

7.2.2 Base Building Improvements. Concessionaire shall pay all costs for required modifications and/or construction of certain base building conditions necessary to bring the base building concession spaces to a condition ready to receive Concessionaire Space Improvements. Improvements shall include but not be limited to the following: demolition of existing storefronts and finishes and removal of debris, construction or relocation of demising partitions, construction of servicing/delivery corridors or other support spaces, and extension or modification of building systems or other work. In locations in which construction of service corridors will be necessary to improve operations at the Airport, the required corridors shall be constructed by the Concessionaire.

7.2.3 Minimum Reinvestment. As provided in the Section entitled "Renewals," this Agreement shall be subject to a single three (3) year renewal at the option of the City. If the renewal option is exercised, the City will notify the Concessionaire of its intention to renew within thirty (30) days of the end of the 5th year anniversary of the Commencement Date. In such case, Concessionaire will be required to refurbish the public areas of the Premises at a minimum cost of one hundred and fifty dollars (\$150.00) per square foot within one hundred and twenty (120) days of the execution of the Renewal or within such longer time period as may be approved by the Aviation General Manager. In the event this Agreement is not renewed, Concessionaire will be required to refurbish the public areas of their Premises at a minimum investment of seventy-five dollars (\$75.00) per square foot by the earlier occurring of: (1.) One hundred and fifty (150) days after the 5th year anniversary of the Commencement Date; or (2.) One hundred and twenty (120) days from the date the City notifies Concessionaire in writing that the Agreement will not be renewed. If the City disputes the amount of reinvestment claimed by Concessionaire, the City may, at its expense, hire an independent appraiser to determine the cost of the reinvestment. If the independent appraiser determines that the reinvestment is less than the minimum required, the difference, as well as City's costs of hiring such independent appraiser, will be paid to the City by Concessionaire within sixty (60) days of the appraiser's determination.

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

7.3 Construction of Concessionaire Improvements.

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

7.3.2 Concessionaire must perform all demolition required and construct and install all Concessionaire Improvements at its own expense and shall hire contractors that are acceptable to City. Prior to the commencement of any construction work, Concessionaire must provide to City a fixed price contract or contracts for all work to be performed within the Premises, which contract(s) shall be insured by, and Concessionaire must provide to City, a payment and performance bond in an amount equal to one hundred percent (100%) of the total contract value of such contract. Concessionaire must also comply with all other requirements of **Exhibit D**.

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

7.3.4 All aspects of RCC concessions build-out must:

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

7.3.4.2 comply with **Exhibit G** attached hereto and incorporated herein.

7.4 Utilities.

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

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

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

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

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

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

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

7.7 Advertising. Concessionaire may, at its own expense, install and operate necessary and appropriate identification signs on the Premises, subject to the prior approval of the Aviation General Manager as to the number, size, height, location, color and the general type and design. Such approval shall be subject to revocation by the Aviation General Manager at any time. Without express written consent of the Aviation General Manager, Concessionaire may

not display any advertising, promotional or informational pamphlets, circulars, brochures or similar materials.

8. LIABILITY AND INDEMNITY

8.1 City's Liabilities. City will not be liable or responsible to Concessionaire for any loss, damage or expense that Concessionaire may sustain or incur if either the quantity or character of any services to be provided by City is changed or is no longer available or is no longer suitable for Concessionaire's requirements. City will not be liable or responsible to Concessionaire for any loss, damage or expense arising out of, resulting from, relating to or concerning, directly or indirectly, acts of terrorism, including, but not limited to, any loss, damage or expense sustained or incurred by Concessionaire as a result of:

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

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

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

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

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

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

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

8.2.4 any loss, expense, demand, suit or claim against the Indemnified Parties sustained or alleged to have been sustained arising out of or relating to Concessionaire's violation or alleged violation of the Section entitled "**Hazardous Materials.**" This indemnification obligation includes, but is not limited to fines assessed against Concessionaire,

City, or others for whom City may be responsible, diminution in value of the Airport, damages for the loss of use of rentable or usable space or of any amenity of the Airport, damages arising from any adverse impact on marketing of space in the Airport, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees which arise during or after the Term of this Agreement, including any renewals, as a result of such violation. This indemnification of City by Concessionaire also includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal, or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Airport which results from such a violation; and

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

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

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

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

10. DAMAGE OR DESTRUCTION

10.1 Partial Destruction of the Premises.

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

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

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

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

10.1.3 In no event shall City be required to repair any injury or damage of fire or other cause, or to make any restoration or replacement of any paneling, decorations, office fixtures, partitions, railings, ceilings, floor covering, equipment, machinery or fixtures or any other improvements or property installed in the Premises by Concessionaire or at the direct or indirect expense of Concessionaire. Concessionaire must restore or replace the same in the event of damage provided that this Agreement is not terminated pursuant to this Section.

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

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

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

10.4 Damage During Last Year of Term or Renewal Period. If during the last year of the Term, including any renewal term, the Premises are partially destroyed or damaged and are not covered under an insurance policy required to be maintained pursuant to this Agreement, City may terminate this Agreement, effective as of the date of occurrence of such damage, by giving written notice to Concessionaire within thirty (30) days after the date of occurrence of such damage. If City elects to terminate this Agreement, Concessionaire will have the right, within

ten (10) days of the date of the City notice, to notify City in writing of Concessionaire's intention to repair such damage at Concessionaire's expense, without reimbursement from City, in which event this Agreement shall continue in full force and effect and Concessionaire must proceed to make such repairs as soon as reasonably possible.

10.5 Reduction of Rent; Concessionaire's Remedies.

10.5.1 If the Premises are partially destroyed or damaged physically and the City is obligated to repair the Premises pursuant to this Agreement, the rent attributable to such partially destroyed or damaged Premises and payable for the period during which such damage and repair continues will be reduced in proportion to the extent to which Concessionaire's use of the Premises is impaired, calculated on a square foot basis, in accordance with the discretion and determinations of the Aviation General Manager. For example, if one-half (1/2) of the Premises is unusable by Concessionaire as a result of such physical damage or destruction, then the rent payable for each month during which it exists and is being repaired will be reduced by one-half (1/2). Except for a reduction rent (if any), Concessionaire shall have no claim against the City for any damage suffered by reason of any such damage, destruction or repair.

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

11. RESERVED.

12. DEFAULT BY TENANT

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

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

12.1.2 Concessionaire does any of the following:

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

12.1.2.2 makes a general assignment for the benefit of creditors.

12.1.2.3 files a voluntary petition in bankruptcy.

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

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

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

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

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

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

12.1.2.10 fails to comply with the requirements set forth in **Exhibit D**.

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

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

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

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

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

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

12.1.2.14 intentionally or willfully misrepresents to City any material fact.

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

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

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

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

12.2.1 Allow this Agreement to continue in full force and effect and to enforce all of City's rights and remedies under it, including, without limitation, the right to assess fines and the right to collect rent as it becomes due together with interest at the rate of one and one half percent (1.5%) per month.

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

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

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

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

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

12.4 Security Interest.

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

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

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

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

13. TERMINATION

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

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

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

13.1.3 immediately upon written notice for numerous breaches of the Agreement by Concessionaire that collectively constitute reasonable grounds for the Aviation General Manager to feel insecure or uncertain about the Concessionaire's performance or ability to perform the Services; or

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

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

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

13.4 Termination by City for Convenience.

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

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

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

13.6 Effect of Termination. Unless otherwise provided herein, termination of this Agreement, in whole or in part and for any reason, shall not affect: (a) any liabilities or obligations of either Party arising before such termination or out of the events causing such termination; or (b) any remedies to which a Party may be entitled under this Agreement, at law or in equity. Upon termination of this Agreement, Concessionaire shall immediately: (i) discontinue Services on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of the

terminated Services; (ii) inventory, maintain and turn over to City all work product, licenses, equipment, materials, plant, tools, and property furnished by Concessionaire or provided by City for performance of the terminated Services; (iii) promptly obtain cancellation, upon terms satisfactory to City, of all purchase orders, subcontracts, rentals or any other agreements existing for performance of the terminated Services, or assign those agreements, as directed by City; (iv) comply with all other reasonable requests from City regarding the terminated Services; and (v) continue to perform in accordance with all of the terms and conditions of this Agreement any portion of the Services that are not terminated.

14. FINES FOR VIOLATIONS

14.1 Concessionaire acknowledges and agrees that each of following shall be deemed an event of default under this Agreement:

14.1.1 Violation of Premises Use;

14.1.2 Failure to maintain required hours of operation;

14.1.3 Failure to submit required documents and reports;

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

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

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

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

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

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

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

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

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

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

14.2.1 Repeated violations of the infractions listed in Section 14.1 above may result in the Concessionaire being in default of the Agreement.

