

AR54006

05-681

CITY AND COUNTY OF DENVER  
DEPARTMENT OF AVIATION



AGREEMENT

between

THE CITY AND COUNTY OF DENVER

and

RMES COMMUNICATIONS, INC.

for a

PAY TELEPHONE CONCESSION  
AT DENVER INTERNATIONAL AIRPORT

STANDARD AGREEMENT FOR CONCESSION SPACE – DENVER INTERNATIONAL AIRPORT

**SUMMARY PAGE**  
**RMES COMMUNICATIONS, INC.**

This Summary Page, consisting of two pages, is attached to and made a part of that certain Agreement dated September 6, 2005, between the City and County of Denver and the Concessionaire listed below.

**CONCESSIONAIRE:**

Name: RMES COMMUNICATIONS, INC.  
Address: 3840 York Street, Suite 200B  
Denver, CO 80205  
Contact: Herman Malone -- President/CEO

**CONCESSION LOCATION:**

Concourse/Terminal: Terminal, Concourses A, B, & C, Public Parking  
Facilities, Ground Transportation Facilities and  
other public areas of the Airport all as designated  
on Exhibit A  
Address: See Exhibit A  
Square Feet: N/A

**STORAGE SPACE LEASE:**

Yes  
Terminal R16-13-W8-N31-1 168.5 Sq. Ft  
Terminal R16-13-E8-N31-1 260.1 Sq. Ft.

**PERMITTED USES:**

Install and integrate within the Airport public  
information system, operate, maintain, market and  
provide no fewer than 200 public Pay Telephones  
with credit card readers and local, long distance  
and international calling services in compliance  
with revised ADA Accessibility Guidelines. Install,  
operate, maintain, market and provide no fewer  
than 17 prepaid phone card vending machines in  
the locations described on Exhibit A. Market at  
the Airport prepaid phone cards to the Airport  
Administration and to Airport retail  
concessionaires for their over the counter resale at  
the Airport.

**CONCESSION OPENING DATE:**

Date the concession opens for business to the  
public; August 1, 2005.

**HOURS OF OPERATION:**

24 hours per day, 7 days per week as provided in  
Section 6.05.

Gates whose schedules determine  
opening hours per Section 6.05:

N/A

**TERM:**

Expiration Date: June 30, 2008  
or as extended pursuant to Section 4.

**COMPENSATION (Initial):**

Minimum Annual Guarantee: \$120,000.00 or as provided in Section 5.01  
Minimum Monthly Guarantee: \$10,000.00 or as provided in Section 5.03A  
Percentage Compensation Fee: 16% of Gross Revenues

<b>PERFORMANCE GUARANTEE:</b>	
50% of the Minimum Annual Guarantee:	<u>\$60,000.00 or as provided in Section 8.03</u>
<b>REQUIRED MINIMUM INVESTMENT:</b>	<u>\$139,604.00</u>
<b>ANNUAL INVESTMENT PLEDGE</b>	<u>N/A</u>
<b>RENOVATION MINIMUM INVESTMENT:</b>	<u>N/A</u>
<b>RENOVATION COMPLETION DATE:</b>	<u>N/A</u>
<b>INSURANCE POLICY AMOUNTS:</b>	
Comprehensive General Liability:	<u>\$1,000,000</u>
Automobile/Delivery Vehicle Liability:	<u>\$1,000,000 non-airside; \$10,000,000 airside</u>
Workers Compensation:	<u>Statutory requirements</u>

**DESCRIPTION OF EXHIBITS AND ADDENDA:**

Exhibit A	Concession Equipment Locations
Exhibit B	Disadvantaged Business Enterprise Participation
Exhibit C	Certificate of Insurance
Exhibit D	Equipment and Service Requirements
Exhibit X	Provisions for Design and Construction of Improvements
Appendix 1	Standard Federal Assurances
Appendix 2	Standard Federal Assurances, Nondiscrimination
Appendix 3	Nondiscrimination in Airport Employment Opportunities

STANDARD AGREEMENT FOR CONCESSION SPACE – DENVER INTERNATIONAL AIRPORT

CONSTRUCTION SUMMARY PAGE

RMES COMMUNICATIONS, INC.

This Summary Page, consisting of one page, is attached to and made a part of that certain Agreement dated September 6, 2005 between the City and County of Denver and the Concessionaire named below.

**CONCESSIONAIRE:**

Name:

RMES COMMUNICATIONS, INC.

Address:

3840 York Street, Suite 200B

Denver, CO 80205

Contact:

Herman Malone – President/CEO

**INSTALLATION, DESIGN AND  
CONSTRUCTION DEADLINE:**

120 Calendar days from date of  
execution

**CONSTRUCTION PERFORMANCE AND  
PAYMENT BOND AMOUNTS:**

100% of construction contract price

**CONSTRUCTION INSURANCE  
POLICY AMOUNTS:**

Builder's Risk:

100% of construction contract price

Minimum Commercial General Liability:

Combined Single Limit:

\$1,000,000

General Aggregate:

\$2,000,000

Business Auto Liability:

Combined Single Limit:

\$1,000,000

Workers Compensation:

Statutory requirements

**SBE DESIGN AND CONSTRUCTION GOALS:**

0%

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- EXHIBIT X: Provisions for Design and Construction of Improvements
  
- APPENDIX 1: Standard Federal Assurances
- APPENDIX 2: Standard Federal Assurances, Nondiscrimination
- APPENDIX 3: Nondiscrimination in Airport Employment Opportunities

## AGREEMENT

THIS AGREEMENT, is made, entered into this 6<sup>th</sup> day of September, 2005, and given effect as of July 1, 2005, by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, for and on behalf of the Department of Aviation (the "City"), Party of the First Part, and RMES COMMUNICATIONS, INC., a Colorado corporation ("Concessionaire"), Party of the Second Part.

### SECTION 1 – GENERAL

#### 1.01 CONSIDERATION

The City enters into this Agreement for and in consideration of the payment of compensation by Concessionaire as herein provided, the construction of all improvements by Concessionaire as herein provided, and the performance and observance by Concessionaire of the covenants and agreements herein.

#### 1.02 INCORPORATION OF ATTACHED SUMMARY PAGES, EXHIBITS AND ADDENDA

The Summary Pages attached to this Agreement and the Exhibits and Addenda attached to this Agreement as described on the Summary Pages shall be deemed incorporated in this Agreement.

### SECTION 2 – DEFINITIONS

As used in this Agreement, unless the context requires otherwise:

#### 2.01 ACCS

"ACCS" shall mean Automated Calling Card Service, which allows a caller to place a calling card call without operator assistance.

#### 2.02 ADA

"ADA" shall mean the Americans with Disabilities Act of 1990, 42 U.S.C. § 12,000 et seq., as amended.

#### 2.03 AIRPORT

"Airport" or "DIA" shall mean Denver International Airport.

#### 2.04 AUDITOR

"Auditor" shall mean the City's Auditor and his authorized representative.

**2.05 CONCESSION EQUIPMENT**

"Concession Equipment" shall mean Pay Telephones and all associated equipment, hardware, software and personal property, including all PPC Vending Units including any pre-manufactured enclosures installed by Concessionaire under this Agreement.

**2.06 CONCESSION EQUIPMENT LOCATIONS**

"Concession Equipment Locations" shall mean the areas approved by the Manager and designated for the placement of the Concession Equipment as indicated on attached Exhibit A located within the public areas of the Terminal, Concourses, Ground Transportation Facilities, Public Parking Facilities and other public areas of the Airport. Concessionaire and the Manager may modify the locations identified in the Summary Page and Exhibit A by adding or deleting new locations thereto without amending this Agreement. A location may be removed or relocated by the authority of the Manager in accordance with Section 3.04.

**2.07 CONCESSIONAIRE'S PROPOSAL**

"Concessionaire's Proposal" shall mean the Proposal as finally submitted by Concessionaire and accepted by City and consisting of Concessionaire's plans for designs, services plan, and all of its plan of operation.

**2.08 CONCOURSES**

"Concourses" shall mean Concourses A, B and C located at the Airport but specifically excepts the Terminal as herein defined.

**2.09 DIA DESIGN STANDARDS**

"DIA Design Standards" shall mean the design standards and criteria established for Denver International Airport, and as hereafter amended.

**2.10 DIA TENANT DEVELOPMENT GUIDELINES**

"DIA Tenant Development Guidelines" shall mean the criteria established at DIA for tenants and concessionaires for design, construction, installation, signage and related matters, and as hereafter amended.

**2.11 ELECTRONIC ADVERTISING FEES**

"Electronic Advertising Fees" means the revenues generated by electronic advertising on the Concession Equipment (e.g., scrolling messages on the Pay Telephones and advertising initiated by Concessionaire and presented to end-users.)

**2.12 GROSS REVENUES**

"Gross Revenues" has the meaning specified in Section 5.02.

### **2.13 LATA**

"LATA" means Local Access Transport Areas, also referred to as Calling Zones. As to DIA, "LATA" is the geographic area that Qwest serves for local and long-distance calls.

### **2.14 MANAGER**

"Manager" shall mean the City's Manager of Aviation or his successor in function.

### **2.15 MANAGER'S AUTHORIZED REPRESENTATIVE**

Whenever reference is made herein to "Manager or his authorized representative," or words of similar import are used, the City's Deputy Manager of Aviation - Business and Technologies ("Deputy Manager") shall be such authorized representative for the purpose of administering, coordinating and approving the Concessionaire's performance of its obligations under this Agreement, except for actions and approvals expressly reserved to the Manager under this Agreement. The Manager may at any time revoke or change such authorized representative by written notice to Concessionaire. The Deputy Manager's authorized representative for day-to-day operational administration of Concessionaire's activities under this Agreement is the Assistant Deputy Manager of Aviation for Telecommunications. The Deputy Manager's authorized representative for day-to-day administration of financial matters under this Agreement, including revenue reports, payments, bonds and insurance is the Project Manager. The Deputy Manager may at any time revoke or change such authorized representatives by written notice to Concessionaire.

### **2.16 PAST DUE INTEREST RATE**

"Past Due Interest Rate" shall mean interest accruing at 18% per annum commencing on the fifth calendar day after the date such amount is due and owing until paid to City.

