 

Commissioner's Signature:  

Chief Financial Officer: N/A

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

Chief Procurement Officer Signature: 

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AIRPORT CONCESSIONS LEASE AGREEMENT WITH IC BBCOA, JV FOR FC-6362, COFFEE AND BAKERY CONCESSION IN THE RENTAL CAR CENTER AT HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT: (if any)

Mayor's Staff Only

Received by CPO: 5/20/14
(date)

Received by LC from CPO: _____
(date)

Received by Mayor's Office: Jamice Osai 5/21/14
(date)

Reviewed by: 
(date)

Submitted to Council: _____
(date)

Attachment: Coffee and Bakery Transmittal (14-R-3735 : Coffee and Bakery Concession Lease Agreement)

Legislative White Paper

Committee of Purview: Transportation

Caption:

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AIRPORT CONCESSIONS LEASE AGREEMENT WITH IC BBCOA, JV FOR FC-6362, COFFEE AND BAKERY CONCESSION IN THE RENTAL CAR CENTER AT HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT; AND FOR OTHER PURPOSES.

Council Meeting Date: 06/16/14

Legislation Title: Coffee and Bakery Concession in the Rental Car Center

Requesting Dept.: Aviation

Contract Type: Concessions Lease Agreement

Source Selection: Request for Proposals

Bids/Proposals Due: March 5, 2014

Invitations Issued: November 12, 2013

Number of Bids/

Proposals Received: Three (3)

Bidders/Proponents: 1. City Souvenir and Gifts

2. CBC, LLC/LUC, LLC Partnership

3. IC BBCOA, JV

Background:

The purpose of this legislation is to authorize the execution of FC-6362-Coffee and Bakery Concession in the Rental Car Center at Hartsfield-Jackson Atlanta International Airport.

A Request for Proposal was advertised November 12, 2013, proposals were received and evaluated. Three 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-6362, Coffee and Bakery Concession in the Rental Car Center to IC BBCOA, JV for a seven (7) year lease agreement with a three (3) year option by the City.

IC BBCOA, JV was created for the purpose of responding to the City of Atlanta's RFP, FC-6362, Coffee and Bakery Concession in the Rental Car Center. The Joint Venture is made up of Mr. Max Choi and Mr. Israel Choi who has 20 plus years in the restaurant industry as a head chef and manager. Mr. Israel Choi owns and operates Choi's Korean Restaurant and

Grocery Store in Warner Robbins, GA and Lakeside Shell Gas Station and Convenience Store in Newnan, GA.

The amount of the first year's minimum annual guarantee (MAG) is \$144,650 with the following percentage rental fees:

Category	Percentage of Gross Sales
Branded Food and Coffee	14.5%
Non-Branded Food and Coffee	16.5%
Travel Retail, Gifts, Souvenirs, Tobacco Products, and Snacks	12.5%
General Retail, Supplies, and Stationary	10%

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

Attachment: Coffee and Bakery Transmittal (14-R-3735 : Coffee and Bakery Concession Lease Agreement)



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-6362- Coffee & Bakery Concessions in the Rental Car Center @ HJAIA

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, **IC BBCOA, JV**.

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



City of Atlanta • Department of Aviation
P.O. Box 20509 • Atlanta, GA USA 30320-2509 • Tel: (404) 530-6600
www.atlanta-airport.com

Attachment: Coffee and Bakery Transmittal (14-R-3735 : Coffee and Bakery Concession Lease Agreement)

CONCESSIONS LEASE AGREEMENT
FOR
COFFEE & BAKERY CONCESSION IN THE RENTAL CAR CENTER
AT THE
HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT
ATLANTA, GEORGIA



Landlord: City of Atlanta

Concessionaire: IC BBCOA, JV

Contract No. FC-6362

Attachment: Coffee and Bakery Agreement (14-R-3735 : Coffee and Bakery Concession Lease Agreement)