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

16. SURRENDER OF PREMISES

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

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

17. OWNERSHIP OF INFORMATION; CONFIDENTIALITY

17.1 All reports, information, data or other documents given to, prepared by or assembled by Concessionaire arising out of the work performed under this Agreement are the exclusive

property of City – with the exception of employee data covered under the Privacy Act – and will be kept confidential and may not be made available to any individual or organization by Concessionaire without the prior written approval of City, provided however that these provisions shall not apply to data that is in the public domain; was previously known to Concessionaire; or was independently acquired by Concessionaire from third parties who are under no obligation to City to keep said data and information confidential. These provisions shall not apply to information in whatever form that comes into the public domain through no fault of Concessionaire, nor shall they be interpreted in any way to restrict Concessionaire from complying with a legally enforceable court order to provide information or data; provided, however, Concessionaire shall immediately place City on notice of such court order to permit City the opportunity to determine whether a protective order shall be filed. This restriction includes, but is not limited to, press releases, presentations, promotional materials and other public disclosures.

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

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

17.1.3 Georgia Open Records Act. Information provided to the City is subject to disclosure under the Georgia Open Records Act ("GORA"). Pursuant to O.C.G.A. § 50-18-72(a)(34), "[a]n entity submitting records containing trade secrets that wishes to keep such

records confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10 [O.C.G.A § 10-1-760 et seq.].”

18. HAZARDOUS MATERIALS

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

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

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

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

(www.atlanta-airport/business/security). See also **Exhibit E**, attached hereto and incorporated by this reference herein.

20. CITY POLICIES; AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE ("ACDBE") BUSINESS PARTICIPATION AND NON-DISCRIMINATION PROVISIONS.

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

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

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

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

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

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

Recruited, whether by advertising or other means; compensated, whether in the form of rates of pay, or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated. The Concessionaire agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of the EEO clause.

- (j) The Concessionaire shall, in all solicitations or advertisements for employees, placed by or on behalf of the Concessionaire, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, disability, or political affiliation.
- (k) The Concessionaire shall send to each labor union or representative of workers with which the Concessionaire may have a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of the Concessionaire's commitments under the equal employment opportunity program of the City of Atlanta and under the Code and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Concessionaire shall register all workers in the skilled trades who are below the journeyman level with the U.S. Bureau of Apprenticeship and Training.
- (l) The Concessionaire shall furnish all information and reports required by the contract compliance officer pursuant to the Code, and shall permit access to the books, records, and accounts of the Concessionaire during normal business hours by the contract compliance officer for the purpose of investigation so as to ascertain compliance with the program.
- (m) The Concessionaire shall take such action with respect to any sub-Concessionaire as the city may direct as a means of enforcing the provisions of paragraphs (a) through (h) herein, including penalties and sanctions for noncompliance; provided, however, that in the event the Concessionaire becomes involved in or is threatened with litigation as a result of such direction by the city, the city will enter into such litigation as is necessary to protect the interest of the city and to effectuate the equal employment opportunity program of the city; and, in the case of contracts receiving federal assistance, the Concessionaire or the city may request the United States to enter into such litigation to protect the interests of the United States.
- (n) The Concessionaire and its sub-Concessionaires, if any, shall file compliance reports at reasonable times and intervals with the city in the form and to the extent prescribed by the contract compliance officer. Compliance reports filed at such times directed shall contain information as to employment practices, policies, programs and statistics of the Concessionaire and its sub-Concessionaires.
- (o) The Concessionaire shall include the provisions of paragraphs (a) through (h) of this equal employment opportunity clause in every subcontract or purchase order so that such provisions will be binding upon each sub-Concessionaire or vendor.

(p) A finding, as hereinafter provided, that a refusal by the Concessionaire or sub-Concessionaire to comply with any portion of this program, as herein provided and described, may subject the offending party to any or all of the following penalties:

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

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

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

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

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

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

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

undersigned Contractor, or authorized agent, further certifies that he/she is an agent duly authorized to sign this certification on behalf of the Contractor.

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

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

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

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

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

The Concessionaire certifies and warrants that it has not employed or retained any company or person, other than a bona fide employee working for the

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

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

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

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

20.4 Public Use and Federal Grants.

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

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

20.4.3 Concessionaire for itself, its sub-Concessionaires, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of said facilities; (2) in the construction of any improvements on, over, or under the Premises and the furnishings of services thereon, no person on the grounds of race, color, or national original shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) Concessionaire shall use the Premises in compliance with all other requirements imposed by or pursuant to the Code of Federal Regulations for the Department of Transportation at Title 49, Subtitle A, Office of the Secretary of Transportation, Part 21, titled "Nondiscrimination in Federally Assisted Programs of the Department of Transportation — Effectuation of Title VI of the Civil Rights Act of 1964," and as said regulations may be amended; and (4) in the event of Concessionaire's breach of any of the above nondiscrimination covenants, City shall have the right to terminate this Agreement therefore, and hold the same as if this Agreement had never been made or issued. Provision (4) shall not be effective until the procedures of 49 CFR Subtitle A, Part 21, are followed and completed, including the exercise or expiration of appeal rights.

21. MISCELLANEOUS PROVISIONS

21.1 Award and Execution of Agreement. The award and execution of this Agreement by City is authorized by Resolution No. _____, adopted by City's Council on _____, 20____, and approved by City's Mayor on _____, 20____, a copy of which is attached to this Agreement as Exhibit B.

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

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

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

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

21.6 Usufruct. Concessionaire acknowledges and agrees that the rights granted to Concessionaire hereunder by the City constitute a usufruct, which is not subject to levy or sale, and is not a leasehold interest. No estate shall pass out of City.

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

21.8 Attorneys' Fees. If City should bring any action under this Agreement or consult or place this Agreement, or any amount payable to Concessionaire pursuant to this Agreement, with an attorney concerning or for enforcement of any of City's rights hereunder, then Concessionaire agrees in each and any such case to pay to City all costs, including, but not limited to, court costs and reasonable attorneys' fees, incurred by City in connection therewith.

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

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

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

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

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

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

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

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

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

21.17 Notices. All notices required to be given to City hereunder shall be in writing and given by (a) a nationally recognized express overnight courier services (e.g., UPS or Federal Express) or (b) U.S. Postal Service's registered or certified mail, return receipt requested with all postage prepaid, addressed as follows:

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

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

Office: _____
Facsimile: _____
E-Mail: _____

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

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

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

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

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

[SIGNATURES BEGIN ON NEXT PAGE]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CONCESSIONAIRE:

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____

Title: Secretary/Assistant Secretary (SEAL)

CITY:

Mayor

ATTEST:

Municipal Clerk (SEAL)

APPROVED:

Chief Procurement Officer

APPROVED:

Aviation General Manager

APPROVED AS TO FORM:

Senior Assistant City Attorney

EXHIBIT A
SCOPE OF SERVICES

1. Project Description:

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

2. Locations:

The Successful Proponent shall operate from the Premises.

3. Permitted Uses Generally:

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

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

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

Prominent and Recognizable brands shall not include:

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

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

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

The Proponent and its sub-concessionaire(s) will also be responsible for cleaning and maintaining the "Premises" so as to provide an environment that is "opening day fresh" in appearance at all times.

Specific Uses:

Concept: Coffee and Bakery

Space No.: RCC-F1

Location: Level 2, West End, Rental Car Center

Approximate Size: 830 s.f.

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

Desired Menu/Concept Requirements:

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

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

Non-Permitted Menu/Concepts:

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

EXHIBIT A.1

FINANCIAL OFFER FORM

FC-6362: Coffee and Bakery Concession at Rental Car Center

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

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

Percentage Rental Fee per Category:

Category	Percentage of Gross Receipts	Forecasted Revenue
Branded Food & Coffee	14.5%	
Non-Branded Food & Coffee	16.5%	
Travel Retail / Gifts / Souvenirs / Tobacco products / Candy & Snacks	12.5%	
General Retail / Supplies / Stationery	10%	