### **2.17 PAY TELEPHONE**

"Pay Telephone" means a coin or coinless telephone instrument, Quostech Millenium or equivalent, containing a device to read credit cards that is integrated within the Airport public information system and installed on Airport premises for use by the general public to place or receive voice telephone calls or other permitted type of transaction, information retrieval or provisioning by way of a dialed telephone call via voice, facsimile, data terminal, or video, and for which telephone call a fee can be collected on a pay-per-use basis via coins, credit cards, third-party billing, or other authorized methods. A single device may function as a "Pay Telephone" and also provide additional services beyond basic pay telephony, with the prior written approval of the Manager. A "Pay Telephone" may be a pay telephone, public telephone, pay station, telephone instrument, telephone set, or other hard-wired telecommunication device.

**2.18 PPC**

"PPC" shall mean prepaid phone card, a card that evidences a certain amount of prepaid long distance calling services, the value of which may be replenished upon the cardholder's payment for such replenishment.

**2.19 PPC VENDING UNIT**

"PPC Vending Unit" shall mean a vending machine for the sale of PPCs.

**2.20 TDD/TTY**

"TDD/TTY" means Telecommunication Device for the Deaf/Text Telephone. Unless another configuration is specifically agreed to by prior written approval of the Manager, the TDD/TTY units installed under this Agreement shall be shelf-top units, not sliding drawer units.

**2.21 TERMINAL**

"Terminal" shall mean the Jeppesen Terminal Building located at the Airport.

**SECTION 3 – GRANT OF CONCESSION RIGHTS**

**3.01 CONCESSION RIGHTS GRANTED**

City grants to Concessionaire as designated on the Summary Page consistent with Concessionaire's Proposal and subject to all of the terms and provisions of this Agreement:

- A. The right to install, operate, maintain and market no fewer than 200 Pay Telephones located in the Terminal, Concourses and other public areas at the Airport as designated on the Summary Pages, the initial 200 locations for such Pay Telephones being as shown on Exhibit A; and
- B. The exclusive right to install, operate, maintain and market no fewer than 17 PPC Vending Units approved in advance by the Manager at locations approved in advance by the Manager, the initial 17 locations for such PPC Vending Units being as shown on Exhibit A; and
- C. An exclusive privilege to market PPCs at the Airport to retail concessionaires for their over-the-counter retail sales, subject to the Manager's giving approval to each such Airport concessionaire to sell such PPCs, Concessionaire being responsible for making its own arrangements with each such Airport concessionaire for such sales; and
- D. A privilege to market PPCs to the Airport Administration.

### **3.02 USE OF CONCESSION EQUIPMENT LOCATIONS**

Concessionaire may use the Concession Equipment Locations only for the purposes set forth on the Summary Page and for no other purposes, unless otherwise authorized in writing by the Manager.

### **3.03 RIGHTS NOT EXCLUSIVE**

City reserves the right to grant to other concessionaires the right to provide similar services and sell similar merchandise in the same or in other locations in the Airport, and Concessionaire understands and agrees that its right to provide the services and sell the merchandise set forth on the Summary Page is not exclusive.

### **3.04 MEANS OF ACCESS**

Concessionaire, its agents, invitees, guests, employees and suppliers have a non-exclusive right of ingress to and egress from the Concession Equipment Locations by a means of access located outside the boundaries of such locations as specified by City. Such access shall, without exception, be in common with such other persons (including, at the option of the City, the general public) as the City may authorize or permit, and the City may at any time close, relocate, reconstruct or modify such means of access, provided that a reasonably convenient and adequate means of ingress and egress is available for the same purpose. This right of access is subject to the security requirements of the section herein entitled "Security."

### **3.05 RIGHT OF INSPECTION**

City retains the full right of entry in and to the Concession Equipment Locations for any purpose necessary, incidental to or in connection with its obligations hereunder, or in the exercise of its governmental functions, or for the purpose of making any inspection it deems necessary. Without limiting the foregoing, Concessionaire agrees that authorized employees of the Department of Aviation may at any time, with or without advance notice, enter and inspect any area in the Concession Equipment Locations.

### **3.06 RELOCATION**

If the Manager or his authorized representative needs to relocate certain Concession Equipment, Concessionaire shall upon written notice relocate such equipment within ten (10) business days after such notice, with all reasonable relocation expenses to be paid by Concessionaire, and without any change in the compensation payable by Concessionaire hereunder, except that when the purpose of said relocation is to test market pay telephones owned by others, the City shall pay Concessionaire's reasonable expenses for removing, relocating and/or reinstalling such Concession Equipment.

### **3.07 ENCLOSURES**

The City presently owns certain custom-built Pay Telephone enclosures that are in use at the Airport and enclosures that are in storage at the Airport. Concessionaire

may use any of the enclosures at no charge, if the City determines that such use would be appropriate. The City will bear the cost to refurbish enclosures if necessary, and the enclosures will remain the property of the City.

### **3.08 REVIEW BY CITY AND CONCESSIONAIRE**

The City and Concessionaire will monthly during the term of this Agreement review together Concessionaire's operations under this Agreement and developments in the telecommunications industry, in order to determine whether the traveling public would be better served if new or improved equipment, services or technologies were made available by Concessionaire at the Airport under this Agreement. The parties acknowledge that the addition of new products, equipment or services may require amendment to this Agreement.

## **SECTION 4 – TERM**

### **4.01 TERM**

"Term" shall mean the period commencing at noon on the date of execution and expiring at noon on the date specified in the Summary Page.

The term may be extended monthly, subject to the City's right to change or modify the Compensation as provided in Section 5.01, for a period not to exceed two years (the "Extended Term"), if, in his sole and absolute discretion, the Manager determines that said extended term is in the best interest of the City. The City's option to extend the Term initially shall be exercised by written notice signed by the Manager delivered to Concessionaire, no later than fifteen (15) months prior to the end of the Term. Concessionaire must consent in writing to the exercise of the option to extend no later than twelve (12) months prior to the end of the Term. If such consent is not delivered to the City, at least twelve (12) months prior to the end of the Term, then the Term will not be extended.

### **4.02 SURRENDER OF CONCESSION EQUIPMENT LOCATIONS**

Upon the expiration or earlier termination of this Agreement or on the date specified in any demand for possession by City after any Default by Concessionaire, Concessionaire covenants and agrees to surrender possession of the Concession Equipment Locations to City in the same condition as when first occupied, ordinary wear and tear excepted. Concessionaire covenants and agrees to cooperate with the City's closeout procedures.

### **4.03 HOLDING OVER**

If Concessionaire holds over after expiration of the Term or any extension thereof, thereafter Concessionaire's occupancy shall be deemed a periodic tenancy from month-to-month at a monthly rental equal to twice the monthly compensation provided in Section 5 herein which is in effect as of the final month of the Term or any extension thereof, except that if a holdover is caused by the City's delay in providing the Concessionaire with a new concession agreement and the Concessionaire's continued use of the City's property has been approved, then the Concessionaire shall not be responsible for the holdover fee.

Concessionaire shall be subject to all other terms and conditions of this Agreement not specifically modified above. Such holding over may be terminated by the City or Concessionaire upon 10 days notice. Nothing herein shall be construed to give Concessionaire the right to hold over, and City may exercise any remedy at law or in equity to recover possession of the Concession Equipment Location, as well as any damages incurred by City on account of such holding over.

## SECTION 5 – COMPENSATION

### 5.01 COMPENSATION

A. Concessionaire covenants and agrees, without offset, deduction or abatement, to pay City as compensation for the rights and privileges herein granted by City the greater of (a) a sum equal to the percentages shown on the Summary Page of the annual Gross Revenues, as herein defined, ("Percentage Compensation Fee") derived by the Concessionaire from its operations under this Agreement, or (b) the Minimum Annual Guarantee, and in addition thereto, Additional Rent pursuant to Section 5.03; provided however, that in the event of the occurrence of any of the following events, the Minimum Annual Guarantee but not the percentage of gross revenues provided for in this Section 5.01 shall be suspended for the period of time the condition continues to exist:

(i) In the event of any national emergency wherein there is a curtailment, either by executive decree or legislative action, of the use of motor vehicles or aircraft by the general public; or

(ii) In the event the number of civilian passengers enplaning at the airport on scheduled airlines during a period of at least 60 consecutive days shall be less than 70% of the number of such enplaning passengers for the same period of time in the immediately preceding year by reason of (1) a strike involving one or more of the interstate airlines serving the airport, (2) destruction or damage to all or a material portion of the Terminal Building at the Airport or the air operations area of the Airport by reason of fire or other casualty, or (3) occupation of the Airport in its entirety by the United States government or any of its agencies. An "air operations area" means any area of the Airport used or intended to be used for landing, takeoff or surface maneuvering of aircraft.

Said obligation to pay compensation shall commence upon the Commencement Date set forth in Section 5.03 herein and continue through the Term hereof.

B. As used in this Section 5.01, the term "Minimum Annual Guarantee" shall mean (i) for the first year commencing on the Commencement Date, the amount stated on the Summary Pages; and (ii) for the second and each succeeding year, commencing on the first day of the month thereafter, during the term of this Agreement, an amount equal to 85% of the total

dollar amount of the Concessionaire's compensation payable under this Agreement for the immediately preceding twelve month period; provided, however, that in no event shall the Minimum Annual Guarantee as so adjusted for any year above mentioned be less than the first year's Minimum Annual Guarantee.

## 5.02 GROSS REVENUES

As used herein, the term "Gross Revenues" shall mean all monies received by or payable to Concessionaire at the point of sale all from all billings and receipts from all sales or services (including but not limited to domestic, long distance and international calling services and pre-paid calling cards) or doing business from the Concession Locations and Equipment, or from doing any business at the Airport not covered by any other Airport permit or agreement, whether from sales or services rendered by Concessionaire, whether for cash or credit, regardless of collection in the case of the latter, and whether for retail or wholesale. It shall include all transactions, whether placed by telephone, via the Internet, in person or by mail (including e-mail), and regardless of place or time of actual payment, and regardless of whether any party other than Concessionaire is: (i) providing or operating equipment or services involved in the transaction or (ii) billing or receiving revenue from such transaction. When properly recorded and accounted for, a reduction from Gross Revenues shall be allowed for bona fide returns for credit, sales taxes collected for remittance to the State or City, tips, and federal excise taxes collected that must be separately stated, collected from the customer and remitted to the federal government by the Concessionaire. There shall not be allowed from Gross Revenues any reduction for bad debts, loss from theft or any deduction except as outlined above.

