

CONCESSION MANAGEMENT CONTRACT

BETWEEN

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

AND

FOR THE LEASING AND MANAGEMENT OF THE

FOOD SERVICE AND RETAIL CONCESSIONS

AT

RONALD REAGAN WASHINGTON NATIONAL AIRPORT

CONTRACT NO. MWAA-4-10-C002

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- Exhibit 3 – Phasing Plan
- Exhibit 4 – Concession Operator Extension Agreements
- Exhibit 5 – Monthly Certified Statement
- Exhibit 6 – Standard Provisions for Concession Contracts
- Exhibit 7 – Good Faith Effort Form
- Exhibit 8 – Office Space

**CONCESSION MANAGEMENT CONTRACT NO. MWAA-4-10-C002
FOR THE LEASING AND MANAGEMENT OF
FOOD SERVICE AND RETAIL CONCESSIONS
AT
RONALD REAGAN WASHINGTON NATIONAL AIRPORT**

THIS CONCESSION MANAGEMENT CONTRACT AND LEASE (hereinafter referred to as "Contract") is by and between the Metropolitan Washington Airports Authority, 1 Aviation Circle, Washington, DC 20001-6000, (hereafter referred to as the "Authority"), and _____ (hereafter referred to as the "Contractor"). The Authority and the Contractor are collectively referred to as the "Parties."

W I T N E S S E T H:

WHEREAS, the Authority operates Ronald Reagan Washington National Airport (hereinafter referred to as "National" and/or "the Airport") under the Metropolitan Washington Airports Act of 1986; and,

WHEREAS, the Authority has determined that the leasing and management of food service and retail concessions is an essential and appropriate service for passengers and other patrons using the Airport; and,

WHEREAS, the Contractor has submitted a proposal in response to the Authority's public solicitation, Request for Proposals No. MWAA-4-10-C002 for leasing and management of the food service and retail concessions at the Airport, and the Authority wishes to enter into a Contract with the Contractor on the terms and conditions herein set forth;

NOW, THEREFORE, the Parties hereto, for and in consideration of the terms, covenants, and agreements contained herein, agree as follows:

ARTICLE 1. OPERATING PERIOD

Section 1.1 Operating Period

The Operating Period of this Contract shall commence as of 12:01 AM on January 1, 2011, and end at 12:00 Midnight on December 31, 2015, subject to earlier termination as provided for herein.

Section 1.2 Extension Option

The Authority may exercise up to two (2) two-year extension options. These options may be exercised at the sole discretion of the Authority. Should the Authority decide that it is in its best interest to exercise one or more of these options to extend the Operating Period of the Contract, the Contractor will be notified by the Authority in writing not less than six (6) months prior to the end of the Contract or any extension thereof. The terms and conditions of the Contract during the option period shall be those stated herein.

Section 1.3 Contract Year

For the purposes of this Contract, "Contract Year" shall mean the period of time beginning on January 1 and extending through December 31 of the same year.

ARTICLE 2. INCORPORATION OF PROPOSAL

The Contractor's original proposal and Best and Final Offer (if any) are hereby incorporated into and made part of this Contract as Exhibit 1. Disclosure of the Contract, proposal and Best and Final Offer and information contained therein to third parties shall be subject to the Article 2 of the Standard Provisions attached hereto as Exhibit 6, the Authority's Freedom of Information Policy, and the Authority's *Contracting Manual*.

ARTICLE 3. PREMISES

Section 3.1 Assignment of Premises

- A. Except as limited in Article 4 of this Contract, the Contractor is hereby granted and assigned the privilege and obligation to lease, market, and manage the food service and retail locations, as defined herein, and hereinafter referred to as "Premises," as defined in Exhibit 2, located in the Airport terminal buildings. The Contractor agrees to lease, market, and manage the food service and retail concession locations (in-line units and permanent kiosks) and multiple retail

merchandising units at the Airport as shown in Exhibit 2. The assigned Premises are comprised of approximately 82 operating locations containing approximately 67,000 square feet. The Authority may adjust these Premises, adding or removing locations, as the Authority's needs change. Any adjustment to the Premises shall be formally made by written amendment to the Contract.

- B. As of the effective date of January 1, 2011, the existing leases for the Premises identified herein shall be assigned to the Contractor and the Authority shall require these tenants to make their rental payments to Contractor and accept Contractor as their landlord. The Contractor shall permit the current Concession Operators occupying these Premises to continue operating under the terms and conditions of those existing concession leases until the expiration date, or other termination of said concession leases. The term "Concession Operators" has the same meaning as the entities identified as "Tenants" in these concession leases. The Contractor shall be bound by the terms and conditions of these existing concession leases until the expiration date or termination of those leases. Beginning on the date upon which said concession leases for the Premises are assigned to the Contractor, the Contractor shall be entitled to retain the Management Fee, as described in Article 5, and shall provide those services identified in Article 4, herein.
- C. In addition to the privilege to use the above Premises, the Contractor and its Concession Operators shall have the privilege, in common with others so authorized by the Authority, to use the loading docks and freight elevators for the purpose of receiving goods and other supplies in support of its business operations; PROVIDED, HOWEVER, that the Contractor's use of the loading docks and elevators, shall, at all times, conform to any and all regulations promulgated by the Authority covering the use of these facilities. There shall be no additional charge to either Contractor or its Concession Operators for the use of such loading docks and freight elevators.
- D. The Contractor and Concession Operators shall have the privilege for their employees to use, in common with other employees and users of the Airport, employee parking facilities provided by the Authority, at such fees as the Authority may, from time to time, charge all employees using these parking facilities.
- E. From time to time during the Operating Period of this Contract, it may be necessary for the Authority to require the Contractor to relocate or reduce the Premises. The Contractor shall accomplish any such relocation or reduction of the Premises as expeditiously as is reasonable under the circumstances. Any

adjustment to the Premises shall be formally made by amendment to the Contract. The Authority will, to the extent reasonably possible, attempt to provide the Contractor with Premises that are comparable to those that are being vacated.

The Contractor shall ensure that leases with Concession Operators provide that:

1. Any such relocation or reduction of the Premises shall be accomplished by the Concession Operators as expeditiously as is reasonable under the circumstances.
 2. In the event that the Authority determines it is necessary to relocate or reduce, all or a portion of the assigned Premises, the Authority agrees to: a) notify the Contractor at least ninety (90) days in advance of the relocation or reduction of the assigned Premises; b) buy out the Concession Operator's undepreciated capital investment on a straight line basis in accordance with the provisions of Article 8 herein.
 3. In the event that the Authority requires the reduction, relocation or discontinuance of any assigned Premises during the Operating Period, the Authority shall be responsible for all reasonable moving costs incurred in any relocation.
- F. The Authority, throughout this Contract, may, at its sole discretion, assign to the Contractor additional areas at the Airport not now covered by this Contract, such as any existing, expanded, or new areas of the Airport's terminal buildings in which the Contractor shall lease and manage appropriate concession facilities, subject to the prior written approval of the Authority as to location, size, design, décor and types of concession products and services to be provided. The Authority shall make reasonable efforts to provide the Contractor with locations and facility sizes that shall maximize concession availability to the traveling public.

Section 3.2 Retail Merchandising Units (RMUs)

The Contractor is required to replace the existing RMUs at National within the first twelve months of the Operating Period. A minimum of ten RMUs must be included in the concession program at National. The cost of designing, constructing, installing, and maintaining the RMUs shall be the sole responsibility of the Contractor and must be fully depreciated on a straightline basis over the initial term of the Operating Period so that they have no book value at the end of the initial Operating Period. Upon the expiration

or earlier termination of this Contract, title to the RMUs shall revert to the Authority. In the event of an early termination of this Contract through no fault of the Contractor, the Authority shall reimburse the Contractor for the unamortized capital investment for the RMUs in use at the Airport as of the effective date of Contract termination based on the straightline depreciation calculation. Title to the RMUs shall pass to the Authority on the date payment is made by the Authority. If the Contract is terminated due to the Contractor's default, then the Contractor shall not be entitled to reimbursement of any of its unamortized capital investment, and title to the RMUs shall pass to the Authority immediately upon termination.

Subject to the prior written approval of the Authority, the Contractor may provide and lease additional RMUs to provide temporary food service and retail locations at the Airport. The Authority will review their size, design, style, and proposed locations prior to granting approval.

The Authority, at its sole discretion, and upon thirty (30) days notice to the Contractor, may require the relocation or removal from service of any RMUs. Such removal by the Contractor shall be at the Contractor's sole expense. The Authority shall have no obligation to provide alternative space for any cart(s) or RMUs removed from service.

Section 3.3 Office Space

Contractor shall use and occupy the space described in Exhibit 8 solely to conduct the business authorized by this Contract and for no other business or purpose whatsoever. The space will be provided without charge for rent or utilities. The Authority reserves the right to require the Contractor to relocate from time to time to office space of a similar size with thirty (30) days advance written notice. In the event the Contractor relocates at the Authority's request, the Authority will bear the relocation costs. Relocation costs shall include the provision of a new location and the start up of any reasonable and customary utilities, but shall not include the cost of moving or replacing Contractor's office equipment.

ARTICLE 4. SCOPE OF OPERATIONS

Section 4.1 Rights of the Contractor

- A. The Authority hereby grants to the Contractor, subject to all terms, conditions and covenants of this Contract, the privilege and obligation to lease and manage leases for Airport terminal concession facilities that offer, sell, and promote food, beverages, and retail merchandise on the Premises as defined herein. These privileges are subject to the following limitations, among others:

1. Any airline operating at the Airport may provide, without charge, coffee to its passengers within its leased premises. The Authority may require that such airline purchase coffee from one or more of the food service operators at the Airport, subject to any other legal commitments between the Authority and the airlines that would prohibit the Authority from requiring such purchase from Airport food service operators.
2. Any airline operating a private club at the Airport may provide food and beverage service to its patrons in the club without charge and without obligation to purchase such food and beverages from an Airport food service facility.
3. Any airline or other airport tenant or the Authority may choose to provide food and beverages at private meetings, parties and receptions on the Airport using caterers other than Airport food service operators.
4. Nothing in this Contract shall prevent other Airport tenants from installing vending machines provided by subcontractors of their choice in their non-public leased premises.
5. The privileges granted under this Contract and under the leases to individual food service operators do not include the preparation or sale of in-flight meals to airlines operating from the Airport. The foregoing prohibition shall not preclude the preparation and sale of carry-on meals to passengers in the Airport by Airport food service operators
6. The privileges granted under this Contract and under the leases to individual Concession Operators do not include the sale of duty free and duty paid merchandise, advertising, ATMs, pay telephones, luggage carts, banking services, currency exchange, and internet access (any internet services provided must be conducted through the Authority's designated wireless provider and a separate fee cannot be charged to the customer).

Section 4.2 Prohibited Activities

- A. The following activities are expressly prohibited under this Contract.
 1. Operation of any food service or retail concession facilities at the Airport by the Contractor.

2. The sale of any goods or services not authorized under this Contract. The Authority reserves the right to approve the nature, type, and pricing of food, beverages and merchandise that may be sold under this Contract, and the right to require the immediate removal of any merchandise that is not approved or that is considered objectionable or inappropriate for sale on the Premises. The Contractor shall, upon receipt of written notice from the Authority, immediately remove any and all such merchandise from display, and discontinue its sale.

Section 4.3 Scope of Operations

A. General

The Authority expects that the Contractor shall:

1. Strive to meet the needs and desires of the Airport's users for food service and retail merchandise.
2. Attempt to maximize financial return to the parties by developing food service and retail concepts that match the customers' wants and needs, tailoring those concepts to the airport market and working with the Authority and the Concession Operators to develop marketing and joint promotions of the concessions.
3. Work with the Authority and Concession Operators to provide attractive, well-designed facilities that provide an excellent variety of contemporary food service and retail choices for Airport users.
4. Continually update the food service and retail concepts operating in the Airport to ensure that they meet the expectations of the airport passengers and reflect current market trends in food service and retail.
5. Ensure that food service and retail Concession Operators provide quality customer service to all airport patrons.
6. Ensure that Concession Operators are open for business during the hours prescribed in the leases, and that tenants extend operating hours during weather events that delay or otherwise disrupt normal flight schedules.
7. Ensure that all food service and retail Premises have strong visual appeal and are inviting to customers.