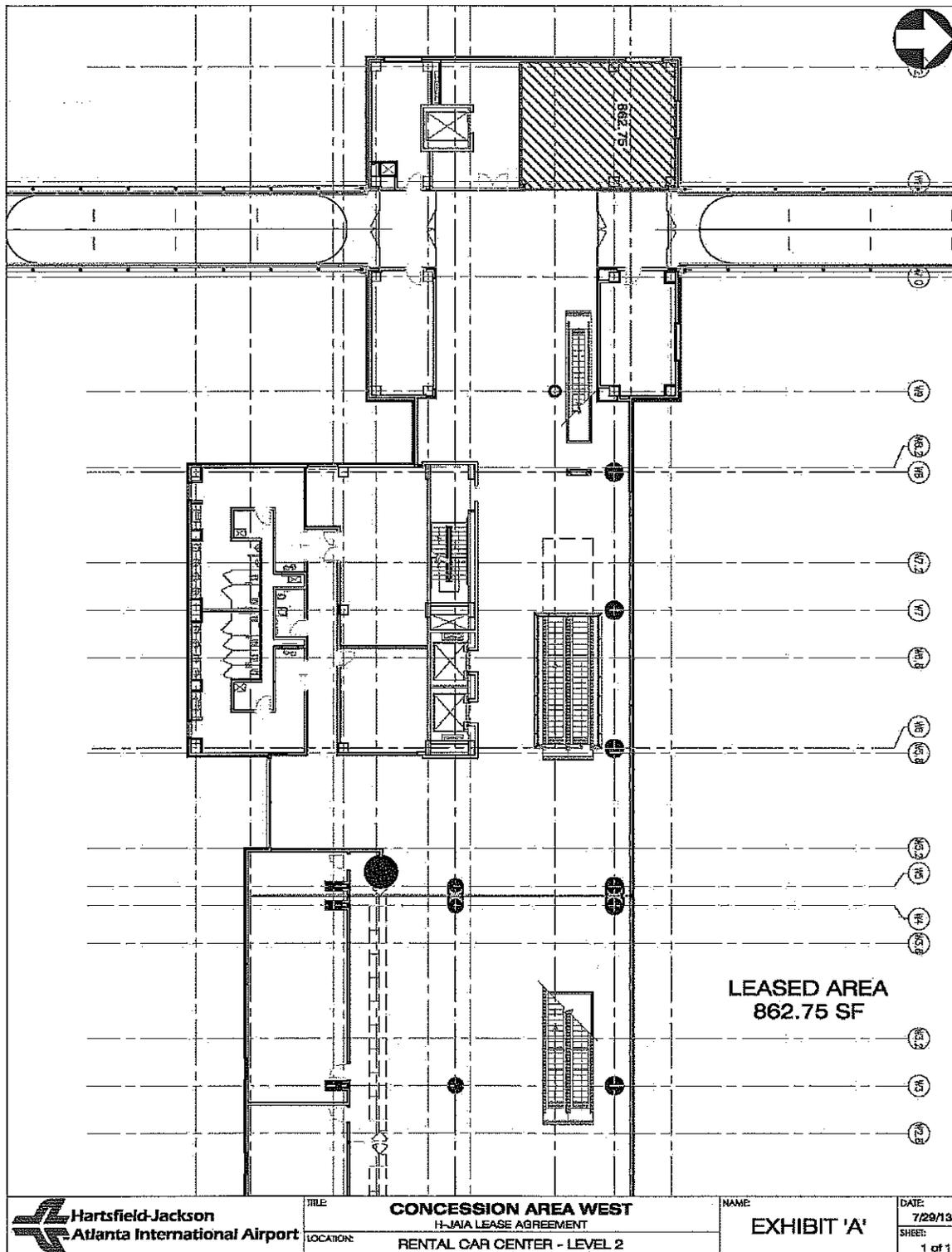
Please sign the appropriate place:

Signature _____

Title _____

Company _____

**EXHIBIT A.2
MAP OF PREMISES**



**EXHIBIT B
AUTHORIZING LEGISLATION**

EXHIBIT C
DEFINITIONS

When used in the Contract Documents, the following capitalized terms have the following meanings:

1. "Applicable Law(s)" means all federal, state or local statutes, laws ordinances, codes, rules, regulations, policies, standards, executive orders, consent orders, orders and guidance from regulatory agencies, judicial decrees, decisions and judgments, permits, licenses, reporting or other governmental requirements or policies of any kind by which a Party may be bound, then in effect or which come into effect during the time the Services are being performed, and any present or future amendments to those Applicable Laws, including those which specifically relate to: (a) the business of City; (b) the business of Contractor or Contractor's subcontractors; (c) the Services Agreement and the Services Agreement Documents; or (d) the performance of the Services under this Services Agreement or any Task Order.
2. "Charges" means the amounts payable by City to Contractor under this Services Agreement.
3. "City Security Policies" means the policies set forth in **Exhibit E**.
4. "Code" means the Code of Ordinances for the City of Atlanta, Georgia, as amended.
5. "Confidential Information" means all information, including, but not limited to, business or financial information, plans, strategies, forecasts, forecast assumptions, proprietary business practices and methods, marketing information and material, customer, supplier, and employee information, and all information concerning relationships with customers, suppliers and employees, proprietary ideas, concepts, know-how, methodologies, specifications, operations, processes and systems manuals, profiles, system and management architectures, diagrams, graphs, models, sketches, technical data, research and all other information related to a Party's past, present or future business activities or operations, now known or later discovered or developed, furnished or made available by or on behalf of one Party to the other or otherwise obtained by a Party from any source in connection with this Services Agreement, including: (i) all information of a Party to which the other has had or will have access; (ii) all information of a Third Party, including customers and suppliers; (iii) all information entered or to be entered into software or equipment by or on behalf of a Party, as well as information obtained or derived from this information, including any such information as stored in, accessed or transmitted through or processed by equipment or software; and (iv) all information whose disclosure is exempted or restricted under Applicable Law. Confidential Information does not include information that is: (a)

subject to public disclosure under Applicable Law such as the Georgia Open Records Act or the Federal Freedom of Information Act; (b) publicly available or becomes so in the future without restriction and through no fault or action of the receiving Party or its agents; (c) rightfully received by either Party from a Third Party and not accompanied by confidentiality obligations; (d) already in the receiving Party's possession and lawfully received from sources other than the disclosing Party; (e) independently developed by the receiving Party without use of or reference to the Confidential Information of the disclosing Party; or (f) approved in writing for release or disclosure without restriction by the disclosing Party.

6. "Contract Documents" include this Agreement and the Exhibits, Addenda, Appendices and other documents attached hereto or referenced herein as well as any authorized changes or addenda hereto.
7. "Force Majeure Event(s)" means acts of war, domestic and/or international terrorism, civil riots or rebellions, quarantines, embargoes and other similar unusual governmental actions, extraordinary elements of nature or acts of God.

Exhibit D
INSURANCE/BONDING REQUIREMENTS
FC-6362 Coffee-Bakery Kiosk

A. General Preamble

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

1. Evidence of Insurance Required Before any modification Work Begins

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

2. Minimum Financial Security Requirements

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

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

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

If the issuing company does not meet these minimum requirements, or for any other reason shall be or become unsatisfactory to the City, written notification shall be mailed by the

City to the lessor who shall promptly obtain a new policy or bond issued by an insurer acceptable to the City, and shall submit evidence of the same to the City as required herein.

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

3. Insurance Required for Duration of Contract

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

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

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

5. City of Atlanta as Additional Insured

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

6. Mandatory Sub-Lessee Compliance

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

7. Authorization and Licensing of Agent

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

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

B. Workers' Compensation and Employer's Liability Insurance

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

Workers' Compensation Statutory

Employer's Liability

- Bodily Injury by Accident/Disease \$500,000 each accident**
- Bodily Injury by Accident/Disease \$500,000 each employee**
- Bodily Injury by Accident/Disease \$500,000 policy limit**

C. Commercial General Liability Insurance

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

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

D. Automobile Liability Insurance

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

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

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

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

E. Property Insurance

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

F. Performance and Payment Bonds

At, or prior to, Service Provider's execution of the Services Agreement, Service Provider must, at its own expense, deliver to the City a Performance and a Payment Bond each in an amount equal to one hundred percent (100%) of the price specified in the Services Agreement, naming the City as co-obligee and issued by a surety company or companies in such form as approved by the City's Attorney, which surety bond or bonds must be renewed annually, at one hundred percent (100%) of the then current price specified in the Services Agreement. The bonds must be kept in full force and effect during the Term and any renewals. In lieu of a Performance Bond, Service Provider may submit to the City an Irrevocable Letter of Credit in a form acceptable to City, in its sole discretion.

1. In addition, prior to the commencement of any construction work by or at the instance of Tenant within the Premises, it must provide to City a fixed price contract or contracts for all work to be performed within the Premises, which contract(s) shall be insured by, and Tenant shall provide to the City, a Performance and a Payment Bond in an amount equal to 100% of the work specified in such contract(s) and acceptable to the City's Chief Financial Officer and in such form as approved by the City Attorney. The Performance and Payment Bond shall name

the City as the Obligee, shall meet the other requirements of the Agreement, and shall remain in full force and effect until: (i) all Tenant Improvements are completely and fully paid for, (ii) certificates of occupancy have been issued for the Premises, (iii) final lien waivers have been obtained from all contractors and subcontractors; (iv) the City has approved the final construction of the Tenant Improvements; and (v) the applicable limitations period under Georgia law for the commencement of a suit against the Performance and Payment Bond has lapsed.

2. The bonds must be issued as security for the faithful performance of this Agreement, including, maintenance and guarantee provisions, its covenants, stipulations and agreements of the Agreement, the payment of all bills and obligations arising out of the performance its obligations under the Agreement, which bills and obligations might or would in any manner become a claim against the City, and guaranteeing all services and work set forth in the Agreement against faulty materials or poor workmanship, or both, in accordance with any warranty provisions of the Agreement.

3. The surety company issuing the bonds must give the Aviation General Manager notice in writing by registered mail at least sixty (60) days prior to an anniversary date of the bonds of its intention not to renew or to terminate the bonds.

4. A Corporate Surety that is satisfactory to City, authorized to do business in the State of Georgia, and listed in the latest issue of U.S. Treasury Circular 570 must execute the bonds.