## 5.03 PAYMENT OF COMPENSATION

- A. Minimum Monthly Guarantee. An amount equal to one-twelfth of the Minimum Annual Guarantee ("Minimum Monthly Guarantee") shall be payable by Concessionaire to City in advance and without demand on the date (referred to herein as the "Commencement Date") which is the earlier of (i) the "Concession Opening Date" set out on the Summary Page or (ii) the first day of the month following the date when Concessionaire first receives gross revenues, and on the first day of each calendar month thereafter.
- B. Partial Month Prorated. The Minimum Monthly Guarantee for a partial month during the Term of this Agreement shall be prorated on a per diem basis. If Concessionaire fails to make any payment on the date such payment is due, (i) Concessionaire shall have a continuing duty and obligation to make such payment on each and every day thereafter until paid in full, with each subsequent day a performance date which must be timely performed by Concessionaire, and (ii) in such event all subsequent rent shall be calculated on a daily basis and payable immediately in advance on a weekly basis.
- C. Percentage Compensation Fee. By the 10th day of the second and each succeeding month following the Commencement Date, Concessionaire

shall furnish to the Project Manager in a form acceptable to City a true and accurate verified statement signed by an officer of Concessionaire of its Gross Revenues for the preceding month, and in the event that the Percentage Compensation Fee of Concessionaire's Gross Revenues derived from its operations for the preceding month exceeds the portion of the Minimum Monthly Guarantee for such month, Concessionaire shall pay to the City an amount equal to such excess.

- D. Additional Rent. In addition to the Minimum Annual Guarantee and Percentage Compensation Fee payable hereunder, Concessionaire shall pay, as "Additional Rent" (whether or not so designated herein), in a manner and at the place provided in this Agreement, all sums of money required to be paid by Concessionaire under this Agreement. If such amounts or charges are not paid at the time and in the manner as provided in this Agreement, they shall nevertheless be collectible as Additional Rent with the next installment of compensation thereafter falling due, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder or to limit any other remedy of the City. All amounts of Minimum Annual Guarantee, Percentage Compensation Fee and Additional Rent (also collectively referred to in this Agreement as "Rental") payable in a given month shall be deemed to comprise a single rental obligation of Concessionaire to City.
- E. Liquidated Damages. It is expressly understood and agreed that City does not consider the Minimum Annual Guarantee in itself a fair and adequate rental for the Concession Equipment Location, and would not have entered into this Agreement unless Concessionaire had obligated itself to pay the Percentage Compensation Fee, which City expects to supplement the Minimum Annual Guarantee to provide a fair and adequate rental return. Therefore, if Concessionaire fails to continuously operate its business in accordance with the terms of this Agreement, or vacates the Concession Equipment Location prior to the expiration of the Term hereof, City will suffer damages in an amount which is not readily ascertainable and thus City, in any such event, shall have the right, at its option, to collect as liquidated damages, and not as a penalty, in addition to all other charges and the Minimum Annual Guarantee due hereunder, one-thirtieth (1/30th) of an amount equal to the greater of (a) the amount of the Minimum Annual Guarantee due for the month in which Concessionaire failed to operate as required by this Agreement, or (b) the average monthly amount of the Minimum Annual Guarantee and Percentage Compensation Fee payable for the immediately preceding year, for each day or portion thereof during which Concessionaire fails to operate as required by this Agreement including, without limitation, Concessionaire's failure to maintain the required operating hours, and, in addition, City shall have the right to treat any of such events as a material default and breach of this Agreement.
- F. Concessionaire's Payment Obligations. Concessionaire covenants to pay all compensation and charges under this Agreement independent of any obligation of the City. No breach of this Agreement by the City shall

relieve Concessionaire of its obligation and duty to pay all such compensation and charges when due under the terms of this Section 5.

**5.04 TITLE TO CITY'S COMPENSATION**

Immediately upon Concessionaire's receipt of monies from the sales of merchandise and services, which it is authorized to sell under the terms of this Agreement, the percentages of said monies, belonging to City shall immediately vest in and become the property of the City. Concessionaire shall be responsible as trustee for said monies until the same are delivered to City.

**5.05 INTEREST ON PAST DUE AMOUNTS**

Any payments not made to City when due shall accrue interest at the Past Due Interest Rate, as herein defined.

**5.06 PLACE AND MANNER OF PAYMENTS**

All sums payable to City hereunder shall be made payable to "Airport Revenue Fund" and paid without notice at the following:

Airport Revenue Fund  
Denver International Airport  
P.O. Box 492065  
Denver, CO 80249-2065

or at such other place as the Manager or his authorized representative may hereafter designate by notice in writing to Concessionaire. All sums shall be made in legal tender of the United States. Any check given to the City shall be received by it subject to collection, and Concessionaire agrees to pay any charges, fees or costs incurred by the City for such collection, including reasonable attorney's fees.

**5.07 APPLICATION OF PAYMENTS**

The City, at its option and its sole discretion, may apply any payments received from Concessionaire to any rental, compensation or other charges, which are then due and payable. If the City shall not make any specific application of a payment received from Concessionaire, then any payment received from Concessionaire shall be applied first to compensation that has been overdue for the longest period of time then to the other charge(s). Payment by Concessionaire or receipt by City of a lesser amount than the compensation or other charges herein stipulated shall be deemed to be on account of the earliest compensation or other charges due from Concessionaire to the City. No designation of any payment by Concessionaire for application to a specific portion of Concessionaire's financial obligations hereunder shall be binding upon the City. No endorsements or statement on any check or any letter accompanying any check or payment as compensation or other charges shall be deemed an accord and satisfaction, and the City shall accept such check or payment without prejudice to the City's right to recover the balance of any and all

compensation or other charges due from Concessionaire to the City or to pursue any other remedy provided in this Agreement or by law. Any sums received by the City after termination of this Agreement shall not constitute compensation but shall be received only as reimbursement for use and occupancy of the Concession Equipment Location.

#### **5.08 BOOKS OF ACCOUNT AND AUDITING**

Concessionaire shall keep or make available upon request true and complete records and accounts of all Gross Revenues and business transacted, including daily bank deposits. Not later than February 28 of each and every year during the Term hereof, Concessionaire shall furnish to City a true and accurate statement of the total of all revenues and business transacted during the preceding calendar year (listing the authorized deductions or exclusions in computing the amount of such Gross Revenues and business transactions and including a breakdown of Gross Revenues on a month-by-month basis). Such statement shall be certified by an independent certified public accountant who has audited the Gross Revenues in accordance with generally accepted accounting principles for special reports. Such statement shall be furnished for every calendar year in which business was transacted under this Agreement during the whole or any part of the year. The above requirements for the annual statement may be modified by the Manager, in his sole discretion, if such modification is in the best interests of the City.

Concessionaire agrees to establish and maintain a system of bookkeeping satisfactory to City's Auditor. Such system shall be kept in a manner as to allow each location of the Concessionaire's operations hereunder to be distinguished from all other locations or operations of Concessionaire. Concessionaire shall keep and preserve for at least three years, or until sooner audited by City, all sales slips, cash register tapes, sales books, bank books or duplicate deposit slips, and all other evidence of Gross Revenues and business transacted for such period. The City's Auditor, Manager, and their respective authorized representatives shall have the right at any time to inspect or audit all of the books of account, bank statements, documents, records, returns, papers and files of Concessionaire relating to the Gross Revenues and business transacted.

Concessionaire, upon written request, shall make all such documents available for examination within the Denver metropolitan area; or shall pay in full, in advance, travel and related expenses of a City representative to travel to any location outside the Denver area for such examination. Following the travel, expenses shall be reconciled, and any difference between the advance payment and the actual expenses shall be paid by or refunded to Concessionaire as appropriate. Such documents shall be available to the City representative within 14 calendar days of the date of the written request. The parties agree that, after execution of this Agreement, any delay in furnishing such records to the City will cause damages to the City that the parties agree are liquidated in the amount of \$350.00 per day for each day the records are unavailable beyond the date established as the City's notice.

If City determines after an audit for any year that the Gross Revenues and business transacted shown by Concessionaire's statement for such year were

understated, Concessionaire shall pay the amount of the deficiency plus interest at the Past Due Interest Rate. If the Gross Revenues were understated by more than 1%, Concessionaire shall pay to City the cost of the audit, in addition to the deficiency and interest, within 30 days after notice from the City of the amounts due and payable for such costs, deficiency and interest. The City's right to perform such an audit shall expire three years after Concessionaire's statement for that year has been delivered to the City.

Concessionaire agrees that the Manager, the Auditor of the City, or an authorized representative of the Auditor, may inspect any documents, returns, data or reports filed pursuant to Chapter 53 of the Denver Revised Municipal Code by Concessionaire with the City's Manager of Revenue and any related reports, documents, data or other information generated by the City's Manager of Revenue or employees under the control of such Manager of Revenue in connection with any investigation or audit of Concessionaire by the City's Department of Revenue. Concessionaire authorizes and permits the inspection of such documents, data, returns, reports and information by the Manager, Auditor or an authorized representative of the Auditor, and, further, waives any claim of confidentiality that it may have in connection with such documents, returns, data, reports and information.

#### **5.09 FAILURE TO FILE MONTHLY OR ANNUAL REPORTS**

If Concessionaire fails to furnish to the City any monthly or annual statement or report of Gross Revenues within the time required by Section 5.03, then Concessionaire shall pay within 10 days of demand therefor by City as Additional Rent, a special handling fee of \$100.00 per statement or report per day until such statement or report is delivered to City. This remedy shall be in addition to any and all other of the City's remedies under this Agreement or at law. In addition, if Concessionaire fails to furnish any two (2) consecutive monthly statements or reports of Gross Revenues within the time required by Section 5.03, then, without limiting any of the City's other rights under this Agreement, City shall have the right with 10 days prior written notice to conduct an audit as set forth in Section 5.08, and any and all charges occasioned by reason thereof shall be the sole obligation of Concessionaire and payable to City on demand.

#### **5.10 REESTABLISHMENT OF RENTALS, FEES AND CHARGES**

The City, through the Manager, may from time to time, at intervals of not more than annually, at the Manager's sole discretion, and subject to the requirements of any outstanding bond ordinance pertaining to the Airport, reestablish the rentals, fees and charges provided for herein. The City agrees that such reestablished schedule of rentals, fees and charges shall be reasonable in relation to the cost of providing, operating and maintaining property, services and facilities of the airport system.