8. Ensure that all food service and retail Premises accommodate customers with luggage, luggage carts, and strollers, as well as wheelchair-bound customers.
9. Continually measure and analyze the productivity of the food service and retail operations at the Airport.
10. Continually evaluate and improve the customer perception, impression, and acceptance of the food service and retail concepts and facilities at the Airport.

B. On-Site General Manager and Other Staff

1. The Contractor shall at all times retain on-site an experienced, full-time General Manager, who has been approved in writing by the Authority. The General Manager shall be fully authorized to represent and act for the Contractor in all matters pertaining to its operations under this Contract. The General Manager shall be dedicated exclusively to the management of the concession program at the Airport. At times when the General Manager is not present at the Airport, the Contractor shall assign, or cause to be assigned, a qualified subordinate to act for the General Manager and be in charge of all locations, services, and facilities.
 - a. The Contractor shall ensure that the General Manager and/or the qualified subordinate acting for the General Manager are accessible via portable email device, pager, or cellular phone in the event of weather and/or other airport emergencies.
 - b. A reference copy of the Contract shall be kept in the Contractor's local office for the benefit of the General Manager.
 - c. The Contractor agrees to comply with all applicable federal, state and local requirements and to allow duly authorized representatives of the Authority and governmental entities reasonable access to all concession Premises for inspection purposes, with prior notification, when possible, and in the presence of the Contractor's General Manager (or qualified subordinate, as described in Article 4, Section 4.3 B.). Best efforts will be made to minimize the impact of the inspections upon the Contractor's business operations.

2. The Contractor shall maintain the minimum staff (as proposed or subsequently negotiated with the Authority) to perform in accordance with the Contract requirements.

C. Negotiation and Administration of Leases

1. General. The Contractor is expected to evaluate, select, and enter into leases with Concession Operators that will operate food service and retail concessions from individual spaces within the Premises granted to Contractor. The Contractor shall be responsible for presenting concept proposals to the Authority for approval, negotiating lease terms, and executing each Concession Operator lease upon receipt of lease approval from the Authority. From the commencement of the Operating Period, the Authority and the Contractor acknowledge and agree that the Contractor shall enter into temporary revocable license agreements (in lieu of a longer-term permanent lease) with all of the Authority's existing food service and retail Concession Operators with lease expiration dates within 180 days (6 months) to the commencement of the Operating Period of this Contract until such time as the applicable individual spaces are redeveloped with a food service or retail concept under a longer-term lease. The length of the terms of these temporary revocable license agreements shall vary and be subject to the prior approval of the Authority.
2. Standard Lease. Within thirty (30) days following the effective date of this Contract, the Contractor shall finalize its proposed standard master form of combined food service and retail lease, incorporating comments from the Authority, and submit it to the Authority for final approval. The standard master form leases shall be simple and straightforward, and tailored to the airport industry. Following approval of the standard master form of lease by the Authority, the Contractor shall use the approved lease form as the basis for the negotiation of leases with all Concession Operators. All leases must be fully assignable to the Authority in the event of the termination or expiration of this Contract.
3. Standard Competitive Process. Within thirty (30) days following the effective date of this Contract, the Contractor shall submit to the Authority for approval its written plan to achieve competition for each new retail or food service concession lease. Said plan shall include issuance of notice of the concession opportunity to a minimum of three (3) potential operators that may fit the lease concept, issuance of a request for proposals stating the

basic proposal requirements, as well as the criteria upon which the Offeror will be evaluated, and the process that will be used to consider the Offeror and their proposals.

4. Concept Development and Concession Operator Mix. The Contractor shall propose a variety of quality food service and retail concepts, and shall lease to a mix of national, regional, local, and Airport Concession Disadvantaged Business Enterprise (ACDBE) Concession Operators that best meets the needs of the Airport users and reflects the Washington D.C. metropolitan Area. The Contractor will also be expected to participate in the annual Business Opportunities Seminar offered by the Authority to meet and recruit local Concession Operators. The final selection of concepts and Concession Operators to become Contractor's tenants shall be subject to Authority approval.
 - a. Competitive Market. The Contractor shall strive to maximize the benefits derived from creating and maintaining a "free market," competitive environment. Therefore, to the extent possible, the Contractor shall optimize opportunities to cluster multiple Concession Operators in groups to stimulate a competitive environment, especially with regard to food service.
 - b. Airport Concession Disadvantaged Business Enterprises (ACDBE) Goal. The Contractor shall make good faith efforts to ensure that thirty-five percent (35%) of the projected total Gross Receipts from food service concessions and twenty-five percent (25%) of the projected total Gross Receipts from retail concessions leased by the Contractor under this Contract are generated by ACDBE Concession Operators. Each ACDBE firm must be certified by the Authority prior to the execution of a lease by the Contractor with that firm, in accordance with the terms of Article 9 herein. The Contractor shall be responsible for ensuring that the Authority receives all reasonable information needed to determine whether a firm qualifies as an ACDBE.
5. Concept Development Meetings. The Contractor shall meet with the Authority as needed, but not less than once per quarter, to review its progress with concept development plans and lease negotiations. In addition, the Contractor shall meet with the Authority annually to review its comprehensive concession plan and identify emerging trends in airport food service and retail.

6. Concept Proposal. The Contractor shall present concept proposals to the Authority for approval regarding the retail or food service concession location it plans to lease. The concept proposal to be developed by the Contractor for each facility is intended to serve as a planning tool that will allow the Contractor and the Authority to consider food service and retail opportunities at the Airport. The concept proposal should provide a brief narrative description of the food service and retail concepts, including the locations, information about the proposed Concession Operators, potential for ACDBE participation, anticipated financial performance and return to the Authority, service and facility issues, examples of the proposed facility and/or Concession Operator(s) at other venues (e.g., photos or drawings of other locations), and other issues that should be considered early in the planning process. The Authority may request modifications to the proposal prior to Authority approval and prior to the Contractor commencing any detailed lease negotiations with proposed Concession Operators.

7. Concession Operator Selection and Preliminary Deal Sheet. Following approval by the Authority of the concept proposal and the Contractor's completion of the competitive process outlined in Section 4.3, the Contractor shall recommend to the Authority a proposed Concession Operator and shall submit to the Authority a written summary of the proposed lease terms, or a "Deal Sheet." The Authority may request additional information regarding the other operators that were considered for the lease but who were not recommended by the Contractor. The Deal Sheet shall include, at a minimum, concept type and use clause, proposed Concession Operator, term length, Minimum Annual Guarantee, Percentage of Gross Receipts, proposed menu and/or merchandise mix, projected Gross Receipts, and whether or not the proposed Concession Operator is an ACDBE. Contractor shall verify that the proposed lease with each Concession Operator is fully independent from any other lease or contract that the Contractor has with a Concession Operator or Affiliates at any other locations leased and/or managed by the Contractor or any of its Affiliates. For purposes of this Contract, "Affiliate" means, with respect to any person or entity, any other person or entity that directly or indirectly controls, is controlled by, or is under common control with such first person or entity. As used in this definition, the term "control" (including the terms controlled, controlled by, and under common control with) shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the person,

whether through the ownership of voting securities, by contract, or otherwise. The Contractor must obtain the Authority's written approval of the Deal Sheet and complete any requested modifications to the Deal Sheet prior to proceeding with any lease negotiations.

8. Lease Negotiation. The Contractor shall proceed with lease negotiations with the prospective Concession Operator following the Authority's written approval of the Deal Sheet, including any modifications required by the Authority. The Contractor may modify portions of the approved standard master lease form during negotiations with a Concession Operator provided, however, that any such changes do not materially modify the requirements of this Contract or materially alter the rights, obligations, and duties of the Contractor under this Contract without the prior written approval of the Authority. Further, the Contractor shall provide a detailed list of all changes proposed and made to the standard master lease form for a particular lease when it submits the lease to the Authority for approval. The list may be in the form of an electronically-prepared redlined draft showing all of such proposed changes compared to the standard master lease form, which shall be emailed by the Contractor to the Authority's designated representative(s).
 - a. Lease Term. The Contractor shall ensure that the lease term for each Concession Operator is as short as possible, while at the same time being commensurate with the Concession Operator's investment in the leased Premises. The Contractor, in determining the length of the leases, shall attempt to preserve space flexibility, the ability to replace less successful concepts with more productive operations, the ability to keep the Premises fresh and refurbished, and such other relevant factors as may be appropriate. In any event, the lease term shall not exceed the term for the Operating Period of this Contract, without the prior written approval of the Authority.
 - b. Lease Use Clause. The Contractor shall define, in each lease, a specific food service and/or retail concept, and establish the initial menu and pricing for food service concessions, and specific product list with initial pricing for retail concessions. The Authority must grant written approval for any variations from the Authority-approved concept, menu, and pricing for food service, and/or merchandise categories and pricing for retail prior to such changes being made.

- c. Lease Assignment. The Contractor shall establish leases that are fully assignable to the Authority or the Authority's designee upon the expiration or termination of this Contract as provided for herein.
- d. Investment Requirements. The Contractor shall define, in each lease, a specific minimum investment requirement for each concession location, as well as remedies the Contractor will exercise if the minimum investment requirement is not met by the Concession Operator.

D. Facility Development

Following approval of a lease, the Contractor shall use all reasonable efforts to cause the Concession Operator to proceed promptly with design development and construction of facilities. The Contractor and the Concession Operators shall comply with the following procedures for the development of facilities and services at the Airport.

- 1. Presentation of Initial Concept Plan. The Contractor shall work with the Concession Operators and use all reasonable efforts to cause the Concession Operators to develop and submit for Authority approval concept and design plans for each facility within sixty (60) days after the lease is signed. The Contractor shall be responsible for presenting all facility designs to the Authority and obtaining all necessary Authority approvals for the design and construction of all facilities at the Premises. The Authority shall have the right to require modifications to the initial concept plan and any approval granted by the Authority is subject to the Contractor's incorporation of the required modifications into the final permit plans. The initial concept plans shall include, at a minimum, the following:
 - a. Plan Views. Plan view layouts of the proposed space in eighth of an inch equals one-foot scale.
 - b. Concept Sketches. Conceptual sketches shall be supplied to the Authority for each proposed space. The conceptual sketches should have sufficient detail to indicate the design approach, communicated through colored floor plans, and interior vignettes that also describe the signage and graphics for the proposed space. Also required will be broad-brush palettes of the colors and

materials to be used, intended furnishings, store fixtures, and types of light fixtures.

- c. Elevations. Drawings of all interior and exterior elevations visible to the public, detailing storefronts and the architectural compatibility with surrounding areas.
 - d. Material Boards. Material boards for the proposed space.
 - e. Project Schedule. A preliminary project schedule describing the actions necessary to implement the project, the sequence of actions, and the schedule of actions.
2. Subsequent Plan Submittals. Following Authority approval of the initial concept plan, the Contractor shall proceed to coordinate with the Concession Operators for continued design development, application for construction permits, and facility construction in accordance with Article 7 of this Contract.
 3. Lease/Tenant Criteria and Enforcement. The Contractor shall ensure, through the lease and through its own management efforts that Concession Operators comply with the Authority's Design Manual and the Tenant Submission Requirement Manual.
 4. Construction Coordination. The Contractor shall use all reasonable efforts to ensure that the Concession Operators' general contractors meet all Authority guidelines to construct facilities on the Airport, and shall provide such coordination between the Concession Operators and the Authority to ensure that construction is completed on schedule and in accordance with Authority standards and security requirements. The Authority's construction requirements and guidelines are detailed in Article 7 of this Contract. In addition, the Contractor shall construct and maintain, as its own cost, all construction walls, dustwalls, and any dust containment covers used during the construction of any concession locations.