5. An agent of the Surety residing in the State of Georgia must execute the bonds. The date of the Bonds must be the same as the date of execution of the Agreement by City. The Surety must appoint an agent for service in Atlanta, Georgia upon whom all notices must be shown on each Bond. The person executing the Bonds on behalf of the Surety must file with the Bonds a general power of attorney unlimited as to amount and type of Bonds covered by such power of attorney, and certified to by an official of said Surety. The Bonds must be on forms provided by City. The Agreement will not be executed by City until after the approval of the Bonds by City's Attorney.

EXHIBIT E
AIRPORT SECURITY REQUIREMENTS

1. Airport Security Requirements. Contractor shall at all times conduct all operations under this Contract in a manner to avoid the risk of loss, theft, or damage by vandalism, sabotage or any other means to any equipment, materials, work or other property at the Jobsite. Contractor shall continuously inspect all equipment, materials and work to discover and determine any conditions which might involve such risks and shall be solely responsible for discovery, determination and correction of any such conditions.

Contractor shall comply with the Transportation Security Administration (TSA) and the City's security requirements for the Airport. Contractor shall cooperate with the TSA and the City on all security matters and shall promptly comply with any Project security arrangements established by City. Such compliance with these security requirements shall not relieve Contractor of its responsibility for maintaining proper security for the above-noted items, nor shall it be construed as limiting in any manner Contractor's obligation with respect to all applicable state, federal and local laws and regulations and its duty to undertake reasonable action to establish and maintain secure conditions at the Jobsite.

2. Preventing Unauthorized Access. The Airport has been secured to prevent unauthorized access to the Air Operations Area (AOA), the secured area, the sterile area and other controlled areas of the Airport. Contractor shall cooperate to the fullest extent with the TSA and DOA to maintain the integrity of the security system. The Contractor shall control its operations and the operations of its subcontractors and all suppliers so as to provide for the free and unobstructed movement of aircraft, aircraft operations personnel and equipment in the AOA, the secured area, the sterile area and other controlled areas of the Airport as defined herein.
3. Transportation Security Administration/Responsibility of Contractor. In order to comply with the TSA and DOA security requirements, Contractor shall be responsible for informing itself as to current, ongoing, and changing requirements, and for remaining in compliance with those requirements throughout this Contract. The security requirements are as follows and from time to time may change as required by the TSA and/or DOA.
4. Security Identification Display Area (SIDA). The Security Identification Display Area (SIDA) is defined in the Airport Security Program as any area that requires individuals to continuously display Airport issued or Airport approved identification badges. Personnel associated with construction contracts in the AOA secured area or sterile area of the Airport shall display SIDA badges at all times. The TSA and the DOA require all personnel to display SIDA badges in areas controlled for security purposes at all times.
 - 4.1. FBI/CHRC Checks. To obtain a SIDA badge, each individual must successfully undergo a Federal Bureau of Investigation (FBI) fingerprint based Criminal History Records Check (CHRC) which must reveal no convictions of disqualifying crimes within the last ten years as defined in Transportation Security Regulation, TSR Part 1542.209. Each individual must also attend a security awareness course conducted by the DOA Security Division. Each employee must present two forms of Identification prior to the badging process. At least one form of identification must have been issued by a government authority and at least one must contain

a photograph. Contractor shall be responsible for all fees associated with obtaining a SIDA badge, (i.e. badge and fingerprint fees as determined by DOA). The current cost for the CHRC is \$60.00 per individual. The current cost for badge is \$60.00 per individual. Costs for lost badges is \$200.00. Contractor shall contact the DOA Security office at (404) 530-6667 prior to sending individuals to the DOA Security office for badging. Contractor/Escorting Requirements are specified in subsection below.

5. Displaying Badges. Employees and those of all subcontractors must display a DOA issued badge showing Contractor's name and an employee number. All personnel shall be required to wear this badge at all times while within the secured areas of the Airport.
6. Badging Records and Process. Contractor shall maintain an up-to-date record of all badge holders showing name, address, sex, height, weight, color of eyes and badge number. Contractor will be required to furnish this information to the DOA upon request.
 - 6.1. The Badging process may begin upon the Contractor's receipt of a formal Notice to Proceed (NTP) from the City and may take up to fourteen (14) calendar days to complete. Access to secured areas shall be denied until such time as the Contractor has completed the badging process.
 - 6.2. If applicable, an Administrative NTP may be presented to the DOA Security Division by the Contractor in order to initiate the badging process for the Contractor's employees.
 - 6.3. The Contractor shall appoint one of its employees as an Authorizing Agent and submit his or her name, on the Contractor's letterhead, to the DOA Security Division. The submittal letter shall indicate the Project Name, Contract Number, Point of Contact, Telephone and Fax number, list of subcontractors including subcontractors' Authorizing Agent nature of the work to be performed by Contractor, and each subcontractor, location and duration, time frame(s), and justification for vehicle access, if required. A copy of the Contractor's Insurance Certificate shall accompany the letter. Once badged, the Contractor's Authorizing Agent shall be responsible for the badging process of his/her company employees.
 - 6.4. Each Subcontractor identified in the Contractor's letter shall appoint one of its employees as an Authorizing Agent and submit his or her name through the Contractor, to the DOA Security Division. A copy of the Subcontractor's Insurance certificate shall accompany the letter. Once badged, the Subcontractor's Authorizing Agent shall be responsible for the badging process of his/her company employees.
 - 6.5. Processing time for badging, at the badging office after completion of the CHRC, will last approximately one (1) hour. Processing time for Authorizing Agents will last an additional hour for briefing by the DOA Security Division. Authorizing agent briefing sessions will be conducted only on Mondays, Wednesdays and Fridays at 11 a.m. in the DOA Security office.
 - 6.6. Each person applying for badging shall complete and submit all forms required by the DOA Security Division. All required forms will be provided to the authorizing agent at the time of the briefing at the DOA Security office.

- 6.7. Each person applying for a badge shall also submit to fingerprinting upon the submittal of said forms. Fingerprints will be utilized for a ten (10) year Federal Bureau of Investigation (FBI) based criminal history records check for each individual employee.
- 6.8. Pursuant to TSR § 1542.209 certain Felony convictions within the most recent ten (10) year period, may cause disqualification. A list of disqualifying Felony convictions is available in the offices of the DOA Security Division and in the TSR Regulations.
- 6.9. The Authorizing Agent will be notified when the results of the fingerprint checks are completed. Upon notification and approval, Contractor's and subcontractor's approved employees may return to the DOA Security Office, during posted hours, for photographing and badging. This process may take up to sixty (60) minutes.
- 6.10. Badges issued to Contractor and subcontractor employees and agents shall expire upon the happening of one (1) of the following events, whichever occurs first:
- 6.10.1. Completion of Contract or subcontract, unless extended by the City;
 - 6.10.2. Expiration of Insurance coverage, as indicated on the Contractor's Insurance certificate; or
 - 6.10.3. Employee's driver's license expiration date;
 - 6.10.4. Two (2) years from the issuance of the badge.
- 6.11. Contractor and its subcontractor shall be responsible for making arrangements, ahead of time, to extend badges, when necessary. A letter, directed to both the DOA Assistant General Manager, Facilities and the DOA Security Manager, explaining the reason(s) for the badge extension on Contractor's letterhead will be required. Extension requests must be approved in writing by the DOA prior to extension of the badges.
- 6.12. Contractor's questions concerning Airport Security shall be directed to (404) 530-6667.
7. Drivers. All drivers operating vehicles within the AOA must obtain, in addition to the DOA Security badge, a DOA Ramp Certification. Ramp Certification will be evidenced by a "D" sticker placed on the face of the badge by the DOA Security department.
- 7.1. Ramp Certification. City will require Airport Driver Safety Training and Ramp Certification for all personnel required to operate a motor vehicle in the AOA. This can be obtained by completing an Airport Driver Safety Training Course administered by the Airport Operations Division. These drivers shall only operate vehicle on the approved NLVR's & Aprons, excluding the Aircraft Movement Area. Contractor shall contact Airport Operations, at (404)530-6620 during normal business hours to schedule the training session.
- 7.2. Except where noted, all vehicles operating within the AOA shall carry a minimum liability insurance coverage amount of TEN MILLION DOLLARS (\$10,000,000.00).
- 7.3. Contractor shall mark all vehicles and construction equipment, including those of subcontractors, in a manner as required by the Department of Aviation and consistent with Transportation Security Regulations (TSR).

7.4. All vehicles operating within the AOA must display permanent signage, legible and visible from a sight distance of five hundred (500) feet on both sides of the vehicle. Magnetic signs are prohibited from use in the AOA.

8. Protocols for Contractor Escorting. Prime contractor must incorporate escorting protocol with Security Plan submitted for approval by the Security Manager. The Security Manager must approve any exceptions. Contractor must attach a map of work area(s) and routes to access the work area(s) to project security plan submitted to the Aviation Security Division for approval. Contractor may contact DOA Security Manager at (404) 530-6667 during normal operating hours. These requirements cover security escorting of unbadged personnel through airport security gates. The requirements for escorting onto the Aircraft Movement Area (AMA) and for crossing-guards on the airfield are included in the Technical Specifications.