If the Manager proposes any change in the schedule of rentals, fees and charges, the City will give notice thereof to Concessionaire not less than 90 days before the same is to become effective. Should the proposed rentals, fees and charges result in an increase of more than 5% in the dollar amount of compensation paid by Concessionaire for the prior calendar year, then

Concessionaire may accept or decline to pay compensation at the new rate(s). Concessionaire shall promptly advise the Manager (but in no event less than 60 days prior to the proposed effective date of such schedule of rentals, fees and charges) of its intention to cancel and terminate this Agreement. Upon such notice of intent to cancel and terminate, Concessionaire shall surrender the Concession Equipment Location upon a date specified by the Manager. Should Concessionaire fail to give such notice of cancellation and termination, then it shall be deemed to have accepted the new rate(s) of compensation as promulgated by the Manager.

No failure by the City to reestablish the rentals, fees and charges at an annual interval date shall constitute a waiver of the City's right to reestablish the rentals, fees and charges at any time thereafter.

## **SECTION 6 – OPERATION OF CONCESSION**

### **6.01 OPENING FOR BUSINESS**

Concessionaire shall unless otherwise instructed by the City, complete its design, obtain building permits, complete installation and open for business to the traveling public no later than the Concession Opening Date set out on the Summary Page. Such period may be extended by the Manager, in writing, if completion of Improvements was delayed through no fault of Concessionaire; however, in no event shall such extension affect the date upon which compensation is due.

Concessionaire shall submit to the City for review, at least 30 days prior to the Concession Opening Date, written operating and security procedures for its operations hereunder. Concessionaire shall revise such operating and security procedures as necessary to obtain City approval of them.

At least 21 days prior to the Concession Opening Date, Concessionaire shall submit to the City the Material Safety Data Sheets (MSDS) for all chemicals used in the operation of the concession, including for cleaning and maintenance.

If Concessionaire fails to open for business, which shall mean having no fewer than 200 Pay Telephones and 12 PPC Vending Units installed and operational, in the Concession Equipment Locations within the time specified in this Section 6.01 and any extension granted by the Manager in writing, the parties agree that it is and will be impracticable and extremely difficult to determine the actual damages suffered by the City. Therefore, the parties have agreed that in order to compensate the City for its loss, Concessionaire shall pay to the City as Additional Rent, upon demand, the sum of \$500.00 per day for each day Concessionaire delays its initial opening beyond the time specified herein plus any extension granted by the Manager in writing. This remedy shall be in addition to any other remedies provided in this Agreement or by law to the City in the event of default by Concessionaire. Such Additional Rent shall be deemed to be in lieu of the Percentage Compensation Fee only (as that term is defined in Section 5.01) that might have been earned during the period of Concessionaire's failure to open. The amount has been determined based upon numerous considerations including the fact that the City has foregone other proposed

revenue-producing uses of the Concession Equipment Locations and expended money in reliance upon and based upon Concessionaire opening for business on the intended opening date.

## **6.02 INSTALLATION OF IMPROVEMENTS; RESTRICTION ON CHANGES**

Concessionaire, at its sole cost and expense, shall install the initial Improvements as defined in Exhibit X, "Provisions for Design and Construction of Improvements." The Improvements are subject to the prior written approval of the Manager and shall be installed in accordance with DIA Tenant Development Guidelines, the requirements of Exhibit X, and pursuant to the City's building permit process and the customary terms and conditions thereof.

Without limiting the foregoing, Concessionaire shall determine and assess the requirements to design, install, operate and maintain the Concession Equipment Locations in accordance with the requirements of the Americans with Disabilities Act, 42 USC §12,000 et seq. ("ADA"), including the ADA Accessibility Guidelines and all federal regulations adopted pursuant to the ADA. In the event that compliance cannot be achieved, Concessionaire shall proceed formally to the federal agency having jurisdiction for a waiver of compliance under applicable federal regulations.

Concessionaire shall install the Improvements, furnish and equip the Concession Equipment Locations at a minimum investment set forth in the Summary Page ("Required Minimum Investment"). The Required Minimum Investment shall not include financial costs, interest, inventory, pre-opening expenses or intra-company charges, but may include architectural and engineering fees not exceeding 15% of the total. The Required Minimum Investment is a material part of the consideration to the City under this Agreement, and within 90 days of completion of construction Concessionaire shall file with the Manager a statement certified by its architect setting forth the total construction costs with appropriate detail itemizing the elements of design, decorations, furnishings, fixtures, and equipment. At City's request, Concessionaire shall submit copies of invoices supporting such costs.

Within the earlier of (a) 10 days after completion of construction of the Improvements or (b) 10 days after Concessionaire's opening for business, Concessionaire shall deliver to City a copy of the original of the Certificate of Occupancy for the Concession Equipment Locations issued by the City Building Department, original execution copies of all mechanics' lien releases or other lien releases notarized and unconditional, in such form as City shall have approved, copies of all building permits indicating inspection and approval by the issuer of said permits, and an architect's certification that the Improvements have been constructed in strict accordance with the approved Final Drawings and Specifications and are fully complete in accordance with Exhibit X. Within 60 days of the completion of construction, Concessionaire shall deliver to City a final and complete set of mylar record drawings, with specifications, shop drawings and other documents defined in Exhibit X and Computer Aided Drafting and Design ("CADD") drawings, duly certified by a registered architect or registered engineer licensed in the State of Colorado. If Concessionaire fails to provide the same within such 60-day period, Concessionaire shall pay to City as Additional

Rent, upon demand, \$100.00 per day for each day that such certified drawings and documents have not been delivered to City within such period of time.

After initial installation, Concessionaire agrees not to alter, add to, remove or demolish any of the Improvements on the Concession Equipment Locations without the prior written approval of the Manager. All such alterations or changes shall be made in accordance with DIA Tenant Development Guidelines and the requirements of Exhibit X.

### 6.03 OPERATIONS

Concessionaire agrees to conduct its business to accommodate the public using the Airport and to operate the concession in the following manner:

- A. Concessionaire shall operate the concession in a first-class manner satisfactory to the Manager or his authorized representative. Service shall be prompt, clean, courteous and efficient.
- B. Concessionaire shall supply and install sufficient equipment and facilities required to fully service the Concession Equipment Locations shown in all of the exhibits that are listed in the Summary Page, and shall comply with the other requirements contained in this Agreement.
- C. At the time of installation, the equipment shall be new or in like new condition if the City approves such like new equipment. All Concession Equipment shall be designed and constructed for comfort and ease of use by the public. By way of example and not of limitation, data ports shall not be located so as to require customers to kneel, bend, stoop or reach under seats or countertops in order to use them.
- D. Concessionaire shall regularly and continuously service each Concession Equipment Location so that it will at all times be clean and in good working order, in accordance with the standards set forth in the Equipment and Service Requirements, Exhibit D. Concessionaire shall repair or replace any broken or nonfunctioning piece of Concession Equipment in accordance with the repair standards set forth in the Equipment and Service Requirements, Exhibit D, and will at all times have available service personnel who are qualified to service and repair the Concession Equipment in accordance with such requirements. Concessionaire shall also insure that operators are available to promptly service caller needs from Pay Telephones in a manner that at all times meets or exceeds the prevailing telecommunications industry standards.
- E. Concessionaire at all times shall retain an experienced service manager of similar, high quality facilities fully authorized to represent and act for it in the operation of the concession. At times when this service manager is not present at the Airport, said service manager or a qualified subordinate shall be available by telephone twenty-four hours per day. Concessionaire shall post on all Concession Equipment clear and obvious signage with a telephone number which customers can call to report malfunctions, which telephone number will be answered between

the hours of 8 a.m. and 7 p.m. Mountain Time, five days each week (excluding weekends and holidays), by a person who is properly instructed in the handling of such reports, and at all other times by a messaging service which is regularly and promptly checked by Concessionaire. Concessionaire shall respond to all Concession Equipment trouble reports, by dispatching qualified technicians to service such equipment in accordance with the repair requirements set forth in the Equipment and Service Requirements, Exhibit D.

- F. Concessionaire shall make all deliveries of merchandise and supplies in such manner and at such times and locations as the Manager or his authorized representative may reasonably approve. Emergency deliveries may be made at other times subject to prior arrangements with the Manager or his authorized representative.
- G. Concessionaire shall allow duly authorized representatives of governmental entities access to the Concession Equipment for inspection purposes. Concessionaire agrees to obtain at its own expense, and maintain at all times, all licenses and certificates necessary for the operation of the Concession Equipment.
- H. The Manager or his authorized representative shall have the right to make reasonable objections to the quality of services or products sold, the character of the service rendered to the public, and the appearance and condition of the Concession Equipment and Concession Equipment Locations. Concessionaire agrees to promptly discontinue or remedy any objectionable practice or condition within five (5) days after written notice by the Manager or his authorized representative. If Concessionaire cannot discontinue or remedy such practice or condition within five (5) days after such notice, it shall promptly provide to the Manager a written explanation as to why it cannot, and shall state the period of time that will be required for it to discontinue or remedy such practice or condition. The Manager in his discretion may grant Concessionaire a period of time longer than five days in which to discontinue or remedy the practice or condition. Notwithstanding the foregoing, as to any pay telephone which is for any reason, not limited to software malfunctions, malfunctioning, including charging users more than the authorized and stated rates for any call or service, the City reserves the right to protect the public from such malfunctions by any reasonable means, including placing an "out of service" notice on it, and disconnecting it, until the malfunction is repaired.
- I. Concessionaire shall comply with all applicable federal, state and local laws and regulations. Concessionaire shall allow duly authorized representatives of governmental entities access to the Concession Space for inspection purposes. Concessionaire agrees to obtain at its own expense, and maintain at all times, all licenses, certificates and any other such documents necessary for the operation of a retail establishment and to comply with all applicable health, safety and sanitary laws, regulations and inspections concerning same.

- j. The City reserves the right upon 30 days written notice to Concessionaire to terminate this Agreement for underperformance. "Underperformance" as used herein shall mean any consecutive 12-month period during the Term hereof that Concessionaire's Percentage Compensation Fee fails to exceed the Minimum Monthly Guarantee.