E. Operational Management

1. Lease Administration. Following execution of a lease and beneficial occupancy of the Premises, the Contractor will be responsible for the following elements of the administration of the lease.

- a. Collection of all rent, fees, fund contributions, reimbursements, and any liquidated damages due under the lease. All monies due will be properly accounted for and reported; and monies shall be forwarded to the Authority as provided for herein.
 - b. Ensuring that Concession Operators meet the insurance requirements contained in Exhibit 6, Standard Provisions.
 - c. Analysis of Concession Operators' financial performance and prompt identification to the Authority of any potential problems. The Contractor shall inform the Authority if a Concession Operator is in default and what action, formal or informal, against the Concession Operator is contemplated. Copies of all correspondence relating to the default and any legal actions filed by the Contractor relating to the default shall be provided to the Authority.
 - d. Coordination with the Authority on concession advertising and promotions.
 - e. Promptly providing for the temporary and/or permanent re-leasing of any Premises that become vacant.
 - f. Ensuring that Concession Operators are compliant with lease terms
2. Construction Coordination. The Contractor will coordinate with the Authority's designated contacts at the Airport on a regular basis. The Contractor will be the principal contact point with the Concession Operators on the areas identified below. The Contractor and the Authority will work together to establish a meeting schedule and procedures necessary to accomplish the continued evaluation of the food service and retail operations as contemplated in this Article.
 3. Evaluation and Oversight. The Contractor shall be responsible for establishing and conducting a program for the continuing evaluation of the food service and retail operations conducted under this Contract. The purpose of this program shall be to identify any area where the Concession Operators may be able to improve the customer service and productivity of the operations. The Contractor shall initiate notification to the Concession Operators of any recommended actions to improve performance, and shall subsequently document whether such recommended actions were taken. The Contractor shall also provide

analysis and services as described more fully below in support of the Authority's food service and retail operations. In performing the continuing evaluation of the Airport's food service and retail operations, the Contractor shall provide the following on a regular basis:

- a. Property Inspections. Perform regular physical inspections of the Premises, on not less than a monthly basis, unless a particular problem or issue arises, to determine the effectiveness and potential for improvement in the following:
 - i. Product displays and inventory;
 - ii. Menu boards and signage;
 - iii. Staffing;
 - iv. Operating hours;
 - v. Facility appearance and maintenance, including layout, color, materials and lighting; accessibility; cleanliness and safety issues, such as floors, stability of tables and chairs, etc.

- b. Mystery Shopper Program. The Contractor shall conduct a mystery shopper program to evaluate Concession Operator customer service levels and develop improvement recommendations in the following areas. The direct costs of conducting the mystery shopper program (excluding the cost of Contractor employees) may be charged against the Marketing Fund.
 - i. Sales techniques
 - ii. Customer service
 - iii. Product presentation
 - iv. Cash control
 - v. General conditions of store or restaurant

- c. Compliance with Street Pricing. The Contractor shall monitor and ensure that all Concession Operators remain in compliance with the street pricing provisions of their leases. The Contractor shall conduct, at its own cost, or require the Concession Operators to conduct at their own cost, an annual survey of prices charged by comparable local food service and retail operators to verify that Concession Operator pricing is in compliance with lease pricing provisions. The Contractor shall provide the Authority with the results of the annual pricing survey(s), and shall take whatever

steps are necessary to resolve any discrepancies between the prices charged by the Concession Operators and the surveyed prices, including assessing the Concession Operator liquidated damages at a rate of up to a maximum of Two Hundred Fifty Dollars (\$250.00) per occurrence after providing a written warning to the Concession Operator the first time a discrepancy is discovered. The street prices for any product sold by any food service or retail Concession Operator shall be determined as follows: (i) If a Concession Operator does business in non-airport locations in the greater Washington, D.C. metropolitan area, the street price is the price charged for the same product at the nearest non-airport location in the greater Washington, D.C. metropolitan area, excluding short-term promotional prices; and (ii) If a Concession Operator does not operate in non-airport locations in the greater Washington, D.C. metropolitan area, the street price for all such products is the average price charged for such products by at least three comparable businesses in the greater Washington, D.C. metropolitan area approved by the Contractor and the Authority where comparable products are sold (e.g., in major regional malls, shopping centers, downtown locations, or other appropriate retail complexes located in the greater Washington, D.C. metropolitan area). For purposes of establishing the street price of an item, any difference in the size or quality of an item or the quality or brand recognition of the concept shall constitute a price differential. The Contractor's costs for the annual street pricing survey (excluding the costs for Contractor employees) may be charged against the Marketing Fund, subject to the Authority's prior written approval.

- d. Communications. The Contractor shall create and distribute to all Concession Operators a newsletter on a monthly basis. Such newsletter should include pertinent airport news and development announcements along with any administrative issues that are applicable to all Concession Operators.
- e. Concession Operator Training. The Contractor shall make available to the Concession Operators the following training programs for local management and staff.
 - i. Sales and service training
 - ii. Merchandising, display, and marketing forums

The Contractor's costs for Concession Operator training programs (excluding costs of Contractor employees) may be charged against the Marketing Fund.

- f. Concession Program Floorplans. The Contractor will be responsible for producing and maintaining current floorplans for all concession units and storage areas located within the Premises that shall include the square footage of each unit, the locations of utility points to lease lines, and the current Concession Operator in each unit. Such floorplans shall be updated at least once every quarter and shall be provided to the Authority as needed in an agreed upon electronic format.
- g. Customer Service Feedback. The Contractor will be responsible for establishing a customer service hotline and/or website to be used for reporting customer complaints and comments. The Contractor will be responsible for responding to all customer complaints and comments received within three-business days and updating the Authority staff as needed regarding critical areas of concern. The Contractor shall provide to Authority staff at its quarterly meetings a list of all complaints and comments received during that quarter.

F. Marketing and Promotion

The Contractor agrees to establish, implement, and monitor the following marketing and promotion plans and funds.

1. Annual Marketing Plan. The Contractor agrees to participate fully with the Authority to develop a comprehensive annual marketing and promotion plan for the concession program at the Airport.
 - a. Development of Marketing Plan. The annual marketing plan, which shall describe the marketing and promotion budget and marketing strategy and tactics for the Contract Year, shall be completed and presented to the Authority within thirty days following the commencement of the first Contract Year. For all subsequent years, the Contractor shall provide a comprehensive marketing plan sixty (60) days prior to the end of the previous Contract Year. The plan and any proposed changes shall be subject to the final written approval of the Authority. The Marketing Plan shall address, at minimum, the following elements:

- i. Internal Promotion Efforts. The Contractor shall coordinate with the various promotion opportunities associated with the Authority including, but not limited to, the Authority's printed magazine, in-terminal flight information display monitors, and any other viable promotion opportunities that become available throughout the term of this Contract, to promote and advertise the concession programs at the Airport.
 - ii. External Promotion Efforts. The Contractor shall also coordinate with the local hospitality, transportation, retail, and restaurant industries, along with any applicable local government agencies, to market National Hall as a shopping destination available to non-travelers. Contractor shall develop promotional campaigns and/or events that partner with the local industries and allow for the potential for cross-promotion. The Contractor shall also coordinate with various travel publications to advertise and promote the concession programs at the Airport.
 - iii. Events. The Contractor shall plan, schedule, and execute various promotional events at the Airport such as product samplings, book signings, demonstrations, fashion shows, and store-opening celebrations.
 - iv. Programs. The Contractor shall create, establish, implement, and monitor an affinity program/frequent shopper program at the Airport.
- b. Implementation of Marketing Plan. The Contractor agrees to implement the plan as approved by the Authority. The Contractor shall request input from the Concession Operators at least once per year regarding the proposed strategy and tactics of the Marketing Plan, and shall provide a status report on the Marketing Plan to the Concession Operators at least once per quarter. The Contractor shall provide reasonable marketing assistance and advice to the Concession Operators as needed, (for example, preparation of operating hours signs, free-standing signs, table top messages, and other marketing efforts that apply to Concession Operators individually). The direct costs of the implementation of the Marketing

Plan (excluding the cost of the Contractor's own employees) may be charged against the Marketing Fund.

2. Establishment and Use of the Marketing Fund. The lease shall require that all Concession Operators be required to contribute a marketing fee equal to one-half of one percent (1/2%) of total Gross Receipts from each Concession Operator (up to a maximum of \$10,000 annually per concession facility) to implement the marketing and promotions plan ("Marketing Fund"). The Contractor shall expend the marketing fees collected from Concession Operators by the end of each Contract Year. Collected marketing funds that are not spent by the end of each Contract Year shall be carried over to the next Contract Year. Any unspent funds at the termination of this Contract shall be turned over to the Authority. The Contractor shall maintain the Marketing Fund in a separate account established solely for the purpose of implementing the food service and retail Marketing Plan. Only direct marketing and promotion costs incurred by the Contractor, or Concession Operators, shall be allowed to be charged against the Marketing Fund. Menus, menu boards, fixed storefront signs, and similar operational items do not qualify as Marketing Fund expenses. The Contractor may not charge to the Marketing Fund any costs associated with the use of its own internal staff to manage the Marketing Plan.
 - a. Documentation of Marketing Expenses. The Contractor shall submit, within sixty (60) days after the end of each contract year, an accounting of all marketing funds collected and spent, with detailed documentation of actual expenditures (including invoices, cancelled checks, or other detailed documentation). The Authority may, from time to time, audit these marketing expenditures.

G. Meetings

The Contractor shall establish and conduct the following periodic meetings.

1. Meetings with the Authority at least monthly to review Concession Operator sales and discuss operational issues, ACDBE and LDBE performance, and other issues, as necessary.
2. Meetings with each Concession Operator owner/manager not less than once each quarter to discuss the operation, marketing, and productivity of the Concession Operator's facilities.

3. Quarterly meetings of all Concession Operators to review airport news and developments, ongoing operational issues and concerns, and marketing and promotional activities.
4. Quarterly status updates with the Authority staff regarding comprehensive concession plan updates.
5. Annual planning meeting with Authority staff to review marketing plan, identify emerging trends in airport food service and retail, and conduct a comprehensive concession plan review.

H. Business Analysis and Reporting

The Contractor shall evaluate on an ongoing basis and report to the Authority **by the 20th calendar day of each month, in an electronic format and a file type as designated by Authority staff**, the following Concession Operator performance data:

For the entire concession program:

1. Certified Monthly Statement (refer to Exhibit 5)
2. Facility appearance and maintenance
3. Any issues related to Concession Operator performance or lease compliance
4. LDBE and ACDBE Contract Activity Report
5. Percentage of sales generated by ACDBE/LDBE Concession Operators

For each concession location:

1. Sales by individual Concession Operator location
2. Sales per square foot and per enplaned passenger
3. Revenue per enplaned passenger – separate food service and retail

I. Rental Collection and Payment of Fees

In consideration of the rights and privileges to be granted to the Concession Operators, the Contractor shall ensure that each lease contains provisions consistent with the following payment requirements. In addition, the Contractor shall collect such fees from the Concession Operators on behalf of the Authority.

1. Minimum Annual Guarantee. Payment of a Minimum Annual Guarantee (“MAG”) of a fixed dollar amount by each Concession Operator. Such

MAG shall be established for each year of the lease. One-twelfth (1/12) of the MAG shall be paid in advance and without demand on the first day of each calendar month. For any period less than a full calendar month, the MAG shall be prorated over the number of days in the period. The MAG shall be deemed delinquent if the Contractor does not receive payment by the tenth (10th) calendar day of the month.