8.1. All escorted vehicles and personnel must remain under the direction of authorized escorting personnel at all times.

8.2. Contractor and escorted personnel shall have no Terminal or Concourse access.

8.3. Escorting is limited to an Airport SIDA badged prime Contractor or an Airport SIDA badged escorting subcontractor approved by the Security and Operations Managers to perform escorting duties. The individuals involved in escorting shall perform no other services other than escorting while in service. No other subcontractors will be allowed to escort any vehicle(s).

8.4. Escorting person(s) must have a SIDA badge.

8.5. Designated badged prime Contractor employees approved or badged escorting subcontractor must escort prime Contractor employees and subcontractors' employees to all work sites. Once at the work site, badged employees, prime or subcontractors', may supervise unbadged employees, not to exceed five (5) employees per one (1) SIDA badged employee.

8.6. All personnel (badged or escorted) must have an employee photo ID displayed on the outermost garment, waist high or above. The employee badge must contain the employee's name, Contractor's name and project number or name. All escorted personnel must remain under the control of person(s) with an Atlanta SIDA badge at all times while in the SIDA.

8.7. Maximum vehicular escort—one (1) prime contractor vehicle or approved badged escorting subcontractor is permitted to escort two (2) subcontractor vehicles.

8.8. All vehicles requiring escort must access and egress the AOA through Pre-approved gates. Vehicles requiring escort shall not be permitted access or egress through any other entry or exit point within the AOA for any reason whatsoever.

8.9. All escorted vehicles must obtain a permit, valid for up to ten (10) hours, at Gate 59. The obtaining of a permit, however, shall not relieve a vehicle from the requirement of being escorted as set forth herein.

- 8.10. In the event an escorted vehicle requires a time limit extension, the vehicle, and its original operator, must return to Gate 59 to obtain a time limit extension to complete work in the AOA secure or sterile area. Time limit extension shall not exceed an additional ten (10) hour period under any circumstances.
9. Construction Contracts Within Sterile Area (Inside Terminal, Concourses)
- 9.1. Highest level of Security required.
- 9.2. All employees of prime Contractor and subcontractor, must be badged to work in the sterile area.
- 9.3. If escorting of unbadged Contractors and or subcontractors is required, an approved sponsor agency (DOA, AATC, IAC, HACM, HCM, etc.) must perform escort full time.
- 9.4. For any work requiring access to the sterile area (beyond the Passenger Screening Checkpoint area and on Concourses), a tool inventory must be conducted daily by the prime Contractor or designated representative. A copy of this inventory should be provided to the construction manager or project manager for verification. In general, tools will not be allowed to pass through the checkpoint area.
10. Restricted AOA Access. Contractor shall allow passage into the AOA or secured area through its access point to persons, vehicles, and equipment displaying identification of the DOA or provide an escort for each person or vehicle not displaying proper identification. Escort vehicles must be insured as specified per Exhibit D, Insurance and Bonding Capacity. Escorted vehicles need not carry the aforementioned coverage but must carry the minimum amounts of insurance required by Georgia Law. However, Insurance coverage of escort vehicles must provide coverage as specified by Exhibit D for vehicles being escorted.
11. Visual Aids. In the event of the possibility of contact with the AOA or secured area, Contractor shall establish a system of visual aids for marking and delineating the limits of required clearances adjacent to active runways, taxiways, and NAVAIDS during both day and night time work, subject to City's approval prior to the start of any work under this Contract. The approved system of marking and delineating shall be installed, maintained and protected at all times.
12. Tools and Materials. Contractor shall create and maintain an inventory of all tools and materials utilized within the SIDA, terminal building, Federal Inspection Service (FIS), and AOA.
- 12.1. All tools and materials shall be stored and maintained in a secured manner to prevent unauthorized use, within pre-designated areas within the secured areas of the airport. Storage designations shall be obtained by the Contractor and/or subcontractor, prior to mobilization, by contacting the DOA Properties Division at (404) 209-2945. Change requests for storage designation may be approved only through the DOA Properties Division with notification and concurrence from the DOA Security Division. Failure to comply with this requirement may result in the termination of Contractor's or subcontractor's contract and disqualification from working on construction contracts within secured areas of the Airport.

- 12.2. All tools and materials must be secured to prevent unauthorized use at all times within the secured areas of the Airport and/or the AOA. Failure to comply with this requirement may result in the termination of Contractor's or subcontractor's contract and disqualification from working on construction contracts within secured areas of the Airport.
- 12.3. Any and all job-specific or unusual tools and/or materials shall be presented to the security authority at point of entry gate when accessing and/or egressing the SIDA and/or AOA. Failure to comply with this requirement may result in the termination of Contractor's or subcontractor's contract and disqualification from working on construction contracts within secured areas of the Airport.
- 12.4. All vehicles shall remain subject to search while within the secured areas of the Airport and/or the AOA at all times. Vehicles may also be searched prior to entry to the secured areas of the Airport. The possession of weapons and other prohibited items may result in criminal or civil charges in accordance with applicable laws.
13. Terminal/Curbside. A maximum of two (2) Contractor vehicles or two (2) subcontractor vehicles may be permitted in a work area at any given time, subject to the approval of the Atlanta Police Department, and the DOA Security. In the event one (1) Contractor vehicle is present, then no more than one (1) subcontractor vehicle may be present at the same time, and vice versa.
- 13.1. Debris removal may be allowed from curbside with special permission by the DOA Security Department.
- 13.2. When parked at curbside, at least one (1) badged employee must remain with the vehicle at all times. Vehicles must be removed as expeditiously as possible in all cases.
- 13.3. Areas surrounding vehicles accessing curbsides must be kept clean at all times.
- 13.4. For purposes of obtaining Terminal or Curbside access, the APD Airport Section shall be contacted by dialing (404) 530-6630 24 hours in advance of the desired access time.
14. Staging Areas. The Contractor's Construction staging area shall be identified on the plans.
15. Federal Inspection Service Areas. For any or all work conducted within Federal Inspection Service (FIS) areas, Contractor shall submit FIS Authorization requests to the U.S. Customs Service (404) 765-2303. The request shall detail the names of employees, description and area of work, work schedule, and any other relevant information to the DOA Security Department.
- 15.1. Contractor shall be responsible for obtaining the appropriate approvals and special SIDA badge FIS access decals from the appropriate Federal authorities. Special SIDA badge FIS access decals will not be required in if one (1) or more U.S. Customs Agent(s) are present at the work site at all times.
16. Security Checkpoints. Contractor and subcontractors shall maintain awareness among all employees, and at all times, that all Security Checkpoints are now under Federal jurisdiction rather

than privately contracted Security agents. In general, contractors will not be allowed to carry tools and construction materials through the passenger security screening points.

16.1. Questions regarding Federal Security Checkpoints shall be directed to (404) 763-7437 or (404) 530-2150.

EXHIBIT F
DISPUTE RESOLUTION PROCEDURES

- 1 If Contractor contends it is entitled to compensation or any other relief from City or if there are any disagreements over the scope of Services or proposed changes to the Services, Contractor shall, without delay and within three (3) days of being aware of the circumstances giving rise to Contractor's claim, provide written notice of its claim to City. If Contractor fails to give timely notice as required by this subsection or if Contractor commences any alleged additional work without first providing notice, Contractor shall not be entitled to compensation or adjustment for any such work to the extent timely notice was not provided. Such notice shall include sufficient information to advise City of the circumstances giving rise to the claim, the specific contractual adjustment of relief requested and the basis for such request. Within ten (10) days of the date that Contractor's written notice to City is required under this subsection, Contractor shall submit a Proposed Change Document relating to the claim meeting the requirements of Subsection 5.3.2 of this Services Agreement.
- 2 The parties are fully committed to working with each other throughout the project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Contractor and City each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Services.
- 3 If a dispute or disagreement cannot be resolved informally Contractor Authorized Representative and Authorized City Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Authorized Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.
- 4 If the City and Contractor are still unable to resolve their dispute, each agrees to consider submitting such dispute to mediation or other acceptable form of alternate dispute resolution.

EXHIBIT G
CONSTRUCTION SAFETY AND HEALTH PLAN

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

4.0 General. Concessionaire must:

- 4.1 develop a Site-Specific Safety Plan that addresses all Work activities, i.e. fall exposures, excavations, cranes, etc., including the requirement for a 100% fall protection program for all work performed 6 feet or more above ground or finished floor level, operating criteria for motorized equipment and an emergency and evacuation plan.
- 4.2 This Site-Specific Safety Plan must be submitted to the Safety Representative(s) and reviewed for approval prior to start of the Work. If any Safety Representative(s) determines that the Site-Specific Safety Plan is deficient in any manner, Concessionaire must, prior to commencing any Work, correct such deficiencies upon receipt of notice from the Safety Representative(s).
- 4.3 Provide safety data information to the Safety Representative(s), as required.
- 4.4 Report all accidents and incidents to City's Representative(s) on a State of Georgia First Report of Injury Form. Incident Reports must be submitted on a Supervisor's Incident Report Form. Only City-approved forms will be accepted for reporting accidents or incidents.
- 4.5 Provide weekly man-hour reports to the Safety Representative(s) on the Monday following the end of each Work week.