CONCESSIONS LEASE AGREEMENT

This Concessions Lease Agreement (“**Agreement**”) is entered into and made effective on this ___ day of _____, 2014 (“**Commencement Date**”), between the CITY OF ATLANTA, a municipal corporation of the State of Georgia (“**City**”) and IC BBCOA, JV (“**Concessionaire**”). In consideration of the mutual premises and obligations set forth herein, and for other good and valuable consideration, the receipt and legal sufficiency of which is acknowledged by Concessionaire and the City, the parties hereto, intending to be legally bound, agree as follows:

1. PREMISES

1.1 Description of Premises.

1.1.1 Concessionaire shall be entitled to occupy and use, solely for the purposes specifically set forth herein, that certain space consisting of approximately 830 square feet of floor area (“**Premises**”) located in the Rental Car Center (“**RCC**”) of Hartsfield-Jackson Atlanta International Airport (“**Airport**,” and for purposes of this Agreement the term ‘Airport’ shall be deemed to include the RCC), and as generally depicted on **Exhibit A**, as follows:

Space	Location	Approximate Square Footage
RCC-F1	Level 2, West End, Rental Car Center	830
		Total S.F.: 830

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 Section 7 of this Agreement, Concessionaire must submit to City 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 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 anywhere 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 City’s Aviation General Manager for the Department of Aviation (“**DOA**”).

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 one or more rental credits to be applied 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.

1.2.2.4.3.2 For example, assuming the Premises of this Agreement on the Commencement Date is one thousand (1,000) square feet. If, in contract year two (2), the City requires a contraction of the Premises to eight hundred and fifty (850) 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. If, in contract year four (4), the City requires an expansion of an additional one hundred fifty (150) 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. If, in contract year five (5), the City requires an expansion of an additional one hundred (100) square feet, the MAG related to the Premises will be increased by ten percent (10%) because the resulting Premises will have expanded by ten percent (10%), in the aggregate, as compared to the original square footage.

1.3. RCC or Concourse Closure. If the RCC or 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 in the RCC or on the specific 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 or abatement 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 to facilitate or assist with any delivery.

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 receiving, handling and/or transfer/delivery services for all or any portion of the concessionaires operating at the Airport in accordance with policies the Aviation General Manager believes at his/her discretion to be in the best interests of the City.

1.5.4.2 If the City chooses to use a third-party contractor for receiving, handling and/or transfer/delivery services, 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/or 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 deemed effective on the Commencement Date of this Agreement first set forth above.

2.2 Term. The term ("**Term**") of this Agreement shall begin on the Commencement Date and end **seven (7) years** thereafter ("**Expiration Date**"), unless earlier terminated or cancelled pursuant to the terms of this Agreement. 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, then (a) the City's obligation to deliver such portion of the Premises to Concessionaire and (2) Concessionaire's obligation to improve such portion of the Premises shall 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 and the City shall have the sole right to extend the Term of this Agreement by **three (3) years**. The City may exercise its option to extend the term of this Agreement by providing Concessionaire with written notice thereof at least **six (6) months** prior the end of the then current term of this Agreement. Renewal shall require the approval of the City Council and, if granted, may require the execution of an appropriate Renewal document.

2.4 Holding Over. If Concessionaire remains in possession of the Premises after the expiration or earlier termination of the Term, 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. Concessionaire's holding over in any portion of the Premises will create a month-to-month tenancy on the same terms and conditions contained herein, except (a) the monthly Rent payable to the City shall be equal to twice the monthly rate existing during

the last month of the Term and (b) either party may terminate this Agreement upon thirty (30) days prior written notice to the other party.

3. USE

3.1 Non-Exclusive. Concessionaire will have the exclusive right to provide the Services within and from the Premises. However, the parties hereto agree that Concessionaire's rights hereunder are not exclusive to the Airport and the City is free to procure the same or similar services anywhere in the Airport.