2. Percentage of Gross Receipts. Payment of a percentage of gross receipts ("Percentage Rent") in excess of the MAG generated by each Concession Operator as established during negotiation of the lease. By no later than the fifteenth (15th) day after the end of each calendar month during the lease period, the Concession Operators shall pay to the Contractor without demand or invoice by the Contractor, a sum of money equal to the amount by which the Percentage Rent exceeds either: (i) the MAG paid for the previous month (if the rent under the lease is structured as the greater of the MAG or Percentage Rent); or (ii) the monthly breakpoint(s) negotiated in the lease. In the event the Percentage Rent for the month does not exceed either (i) the monthly installment of the MAG paid for that month; or (ii) the monthly breakpoint(s) for Percentage Rent, then no Percentage Rent shall be due for that month. Percentage Rent payments, if due, shall be deemed delinquent if not received by the Contractor by the fifteenth (15th) calendar day after the end of each calendar month.
3. Monthly Sales Report. Each month, the Contractor shall obtain from each Concession Operator a detailed Certified Monthly Statement of Gross Receipts (see Exhibit 5). This statement shall be reviewed by the Contractor for sales trends and to verify that the correct Percentage Rent payment has been made. After it has been reviewed by the Contractor, Contractor shall compile the information from the individual Certified Monthly Statements of Gross Receipts collected from the Concession Operators into one document to be forwarded to the Authority by the twentieth (20th) calendar day of the month, in an electronic format and file type as designated by Authority staff (as described herein). In the event of any rental discrepancies, the Contractor shall notify the Authority, in writing, within thirty (30) days of detection of such discrepancies and detail the steps that are being taken to remedy each discrepancy.
4. Annual Reconciliation. There shall be an annual reconciliation conducted by each Concession Operator of the Minimum Annual Guarantee and Percentage of Gross Receipts payments, as defined in Exhibit 6, Standard Provisions. The Contractor shall collect such Certified Annual Statements

from the Concession Operators and prepare one comprehensive Certified Annual Statement for the entire concession program for the Contract Year just ended. An independent certified public accountant (CPA) shall prepare said Annual Statement for the Contractor. The Annual Statement shall also include a statement by the independent CPA that in its opinion such Gross Receipts and fees paid have been prepared in accordance with Generally Accepted Accounting Principles (GAAP) and in accordance with the terms and conditions of this Contract including the definition of Gross Receipts set forth herein. Such Annual Statement shall also contain a list of the Gross Receipts, by month, as shown on the books and records of the Contractor that were used to compute the fees paid to the Authority during the period covered by the Annual Statement. The Authority reserves the right to reject the Contractor's choice of independent CPA if said independent CPA does not, in the Authority's view, have the appropriate standing and reputation.

5. Utility Charges. Food service Concession Operators shall be responsible for payment of all utilities (including electric, gas and water/sewer) used or consumed on the Premises. Food service Concession Operators shall install meters, at their sole cost and expense, in accordance with the Authority Design Manual, at each of the Premises leased to them. Charges for such utility consumption shall be at rates established by the Authority for all Airport tenants and concessionaires and shall be on a non-discriminatory basis. Payment from the Concession Operators shall be due upon receipt of a bill from the Authority. Retail and newsstand Concession Operators are omitted from this requirement.
6. Telephone Service. Telephone service must be separately contracted and paid by the Contractor and its Concession Operators.

J. Hours of Operation

The Contractor shall monitor and ensure that Concession Operators shall be open for business daily a minimum of one hour before the first scheduled departing flight from the terminal or concourse in which the Concession Operator's Premises is located, and shall remain open for business until the last departure from the terminal or concourse in which the Concession Operator's Premises is located, unless otherwise specifically directed by the Authority. If the Concession Operator's Premises is located in the National Hall portion of the Airport, the location shall be open for business daily a minimum of one hour before the first scheduled departing flight from either Terminal B or C and shall remain open for

business until the last departure from either Terminal B or C. The Contractor shall require Concession Operators to provide professionally-made signs at each facility, as approved by the Authority, that clearly display the hours of operation. The Authority's Terminal Concessions and Services Manager must approve in advance any changes or modifications to the required minimum hours of operation. The Authority reserves the right to require the Contractor's Concession Operators to increase the hours of operation if airline schedules and passenger demand for food service and retail dictates. Should the Concession Operators fail to maintain the designated operating hours and fail to obtain Authority permission to alter their operating hours, the Contractor shall assess liquidated damages against the Concession Operators. If a concession facility is found closed at anytime it is required to be open, the Contractor shall provide the Concession Operator with a reasonable opportunity (not more than four hours) to correct the discrepancy. Should the discrepancy continue, the Contractor shall assess the Concession Operator liquidated damages at a rate of up to a maximum of Two Hundred Dollars (\$200.00) per hour of non-operation, or any fraction thereof, until corrected. The Contractor shall require that Concession Operators comply to the fullest extent possible with Authority requests to remain open beyond established operating hours in the event of weather delays or diversions.

K. Staffing

During the hours of operation required herein, the Contractor shall use all reasonable efforts to ensure that all Concession Operators provide personnel in sufficient number and with such qualifications necessary to provide efficient service to the public. The minimum number of staff for each location shall be stated in the lease with the Concession Operator for that location. Personnel shall be trained in the business to be provided, so as to be courteous, informative, and helpful to the public. The attire of such personnel shall be in keeping with that required in similar food service and retail businesses in the Washington D.C. metropolitan area. The Contractor agrees to require the Concession Operators to maintain the required minimum staffing at all times during which a facility is open for business unless otherwise modified in writing by the Authority. Should the Concession Operators fail to maintain the required minimum staffing levels and fail to obtain Authority permission to alter the minimum staffing levels, the Contractor shall assess liquidated damages against the Concession Operators. If a food service or retail facility is found not to have the minimum staffing levels required to provide efficient service, the Contractor will provide the Concession Operator with a reasonable opportunity to correct the deficiency. Should the deficiency continue, the Contractor shall assess the

Concession Operator liquidated damages at a rate of Fifty Dollars (\$50.00) for each hour or fraction thereof that a Concession Operator does not maintain the required minimum staffing level in a facility until corrected.

L. 24-Hour Facility

At least one food service facility and one newsstand/sundries facility must remain open twenty-four (24) hours each day, except as may be otherwise approved in writing by the Authority. The locations of such facilities shall be subject to Authority approval.

M. Service

The Contractor shall use its best efforts to ensure the highest standards of public service from all Concession Operators. All Concession Operators shall accept at least two nationally-recognized credit cards (e.g., American Express, Master Card, VISA) for payment of purchases made in the Premises. The Contractor shall ensure that all food service Concession Operators can properly package food to be conveniently carried on board by departing airline passengers. As appropriate, retail Concession Operators shall offer their customers shipping and gift-wrapping services at their cost or less.

N. Cash Control and Accounting

The Contractor shall require Concession Operators to maintain total control of all Gross Receipts with cash registers capable of providing customer receipts indicating the date and time of purchase. The Contractor shall require Concession Operators to maintain an accounting system in sufficient detail and in accordance with Generally Accepted Accounting Principles (GAAP) to permit audits by the Contractor and the Authority periodically during the Operating Period and/or during the term of the lease. The Contractor shall also require Concession Operators to conduct a continuing education program to ensure that all employees are adequately trained in cash handling procedures and provide the results of this program to the Authority upon reasonable request.

O. Contractor and Concession Operator Audits

The Contractor shall adhere to the provisions and requirements of Article 14 of the Standard Provisions for Concession Contracts (Exhibit 6) and shall apply the same to Concession Operators. Concession Operators shall be audited by the

Contractor at least once during the term of their lease and/or at least once every three (3) years.

P. Licensing and Regulations

All concession facilities shall be licensed and maintained in compliance with all applicable local, state, and federal rules, Airport regulations and standards. Food and beverage operations at the Airport are subject to periodic inspections by the Arlington County Health Department, the Environmental Health Bureau, and the Commonwealth of Virginia's Alcoholic Beverage Control Department. The Contractor shall require the Concession Operators to promptly correct or cause to be corrected any deficiencies reported by these agencies or any other government agency having jurisdiction. All licenses and fees necessary for the development and operation of the food service and retail concessions at the Airport shall be the sole responsibility of the Concession Operators. If a Concession Operator does not correct the deficiencies with a reasonable time after notice thereof, the Contractor shall assess the Concession Operator liquidated damages at a rate of up to a maximum of Two Hundred Fifty Dollars (\$250.00) for each day or part thereof until the deficiencies are corrected.

Q. Concession Operator Deliveries

The Contractor shall work closely with the Concession Operators to develop procedures, usage guidelines, and collect fees for all deliveries to both landside and airside food service and retail facilities. The Contractor may contract with a common logistical support provider (hereinafter referred to as the "Distributor") to meet the reasonable logistical and storage requirements of the Concession Operators. All Concession Operators may use and share in the prorated costs of the Distributor and the Contractor may not mark up the costs or charge the Concession Operators additional administrative or overhead fees for this service. The Contractor's plans and procedures for managing product deliveries and any fees proposed to be charged to the Concession Operators are subject to the prior written approval of the Authority. The Authority shall use all reasonable efforts to provide the Contractor with space for the operation of a central commissary of an appropriate size in order to provide common logistical support and storage for the Concession Operators, such space to be provided without charge (no fees for rent or utilities) to the Contractor, its Distributor, and the Concession Operators. Product deliveries to Concession Operator facilities located airside must be made via designated doors or airside gates accessed only by employees using Authority-issued identification cards that allow airside access. The Contractor agrees to adhere to Transportation Security Administration ("TSA") and Authority

directives and policies regarding access to airside facilities for its own employees and to require Concession Operators to adhere to TSA and Authority directives and policies regarding access to airside facilities for their respective employees. The Contractor shall provide assistance to the Concession Operators by providing appropriate applications and other information and documentation supplied by the Authority for submission to the appropriate officials. Notwithstanding the foregoing, the Contractor shall not have any other liability with respect to security issues relating to such Concession Operator employee badging and security clearance requirements and the screening of such Concession Operator goods, products, equipment, materials, or supplies brought to the Airport by or on behalf of Concession Operators. In the event any such screening or inspection becomes required as a result of laws, regulations, or security measures instituted by the TSA or the Authority, the responsibility and cost therefore shall be the sole responsibility of the Concession Operators. The Contractor shall also work with the Authority to develop elevator and loading dock usage guidelines and procedures for Concession Operators. In the event that the Authority provides additional storage areas, the Contractor will be expected to manage, develop procedures, usage guidelines, and collect fees for the additional storage areas.

R. Commissary Operation

The Distributor shall be responsible for the operation of the commissary and for the receipt, storage, control, delivery, and accounting of all supplies, materials, and merchandise delivered to support the Concession Operator operations contemplated under this Contract. The Distributor shall be required to staff the commissary with sufficiently-trained personnel to ensure the highest level of service and support to the Concession Operators. The commissary and other storage areas controlled by the Distributor shall be secure areas. All access doors shall be on a security system with the Distributor's employees having the only access to those areas. Visitors may enter the commissary if they are signed in by a Distributor employee. The Distributor shall establish procedures for the receipt, storage, Concession Operator delivery, and returns of supplies, materials, and merchandise and coordinate these procedures with the Contractor.

S. Facility Maintenance

The Contractor shall obligate all Concession Operators to repair and maintain all Fixed Improvements and Operating Equipment on the Premises in good, safe condition throughout the term of the lease, reasonable wear and tear excepted.

During the Operating Period of this Contract, the Concession Operators shall provide for continuing facility maintenance in accordance with the following.

1. Premises Maintenance. The Concession Operators, at all times and at their own cost and expense, shall use the Premises with care and be responsible for maintaining, repairing, and replacing, as necessary, all Fixed Improvements and Operating Equipment. Maintenance, repairs, and replacements shall be as necessary to maintain the Fixed Improvements and Operating Equipment in good condition. The Concession Operators shall repaint or otherwise renovate the interior of the Premises as necessary. High traffic areas subject to greater wear and tear shall be repainted, re-tiled, and re-carpeted on a regular basis as may be necessary to maintain a high-quality appearance and safe operating conditions. All furniture and furnishings that become worn, torn, or damaged shall be replaced as necessary. All such maintenance, repairs, and replacements shall be of a quality equal to the original in materials and workmanship, and, if changed from the original, shall be subject to the prior written approval of the Authority. The Authority shall have the right to disapprove any improvements, replacements, or alterations, which, in its judgment, are of a design, quality, condition or color deemed to be inconsistent with the established tenant design standards of the Airport.