#### 6.04 MAINTENANCE OF EQUIPMENT

The Concessionaire shall provide qualified and trained employees to provide route and special maintenance of all Concession Equipment, who will respond to service call within the time stated in the Equipment and Service Requirements, Exhibit D. Not offer any services or engage in any activity not specifically provided for under the terms of this Agreement, unless otherwise authorized in writing by the Manager or his authorized representative.

#### 6.05 HOURS OF OPERATION

- A. Continuous Operation. Concessionaire agrees to keep its concession Equipment fully operational and available to the public twenty-four hours per day, seven days per week, including all holidays, unless otherwise authorized beforehand in writing by the Manager or his authorized representative. Concessionaire shall be deemed to have abandoned this Agreement if concessionaire stops providing the services hereunder for two (2) or more consecutive days, unless permitted by any other provision of this Agreement. Such abandonment is an event of default under Section 9.01.
- B. Exceptions. Exceptions to Concessionaire's obligations under this Section 6.05 may be authorized in advance in writing by the Manager or his authorized representative.
- C. Noncompliance. If Concessionaire fails to comply with any of the provisions of this Section 6.05, the City will suffer damages in an amount which is not readily ascertainable and thus City, in any such event, shall have the right, at its option, to collect as liquidated damages, and not as a penalty, in addition to all other charges or compensation payable hereunder, \$150.00 per day for each day in which Concessionaire failed to comply with this Section 6.05. This remedy shall be in addition to any and all other remedies provided in this Agreement or by law to the City.

#### 6.06 CARE OF EQUIPMENT

- A. Concessionaire agrees that it will keep the Concession Equipment, the Concession Equipment Locations and the enclosures in which the Conversion Equipment is placed in a neat, clean, safe, sanitary and orderly condition at all times, and will refurbish the Concession Equipment damaged, worn or defaced, on its own initiative or at the written request of the City. Concessionaire shall comply with all maintenance obligations set forth in the Equipment and Service Requirements, Exhibit D.

- B. In the event Concessionaire shall be in default of this Section 6.06, Concessionaire shall pay as Additional Rent \$100.00 for each day of default in order to reimburse City for the additional administrative expenses resulting therefrom.

**6.07 [RESERVED]**

**6.08 VENDING MACHINES**

With the exception of the PPC Vending Units authorized by this Agreement, no amusement or vending machines or other machines operated by coins, tokens or credit cards shall be installed or maintained in or upon the Concession Equipment Locations except with the prior written permission of the Manager or his authorized representative. This prohibition includes, but not by way of limitation, sales from vending machines of such items as cigarettes, candy, maps, coffee, soft drinks, newspapers, stamps and insurance policies; dispensation of cash, money orders and checks; and operation of mechanical or electronic game devices, electronic video games, and entertainment devices.

**6.09 COMPLIANCE WITH ALL LAWS AND REGULATIONS**

Concessionaire agrees not to use or permit the Concession Equipment Locations to be used for any purpose prohibited by the laws of the United States or the State of Colorado or the ordinances or Charter of the City and County of Denver, or not authorized hereunder, and it further agrees that it will use the Concession Equipment Locations in accordance with all applicable federal, state and local laws and all general rules and regulations adopted by the City or the Manager for the management, operation and control of the Airport, either promulgated by the City on its own initiative or in compliance with regulations or actions of the Federal Aviation Administration or other authorized federal agency. Concessionaire further agrees to submit any report, reports or information which the City is required by law or regulation to obtain from Concessionaire or which the Manager may request relating to Concessionaire's operations. Without limiting the foregoing, Concessionaire shall comply at all times with the Americans with Disabilities Act, 42 USC §12,000 et seq., and all applicable regulations adopted pursuant thereto, in the physical conditions in the Concession Equipment Locations and in Concessionaire's operations.

**6.10 COMPLIANCE WITH ENVIRONMENTAL REGULATIONS**

Concessionaire, in conducting any activity on the Concession Equipment Location, shall comply with all applicable local, state or federal environmental rules, regulations, statutes, laws or orders (collectively "Environmental Requirements"), including but not limited to Environmental Requirements regarding the storage, use and disposal of Hazardous Materials or Special Wastes and regarding releases or threatened releases of Hazardous Materials or Special Wastes to the environment. For purposes of this Agreement the terms "Hazardous Materials" shall refer to those materials, including without limitation asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), oil or any other petroleum products, natural gas, source material, pesticides, and any hazardous waste, toxic substance or related material, including any

substance defined or treated as a "hazardous substance," "hazardous waste" or "toxic substance" (or comparable term) in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 et seq. (1990)), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq. (1990)), and any rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute. Concessionaire shall comply with the City's Ordinance 196, as amended on March 18, 1991 (amendments to the City Uniform Public Code related to water conservation fixtures).

Concessionaire shall acquire all necessary federal, state and local environmental permits and comply with all applicable federal and state environmental permit requirements.

Concessionaire agrees to ensure that its Concession Equipment is installed, operated and maintained in a manner that minimizes environmental impact through appropriate preventive measures and complies with all federal, state and local environmental requirements. Concessionaire agrees to evaluate methods to reduce the generation and disposal of waste materials. Wastewater from maintenance or operational activities shall be pretreated with sand and grease traps.

In the case of a release, spill or leak as a result of Concessionaire's construction, operation or maintenance activities, Concessionaire shall immediately control and remediate the contaminated media to applicable federal, state and local standards. Concessionaire shall reimburse the City for any penalties and all cost and expense, including without limitation attorney's fees, incurred by the City as a result of the release or disposal by Concessionaire of any pollutant or hazardous material on the Airport.

#### **6.11 WASTE OR IMPAIRMENT OF VALUE**

Concessionaire agrees that nothing shall be done or kept in the Concession Equipment Locations which might impair the value of the City's property or which would constitute waste.

#### **6.12 HAZARDOUS USE**

Concessionaire agrees that nothing shall be done or kept in the Concession Equipment Locations and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Concession Equipment Locations which might be unsafe or hazardous to any person or property. Further, Concessionaire shall not do or permit to be done any act or thing upon the Concession Equipment Locations which will invalidate, suspend or increase the rate of any fire insurance policy required under this Agreement, or carried by the City, covering the Concession Equipment Locations or the buildings in which the Concession Equipment Locations is located or which, in the opinion of the Manager or his authorized representative, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement. If, by reason of any failure by Concessionaire to comply with the provisions of this section, after receipt of notice in writing from the City, any fire insurance rate on the Concession Equipment Locations or on the

buildings in which the same is located, shall at any time be higher than it normally would be, then Concessionaire shall pay the City, on demand, that part of all fire insurance premiums paid by the City which have been charged because of such violation or failure of Concessionaire; provided, that nothing herein shall preclude Concessionaire from bringing, keeping or using on or about the Concession Equipment Locations such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on the normal operations contemplated herein.

#### **6.13 STRUCTURAL, ELECTRICAL OR SYSTEM OVERLOADING**

Concessionaire agrees that nothing shall be done or kept on the Concession Equipment Locations and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Concession Equipment Locations which might impair the structural soundness of the building, result in an overload of utility, plumbing, or HVAC systems serving the Terminal and/or Concourses or interfere with electric, electronic or other equipment at the Airport. In the event of violations hereof, Concessionaire agrees to remedy immediately the violation at Concessionaire's expense.

#### **6.14 NOISE, ODORS, VIBRATIONS AND ANNOYANCES**

Concessionaire shall conduct its operations in an orderly and proper manner so as not to commit any nuisance in the Concession Equipment Locations or annoy, disturb or be offensive to others in the Terminal or Concourses and shall take all reasonable measures, using the latest known and practicable devices and means, to eliminate any unusual, nauseous or objectionable noise, gases, vapors, odors and vibrations and to maintain the lowest possible sound level in its operations.

#### **6.15 ACCESS**

Concessionaire shall not do or permit to be done anything which might interfere with the effectiveness or accessibility of utility, heating, ventilating or air conditioning systems or portions thereof on the Concession Equipment Locations or elsewhere on the Airport, nor do or permit to be done anything which may interfere with free access and passage in the Concession Equipment Locations or the public areas adjacent thereto, or hinder police, firefighting or other emergency personnel in the discharge of their duties. Further, Concessionaire shall not do or permit to be done anything which might interfere with the effectiveness or accessibility of elevators or escalators in or adjacent to the Concession Equipment Locations, including lines, pipes, wires, conduits and equipment connected with or appurtenant thereto.

Concessionaire shall not place any additional lock of any kind upon any window or interior or exterior door in the Concession Equipment Locations, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefor is maintained on the Concession Equipment Locations, nor refuse, upon the expiration or sooner termination of this Agreement, to surrender to the City any and all keys to the interior or exterior doors on the Concession Equipment Locations, whether said keys were furnished to or otherwise procured

by Concessionaire. If any keys furnished to Concessionaire by City are lost, Concessionaire shall pay the City, on demand, the cost for replacement thereof.

**6.16 COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT:**

Concessionaire shall be responsible for compliance with the ADA and all rules and regulations promulgated pursuant to such statute, in the construction and installation of all Concession Equipment and all improvements to the Concession Equipment Locations, and in all of its operations hereunder. If notified by the City in writing that any Concession Equipment, Concession Equipment Location or service is, or is alleged to be, out of compliance with any ADA requirements, Concessionaire shall respond within ten days to the City, in writing. Such response shall include the facts disclosed by Concessionaire's investigation of the matter, the reasons why Concessionaire does not agree that the ADA requirements were not complied with, if that is the case, or the actions taken or planned by Concessionaire to remedy the non-compliance.

**6.17 RATES:**

Concessionaire shall charge rates for Operator Services and other services that comply with the Equipment and Service Requirements, Exhibit D.

**6.18 INSTALLATION OF CONCESSION EQUIPMENT; CHANGEOVER PERIOD**

- A. Concessionaire shall, unless otherwise instructed by the City, complete installation of all Concession Equipment as identified in Exhibit A no later than 120 days after execution of this Agreement, or in the case of new or additional installations or locations, within 60 days after the space becomes available and the request for installation is made. Such period may be extended by the Manager if completion of installation was delayed through no fault of Concessionaire; however, in no event shall such extension affect the date upon which compensation is due.
- B. Concessionaire agrees that any installation, repair, removal or alteration of any Concession Equipment shall be in conformance with the requirements of Exhibit X and the DIA Tenant Development Guidelines.
- C. Concessionaire will cooperate with the incumbent providers of pay telephone service to assure that service is maintained during the transitional stage. Removal and replacement of Concession Equipment, including telephones, will be accomplished under a schedule approved by the City, in order that no more than ten (10) telephones in any building will be out of service for longer than three days at one time. At no time during the transitional period will any building be without functioning TDD/TTY's, and at no time will the number of TDD/TTY's in any area of the Airport be fewer than the minimum required by the ADA and applicable regulations.