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

- 5.2 Assist in investigating all accidents and implementing immediate corrective actions.
- 5.1 Control the availability and use of necessary safety equipment, including personal protective for all employees.
- 5.2 Cooperate with Safety Managers of other contractors, and take necessary steps to promptly implement appropriate safety recommendations.
- 5.3 Attend safety meetings.

6.0 Miscellaneous Safety Requirements.

6.1 Safe Operations. Concessionaire must conduct all operations under this Contract to avoid the risk of health endangerment health, bodily harm to individuals and damage to property. Concessionaire must continually and diligently inspect all equipment, materials and Work to discover any conditions that might involve such risks and correct those conditions.

6.2 Safety Orders. Concessionaire must have copies of appropriate Federal, State and Local Safety Regulations at all Jobsites available for employees to review.

6.3 General Safety Provisions. Concessionaire must protect the health and safety of employees, the public and other persons, prevent damage to property, materials, supplies and equipment and avoid interrupting the normal operation of the Airport.

6.4 Fire Protection. Concessionaire must establish a Fire Prevention Plan incorporating, as a minimum, OSHA and NFPA standards. Only approved safety cans may be used for flammable and combustible liquids. "No Smoking Or Open Flame" signs and fire extinguishers must be provided where required or as directed by City. Approved safety cans must be metal with flash arresters and spring-loaded tops.

6.5 Scaffolding: Concessionaire must:

6.5.1 Ensure that all employees working on, erecting, dismantling or modifying any scaffolding are trained by a competent Person and maintain documentation concerning all training at the Project.

6.5.2 Ensure that a complete guardrail system is utilized on scaffolding at all working heights and fall protection plan implemented over six (6) feet.

6.6 Protection of the Public and Property. Concessionaire must take all steps necessary to ensure protection of the public and property.

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

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

consideration must be given to the elimination of those hazards. If a fall hazard cannot be practically eliminated, second consideration must be given to implementing effective permanent means of fall protection.

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

- 9.3.1 Spinal cord injury;
- 9.3.2 Head trauma;
- 9.3.3 Amputations;
- 9.3.4 Fatality;
- 9.3.5 Severe burns;
- 9.3.6 Heart attack; and
- 9.3.7 Hospitalizations.

- 9.4 Concessionaire must secure the affected area immediately after the accident in order to prevent any alteration of the scene before the investigation. This includes immediately contacting the Safety Representative(s). The area is to be cordoned off and an individual posted by Concessionaire to restrict unauthorized personnel as necessary
- 9.5 Concessionaire shall not make any news releases or statements to the public regarding any matters related to the Project.
- 9.6 Witness Statements. Concessionaire must assist the City in obtaining witness statements when there has been an accident². All statements are to be recorded and then typed. The witness must sign and date the statement after it is typed.
- 9.7 The Incident/Accident Report form must be filed within twenty-four (24) hours of the occurrence.
- 9.8 Appropriate drug screening must be conducted after the incident or accident.
- 10.0 Fire Prevention Program. A Fire Prevention Program must be submitted in writing to City for review and coordination with other Jobsite activities prior to commencing Work. Such program must include:
 - 10.1 Restriction of burning to designated areas. No unauthorized fires shall be permitted on Jobsite.
 - 10.2 Assignment of fire watches, trained and equipped to prevent or control fires, for all welding and burning operations. Fires should be monitored for three hours after the burning.

- 10.3 Proper identification, storing, handling and use of flammable Material to prevent accidental ignition.
- 10.4 Adequate fire extinguishing equipment appropriate for the operations being performed must be provided and employees must be trained in the maintenance and use of such equipment.
- 10.5 Evacuation procedures and fire drills as required by City.

APPENDIX A
OFFICE OF CONTRACT COMPLIANCE REQUIREMENTS AND FORMS



CITY OF ATLANTA

Kasim Reed
Mayor

SUITE 1700
55 TRINITY AVENUE, SW
ATLANTA, GA 30303
(404) 330-6010 Fax: (404) 658-7359
Internet Home Page: www.atlantaga.gov

OFFICE OF CONTRACT COMPLIANCE
Hubert Owens
Director
howens@atlantaga.gov

03/04/2013

**RE: ACDBE Documents for Project No.: FC# 6362 - Food and Beverage Concession
Coffee & Bakery Kiosk**

Dear Prospective City of Atlanta Bidder:

This packet is substantially different from all previous packets. The Office of Contract Compliance's **Airport Concessions Disadvantaged Business Enterprises (ACDBE)** information is an integral part of every Federally Funded City of Atlanta bid or proposal. Your efforts to assist the City of Atlanta in mitigating the present effects of past discrimination against disadvantaged business enterprises are essential. Please read all of the information very carefully. Pay close attention to the contract goals for this project and the DBE/ACDBE program reminders listed on page DBE 5.

Many businesses that appear in our register as certified M/FBEs or SBEs are not currently certified as **Disadvantaged Business Enterprises**. Certification of DBE/ACDBE firms is being handled by a different agency. Please see page ACDBE 2 for details of certification of DBE/ACDBEs. Thank you for your extra attention to the DBE/ACDBE program.

If you have any questions about the information included in this section of the solicitation please contact the City of Atlanta Office of Contract Compliance at (404) 330-6010.

The City of Atlanta looks forward to the opportunity to do business with your company.

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CITY OF ATLANTA

Kasim Reed
Mayor

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OFFICE OF CONTRACT COMPLIANCE
Hubert Owens
Director
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CITY OF ATLANTA

DISADVANTAGED BUSINESS ENTERPRISE

POLICY STATEMENT

It is the policy of the City of Atlanta to ensure that DBEs and ACDBEs, as defined in 49 CFR Parts 23 and 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the City of Atlanta's policy:

1. To ensure non-discrimination in the award and administration of DOT assisted Opportunities;
2. To create a level playing field on which DBE/ACDBE firms can compete fairly for DOT Assisted contracts;
3. To ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Parts 23 and 26 eligibility standards are permitted to participate as DBE/ACDBEs;
5. To help remove barriers to the participation of DBE/ACDBEs in DOT assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE program.

IMPLEMENTATION OF DBE/ACDBE POLICY CONTRACT GOALS

The City of Atlanta establishes contract goals only on those contracts that have subcontracting and/or joint venture possibilities. The size of the contract goal is adopted on a project by project basis, impacted by the circumstances of each such contract (e.g. type and location of work, availability of DBE/ACDBEs to perform the particular type of work), in relation to the City's annual DBE goal.

The City of Atlanta expresses its contract goals as a percentage of the total amount of each particular DOT-assisted contract.

Each solicitation for which a contract goal has been established requires the bidders/offerors to submit the following information as part of their bid or offer:

1. The names, addresses and phone numbers of DBE/ACDBE firms that will participate in the contract;
2. A description of the work that each DBE/ACDBE will perform;
3. The dollar amount of the participation of each DBE/ACDBE firm's participation;
4. Written and signed documentation of commitment to use a DBE/ACDBE subcontractor whose participation is submitted to meet a contract goal;
5. Written and signed confirmation from the DBE/ACDBE that it is participating in the contract as provided in the prime contractor's commitment; and,
6. If the contract goal is not met, evidence of good faith efforts to meet the goal.

The City of Atlanta has designated the Office of Contract Compliance as its DBE Liaison Office. The address of OCC is 55 Trinity Avenue, Ste. 1700, Atlanta, Georgia 30303. The phone number is (404) 330-6010.

Each contracting opportunity at the airport is individually evaluated and the individual contract goal is adjusted as appropriate in relation to the City's Annual DBE goal. The City of Atlanta will express its contract goal as a percentage of the total amount of each individual DOT-assisted contract.

GOOD FAITH EFFORTS

The City of Atlanta treats bidder/offers' compliance with good faith effort requirements as a matter of responsiveness. Compliance of bidders with the DBE/ACDBE requirements, including good faith efforts, will be evaluated according to the standards of 49 CFR Parts 23 and 26.

DEMONSTRATION OF GOOD FAITH EFFORTS

The obligation of the bidder/offeror is to make good faith efforts to meet the goal. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting its good faith efforts. Examples of good faith efforts are found at 49 CFR Parts 23 and 26 Appendix A and are attached to this document.

OCC is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. In determining whether a bidder/offeror is responsive to the DBE/ACDBE goals, OCC will consider whether the information submitted by that bidder/offeror is complete, accurate and adequately documents the bidder's/offeror's good faith efforts. Bidders who are informed that they have not met the "good faith efforts" requirements are entitled to administrative reconsideration of that determination, per 49 CFR 26.53(d).