2. Custodial Service. The Contractor shall furnish custodial services that shall provide routine cleaning for all common food court public seating areas and the complete and adequate sanitary handling of all trash, garbage, and other refuse generated in connection with those public seating areas. Food court public seating areas shall be cleaned with sufficient frequency that they remain clean and readily available for public use at all times. The custodial service shall also pick up and dispose of trash from individual food service Concession Operator facilities. When possible, trash shall be disposed of during inactive hours of the Airport's operation to minimize interference with Airport passengers. The custodial service shall use its own trash receptacles or those provided by the Authority in locations designated by the Authority. Piling of boxes, cartons, barrels, crates, or other similar items in a public area shall not be permitted. In order to recover the direct costs of such custodial service, the Contractor shall assess reasonable fees to each food service Concession Operator for Common Area Maintenance charges ("CAM") as well as charges to each food service Concession Operator for trash removal from individual concession facilities. The Contractor's fees for such services shall be subject to the Authority's prior written approval.

The Contractor shall assess liquidated damages of One Hundred Dollars (\$100.00) per day or portion thereof against a Concession Operator for each day that a Concession Operator fails to maintain the cleanliness of its facilities and does not cure the failure within one hour of Authority notification of the problem.

3. Grease Traps. The Contractor shall ensure that all food service Concession Operators' grease traps are inspected and cleaned at least once per month by the Concession Operators. The Contractor shall have the authority to hire an independent contractor to conduct grease trap inspections and cleaning and charge the Concession Operators a fee for the direct costs associated with this service, subject to the prior written approval of the Authority. The Contractor shall assess liquidated damages against the food service Concession Operator(s) of One Hundred Dollars (\$100.00) per day or portion thereof for each day that a food service Concession Operator(s) fails to cure the failure within twenty-four (24) hours of Contractor or Authority notification to the food service Concession Operator of the problem.
4. Maintenance of Plumbing/Sewer Lines. The Contractor shall prohibit the disposal of grease or solid materials by the food service Concession Operators into the drainage system, and shall require all Concession Operators to snake drains and conduct any other necessary drain maintenance at least monthly. The Contractor shall have the authority to hire an independent contractor to snake drains and conduct any necessary drain maintenance, and charge the relevant Concession Operators a fee for the direct costs associated with this service, subject to the prior written approval of the Authority. The Contractor shall assess liquidated damages against any Concession Operator(s) that fail to properly maintain plumbing and/or sewer lines serving their Premises. The Contractor shall assess liquidated damages of One Hundred Dollars (\$100.00) per day or portion thereof against a Concession Operator for each day that a Concession Operator fails to cure the failure within 24 hours of Contractor or Authority notification of the problem.
5. Maintenance of Cooking Exhaust Systems. The Contractor shall require that all food service Concession Operators with rooftop exhaust units conduct inspections, cleaning, and maintenance of all elements of cooking exhaust systems at least once per quarter. The Contractor may have an independent third-party contractor perform this function for all food service Concession Operators and charge the food service Concession Operators

a pro rata share of the direct costs of such maintenance, subject to prior Authority approval. The Contractor and/or the food service Concession Operators shall coordinate all rooftop exhaust work through Authority staff prior to accessing the roof for any work to be conducted. The Contractor shall assess liquidated damages against the Concession Operator(s) for failure to properly maintain rooftop exhaust systems serving their portion of the Premises. The Contractor shall assess liquidated damages of One Hundred Dollars (\$100.00) per day or portion thereof for each day that a food service Concession Operator fails to cure the failure within 24 hours of Contractor or Authority notification to the food service Concession Operator of the problem.

6. Maintenance of Utility Systems Serving the Premises.

- a. In areas where the utility lines, including gas, electrical, telephone, hot and cold water, heating and ventilation ductwork, fire sprinkler, steam, condensate, roof drainage, and sanitary and domestic waste, serve other areas in addition to the Premises, the Contractor shall require that Concession Operators will be responsible for the maintenance, repair and replacement of the utility branch lines that are located within the Premises. In the event, however, that blockages or damage to sewer and/or plumbing lines occur downstream of the Premises and such blockages or damage are reasonably determined by the Authority to be due to the negligence of the Concession Operator(s) or failure of the Concession Operator(s) to properly maintain their portion of the Premises, then the Authority may request that the Contractor assess liquidated damages against the Concession Operator(s). For the first such incident, the Contractor shall assess the Concession Operator(s) for any costs associated with investigating, cleaning, and repairing such blockages or damage. The Authority shall identify and report to the Contractor any costs associated with such Concession Operator negligence. In the event of subsequent similar incidents caused by the same Concession Operator, the Contractor shall assess liquidated damages against the Concession Operator in the amount of Two Hundred Dollars (\$200.00) per day or portion thereof until the problem is corrected, in addition to the costs of investigating, cleaning, and repairing such blockages or damage. The Contractor shall be responsible for ensuring that the Concession Operator takes corrective action immediately upon notification by the Authority, and shall assist the Authority in

collecting any costs or liquidated damages levied against the Concession Operator(s).

- 1) Where the utility lines are solely for the use of a Concession Operator, the Contractor shall require that the Concession Operator shall be solely responsible for the maintenance, repair, and replacement of such utility lines from the Concession Operator's portion of the Premises up to the Authority-maintained main utility system or to the shut-off valves in the Airport's machine room, as appropriate.
- 2) The Contractor shall require in the lease that the Concession Operator(s) shall have the responsibility for the maintenance, repair and replacement, as necessary, of all electrical cables, conduits, wiring, fire alarm systems and wiring panels and associated equipment located within and serving the Premises. The Authority will be responsible for the main distribution panels located in the Airport's utility room and the KWH meter and all other above-mentioned items not serving the Premises.
- 3) The Contractor shall require in the lease that the Concession Operator(s) prepare and maintain, on a current basis, preventive maintenance schedules on all mechanical, electrical, steam and plumbing equipment and lines that they are responsible for maintaining and provide copies of such schedules to the Authority upon request.
- 4) The Authority may make inspections as often as it considers necessary to determine that the Contractor, its Concession Operator(s), or their subcontractor(s) are performing proper maintenance of the Premises.
- 5) The Authority reserves the right to interrupt temporarily the heating, air conditioning, plumbing, and electrical services to make repairs, alterations, replacements, or improvements in said systems. The Authority shall have no responsibility or liability for failure to supply heat, air-conditioning, plumbing, and electrical service or when prevented from doing so by laws, orders, or regulations of any federal, State, or local agency as a result of strikes, accidents, or by any other

cause whatsoever beyond the Authority's control. During periods of Authority construction, unforeseen interruptions in utility services may occur. The Authority shall have no liability for such interruptions; however the Authority shall provide the Concession Operators with as much advance notice as possible and shall use its best efforts to avoid interrupting the Concession Operators' operations except as necessary. Notwithstanding the foregoing, if any utility to the Premises is supplied by the Authority and, due to the sole negligence of the Authority (including its agents and employees), such utility to the Premises is interrupted, forcing a Concession Operator to close its business within the Premises for more than two (2) complete and consecutive days, then the Concession Operator's MAG may abate for the period commencing on the third (3rd) day after the Concession Operator closes its business within the Premises and shall continue until the earlier of: (i) the date such utility is restored to the Premises, or (ii) the date the Concession Operator reopens its business in the Premises.

- 6) The Contractor shall require that Concession Operators report all malfunctions of the drainage and sewage systems, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, heat and air-conditioning systems, electrical systems, and plumbing, installed or located on or within the Premises to the Authority in accordance with Airport regulations and immediately after discovery.
- 7) The Contractor shall require that food service Concession Operators install and maintain utility meters, as specified by the Authority, at the Concession Operators' own cost and expense, except food service Concession Operators shall not be required to install meters in those portions of the Premises where meters were previously installed and meet the Authority's Design Manual requirements.
- 8) All repair, maintenance, replacement, construction and installation work shall be done by the Concession Operators or their licensed contractors in accordance with Authority regulations, all applicable building and safety codes, and only after obtaining all necessary licenses and permits.

ARTICLE 5. FINANCIAL CONSIDERATION

Section 5.1 Management Fees

In consideration of the services provided under this Contract, the Contractor shall be entitled to retain a Management Fee of _____ (_____%) percent of the Total Gross Rental Payments due to the Authority by each of the Contractor's Concession Operators ("Management Fee"). **"Total Gross Rental Payments" shall be defined as the MAG, Percentage Rent, and liquidated damages payments due and payable from the Concession Operators each month.** Total Gross Rental Payments do not include Concession Operator payments for marketing, logistical support, common area maintenance, or utilities due and payable as defined in each lease.

Section 5.2 Payment to the Authority

By no later than the twentieth (20th) day of each month during the term of this Contract, the Contractor shall pay to the Authority, the Total Gross Rental Payments due the Contractor from the Concession Operators, less the Management Fee due the Contractor. The Total Gross Rental Payments are due to the Authority for all Concession Operators in possession and operating from the Premises even if the Contractor is not paid by the Concession Operators. Collection of unpaid Total Gross Rental Payments from Concession Operators is solely the Contractor's responsibility; the Contractor shall not be entitled to relief under this Contract in the event of any such unpaid Total Gross Receipts.

Section 5.3 Withheld and Late Payments to the Authority

Any and all funds due to the Authority from the Contractor that are due the Contractor from any Concession Operator under this Contract, and not paid to the Authority by the Contractor, may result in the Contractor's default, subject to applicable notice and cure periods. The Contractor shall not have the right to withhold any funds due to the Authority against any claims the Contractor may bring against the Authority. Any funds received late by the Authority shall be subject to the fees and late charges set forth in the Standard Provisions for Concession Contracts herein attached as Exhibit 6.

Section 5.4 Payment for Vacant Premises

The Contractor shall make reasonable efforts to replace in a timely manner any vacant or abandoned concession Premises. The Contractor is not responsible for concession Rent payments for portions of the Premises that are vacant or have been abandoned for any reason for the first 150 consecutive days of the vacancy or abandonment ("Initial

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Vacancy Period”). After the Initial Vacancy Period, the Contractor shall be assessed liquidated damages at a rate of 25 percent (25%) of the vacant Premises’ most recent Concession Operators’ monthly MAG for the first consecutive 30-day period or portion thereof, that the Premises remain vacant after the Initial Vacancy Period; 50 percent (50%) of the vacated Premises’ most recent Concession Operators’ monthly MAG for the second consecutive 30-day period or portion thereof, that the Premises remain vacant after the Initial Vacancy Period; 75 percent (75%) of the vacated Premises’ most recent Concession Operators’ monthly MAG for the third consecutive 30-day period or portion thereof, that the Premises remain vacant after the Initial Vacancy Period; and 100 percent (100%) of the vacated Premises’ most recent Concession Operators’ monthly MAG for the each consecutive 30-day period or portion thereof that the Premises remain vacant thereafter.

Section 5.5 Financial Reporting Requirements

The Contractor shall be required to meet the financial reporting requirements as set forth in the Standard Provisions for Concession Contracts herein attached as Exhibit 6.

Section 5.6 Annual Reconciliation

There shall be an Annual Reconciliation of the Management Fee conducted by the Contractor based on the Certified Annual Statements from the Concession Operators within 60 days of the end of the Contract Year. Such reconciliation shall calculate any necessary adjustments to the Management Fee and the Total Gross Rental Payments to the Authority for the Contract Year based on the actual Total Gross Rental Payments due from each Concession Operator, whether paid to Contractor or not. Any amounts due to the Authority shall be paid along with the submission of the Annual Reconciliation. Any additional Management Fee due to the Contractor shall be paid by the Authority within 30 days of receipt of the Annual Reconciliation.