3.2 Use of Premises. Concessionaire must use the Premises to sell the following goods, items, services or commodities: coffee, tea, juice and other non-alcoholic beverages, light snacks and certain retail items (all of which must be pre-approved by the Aviation General Manager), 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. The 'Market Basket Pricing 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%) ("**Street Plus Ten Percent (10%) Pricing**"). Concessionaire acknowledges and agrees that 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 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 from 7 a.m. – 10 p.m. or 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, but 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 for U.S. currency; offering passengers directions and assistance; and accepting at least four (4) major credit cards (i.e., Visa, MasterCard, Discover, and American Express) as payment for any debit or credit transaction. Further, 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 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, in the Aviation General Manager's sole discretion, 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, approved by the Aviation General Manager in advance, 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. Concessionaire shall use compostable service ware along with consumer facing packaging and source separate all food service wastes for direct transport to off-airport composting facilities. Costs attributable to Concessionaire for complying with the waste separation initiative will not exceed \$10 per square foot over and above trash removal and recycling costs, including labor and dumpster fees, assessed to concessionaires.

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 Concessionaire's Gross Revenues in addition to all other rental, fees and other charges payable hereunder. 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. Additionally, Concessionaire is prohibited from soliciting funds (or permitting the solicitation of funds) on or from the Premises in violation of Code Section 22-146 et seq.

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 and/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 (or Concessionaire's employees, contractors, agents or assignees), 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 a day basis.

3.13 Compliance with Laws and Regulations; Licenses and Permits.

3.13.1 Concessionaire must at all times during the 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 only be used for the sole purpose(s) specifically set forth in the Section entitled "Use." Additionally, Concessionaire acknowledges and agrees that it may not do, or cause or permit anything to be done in or about the Premises, or bring or keep anything on the Premises that:

3.14.1 increases 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 creates a nuisance;

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

3.14.4 allows any sale by auction on the Premises;

3.14.5 commits any waste upon the Premises;

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

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

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

3.14.9 does or permits 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.

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 deemed automatically null and void and of no force or effect.

4.2 If Concessionaire is a partnership, limited liability company or joint venture, a withdrawal or change (whether voluntary, involuntary or by operation of law) of the partner/member/joint venturer or partners/members/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/ limited liability company/joint venture, or the dissolution of the partnership/ limited liability company/joint venture, will be deemed an assignment and subject to the terms and conditions set forth in 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.

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 **\$144,650** or percent of the Concessionaire's Gross Receipts ("**Percentage Rent**") as detailed in the table below over the first year of the Term.

(see table on following page)

Category	Percentage of Gross Receipts
Branded Food and Coffee	14.5%
Non-Branded Food and Coffee	16.5%
Travel Retail, Gifts, Souvenirs, Tobacco Products, and Snacks	12.5%
General Retail, Supplies, and Stationary	10%

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 150th day after the Commencement Date (i.e., _____, 2014). 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, 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, 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, as amended from time to time.

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

$$\text{Tax assessment} / \text{projected annual sales receipts} = \text{possessory tax.}$$

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.

$$(\text{Tax assessment} - \text{collection surplus}) / \text{projected annual sales receipts} = \text{applicable possessory tax for the upcoming year}$$

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.

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

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 D 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 fifteen (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 (150) 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 amount equal to two hundred fifty Dollars (\$250.00) per square foot. In addition, Concessionaire is responsible for demolition necessary to accommodate all improvements. The two hundred fifty Dollars (\$250.00) minimum investment amount 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 two hundred fifty Dollars (\$250.00) 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 5th year 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 one hundred and fifty dollars (\$150.00) 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 seventy-five dollars (\$75.00) per square foot by the earlier occurring of: (1.) One hundred and fifty (150) days after the 5th year 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 RCC 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 **Exhibit G** 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 prior 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 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

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 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. RESERVED.

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**.

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.

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 Allow this Agreement to continue 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 may 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 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 reasonable grounds for the Aviation General Manager to feel insecure or uncertain about the Concessionaire's performance or ability to perform the Services; 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 thirty (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 Concessionaire acknowledges and agrees that each of following shall be deemed an event of default under this Agreement:

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.