**DISADVANTAGED BUSINESS ENTERPRISE
CONTRACT GOALS**

**PROJECT: ACDBE Bid Document for Project No.: FC# 6362 - Food and Beverage
Concession Coffee & Bakery Kiosk**

The Airport Concessions Disadvantaged Business Enterprise (ACDBE) participation goal for this project is:

36%

OCC will count ACDBE participation in the form of a certified ACDBE a prime contractor, ACDBE certified joint venture partner (Joint Ventures are not mandated on this contracting opportunity), or certified ACDBE sub-contractor arrangement. The above referenced goal will be measured against **total dollar value of Certified ACDBE firms self performance (inclusive of any change orders and/or miscellaneous modifications)** that may occur throughout the life of the project.

MONITORING OF DBE/ACDBE POLICY

The City of Atlanta will require prime contractors to maintain records, documents, and receipts of gross revenue attributed to ACDBEs for three years following the performance of the contract. Those records must be made available for inspection upon request by any authorized representative of the City of Atlanta or DOT. This reporting requirement also extends to any certified DBE/ACDBE subcontractor.

The City of Atlanta will keep a running tally of actual gross receipts attributed to the ACDBE firms from the time of the contract award.

The City of Atlanta's Office of Contract Compliance, or its designee, will perform interim audits of gross receipts and contract payments to ACDBEs if applicable. The audit will review payments to ACDBE subcontractors to ensure that the actual amount paid to ACDBE subcontractors equals or exceeds the dollar amounts stated in the schedule of ACDBE participation.

DBE/ACDBE PROGRAM REMINDERS

1. DBE Plan. All proposals must contain an ACDBE Participation plan in accordance with the goals set forth above. The ACDBE plan must identify each ACDBE's name, address, and contact name, work description, and contract amount.
2. Subcontractor and Supplier Participation. On projects with subcontractor and supplier opportunities, disadvantaged business enterprise participation may only be met through certified businesses that meet the standards of 49 CFR Parts 23 and 26, Subparts D and E. Each prime contractor must meet the requirements of the DBE program.
3. Failure to Meet ACDBE Goals. Any bidder unable to meet the ACDBE goals must document the good faith efforts it made to meet the goals. Documentation must follow the requirements of the ACDBE plan pursuant to 49 CFR Parts 23 and 26 etc. If the City determines that good faith efforts were not made, the bidder is entitled to administrative reconsideration under 49 CFR 26.53.
4. Certification. As of March 1, 2004, the City no longer does DBE/ACDBE Certification. DBE/ACDBE Certifications are now handled by the GA Department of Transportation (GA DOT). The contact number for GA DOT is (404) 631-1280
5. Reporting. The successful bidder must submit monthly ACDBE participation reports to OCC, in a form prescribed by the Office of Contract Compliance.
6. ACDBE Concession Program. The ACDBE Concession Program is governed by the provisions of "49 CFR Parts 23 and 26".
7. Contract Assurance. The Concessionaire shall not discriminate on the basis of race, color, national origin, sex, religion, or sexual orientation in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of Atlanta deems appropriate. Anti discrimination provisions based upon religion and sexual orientation are not included by or enforceable through 49 CFR Parts 23 and 26 but are enforceable through the City of Atlanta regulations.

EQUAL EMPLOYMENT OPPORTUNITY POLICY

PROJECT: ACDBE Bid Document for Project No.: FC# 6362 - Food and Beverage Concession Coffee & Bakery Kiosk

IMPLEMENTATION OF EEO POLICY

The City effectuates its EEO policy by adopting racial and gender workforce goals for every contractor performing work for the City of Atlanta on federally funded projects. These goals are derived from the work force demographics set forth by the United States Department of Labor Federal Office of Contract Compliance. These goals are not included in or enforceable through 49 CFR Part 26.

A FIRM 'S WORK FORCE CONSISTING OF LESS THAN TWENTY-FIVE (25) EMPLOYEES IS EXEMPT FROM THE FOLLOWING EEO REQUIREMENTS

The Office of Federal Contract Compliance Programs (OFCCP) is the office of the United States Department of Labor that has responsibility for administration and enforcement of the Equal Employment Opportunity requirements under the contract compliance program which is authorized by Executive Order 11246 as amended, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans Readjustment Act of 1974. The programs mentioned above prohibit Federal contractors and sub-contractors from employment discrimination based on Race, Sex, National Origin, Religion, Sexual Orientation, and against persons with Disabilities or Vietnam Era Veterans, and requires such contractors to take affirmative action to ensure equal employment opportunity.

BUSINESS DEVELOPMENT PROGRAMS

Though the DBE program primarily focuses on DBE/ACDBE participation at the subcontractor level, it is also important to provide DBEs with experience, training and skill development at the prime contractor level. The City of Atlanta encourages joint ventures between a prime contractor and an DBE, or a mentor protégé agreement between a prime contractor and a DBE whenever feasible on applicable contracts. The general description of the joint venture and mentor-protégé agreements is found on **Attachment 1 and Attachment 2** hereto and in the Atlanta Code of Ordinances.

CITY OF ATLANTA CONTRACT COMPLIANCE CERTIFICATE

The undersigned has prepared and submitted all the documents attached hereto. The documents have been prepared with a full understanding of the City's goals and objectives with respect to increased opportunity in the proposed work to be undertaken in performance of this project. It is the company's intent to achieve the Airport Concessions Disadvantaged Business Enterprise goals, the Equal Employment Opportunity goals, and the First Source Jobs Employment goals.

All information and representations contained herein and submitted with this bid or proposal are true and correct.

Witness

Signature
Company Authorized Representative

Date: _____

Company Name: _____

FC Number: _____

Project Name: _____

ACDBE -1

SUBCONTRACTOR CONTACT FORM

List all subcontractors or suppliers (Both ACDBE and Non-ACDBE Certified) that were contacted regarding this project.

Name of Sub-contractor/ Supplier	Contact Name, Address and Phone Number	City Of Atlanta Business License? (Yes or No)	Type of Work Solicited for	Ethnicity of Ownership (see code below)	Certification No. and Expiration Date	Results of Contact

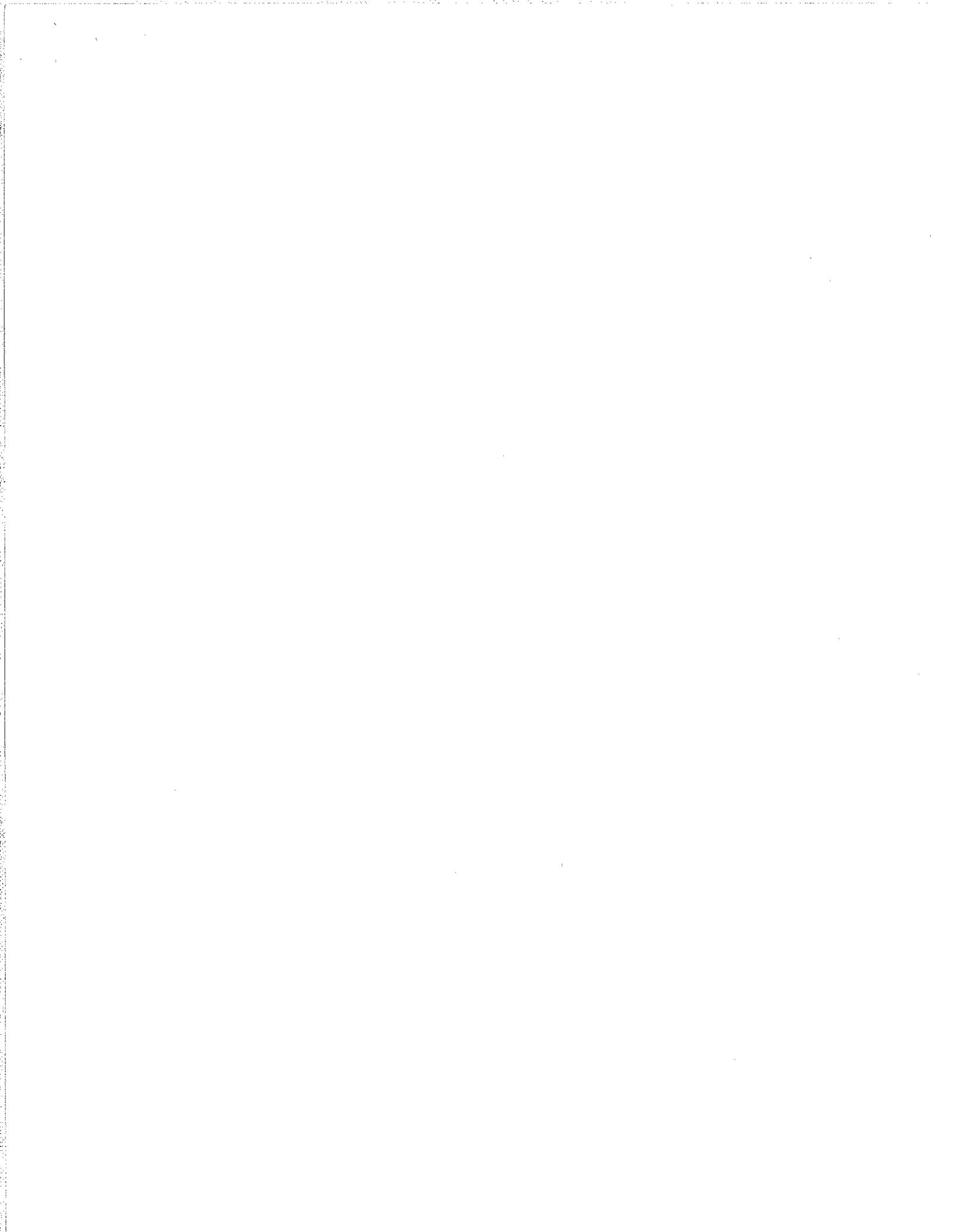
Name of Sub-contractor/ Supplier	Contact Name, Address and Phone Number	City Of Atlanta Business License? (Yes or No)	Type of Work Solicited for	Ethnicity of Ownership (see code below)	Certification No. and Expiration Date	Results of Contact