ARTICLE 6. PERFORMANCE GUARANTEE

Section 6.1 Performance Guarantee

- A. The Contractor shall deliver to the Authority upon the execution of this Contract a Performance Guarantee in the amount of One Million Dollars (\$1,000,000).
- B. This Performance Guarantee is required in order to guarantee performance of the Contract by the Contractor and shall be subject to claim in full or part by the Authority in the event of default by the Contractor or failure to fully perform the Contract. The Contractor shall ensure that the performance guarantee is

maintained at all times in the proper amount throughout the full term of the Contract.

- C. The amount of said performance guarantee shall be subject to adjustment at the end of each Contract Year, to an amount equal to fifty (50%) percent of the Total Gross Rental Payments for the subsequent year based on the MAG rent in the Concession Operator leases, but never less than One Million Dollars (\$1,000,000); provided, however, if the Contractor has not been in monetary default following applicable notice and cure periods during the first or second Contract Years, the performance guarantee shall be reduced to an amount equal to thirty-three percent (33%) of the total Gross Rental Payments for the third Contract Year and if the Contractor has not been in monetary default following applicable notice and cure periods during the third Contract Year, the performance guarantee shall thereafter be reduced to an amount equal to twenty-five percent (25%) of the total Gross Rental Payments for the fourth and each subsequent Contract Year.
- D. The performance guarantee, at the option of the Contractor, may be in the form of an irrevocable letter of credit issued by a bank (with a bank rating "B" or better by Sheshunoff Information Services), a certified check, cashiers check or bank guarantee, or money order acceptable to the Authority and made payable to the Authority. The performance guarantee may also be in the form of a performance and/or payment bond issued by an insurance or surety company acceptable to the Authority.
- E. If the Contractor fails to provide or maintain the performance guarantee in effect at any time during the Operating Period of this Contract, the Contractor shall be in default under the Contract. The Contractor will have a period of sixty (60) days to cure the default upon receipt of written notice by the Authority.

ARTICLE 7. FIXED IMPROVEMENTS

Section 7.1 Initial Fixed Improvements

The Contractor shall commence operations under this Contract using the existing Premises as described in Article 3.

Section 7.2 Additional Improvements

The Contractor shall require the Concession Operators to renovate the existing Premises in accordance with their leases approved by the Authority as well as in

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accordance with the tenant design standards for the Airport. The Contractor shall also be obligated to have Concession Operators build out new food service and retail facilities at the Airport should the Authority, in its sole discretion determine that growth at the Airport requires such facilities, and shall conduct food service and retail operations in said facilities, upon the same terms and conditions as specified herein. Such new concession premises will be added by amendment to the Contract. If such additional facilities are required, the Contractor shall be assigned Premises for the purpose of leasing such facilities for the Concession Operator's construction and operation of additional food service and retail facilities. The Contractor acknowledges that the Authority shall determine the location and size of the Premises, and work with the Contractor to determine the nature and extent of the improvements to be installed by Concession Operator(s) therein.

- A. Concept Plan. Prior to the construction and installation of any new facilities or renovation of any existing Premises, the Contractor shall first prepare an overall concept plan for the facilities, including a proposed time schedule, date of construction completion, and budget, which shall be subject to the approval of the Authority, prior to the issuance of an Authority Building Permit. Such data must be in a form consistent with that cited under Article 4, Section 4.3.D of this Contract. Thereafter the Contractor (or its designated Concession Operators) shall, at its/their sole cost and expense, employ competent architects and engineers, licensed by the State of Virginia, who will prepare detailed plans, specifications, interior designs and decorations and cost estimates, for all facility construction. All such plans, specifications, equipment, cost estimates, and modifications shall be first submitted to the Authority for approval. Construction shall not commence until the Authority has issued a building permit.
- B. Building Codes. The most current editions of the following codes are to be utilized in the preparation of the designs and specifications of improvements undertaken herein. Where a conflict exists in requirements, the Concession Operators shall comply with the strictest requirements.
1. International Building Code. This code incorporates all general building, mechanical, electrical, and plumbing codes in accordance with Virginia State regulations.
 2. National Electrical Code (NEC). This code covers the safeguarding of persons and property from hazards arising from the use of electricity, which includes wiring, loading, grounding communications systems, and hazardous locations.

3. Virginia Department of Health Regulations
 4. Arlington County Health Department Regulations
 5. Authority Design Manuals
 6. Americans with Disabilities Act (ADA) Codes and Guidelines
- C. Certificates of Insurance. The Contractor shall ensure that the contractor(s) performing construction, maintenance or repair work for the Premises, and any of their subcontractors, provide the Authority with valid certificate(s) of insurance with a minimum of One Million Dollars (\$1,000,000) of commercial general liability insurance, in advance of the performance of any work. The Certificates of Insurance shall be provided on the Industry Standard Form (Accord 25). Construction contractors shall provide property all risk coverage. Replacement Cost Insurance under Builder's Risk (100% Completed Value) and an Installation Floater (100% Installed) for Real and Personal Property shall also be provided to the Authority within ten (10) days of execution of a contract. The Metropolitan Washington Airports Authority shall be identified as an additional insured on all policies. The policy must provide for thirty (30) days' advance notice to the Authority of cancellation of the coverage or any material change in the policy.
- D. Construction Management. The Contractor shall, during facility planning and development at the Airport, employ the services of a construction manager and/or tenant construction coordinator to supervise the Concession Operators' construction contractors and to monitor and enforce compliance with project requirements and applicable codes and regulations. The commitment of the construction manager and/or tenant construction coordinator shall be determined by the Contractor to ensure the accurate, ongoing, and thorough monitoring of all Concession Operator construction.
- E. Project Costs. The term "Project Costs" or "Construction Costs" shall include the following:
1. Amounts paid by the Contractor or Concession Operators for the construction of Fixed Improvements on the Premises.
 2. Amounts paid by the Contractor or Concession Operators to provide all utility lines and connections or equipment required to connect Premises to the Authority's utility distribution system.

3. Sums paid by the Contractor or Concession Operators to architects, designers, engineers, surveyors, construction managers, attorneys, accountants, appraisers and other professionals and consultants directly connected with the design, development and construction of the fixed improvements. In-house expenses for such personnel shall not be considered construction costs unless such work was performed and managed in-house and documented by the Contractor or Concession Operators. Such in-house billing shall be invoiced without mark-up.
4. Premiums paid by the Contractor or Concession Operators for all permits and insurance required during construction, including, without limitation, commercial general liability, builder's risk and extended coverage endorsements, workers' compensation insurance, and premiums paid for performance bond and labor and material payment bonds during construction.
5. Fees, including customary and reasonable bank administration costs, and interest paid by the Contractor or Concession Operator to the construction lender during the period of construction, excluding late fees and penalties.

F. Documentation of Construction Costs and Costs of Fixed Improvements and Operating Equipment.

1. The Contractor shall require that all Concession Operators make available to the Authority a complete schedule detailing the final costs of construction and modifications, invoices, cancelled checks and such other documents as the Authority may reasonably require to verify expenses for such Fixed Improvements, including architectural and engineering fees, fixtures, and signage within ninety (90) days of the date of completion of construction. In addition, within ninety (90) days after completion of construction, the Contractor shall require that all Concession Operators, at their own expense, provide the Authority with record drawings showing the "as built" condition of all Fixed Improvements constructed by the Concession Operators on the Premises. The lease shall require that all Concession Operators pay within ten (10) days of demand by the Authority liquidated damages of Fifty Dollars (\$50.00) per day or part thereof for each day past the required due date that such documents are not delivered.
2. The Authority reserves the right to audit all documentation of all construction costs and costs for Fixed Improvements and Operating

Equipment provided under this Contract. The Contractor shall cooperate and cause its Concession Operators to cooperate in such an audit and provide supporting cost documentation upon request from the Authority and the Authority shall establish a reasonable schedule for such audits.

3. If the Authority disagrees with the Contractor's or its Concession Operators' determination of 1) the categorization of ownership of an item as a Fixed Improvement or Operating Equipment, 2) with the reasonableness of the cost of the item, or, 3) if supporting cost documentation is not sufficient, it shall notify the Contractor in writing. The Contractor or the Concession Operator(s), as applicable, shall have sixty (60) days following receipt of the Authority's notice to respond or provide any additional information. Within thirty (30) days after receipt of any response or additional information provided by the Contractor or the Concession Operator(s), as applicable, the Authority will make a determination as to whether or not the cost or ownership of the Fixed Improvement or Operating Equipment shall be allowed. All Concession Operator leases shall state that professional fees and other costs related to the design and engineering of Concession Operator's leased Premises in excess of twelve percent (12%) of the Concession Operator's required minimum investment in the concession Premises, and professional fees and other costs related to the design and engineering of the Concession Operator's required mid-term refurbishment investment in excess of twelve percent (12%) shall not be allowed in the assessment of whether the Concession Operator has met the required minimum investment amounts. Such restrictions on professional fees and other costs related to the design and engineering of the RMUs shall also apply to the Authority's assessment of the Contractor's required minimum investment in the RMUs.
- G. Plan Submittal. Full and complete plans with the professional seal of an architect or engineer licensed in the Commonwealth of Virginia and specifications for all work, including cost estimates, facilities and improvements, and the time required to complete same, shall be submitted to and receive the written approval of the Authority before work or construction is commenced. First-class standards of design and construction will be required in connection with all such work, facilities, and improvements; and all construction shall conform to the general requirements of the Authority. Eight (8) sets of plans for all improvements or subsequent changes thereto or alterations thereof shall be given to the Authority for review at the following stages of design.

1. 35% completion of schematic design
2. 60% completion of schematic design
3. 90% completion of schematic design
4. Final design

The Concession Operators must receive a building permit from the Authority for each location prior to commencement of construction. Upon receiving the building permit, the Contractor shall submit to the Authority, the approved construction plans in digital format (CADD) in accordance with the Authority's Design Manual, Appendix 3, CADD Design Standards.

- H. Modifications. In the event of disapproval by the Authority of any portion of the plans and specifications, the Contractor shall require the applicable Concession Operator to promptly submit necessary modifications and revisions thereof. No changes or alterations shall be made to the plans and specifications by the Contractor or the Concession Operators after initial approval by the Authority, and no alterations or improvements shall be made to or upon the concession facilities without the prior written approval of the Authority except minor changes or alterations due to existing field conditions. The Authority agrees to act within a reasonable time period on such plans and specifications upon requests for approval of changes or alterations to said plans or specifications.
- I. Record Drawings. Within one hundred twenty (120) days following completion of all work, the Contractor shall require Concession Operators to submit two (2) complete, full-sized, printed sets of marked-up Record Drawings. The drawings are not to be submitted until after substantial completion to ensure that all changes are shown on the drawings. Record Drawings are to show the actual installation where installation varies from that shown on original permitted construction documents. The Concession Operators shall give particular attention to information on concealed elements that would be difficult to identify or measure and record later and accurately record information in an understandable drawing technique. Mark-ups must be legible and reproducible. The Contractor agrees that, upon the request of the Authority, the Contractor and the Concession Operators will inspect the Premises jointly with the Authority to verify said as-built drawings. The Contractor shall require the Concession Operators to pay within ten (10) days of demand by the Authority liquidated damages of Fifty Dollars (\$50.00) per day for each day beyond the one hundred twenty (120) day deadline that the Record Drawings are not submitted.
- J. Annual Report. The Contractor shall require the Concession Operators to provide, within ninety (90) days after the end of each Contract Year, an annual

report of Fixed Improvements and Operating Equipment installed and completed by the Concession Operators during the prior Contract Year. The Contractor shall require the Concession Operators to pay within ten (10) days of demand by the Authority liquidated damages of One Hundred Fifty Dollars (\$150.00) per day for each day beyond the ninety (90) day deadline that the Annual Report is not submitted.