**6.19 OWNERSHIP OF EQUIPMENT:**

All Concession Equipment, installed by Concessionaire or its subcontractor(s), and used in the operation of the Concession, shall remain the property of Concessionaire or its subcontractor.

**6.20 REMOVAL OF CONCESSIONAIRE'S EQUIPMENT**

Concessionaire shall retain title to and shall remove, at its sole cost, prior to the expiration or termination of this Agreement, all of Concessionaire's Equipment. If such removal shall injure or damage the Concession Equipment Location, Concessionaire agrees, at its sole cost, at or prior to the expiration or termination of this Agreement, to repair such injury or damage in good and workmanlike fashion and to place the Concession Equipment Location in the same condition as the Concession Equipment Location would have been if such Concessionaire's Equipment had not been installed. If Concessionaire fails to remove any of Concessionaire's Equipment by the expiration or termination of this Agreement, City may, at its option, keep and retain any such Concessionaire's Equipment or dispose of the same and retain any proceeds therefrom, and City shall be entitled to recover from Concessionaire any costs of City in removing the same and in restoring the Concession Equipment Location in excess of the actual proceeds, if any, received by City from disposition thereof.

**6.21 COOPERATION WITH SUCCESSOR CONCESSIONAIRES:**

Concessionaire shall fully cooperate with the City and any other company that may be selected as a successor Concessionaire when this Agreement terminates. This shall include, but not be limited to, complying with the schedule approved under Section 6.01 above. The objective of this cooperation is to minimize any disruption of telephone service to Airport passengers and facilitate the installation of the successor concessionaire's equipment. If Concessionaire or any of its subcontractors does not reasonably cooperate and comply with such equipment removal schedule, the City will incur significant damages, which will be extremely difficult to quantify. Therefore, Concessionaire will be liable to pay the City, as liquidated damages, \$1,000.00 per day for each day in which it delays the scheduled installation of three or more Pay Telephones or one or more PPC Vending Units by a successor concessionaire or subcontractor.

**6.22 REPORTING REQUIREMENTS**

- A. In addition to the reports and statements required by Section 5, Concessionaire shall provide the following reports. These reporting requirements are a material obligation of Concessionaire under this Agreement.
- B. Concessionaire shall gather record and retain all the information and data needed to prepare the monthly management reports required by the City, the monthly data summary described in the next paragraph, and any other reports of, Internet Access transactions, Electronic Advertising transactions and PPC sales that the City may reasonably require. This data shall include the traffic carried by Concessionaire, and any other

company under this Agreement, such as interLATA, intraLATA and long distance minutes and messages, gross revenues in all sent paid and non-sent paid categories, and gross revenues from sales of PPCs.

- C. Additionally, the Concessionaire shall prepare and submit to the City a summary of monthly data and information per public pay telephone and PPC Vending Unit within thirty (30) days of the last day of the previous calendar month in Microsoft Access file format, or other format as reasonably requested by the City, on floppy disks or other portable storage media as specified by the City. This monthly data and information by each telephone shall include, but not be limited to, local, long distance, interLATA, intraLATA and long distance minutes and messages, sent paid and non-sent paid (local and Intra) gross revenue. This monthly data and information per PPC Vending Unit shall include the number of PPCs dispensed and the gross revenue derived from those PPCs. The data and information shall include usage statistics. Concessionaire shall also submit a detailed annual report containing this information within 30 days after each anniversary date of this Agreement.
- D. If any data required to be reported by this Section 6.22 is not available for technological reasons that are beyond the control of Concessionaire, Concessionaire shall notify the City in writing, identifying the data that is not available and the reason why it is not available.
- E. Concessionaire shall prepare, submit and keep current a personnel report that lists all of Concessionaire's employees by name, function and work schedule.

## **SECTION 7 – UTILITIES AND SERVICES**

### **7.01 PREMISES WIRING AND HEATING AND AIR CONDITIONING (HVAC)**

Concessionaire shall, at its expense, furnish, install and maintain any wiring and other connections within or leading into its Concession Equipment Location required to connect and operate the Concession Equipment including any moves, additions or changes to the Airport Premises Wiring infrastructure as existing on the Commencement Date. Such existing infrastructure will remain in place to support existing telephone and PPC vending services at no additional cost to Concessionaire. Concessionaire shall coordinate any changes to the City infrastructure through the City's premises wiring contractor, and shall pay contracted rates for such changes.

City shall, at its expense, furnish normal and reasonable quantities of central air from the central HVAC system to the Concession Equipment Location and all necessary power and electricity for such central air circulation. Subject to conditions beyond its control, the City shall maintain under normal conditions a temperature adequate for comfortable occupancy according to the season.

## **7.02 ELECTRICITY**

Concessionaire shall furnish, install and maintain any power circuits, transformers and connections required for equipment and mechanical systems used at the Concession Equipment Locations. The City shall furnish, without charge, normal and reasonable amounts of electricity required for the operation of the Concession Equipment.

## **7.03 LIGHTING**

Concessionaire shall, at its expense, furnish, install and maintain all lighting fixtures and wiring that are an integral part of the enclosures installed by Concessionaire. Where enclosures installed by Concessionaire provide for lighting, levels of illumination and wattage requirements shall be subject to approval by the City. The City shall furnish, without charge, reasonable amounts of lighting in the Concession Equipment Locations needed to operate the Concession Equipment.

## **7.04 JANITORIAL SERVICES AND MAINTENANCE**

Concessionaire, at its expense, shall be responsible for janitorial services for the Concession Equipment Location and storage space, if any. Concessionaire, at its expense, shall maintain the premises in a first-class condition, as conditions and the Manager or his authorized representative may require, including but not limited to redecoration, painting, repair and replacement of damaged or worn furnishings and equipment, and maintenance, repair and replacement of life safety, fire detection, fire suppression and fire monitoring systems.

Concessionaire covenants and agrees that all maintenance, repair and replacement shall be completed with due diligence and in a good and workmanlike fashion and in compliance with all conditions imposed by City and all applicable permits, authorizations, laws, ordinances, orders, rules and regulations of governmental authorities having jurisdiction and that the costs and expenses with respect to such maintenance, repair and replacement shall be paid promptly when due and that the maintenance, repair and replacement shall be accomplished free of liens of mechanics and materialmen. Concessionaire further covenants and agrees that the costs and expenses for any maintenance, repair and replacement to the Concession Equipment Location required as a result of a failure of Concessionaire to perform such maintenance, repair or replacement plus 20% of such costs and expenses for overhead expenses shall be reimbursed by Concessionaire to City upon City's written demand.

## **7.05 WINDOW WASHING AND STRUCTURAL MAINTENANCE**

City shall, at its expense, provide exterior window washing and maintain all structural parts of the Terminal and Concourses, including exterior glass, walls and roof but specifically excluding Concession Improvements made by Concessionaire.

## **7.06 COMMON USE SERVICES**

The Manager may establish common use services at the Airport, including but not limited to trash and refuse removal, deliveries, industrial waste handling, recycling and security guards. The Manager reserves the right to establish charges for common use services based upon documented actual costs. Trash, sewer and deliveries will be common use services that Concessionaire may be required to use and pay its prorata actual share; however, other common use services may be utilized at Concessionaire's option. Concessionaire agrees to pay the charges for those common use services that are utilized by Concessionaire.

## **7.07 INTERRUPTION OF SERVICES**

Concessionaire agrees that City shall not be liable for failure to supply any utility services. City reserves the right to temporarily discontinue utility services at such time as may be necessary by reason of accident, unavailability of employees, repairs, alterations or improvements or whenever by reason of strikes, lockouts, riots, acts of God or any other happenings beyond the control of the City, the City is unable to furnish such utility services. The City shall not be liable for damages to persons or property for any such discontinuance, nor shall such discontinuance in any way be construed as cause for abatement of compensation or operate to release the Concessionaire from any of its obligations hereunder, except as otherwise provided in the section entitled "Damage, Destruction or Loss."

## **SECTION 8 – INDEMNITY, INSURANCE AND GUARANTEES**

### **8.01 INDEMNITY**

Concessionaire hereby agrees to release and indemnify and save harmless the City, its officers, agents and employees from and against any and all loss of or damage to property, or injuries to or death of any person or persons, including property and employees or agents of the City, and shall defend, indemnify and save harmless the City, its officers, agents and employees from any and all claims, damages, suits, costs, expense, liability, actions, penalties or proceedings of any kind or nature whatsoever, including worker's compensation claims, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, its operations in connection herewith, its construction of the Concession Improvements, or its use or occupancy of any portion of the Airport and including acts and omissions of officers, employees, representatives, suppliers, invitees, contractors, subcontractors, and agents of the Concessionaire; provided, that the Concessionaire need not release, indemnify or save harmless the City, its officers, agents and employees from damages resulting from the sole negligence of the City's officers, agents and employees. The minimum insurance requirements prescribed herein shall not be deemed to limit or define the obligations of Concessionaire hereunder.

## 8.02 INSURANCE

Concessionaire further agrees to secure at its own expense and to keep in force at all times during the Term hereof, the following insurance:

- A. Comprehensive General Liability Insurance. A comprehensive general liability insurance policy written on an occurrence basis and including coverage for premises/operations, products, contractual, independent contractors, broad form property damage, personal liability, and fire legal liability, in the amount specified in the Summary Page, which amount may be adjusted by the Manager in his sole discretion at any time during the Term of this Agreement. This policy shall cover the obligations assumed by Concessionaire hereunder and shall name and endorse the City as an additional insured. This policy shall be at least as broad as ISO CG 0001 (10/93) and shall include defense costs for additional insureds outside the limits of insurance. This policy shall not contain any care, custody or control exclusions, or any exclusion for bodily injury to or sickness, disease, or death of any employee of Concessionaire or any of its contractors which would conflict with or in any way impair coverage under the contractual liability endorsement.
- B. Business Auto Liability Insurance. A business auto and delivery vehicle liability insurance policy which includes coverage for owned, non-owned and hired vehicles in the amount specified in the Summary Page, which amount may be adjusted by the Manager in his sole discretion, in a combined single limit for damage or bodily injury, including wrongful death, as well as claims for property damage, which may arise from the ownership, use, or maintenance of owned or non-owned vehicles, including rented vehicles, and including their use on or off City property or by City personnel.
- C. Workers Compensation Insurance. Concessionaire shall maintain at all times adequate worker's compensation insurance (including occupational disease hazards) with an authorized insurance company, or through the Colorado State Compensation Insurance Fund or through an authorized self-insurance plan approved by the State of Colorado, insuring the payment of compensation to all its employees.