Business Ownership Code: AABE - African American Business Enterprise, HABE - Hispanic Business Enterprise, FBE - Female Business Enterprise, APABE - Asian (Pacific Islander) American Business Enterprise

Company Name: _____ Project Name: _____ FC#: _____

Signature: _____ Date: _____
(Please Print)

***Note: COA M/FBE certification does not count for DBE/ACDBE program goals. Firms must be certified by the GA DOT.



FIRST SOURCE JOBS PROGRAM POLICY STATEMENT

It is the policy of the City of Atlanta to provide job opportunities to the residents of the City of Atlanta whenever possible. Every contract with the City of Atlanta creates a potential pool of new employment opportunities. The prime contractor is expected to work with the First Source Jobs Program to fill at least 50% of all new entry-level jobs, which arise from this project, with residents of the City of Atlanta. For more specific information about the First Source Jobs Program contact Deborah Lum of the Atlanta Workforce Development Agency at (404) 546-3001. This City of Atlanta program is not included in or enforceable through 49 CFR Parts 23 and 26.

**Deborah Lum
Manager, One Stop Services
First Source Jobs Program
Atlanta Workforce Development Agency
818 Pollard Boulevard
Atlanta, GA 30315
(404) 546-3001**

FIRST SOURCE JOBS INFORMATION FORM

Company Name: _____

FC Number: _____

Project Name: _____

The following entry-level positions will become available as a result of the above referenced contract with the City of Atlanta:

- 1.
- 2.
- 3.
- 4.
- 5.

Include a job description and all required qualifications for each position listed above.

Identify a company representative and contact phone number who will be responsible for coordinating with the First Source Jobs Program.

Company Representative: _____

Phone: _____

THIS AGREEMENT REGARDING THE USE OF THE FIRST SOURCE JOBS PROGRAM BY CONTRACTORS WITH THE CITY OF ATLANTA TO FILL ENTRY LEVEL JOBS is made and entered into by _____

This _____ day of _____, 201__.

The City of Atlanta requires the immediate beneficiary or primary contractor for every eligible project to enter into a First Source Jobs employment agreement. The contractor agrees to the following terms and conditions:

- The first source for finding employees to fill all entry level jobs Created by the eligible project will be the First Source Program.
- The contractor will make every effort to fill 50% of the entry level jobs created by this eligible project with applicants from the First Source Program.
- The contractor shall make good faith effort to reach the goal of this employment agreement.
- Details as to the number and description of each entry level job must me provided with the bid.
- The contractor shall comply with the spirit of the First Source Jobs Policy beyond the duration of this agreement and continue to make good faith attempts to hire employees of similar backgrounds to those participating in the First Source Program.
- The contractor as a condition of transfer, assignment or otherwise shall require the transferee to agree in writing to the terms of the employment Agreement.

Upon a determination that a beneficiary or contractor has failed to comply with the terms of this Agreement, the City may impose the following penalties based on the severity of the non-compliance:

- The City of Atlanta may withhold payment from the contractor.
- The City of Atlanta may withhold 10 percent of all future payments on the contract until the contractor is in compliance
- The City of Atlanta may refuse all future bids on city projects or applications for financials assistance in any form from the City until the contractor demonstrated that the First Source requirements have been met, or cancellation of the eligible project.
- The City of Atlanta may cancel the eligible project.

All terms stated herein can be found in the City of Atlanta Code of Ordinances Sections 5-8002 through 5-8005.

The undersigned hereby agrees to the terms and conditions set forth in this agreement.

Contractor

FORM 5

ATTACHMENT 1

“Components of a Joint Venture Agreement with DBE Participation as Counted under 49 CFR 26.55 (b)”

For credit forward toward the contract goal under Part 26, a joint venture agreement with a certified disadvantaged business enterprise should include at a minimum:

- The initial capital investment of each venture partner.
- The proportional allocation of profits and losses to each venture partner.
- The sharing of the right to control the ownership and management of the joint venture.
- A description of the distinct and clearly defined portion of the work to be performed by the DBE.
- The method of and responsibility for accounting.
- The methods by which disputes are resolved.
- All other pertinent factors of the joint venture.

ATTACHMENT 2

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM MENTOR PROTÉGÉ INITIATIVES

The mentor-protégé program is an initiative, in accordance with Appendix D to 49 CFR Part 26, to encourage and develop certified Disadvantaged Business Enterprises in contracting with city government in areas that Disadvantaged Business Enterprises have historically been underrepresented due to various discriminatory barriers. This program, implemented on projects with a projected value of 5 million dollars or more, will enable prime contractors of all ethnic and gender categories to provide technical, administrative, and other assistance to smaller, developing businesses. Companies must successfully complete the Disadvantaged Business Enterprise certification process in order to participate as a protégé in this program. Additionally, participation as a certified Disadvantaged Business Enterprise protégé team member will not preclude the inclusion of the same certified Disadvantaged Business Enterprise team member as a self-performing subcontractor in the DBE plan. The subcontracting by the certified Disadvantaged Business Enterprise protégé team member will be applied toward the satisfaction of the DBE goals in accordance with 49 CFR 26, Subpart C, 26.55.

Examples of good faith efforts are found in 49 CFR Parts 23 and 26, Appendix A that is attached to this package.

“Components of a Mentor-Protégé Agreement with DBE Participation as Counted under 49 CFR 26.55”

The Mentor-Protégé agreement between a prime contractor and the DBE protégé will provide an excellent development opportunity for the disadvantaged business enterprise protégé. Under the guidance of the mentor, the protégé will gain valuable knowledge and experience that will ultimately enhance the capabilities of the protégé. Additionally, the protégé has the opportunity to gain this knowledge and experience without exposing itself to the normal business risks that are associated with projects of this size.

As part of the City's Part 26 DBE program and subject to 49 CFR 26.35 and Appendix D, a mentor may meet up to half of the contract goal for this contract by using a DBE protégé as a self performing subcontractor through a formal mentor-protégé program. The successful prime for this project remains obligated to meet the entire contract goal for this project, including whatever portion of the goal that cannot be met by the protégé. Only independent DBE forms already certified by the City at this time (see “Certification”, page DBE 2) may participate as protégés.

The mentor may not (1) enter into a mentor-protégé agreement as a substitute for compliance with the DBE program, (2) use such an agreement to circumvent the obligations of the DBE program, (3) create a new firm to serve as a protégé (4) require a potential protégé to pay the mentor for the privilege of participating in the agreement, or (5) bar the protégé from performing work on this contract.

To meet the requirements of Part 26, the mentor-protégé team must present a written development plan and formal agreement between the parties to the City of Atlanta prior to executing the final contract.

The agreement should include, but is not limited to the following information:

- The type of collaboration, training and assistance to be provided. The areas of assistance encouraged include, but are not limited to, bonding and insurance support, management and scheduling support.
- The specific rights and responsibilities of the Mentor and the Protégé.
- Names or titles of the individuals from the Mentor responsible for working directly with the Protégé in the areas identified above.
- Names or titles of the individuals from the Protégé responsible for working directly with the Mentor in the areas listed above.
- The term of the agreement.
- A system to monitor and evaluate the effectiveness of the Mentor Protégé agreement.
- A plan detailing how the Mentor plans to include the Protégé on non-governmental projects, governmental projects, and DOT-assisted projects during the term of the agreement.
- Protege shall not subcontract any of their work to the mentor firm or to other contractors without the approval of the OCC. Subcontracted work will not be counted toward DBE goals except as specified by Part 26.
- Mentor and Protege representatives may not bid or otherwise participate independently on a contract in which the Mentor Protege team is bidding or participating as a team.
- Work self performed by the protégé may be used to fulfill up to one half of the DBE contract goal on this project.
- DBE credit will not be awarded to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé.
- Staff members from the Office of Contract Compliance will be available to review draft mentor-protégé agreements for compliance with this section.

Additional Resources Proponents May Contact in an Effort to Identify DBE Participants

**Atlanta Minority Business
Development Center**
Clem Wilmont
Project Director
1599-A Memorial Drive, SE
Suite 134
Atlanta, GA 30317
Phone: 404-329-4567
E-mail: cwilnot@AtIMBDC.com

Georgia Technology Authority
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APPENDIX B
MENU CONCEPTS & KEY PERSONNEL

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