14.2 If Concessionaire defaults under, breaches or violates this Agreement, in lieu of, or in addition to, any other remedy available to the City at law, in equity or pursuant to the terms of this Agreement, the Aviation General Manager may elect to impose the charges described below on a per diem basis per infraction, as follows:

14.2.1 First offense of any infraction listed in Section 14.1 above may result in a charge of \$500;

14.2.1 Second offence of any infraction listed in Section 14.1 above may result in a charge of \$750;

14.2.1 Third offense of any infraction listed in Section 14.1 above may result in charge of \$1,000; and

14.2.1 Repeated violations of the infractions listed in Section 14.1 above 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 security 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 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 **Exhibit E**, attached hereto and incorporated by this reference 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 original 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 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. _____, adopted by City's Council on _____, 20____, and approved by City's Mayor on _____, 20____, a copy of which is attached to this Agreement as Exhibit B.

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. Concessionaire acknowledges and agrees that the rights granted to Concessionaire hereunder by the City constitute a usufruct, which is not subject to levy or sale, and is not a leasehold interest. 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 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:

- **Exhibit A** – Scope of Services and Map of Premises Locations
- **Exhibit B** – Authorizing Legislation
- **Exhibit D** – Insurance and Bonding Requirements
- **Exhibit E** – Airport Security Requirements
- **Exhibit F** – Dispute Resolution Procedures
- **Exhibit G** – Construction Safety and Health Plan
- **Appendix A** – Office of Contract Compliance Requirements

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 anything 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 as may be amended from time to time.

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 (a) a nationally recognized express overnight courier services (e.g., UPS or Federal Express) or (b) U.S. Postal Service's registered or certified mail, return receipt requested with all postage prepaid, addressed as follows:

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

All notices required or permitted to be given under this Agreement may also be transmitted by electronic mail, at the electronic mail address provided herein, with confirmation of transmission, delivery and receipt. If no electronic mail address is set forth herein for a party, then notices transmitted by electronic mail are not effectively transmitted for purposes of this Agreement. All notices required to be given to Concessionaire hereunder shall be sent to the following address:

Office: _____
Facsimile: _____
E-Mail: _____

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]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CONCESSIONAIRE:

IC BBCOA, JV

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

Attachment: Coffee and Bakery Agreement (14-R-3735 : Coffee and Bakery Concession Lease Agreement)

**EXHIBIT A
SCOPE OF SERVICES**

1. Project Description:

Interested Proponents shall submit a proposal to construct, fit and finish, operate, maintain and manage one (1) Coffee & Bakery Concession located in the Rental Car Center ("RCC") at the Airport.

2. Locations:

The Successful Proponent shall operate from the Premises.

3. Permitted Uses Generally:

The permitted use for this location, as outlined in this section, is a concept that should offer a wide range of food, beverage and retail choices for customers. This suggested concept was chosen on the basis of airport food and beverage trends and customer preference. Any deviation from the Scope of Services or the Agreement is strictly prohibited, without the Aviation General Manager's prior written approval (when permitted).

Proponent shall submit, in sufficient detail, a clearly defined operation believed to be the best concept for the location. This concept must be clearly defined in the merchandising plan and included in the business plan submitted with the proponent's proposal. The Department of Aviation is seeking Prominent and Recognizable brands. This shall include any and all of the following:

- A. Brands that may be known by the relevant market segment nationally, regionally, and/or locally, including but not limited to franchised operations in the quick service restaurant industry, chain full service restaurant concepts, regionally-themed restaurants, and single-store proprietary restaurant concepts;
- B. Brands and/or concepts that are based on the expertise or public appeal of a celebrity figure, television show, movie, and /or significant attraction including but not limited to celebrity-themed restaurants;
- C. International brands that would have a demonstrable following and/or relevant applicability to the Airport.
- D. Local brands with at least one (1) location situated in the Atlanta Metropolitan Area

Prominent and Recognizable brands shall not include:

- A. Generic concepts that do not already possess a licensed, trademarked, or proprietary name, logo, recipe or food and beverage approach;
- B. Brands or concepts operating in less than three locations and situated more than 500 miles from Atlanta, Georgia.

The successful Proponent will be required to operate and manage this location providing merchandise and or products on a non-exclusive basis. All items sold must meet Federal Aviation Administration (FAA) security regulations. Other than the items listed, no other product, merchandise or service shall be sold or offered by the Proponent without the written consent of the Aviation General Manager. In the event any question or dispute arises as to the sale of any specific item or category of items on the premises, the Proponent may submit a request in writing to the Aviation General Manager asking that the matter be reviewed. The Aviation General Manager shall give a decision in writing and such determination is the final authority in the matter. The Proponent shall abide by and conform to the decision of the General Manager.