Certificates evidencing the existence of the policies, in such form as the Manager may require, shall be delivered to the Airport Telecommunications prior to the Commencement Date as defined in Section 5.03. The current form required is attached hereto as Exhibit C. Upon request by the Manager, Concessionaire agrees to furnish to the Airport Telecommunications at any time thereafter during the Term of this Agreement the original or a certified copy of said policy or policies.

Each such policy or certificate shall contain a valid provision or endorsement that "This policy will not be canceled, or materially changed or altered, without first giving 30 days prior written notice, or 10 days notice for nonpayment of premium, to the City's Manager of Aviation, Denver International Airport, 8500 Peña

Boulevard, Denver, Colorado 80249-6340, sent by certified mail, return receipt requested.”

Each such policy or certificate shall further provide that any coverage afforded the City as additional insured shall apply as primary insurance and other insurance issued to the City shall apply as excess and non-contributing insurance.

A renewal certificate shall be delivered to the Airport Telecommunications at least 10 days prior to a policy's expiration date, except for any policy expiring after the Expiration Date of this Agreement or any extension thereof.

### **8.03 PERFORMANCE GUARANTEE**

Upon execution of this Agreement, Concessionaire shall deliver to the Manager, and maintain in effect at all times throughout the Term an irrevocable letter of credit or such other acceptable surety as first approved in writing by City, in an amount equal to six (6) months of Minimum Annual Guarantees, which amount is subject to increase by the Manager. Such guarantee shall be payable without condition to the City and guarantee to the City full and faithful performance of (i) all of the terms and provisions of this Agreement by Concessionaire, as said Agreement may be amended, substituted, supplemented or extended, and (ii) all obligations and duties under all general rules and regulations adopted by the City or the Manager for the management, operation and control of the Airport as amended or supplemented. All irrevocable letters of credit shall be in a form, and issued by a bank, acceptable to the City.

### **8.04 NO PERSONAL LIABILITY**

No director, officer or employee of either party hereto shall be held personally liable under this Agreement or because of its execution or attempted execution.

### **8.05 TAXES, LICENSES, LIENS AND FEES**

Concessionaire agrees to promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operations hereunder and to take out and keep current all municipal, state or federal licenses required for the conduct of its business at and upon the Concession Equipment Location and further agrees not to permit any of said taxes, excises, license fees or permit fees to become delinquent. Concessionaire also agrees not to permit any mechanic's or materialman's or any other lien to become attached or be foreclosed upon the Concession Equipment Locations or improvements thereto, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or materialman. Concessionaire agrees to furnish to the Manager, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by it of Social Security, unemployment insurance and worker's compensation insurance, and all required licenses and all taxes. Concessionaire further agrees to promptly pay when due all bills, debts and obligations incurred by it in connection with its operations hereunder and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be

filed against the Concession Equipment Location or improvements thereon which will in any way impair the rights of the City under this Agreement.

## SECTION 9 – DEFAULT AND REMEDIES

### 9.01 DEFAULT

Concessionaire shall be in default under this Agreement if Concessionaire:

- A. Fails to timely pay when due to City the compensation or any other payment required hereunder; or
- B. Is in default under any other Agreement with the City for any concession at the Airport; or
- C. Becomes insolvent, or takes the benefit of any present or future insolvency or bankruptcy statute, or makes a general assignment for the benefit of creditors, or consents to the appointment of a receiver, trustee or liquidator of any or substantially all of its property; or
- D. Transfers its interest under this Agreement, without the prior written approval of the City, by reason of death, operation of law, assignment, sublease or otherwise, to any other person, entity or corporation; or
- E. Fails to timely submit plans and specifications, bonds and other preconstruction submittals, fails to promptly begin and complete installation of the Concession Equipment, or fails to operate the concession after installation is completed; or
- F. Abandons, deserts or vacates the Concession Equipment Locations, or fails to operate the concession; or
- G. Suffers any lien or attachment to be filed against the Concession Equipment Location, the Airport or City's property because of any act or omission of Concessionaire, and such lien or attachment is not discharged or contested by Concessionaire in good faith by proper legal proceedings within 20 days after receipt of notice thereof by Concessionaire; or
- H. Fails to keep, perform and observe any other promise, covenant or agreement set forth in this Agreement and such failure continues for a period of more than 30 days after delivery by Manager of a written notice of such breach or default, except where a shorter period is specified herein, or where fulfillment of its obligation requires activity over a period of time and Concessionaire within 10 days of notice commences in good faith to perform whatever may be required to correct its failure to perform and continues such performance without interruption except for causes beyond its control; or
- I. Uses, or gives its permission to any person to use for any illegal purpose any portion of the Airport made available to Concessionaire for its use under this Agreement.

## 9.02 REMEDIES

If Concessionaire defaults in any of the covenants, terms and conditions herein, the City may exercise any one or more of the following remedies:

- A. The City may elect to allow this Agreement to continue in full force and effect and to enforce all of City's rights and remedies hereunder, including without limitation the right to collect compensation as it becomes due together with Past Due Interest.
- B. The City may cancel and terminate this Agreement and repossess the Concession Equipment Locations, with or without process of law, and without liability for so doing, upon giving 30 days written notice to Concessionaire of its intention to terminate, at the end of which time all the rights hereunder of the Concessionaire shall terminate, unless the default, which shall have been stated in such notice, is by its nature curable and shall have been cured within such 30 days. Notwithstanding the foregoing, Concessionaire shall be allowed only two notices of curable default hereunder which it may cure within the time specified in this section. The third notice shall be final and the City shall at its option (1) cancel and terminate all of the rights hereunder of the Concessionaire, reenter the Concession Equipment Locations, remove therefrom all property of the Concessionaire and store the same at the expense of the Concessionaire, or (2) elect to proceed under subparagraph C below. If City elects to terminate, Concessionaire shall be liable to City for all amounts owing at the time of termination, including but not limited to compensation due plus interest thereon at the Past Due Interest Rate together with any other amount to fully compensate City for all loss of compensation, damages, and costs, including attorney's fees, caused by Concessionaire's failure to perform its obligations hereunder, or which in the ordinary course would likely result therefrom. Nothing in this Section 9.02 shall be construed to grant a right to Concessionaire to cure a default that by its nature is not capable of being cured.
- C. The City may elect to reenter and take possession of the Concession Equipment Locations and expel Concessionaire or any person claiming under Concessionaire, and remove all effects as may be necessary, without prejudice to any remedies for damages or breach. Such reentry shall not be construed as termination of this Agreement unless a written notice specifically so states; however, the City reserves the right to terminate the Agreement at any time after reentry. Following reentry, the City may relet the Concession Equipment Locations, or any portion thereof, for the account of Concessionaire, on such terms and conditions as the City may choose, and may make such repairs or improvements as it deems appropriate to accomplish the reletting. The City shall not be responsible for any failure to relet or any failure to collect compensation due for such reletting. Concessionaire shall be liable to City for all costs of reletting, including attorney's fees and repairs or improvements. Notwithstanding re-entry by the City, Concessionaire shall continue to be liable for all amounts due as compensation under this Agreement, on the dates specified and in such amounts as would be payable if default had

not occurred. Upon expiration of the Term, or any earlier termination of the Agreement by the City, the City, having credited to the account of Concessionaire any amounts recovered through reletting, shall refund, without interest, any amount that exceeds the compensation, damages and costs payable by Concessionaire under this Agreement.

#### **9.03 REMEDIES CUMULATIVE**

The remedies provided in this Agreement shall be cumulative and shall in no way affect any other remedy available to the City under law or equity.

#### **9.04 ADMINISTRATIVE HEARING**

Disputes arising out of this Agreement shall be resolved by administrative hearing before the Manager following the procedures outlined in Denver Revised Municipal Code Section 5-17; provided, that City shall retain its right to obtain an order of eviction in accordance with applicable state law. It is further agreed that no cause of action shall be brought against the City until there has been full compliance with the terms of this paragraph.

#### **9.05 WAIVERS**

No failure of City to insist upon the strict performance of a term, covenant or agreement contained in this Agreement, no failure by City to exercise any right or remedy under this Agreement, and no acceptance of full or partial payment during the continuance of any default by Concessionaire shall constitute a waiver of any such term, covenant or agreement or a waiver of any such right or remedy or a waiver of any default by Concessionaire.

### **SECTION 10 – DAMAGE, DESTRUCTION OR LOSS**

#### **10.01 DAMAGE TO OR DESTRUCTION OF CONCESSION EQUIPMENT LOCATIONS:**

If a PPC Vending Unit or ten or more Pay Telephones are destroyed or damaged by fire or otherwise to an extent which renders them unusable, the City may rebuild or repair any portions of the building structure destroyed or damaged, and if the cause was beyond the control of Concessionaire, the obligation of Concessionaire to pay the compensation hereunder shall abate as to such damaged or destroyed units of equipment during the time they are unusable or until replacement equipment can be installed, provided the replacement equipment can be located within reasonable proximity to the damaged equipment. As to Pay Telephones, such abatement shall be prorated based upon the Concessionaire's loss of revenues that result from the damaged or destroyed Pay Telephones. Abatement shall not be granted to the Concessionaire for compensation payable for Pay Telephones or PPC Vending Units, for any period during which it is possible for Concessionaire to repair or replace damaged or destroyed units of Concession Equipment, but Concessionaire has failed to make reasonable efforts to accomplish such repair or replacement.

#### **10.02 COOPERATION IN THE EVENT OF LOSS:**

If the City elects to rebuild, Concessionaire must replace all Concession Equipment at its sole cost and in accordance with all performance standards, DIA Tenant Development Guidelines and Exhibit X. The City and Concessionaire shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss or damage.