ARTICLE 8. BUYOUT, TITLE, AND AMORTIZATION

Section 8.1 Title

During the term of the Contract, title to Fixed Improvements made by the Contractor or the Concession Operators shall remain with the Contractor or the Concession Operators unless otherwise specified by the Parties. At the expiration of any lease, title to the Fixed Improvements shall vest in the Contractor or the Authority. Title to all Fixed Improvements for which there is no approved amortization schedule shall, at the expiration or termination of the Contract or any individual lease, at the discretion of the Authority, vest either in the Authority or its designee at no charge to either the Authority or its designee. The Contractor, at its expense, agrees to execute and have the Concession Operators execute, at their expense, all documents reasonably requested and deemed reasonably necessary by the Authority as evidence of said transfer of title. Neither the Contractor nor the Concession Operators shall have the right during the term of the Contract, to demolish, in whole or in part, any building, structure or other fixed improvement on the Airport except with the prior written consent of the Authority, which may, at the discretion of the Authority, be conditioned on the obligation of the Contractor or the Concession Operators to replace the same by a building, structure or improvement acceptable to the Authority or to repair any damage caused by such removal. At the expiration of the Contract, all Fixed Improvements made by the Contractor or the Concession Operators shall be left in place, and shall be subject to inspection by the Authority.

Section 8.2 Amortization

The commencement date for the amortization of the cost of Fixed Improvements approved by the Authority under the Contract shall be the date of beneficial occupancy of the Concession Operator in the improved facility. The cost of Fixed Improvements for each facility shall be amortized on a straight-line basis over the term of the lease for the facility, as appropriate. Allowable costs to be amortized shall include those items listed in Article 7, Section 7.2.E. Operating Equipment, moveable fixtures, and professional fees and other costs related to the design and engineering of Concession Operators' leased Premises in excess of twelve percent (12%) of the Concession Operators'

required minimum investment in the concession Premises, and professional fees and other costs related to the design and engineering of the Concession Operators' required mid-term refurbishment investment in excess of twelve percent (12%) shall not be included in allowable costs for purposes of amortization and buyout.

The Contractor or the Concession Operators shall submit a certified statement of costs with sufficiently detailed documentation to show the actual sum expended in the creation of the facilities within ninety (90) days after completion of construction, as explained in Article 7, Section 7.2.F. The Authority shall have the right to examine the Contractor's or the Concession Operators' records concerning such costs of construction and to audit such records following completion of construction.

ARTICLE 9. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

Section 9.1 Local Disadvantaged Business Enterprise (LDBE) Participation

During the Operating Period of this Contract, the Contractor shall achieve ten percent (10%) LDBE participation through the management functions of the concession program. The percentage of LDBE participation shall be calculated as a percentage of the Management Fee paid to the LDBE for performing a clearly defined portion or all of the Scope of Operations as described in Article 4.

An LDBE is defined as a disadvantaged business concern which is organized for profit and located within a 100-mile radius of Washington, DC's zero mile marker, which has been certified by the Authority as a local disadvantaged business enterprise.

If the Contractor is unable to achieve the LDBE requirement, it must demonstrate that it made good faith efforts to do so. Failure to demonstrate good faith efforts may result in a determination that the Contractor is in breach of its obligation under this Contract.

Failure to meet the LDBE requirement shall constitute a default as defined in Exhibit 6, Standard Provisions for Concessions Contracts. Additionally, the Airports Authority, at its option may retain ten-percent (10%) of the annual Management Fee for failure to comply with the LDBE requirement under this agreement.

Section 9.2 Airport Concession Disadvantaged Business Enterprise (ACDBE) Participation

During the Operating Period of the Contract, the Contractor shall make a good faith effort to achieve a thirty-five percent (35%) ACDBE participation goal calculated as a percentage of projected total Gross Receipts from food service and a twenty-five

percent (25%) ACDBE participation goal calculated as a percentage of projected total Gross Receipts from retail concessions leased by the Contractor under this Contract. ACDBE participation shall be generated by Authority-certified ACDBE Concession Operators.

If the Contractor is unable to achieve the ACDBE goal, it must demonstrate that it made good faith efforts to do so. Failure to demonstrate good faith efforts may result in a determination that the Contractor is in breach of its obligations under this Contract.

Section 9.3 Identification and Certification of ACDBE Concession Operators and Business Partners

The Contractor shall identify potential ACDBE Concession Operators prior to finalization of leases, and work closely with the proposed ACDBEs to submit their applications for ACDBE certification. The Authority's Equal Opportunity Programs Department will assist the Contractor in identifying current Authority-certified ACDBE firms and other potential ACDBE firms upon request.

- A. To qualify as an ACDBE, the firm must meet the definition as set forth below and the applicable size standard, defined in terms of the firm's average annual receipts for the preceding three (3) fiscal years. The current applicable size standard for food service and retail concessions is \$52.47 million, which means the ACDBEs average annual Gross Receipts for the last three (3) years (including Gross Receipts of all affiliates) cannot exceed \$52.47 million. The receipts of affiliate companies are included in determining size. In general, business concerns are affiliates of each other when either directly or indirectly:
1. One concern controls or has the power to control the other, or
 2. A third-party (or parties) has the power to control both.

When determining if affiliation exists, consideration is given to such factors as common ownership, common management, contractual relationships, and overlapping authority. Any questions related to ACDBE certification may be directed to Ms Betty Toulson, Equal Opportunity Programs Department at (703) 417-8360.

A ACDBE, as defined by 49 CFR Parts 23 and 26, is a business concern that meets the applicable size standard and is a small business (as defined by the Small Business Administration), which is: a) at least fifty-one percent (51%) owned and controlled by one (1) or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least

fifty-one percent (51%) of the stock is owned by one (1) or more socially and economically disadvantaged individuals; and b) whose management and daily business operations are controlled by one (1) or more of the socially and economically disadvantaged individuals who own it. "Socially and economically disadvantaged individuals" include:

1. Women;
2. Black Americans, which includes a person having origins in any of the Black racial groups of Africa;
3. Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Central, or South American, or other Spanish or Portuguese culture or origin, regardless of race;
4. Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, and Native Hawaiians;
5. Asian-Pacific Americans, which includes persons whose origins are from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia (Kampuchea), the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, or the Commonwealth of the Northern Mariana Islands, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru; and
6. Asian-Indian Americans, which includes persons whose origins, are from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal.

The Authority will generally assume that business owners who fall into one of these groups are socially and economically disadvantaged. Their disadvantaged status will not generally be investigated, unless a third-party challenge is made.

- B. Other individuals may be found to be socially and economically disadvantaged on a case-by-case basis. For example, a disabled Vietnam veteran, an Appalachian white male or another person may claim to be disadvantaged. If such individual requests that his or her firm be certified as ACDBE, the Authority, as part of the certification process, will determine whether the individual is socially and economically disadvantaged under the criteria in Appendix C of Subpart D of 49 CFR Part 23. These owners must demonstrate that their

disadvantaged status arose from individual circumstances, rather than by virtue of membership in a group.

Section 9.4 Good Faith Efforts Waiver

Efforts that are merely pro forma are not good faith efforts to meet the goal. Efforts to obtain ACDBE or LDBE participation are considered pro forma, even if they are sincerely motivated, if, given all relevant circumstances, they could not reasonably be expected to produce a level of ACDBE participation to meet the ACDBE goal or LDBE participation requirement. For example, advertising or bulk mailings, alone or together are considered pro forma unless followed up with telephone calls and/or correspondence consistent with normal business practice. If the ACDBE or LDBE firm provides a reasonable and/or legitimate offer, a reasonable effort to evaluate the participant and work towards a good business arrangement for both parties must be demonstrated.

- A. Request for Waiver. To be deemed compliant with this Contract, the Contractor must commit to the ten percent (10%) LDBE requirement for the Management Fee; the thirty-five percent (35%) ACDBE goal for food service Concession Operators; and the twenty-five percent (25%) ACDBE goal for retail Concession Operators. If the Contractor is unable to commit to all or any part of the LDBE participation requirement or ACDBE goals, it must submit the attached Request for Waiver of the LDBE participation requirement or ACDBE goal. The Contractor must demonstrate that it made good faith efforts to achieve the goals. The Waiver request must include a report of the efforts made by the Contractor sufficient to satisfy the Authority that a waiver of the goal(s) or portion thereof is justified. Activities constituting “good faith efforts” are outlined below.
1. Elements of the Waiver Report. The report supporting the waiver request shall include documentation to substantiate the good faith efforts made. The following examples are possible efforts demonstrating good faith, however, this list is not inclusive or exhaustive:
 - a. Attend informational meetings that are scheduled by the Authority regarding LDBEs and/or ACDBEs;
 - b. Advertise in major circulation newspapers, such as the Washington Post, trade association newsletters, and minority and/or women oriented media concerning the LDBE and ACDBE participation opportunities;

- c. Provide written notice to a reasonable number of specific LDBEs and ACDBEs regarding the concession lease being solicited, in sufficient time to allow LDBEs and ACDBEs to participate;
- d. Follow up initial solicitations of interested LDBEs and ACDBEs to determine their level of interest;
- e. Provide interested LDBEs and ACDBEs with adequate information about the leasing opportunity, the certification process, and other elements of the concession program at the Airport;
- f. Negotiate in good faith with interested LDBEs and ACDBEs and not reject LDBEs or ACDBEs as unqualified without sound reasons, based upon thorough investigation of their capabilities;
- g. Make efforts to assist interested LDBEs and ACDBEs in obtaining financing or insurance (if applicable).

- B. Evaluation of Good Faith Efforts. Good faith efforts of the Contractor shall be evaluated by the Authority to determine whether the efforts to obtain LDBE and ACDBE participation were those that a firm aggressively seeking partners or subcontractors would take in the normal course of doing business; whether the steps taken had a reasonable probability of success; and whether based upon the size, scope and complexity of the project, there were qualified LDBE and ACDBE firms available and willing to participate in a reasonable manner (e.g., financing, staff, and/or experience, etc.).

Section 9.5 LDBE and ACDBE Compliance

Throughout the term of this Contract, the Contractor shall monitor the certification status of any and all LDBE and ACDBE firms included in this Contract to ensure that their status as certified LDBEs and ACDBEs remains current (an Annual Statement of No Change In Status shall be required from LDBE and ACDBE firms).

- A. Contractor LDBE and ACDBE Compliance. If during the term of this Contract, LDBE and ACDBE Concession Operators and/or business partners cease to do business or cease to exist, whichever occurs later, the Contractor may replace such LDBE and ACDBE Concession Operator/business partner with other LDBEs and ACDBEs that have been reviewed, certified, and approved by the Equal Opportunity Programs Department of the Authority. The LDBE and ACDBE Concession Operator/business partner replacement shall occur within

ninety (90) days of the date on which the previous LDBE and ACDBE Concession Operator/business partner ceased to do business or ceased to exist, whichever is later. The replacement LDBE and ACDBE may not begin operating until the substitution has been approved by the Authority's Equal Opportunity Programs and Concessions and Property Development departments.

- B. Authority LDBE and ACDBE Compliance. The Authority will conduct compliance monitoring on the LDBE and ACDBE participation in this Contract. The Contractor shall use all efforts to assist the Authority in obtaining access to the Concession Operator's/business partner's records relating to, LDBE and ACDBE certification and ongoing certification status, including, but not limited to, payroll records, tax information, and accounting records, for the purpose of ascertaining whether the LDBE and ACDBE is performing the designated work and the LDBE and ACDBE Concession Operator/business partner is otherwise carrying out the LDBE and ACDBE participation requirements of the Contract. The Contractor shall provide true and monthly reports of the LDBE and ACDBE participation (including gross sales achieved by LDBE and ACDBE Concession Operators) under this Contract. The LDBE and ACDBE Contract Activity report will be included with the Contractor's Certified Monthly Statement (as described in Article 4, Section 4.3,E.3.d) **by the 20th calendar day each month** with a separate copy to the Authority's Equal Opportunity Programs Department. The LDBE and ACDBE monthly report will include any supporting documentation reasonably required by the Authority. The Contractor shall pay within ten (10) days of demand by the Authority liquidated damages of One Hundred Dollars (\$100.00) per day for each day past the due date as defined in this Article 9 that the monthly LDBE and ACDBE Contract Activity Report is not submitted. The Contractor shall be found to be in non-compliance if the Contractor fails to comply with the LDBE and ACDBE provisions of this Contract.