The Aviation General Manager 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 or merchandise offerings.

The Proponent and its sub-concessionaire(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.

Specific Uses:

Concept: Coffee and Bakery

Space No.: RCC-F1

Location: Level 2, West End, Rental Car Center

Approximate Size: 830 s.f.

Concept Specifications: Coffee, tea and other non-alcoholic beverages as well as baked goods and a selection of sundry items.

Desired Menu/Concept Requirements:

- Menu should include branded coffee and espresso drinks, tea, and limited menu of baked goods (suitable for breakfast, such as muffins and bagels) and takeaway snack items for other day-parts (such as prepared sandwiches, salads, and desserts)
- Food should be available in convenient "to go" packaging
- Restaurant should also offer juices and water

- Menu offerings shall be of high quality and offer good value to the customers
- There must be portion-appropriate menu items for children
- A newspaper selection consisting of at least two (2) local, six (6) national/out of town, and four (4) international/foreign newspaper titles of general circulation must be carried at all times.
- At least 20 varieties of candy and snack foods as packaged for normal retail sale shall be offered.
- Cosmetics, hosiery, and variety of health & beauty aid products in travel sizes.
- Disposable cameras, film, photographic accessories, and batteries.
- Tobacco products and related accessories.
- Travel-sized non-prescription medication and pain relievers.
- High quality regional gifts, souvenirs, and travel-related products.
- Business traveler supplies such as paper, pens, stationery, postage stamps sold at face value, and planners/calendars.

Non-Permitted Menu/Concepts:

- Alcoholic beverages
- Candy and chewing gum
- Any and all sales from vending machines or other mechanical devices, including but not limited to: cigarettes, candy, maps, coffee, newspapers, stamps, phone cards, insurance policies, and dispensation of cash, money orders, and checks
- Any menu item or concept that has not been approved in advance by the Aviation General Manager in writing.

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-6362-Coffee and Bakery Concession in the Rental Car Center at Hartsfield-Jackson Atlanta International Airport.

2. Please provide background information regarding this legislation.

A Request for Proposal was advertised November 12, 2013, proposals were received and evaluated. Three 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-6362, Coffee and Bakery Concession in the Rental Car Center to IC BBCOA, JV for a seven (7) year lease agreement with a three (3) year option by the City.

IC BBCOA, JV was created for the purpose of responding to the City of Atlanta’s RFP, FC-6362, Coffee and Bakery Concession in the Rental Car Center. The Joint Venture is made up of Mr. Max Choi and Mr. Israel Choi who has 20 plus years in the restaurant industry as a head chef and manager. Mr. Israel Choi owns and operates Choi’s Korean Restaurant and Grocery Store in Warner Robbins, GA and Lakeside Shell Gas Station and Convenience Store in Newnan, GA.

The amount of the first year’s minimum annual guarantee (MAG) is \$144,650 with the following percentage rental fees:

Category	Percentage of Gross Sales
Branded Food and Coffee	14.5%
Non-Branded Food and Coffee	16.5%
Travel Retail, Gifts, Souvenirs, Tobacco Products, and Snacks	12.5%
General Retail, Supplies, and Stationary	10%

Attachment: Coffee Bakery Request Form (14-R-3735 : Coffee and Bakery Concession Lease Agreement)

3. If Applicable/Known:

- (a) **Contract Type:** Concessions Lease Agreement
- (b) **Source Selection:** Request for Proposals
- (c) **Bids/Proposals Due:** March 5, 2014
- (d) **Invitations Issued:** November 12, 2013
- (e) **Number of Bids:** N/A
- (f) **Proposals Received:** Three (3)
- (g) **Bidders/Proponents:**
 - 1. City Souvenir and Gifts
 - 2. CBC, LLC/LUC, LLC Partnership
 - 3. IC BBCOA, JV
- (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