ARTICLE 10. QUALITY OF PERFORMANCE AND LIQUIDATED DAMAGES

The liquidated damages provisions in the Contract relate to the quality of the Contractor's Concession Operators' performance or the quality of service that the Authority expects to be provided to the public under the Contract. The Contractor agrees that nonperformance denigrates the quality of the service, and therefore, is in violation of this Contract. The actual amount of damages sustained by the Authority for these violations cannot readily be determined, however. The Contractor agrees that the liquidated damages stated in the Contract are fair and reasonable and do not constitute a penalty. Failure to impose liquidated damages for a particular violation shall not bar the Authority from imposing liquidated damages for subsequent violations of the same nature. The Authority will notify the Contractor within five (5) days of a violation's

occurrence if it intends to assess liquidated damages. The Contractor agrees to assess the liquidated damages to the Concession Operator(s) and to pay the same promptly to the Authority.

ARTICLE 11. INSURANCE REQUIREMENTS

Section 11.1 Notice to the Contractor, Types of Insurance Coverage Required.

Notwithstanding the above indemnification, the Contractor shall give the Authority notice of any matter that may be covered by the indemnification and shall forward to the Authority every demand, notice, summons, or other process received in any claim or legal proceeding covered thereby. Further, the Contractor shall procure and maintain at its sole expense during the Contract period the following insurance coverage from an insurance company or companies possessing a rating of A VII or higher from the A.M. Best Company or an equivalent rating service. **THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY SHALL BE NAMED AS AN ADDITIONAL INSURED ON ALL POLICIES**, except Workers' Compensation and Employer's Liability, and, if such a policy is required, Professional Liability. Contractor waives all rights of recovery under subrogation under all policies enumerated herein and will obtain a waiver of subrogation endorsement on its workers compensation policy. The following policies must provide for thirty (30) days advance notice to the Authority of cancellation, non-renewal of the coverage, or any material change in the policy. All Contractors' policies shall be primary and Contractor agrees that any insurance maintained by the Authority shall be excess of and non-contributing with respect to the Contractor's insurance. The Authority reserves the right to waive or modify selected insurance requirements for the Contractor for good cause.

Section 11.2 Commercial Automobile Liability

\$1,000,000 Combined Single Limit for Bodily Injury and Property Damage per occurrence for owned, non-owned and hired vehicles; however, if any of the Contractor's vehicles operate on the Airport Operations Area (AOA), the required limit shall be \$2,000,000. The AOA is defined as that area of the Airport which is located inside the perimeter security fence surrounding the airside portion of the Airport.

Section 11.3 Commercial General Liability

\$10,000,000 Combined Single Limit for Bodily Injury and Property Damage per occurrence for the Contractor. Coverage must include Broad Form Contractual, Property Damage, Products-Completed Operations, Personal Injury, Advertising Injury,

Premises-Operations, Independent Contractors and Subcontractors, Host Liquor Legal Liability and Fire Legal Liability.

Section 11.4 Professional Liability

\$3,000,000 per claim with a \$3,000,000 aggregate for all employees.

Section 11.5 “All Risk” Property-Contractor’s Property

Replacement cost coverage under an “All Risk” policy for any of the Contractor’s real or personal property and improvements and betterments used or situated on Authority property. Concession Operators shall be required by the lease to carry such replacement cost coverage under an “All Risk” policy for any of the Concession Operators’ real or personal property used or situated on Authority property.

Section 11.6 Workers’ Compensation and Employer’s Liability

Virginia Statutory Limits with an All States Endorsement for Workers’ Compensation and \$1,000,000 for Employer’s Liability.

The failure of the Authority to enforce the insurance provisions or to identify a deficiency from evidence that is provided shall not constitute a waiver of those provisions nor in any respect reduce the obligations of the Contractor to maintain such insurance or to defend and hold the Authority harmless with respect to any injury or damage covered by this Contract.

The Contractor shall provide the Contracting Officer with a valid Certificate of Insurance, in advance of the performance of any work, exhibiting coverage as required by the Authority’s contract terms and conditions. The Contractor shall require by the lease that all Concession Operators independently carry the minimum insurance requirements satisfactory to the Contractor or as otherwise required by the lease. The Certificate of Insurance shall be provided on the industry standard form (ACORD 25-S), and **the contract number shall be listed on the Certificate of Insurance and issued to:**

Procurement and Contracts Department
Metropolitan Washington Airports Authority
1 Aviation Circle
Washington, DC 20001-6000

ARTICLE 12. RECORDS AND BOOKS; INSPECTIONS; AUDITS

Section 12.1 Contractor to Maintain Certain Books and Records

Contractor shall maintain in a true and accurate manner and in accordance with Generally Accepted Accounting Principles (GAAP), such accounts, books, records and data as would reasonably be expected to be examined by an independent certified public accountant in performing an audit or examination of Contractor's revenues and expenses in accordance with GAAP and when applying Generally Accepted Auditing Standards (GAAS).

Section 12.2 Location of Books and Records

The Contractor may keep the books and records it is required to maintain under Section 12.1 at its corporate office, or available for inspection under the provisions of Section 12.5 herein. Such books and records shall be kept segregated from the Contractor's books and records relating to operations other than pursuant to this Contract.

Section 12.3 Books, Records and Information

Books and records as used in this clause include budget reports, schedules, invoices, receipts, source documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. Contractor, at a minimum, shall maintain, as an integrated part of its general ledger system, a revenue and expense sub-ledger, and shall identify and itemize all revenue and expense categories. Contractor shall make available all items stated and any related information sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of the Contract.

Section 12.4 Controls

In addition to maintaining the books and records required by Article 12 herein, Contractor shall install on the Premises, and shall at all times use, cash registers, invoicing machines, sales slips and other accounting equipment, devices and forms necessary to record properly, accurately and completely all sales of goods and services under any part of this Contract on or from the Premises.

Section 12.5 Authority's Right to Inspect and Audit

A. Books and Records Available for Inspection

Contractor may keep the books and records required under Article 12 herein at the Contractor's corporate office or elsewhere available for inspection. Such books and records shall be kept segregated from the Contractor's books and records relating to other operations. Contractor shall make such books and records available to the Authority or its designee within seven (7) business days of receiving said request from the Authority. Should Contractor not wish to make the corporate books and records available in the Washington, D.C. area, then the Contractor shall pay reasonable travel and accommodation expenses for the Authority or the Authority's authorized representatives to travel to the Contractor's office to conduct the audit.

B. Authority's Right to Audit

The Authority shall have the right, upon reasonable notice to Contractor to audit the corporate books and records relating to the operation of the Contractor in order to determine the correctness of the fees paid to the Authority for any Contract Year. The Authority's right to inspect and audit extends to the books and records of all subcontractors and/or partners under this Contract as they relate to this Contract. If the audit discloses intentional inaccuracies, this Contract, at the option of the Authority, may be terminated.

C. Fees and Interest if Underpayment Discovered by Audit

If, as a result of the audit performed under Article 12 herein, additional fees are due from the Contractor to the Authority, the Contractor shall immediately pay to the Authority such additional fees, together with interest on the amount of such additional fees at the rate specified herein from the date such additional fees should have been paid. Further, if the audit establishes that the Contractor has understated and underpaid fees by three percent (3%) or more for any Contract year, then the entire expense of such audit, whether internal or external, shall be paid by the Contractor.

D. Delinquent Fees

In the event that it is established through an audit conducted by the Authority that fees or charges otherwise due to the Authority under this Contract have not been paid to the Authority as a result of the Contractor's

improper recording of its Gross Receipts, the Contractor shall pay to the Authority as delinquent fees and charges (with interest and charges in accordance with Section 12.5 herein) an amount equal to the amount of fees or charges reasonably estimated to have been lost to the Authority.

E. Inspection and Audit Rights Survive Expiration

The Authority's rights under Article 12 to inspect and audit the books and records of the Contractor shall survive the expiration or earlier termination of this Contract. The Contractor shall retain and keep available all documents and records relating to this Contract for not less than three (3) years after the expiration or termination date of the Contract term or any extension, or in the event of litigation or claims relating to this Contract until such litigation or claims are completely disposed of and all time limits for appeal have expired.

ARTICLE 13. MISCELLANEOUS PROVISIONS

Section 13.1 Advertising and Public Displays

The Contractor shall not install or have installed or allow to be installed upon the Premises under this Contract any lighted or unlighted sign, poster or other display of advertising media, including material or display racks supplied by manufacturers of merchandise offered for sale, as well as other types of display, without the written approval of the Authority. Permission will not be granted for such advertising material, or any portion of the fixtures or equipment used in connection with the operations hereunder, to extend beyond the areas shown on the attached Exhibit 2, and to be occupied by the Contractor's Concession Operators.

Section 13.2 Inconveniences During Construction

The Contractor recognizes that from time to time during the term of this Contract, it will be necessary for the Authority to initiate and carry forward programs of construction, reconstruction, expansion, relocation, maintenance and repair in order that the Airport and its facilities may be suitable for the volume and character of air traffic and flight activity that will require accommodation, and that such construction, reconstruction, expansion, relocation, maintenance and repair may inconvenience the Contractor or the Concession Operators in its operations at the Airport. The Contractor agrees and shall require that the Concession Operators to agree that no liability shall attach to the Authority, its officers, agents, employees, contractors, lessors and representatives by way of such inconveniences, and for and in further consideration of the Premises, the Contractor waives any right to claim damages or other consideration therefore.

The Authority agrees to keep the Contractor informed of planned changes that may materially affect or inconvenience the Contractor or the Concession Operators, and further agrees to use its best efforts to minimize the disruption and inconvenience whenever possible. Notwithstanding the foregoing, all work carried on by the Authority with respect thereto within the Premises, if any, shall be done during hours when the Premises are not open for business (except in the case of emergencies) and otherwise shall be carried out in such a manner as not to unreasonably interfere with Concession Operator's operations in the Premises. The Authority, at its expenses, shall repair all damage to the Premises resulting from such work.

Section 13.3 Incorporation of Standard Provisions

- A. Except as provided herein, the Standard Provisions attached hereto as Exhibit 6 are hereby incorporated into and made a part of this Contract and shall be part of all leases with Concession Operators. The Contractor shall be obligated to meet where applicable to the Contractor and enforce on the Concession Operators where applicable, all specifications described in the Standard Provisions, PROVIDED, HOWEVER, that where an express provision of this Contract is in conflict with any provisions of the Standard Provisions, this Contract shall control.
- B. The following provisions of the Standard Provisions do not apply to the Contractor: Article 3, Sections 4.02, 4.03, 4.04, 4.05, 4.06, Article 5, and Article 6. All sections of the Standard Provisions shall apply to Concession Operators.

Section 13.4 Notices

All notices, consents, and approvals required under the terms of this Contract shall be given by a designated representative of the Authority and the Contractor and delivered either by hand or certified mail, postage prepaid, return receipt requested, or by prepaid nationally recognized overnight courier service providing evidence of delivery and addressed as follows or to such other address as may be designated by the party following the procedure set forth herein:

To the Authority:

Kathleen T. Verret, Manager
Revenue Development
Metropolitan Washington Airports Authority
1 Aviation Circle, Suite 158
Washington, DC 20001

To the Contractor:

IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of the dates shown below.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

By: _____
Kathleen T. Verret, Manager
Revenue Development

Date: _____

CONTRACTOR

By: _____

Name: _____

Title: _____

Date: _____

Exhibit 1

Contractor's Proposal

Exhibit 2
Premises Drawings

Exhibit 3
Phasing Plan

Exhibit 4

Concession Operator Extension Agreements

Concession Management Contract
Contract No. MWAA-4-10-C002

Exhibit 5

Monthly Certified Statement

Exhibit 6

Standard Provisions for Concession Contracts

Concession Management Contract
Contract No. MWAA-4-10-C002

Exhibit 7

Good Faith Effort Form

Exhibit 8
Office Space