#### **10.03 LOSS OR DAMAGE TO PROPERTY:**

The City shall not be liable for any loss of property by theft or burglary from the Airport or for any damage to person or property on the Airport resulting from operating the elevators, or electric lighting, or water, rain or snow, which may come into or issue or flow from any part of the Airport, or from the pipes, plumbing, wiring, gas or sprinklers thereof or that may be caused by the City's employees or any other cause, and Concessionaire agrees to make no claim for any such loss or damage at any time, except for any abatement of compensation or right to insurance proceeds provided for in this Section.

#### **10.04 MUTUAL WAIVER/INSURANCE COVERAGE:**

The City and Concessionaire each waive any and every claim for recovery from the other for any and all loss of or damage to the Concession Equipment Locations or to the contents thereof, which loss or damage is covered by valid and collectible fire and extended insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Since this mutual waiver will preclude the assignment of any such claim by subrogation or otherwise to an insurance company or any other person, Concessionaire agrees to give to each insurance company which has issued, or may issue, to the Concessionaire policies of fire and extended coverage insurance, written notice of the terms of this mutual waiver, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverage by reason of this waiver.

### **SECTION 11 -- PROMOTIONAL PROGRAM; ADVERTISING**

#### **11.01 ADVERTISING AND PUBLIC DISPLAYS:**

Concessionaire shall not install or have installed or allow to be installed upon the Concession Equipment or Concession Equipment Locations, without the prior written approval of the Manager or his authorized representative, any sign, either lighted or unlighted, poster or other display of advertising media, including material supplied by manufacturers of merchandise offered for sale, as well as other types of display specified in the DIA Design Standards or DIA Tenant Development Guidelines. Permission will not be granted for any advertising that fails to comply with DIA Design Standards, or any advertising material, fixture or equipment that is not affixed to the equipment or enclosures. Concessionaire shall coordinate with the Airport's advertising concessionaire to ensure any advertising generated by Concessionaire will not infringe upon such advertising agreement with the City.

## SECTION 12 – MISCELLANEOUS PROVISIONS

### 12.01 AGREEMENT BINDING UPON SUCCESSORS

This Agreement, subject to the provisions of the section entitled "Assignment," shall be binding upon and extend to the heirs, personal representatives, successors and assigns of the respective parties hereto.

### 12.02 AGREEMENT MADE IN COLORADO

This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado.

### 12.03 AGREEMENTS WITH THE UNITED STATES

This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes and the expenditure of federal funds for the development of the Airport or airport system. The provisions of the attached Appendices 1, 2 and 3 are incorporated herein by reference.

### 12.04 ASSIGNMENT

Concessionaire covenants and agrees not to assign, pledge or transfer its rights in this Agreement, in whole or in part, except as otherwise provided herein. Any transfer of 50% or more of the outstanding voting stock of Concessionaire or of 50% or more of the equity interest in Concessionaire, including transfer by merger, consolidation or liquidation or other change in ownership of Concessionaire, shall constitute a transfer by Concessionaire under this Section; provided, however, that transfers of such stock or equity interest that result from the death of the owner or otherwise, and that are approved in advance by the Manager, shall not constitute a transfer in violation of this Section. Any attempt by the Concessionaire, except as required herein, to assign or in any way transfer its interest in this Agreement, in whole or in part, without such prior written consent of the Manager shall, at the option of said Manager, automatically terminate this Agreement and all rights of the Concessionaire hereunder, except for transfers resulting from the death of the owner or otherwise which have been approved by the Manager.

### 12.05 BOND ORDINANCES

This Agreement is in all respects subject and subordinate to any and all City bond ordinances applicable to the Airport and airport system and to any other bond ordinances that should amend, supplement or replace such bond ordinances. The parties to this Agreement acknowledge and agree that all property subject to this Agreement which was financed by the net proceeds of tax-exempt bonds is owned by the City, and Concessionaire agrees not to take any action that would impair, or omit to take any action required to confirm, the

treatment of such property as owned by the City for purposes of Section 142(b) of the Internal Revenue Code of 1986, as amended. In particular, the Concessionaire agrees to make, and hereby makes, an irrevocable election (binding on itself and all successors in interest under this Agreement) not to claim depreciation or an investment credit with respect to any property subject to this Agreement which was financed by the net proceeds of tax-exempt bonds and shall execute such forms and take such other action as the City may request in order to implement such election.

#### **12.06 FORCE MAJEURE**

Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to causes beyond the control of that party, including without limitation strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such party is not responsible or which is not in its power to control, but in no event shall this paragraph be construed so as to allow Concessionaire to reduce or abate its obligation to pay the Minimum Annual Guarantee or Percentage Compensation Fee herein, or any other compensation due hereunder.

#### **12.07 INCONVENIENCES DURING CONSTRUCTION**

Concessionaire recognizes that from time to time during the Term of this Agreement, it may be necessary for City to commence or complete extensive programs of construction, expansion, relocation, maintenance and repair in order that the Airport and its facilities may be maintained, improved, and operated in accordance with any present or future master layout plan, and that such construction, expansion, relocation, maintenance and repair may inconvenience the Concessionaire in its operation at the Airport. Concessionaire agrees that no liability shall attach to City, its officers, agents, employees, contractors, subcontractors and representatives by way of such inconveniences, and Concessionaire waives any right to claim damages or other consideration therefrom.

#### **12.08 MASTER PLAN**

Concessionaire agrees that no liability shall attach to the City, its officers, agents and employees by reason of any efforts or action toward implementation of any present or future master layout plan for the Airport, and waives any right to claim damages or other consideration arising therefrom.

#### **12.09 NONDISCRIMINATION**

In connection with the performance of work under this Agreement, Concessionaire agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability, and

Concessionaire further agrees to insert the foregoing provision in all subcontracts hereunder.

#### **12.10 NOT PARTNERSHIP**

Notwithstanding the provisions herein for payment by Concessionaire to City of sums based upon a percentage of Gross Revenues, it is expressly understood and agreed that the City shall not be construed or held to be a partner, associate or joint venturer of Concessionaire in the conduct of its business. Concessionaire shall at all times have the status of an independent contractor without the right or authority to impose tort or contractual liability upon the City.

#### **12.11 NOTICES**

All notices required to be given to the City or Concessionaire hereunder shall be in writing and sent by certified mail, return receipt requested, as follows:

to City:	Manager of Aviation Denver International Airport Airport Office Building, 9th Floor 8500 Peña Boulevard Denver, CO 80249-6340
with a copy to:	Airport Telecommunications Section Denver International Airport Airport Office Building, 9th Floor 8500 Peña Boulevard Denver, CO 80249-6340
to Concessionaire:	RMES COMMUNICATIONS, INC. 3840 York Street, Ste. 200B Denver, CO 80205 Attention: President Herman Malone

Either party hereto may designate in writing from time to time the address of substitute or supplementary persons within the State of Colorado to receive such notices. The effective date of service of any such notice shall be the date such notice is mailed or delivered to Concessionaire or Manager.

#### **12.12 PARAGRAPH HEADINGS**

The paragraph headings herein are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

#### **12.13 PATENTS AND TRADEMARKS**

Concessionaire represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under this Agreement. Concessionaire will not utilize any

protected patent, trademark or copyright, including any patents, trademarks or copyrights owned by the City, in its operations under this Agreement unless it has obtained proper permission and all releases and other necessary documents. Concessionaire agrees to save and hold harmless the City, its officers, employees, agents and representatives from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Concessionaire under this Agreement.

#### **12.14 SECURITY**

Concessionaire shall cause its officers, contractors, agents and employees to comply with any and all existing and future security regulations adopted by the City or the Transportation Security Administration (TSA), including 49 CFR Subtitle B, Chapter XII, as amended from time to time.

#### **12.15 SEVERABILITY**

If any provision in this Agreement is held by a court to be invalid, the validity of other provisions herein, which are severable, shall be unaffected.

#### **12.16 THIRD PARTIES**

This Agreement does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties (except parties to whom the Concessionaire may assign this Agreement in accordance with the terms hereof, and except any successor to the City) any right to claim damages or to bring any suit, action or other proceeding against either the City or the Concessionaire because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

#### **12.17 USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS**

Concessionaire, its officers, agents and employees shall cooperate and comply with the provisions of the Federal Drug-Free Workplace Act of 1988 and Denver Executive Order No. 94, or any successor thereto, concerning the use, possession or sale of alcohol or drugs. Concessionaire shall also prohibit consumption of alcohol within the Concession Equipment Location. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring Concessionaire from City facilities or participating in City operations.

#### **12.18 CITY SMOKING POLICY**

Concessionaire agrees that it will prohibit smoking by its employees and the public in the Concession Equipment Location and will not sell or advertise tobacco products. Concessionaire acknowledges that smoking is not permitted in Airport buildings and facilities except for designated smoking lounges. Concessionaire and its officers, agents and employees shall cooperate and comply with the provisions of the City's Executive Order No. 99 dated

December 1, 1993 and Executive Order No. 13 dated July 31, 2002, and with the provisions of Denver Revised Municipal Code, §§ 24-301 to 317 et. seq.

**12.19 ENTIRE AGREEMENT**

The parties acknowledge and agree that the provisions herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications, unless expressly reserved to the Manager herein, shall be valid unless executed by an instrument in writing by all the parties with the same formality as this Agreement.

**12.20 FINAL APPROVAL**

This Agreement is expressly subject to, shall not be or become effective or binding on the City until approved by the City Council, and fully executed by all signatories of the City and County of Denver.

**[SIGNATURE PAGE FOLLOWS]**

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

CITY AND COUNTY OF DENVER

ATTEST: DEPUTY CITY CLERK

*Wanda Vincent*

WAYNE E. VADEN, Clerk and Recorder, Ex-officio Clerk of the City and County of Denver



*John Habeler*  
Mayor

RECOMMENDED AND APPROVED:

APPROVED AS TO FORM:

COLE FINEGAN, City Attorney for the City and County of Denver

By *[Signature]*  
Assistant City Attorney

By *[Signature]*  
Co-Manager of Aviation

By *[Signature]*  
Co-Manager of Aviation

REGISTERED AND COUNTERSIGNED:

By *[Signature]*  
Auditor

Contract Control Number AR55012

"CITY"

PARTY OF THE FIRST PART

ATTEST:

By \_\_\_\_\_

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

By *[Signature]*

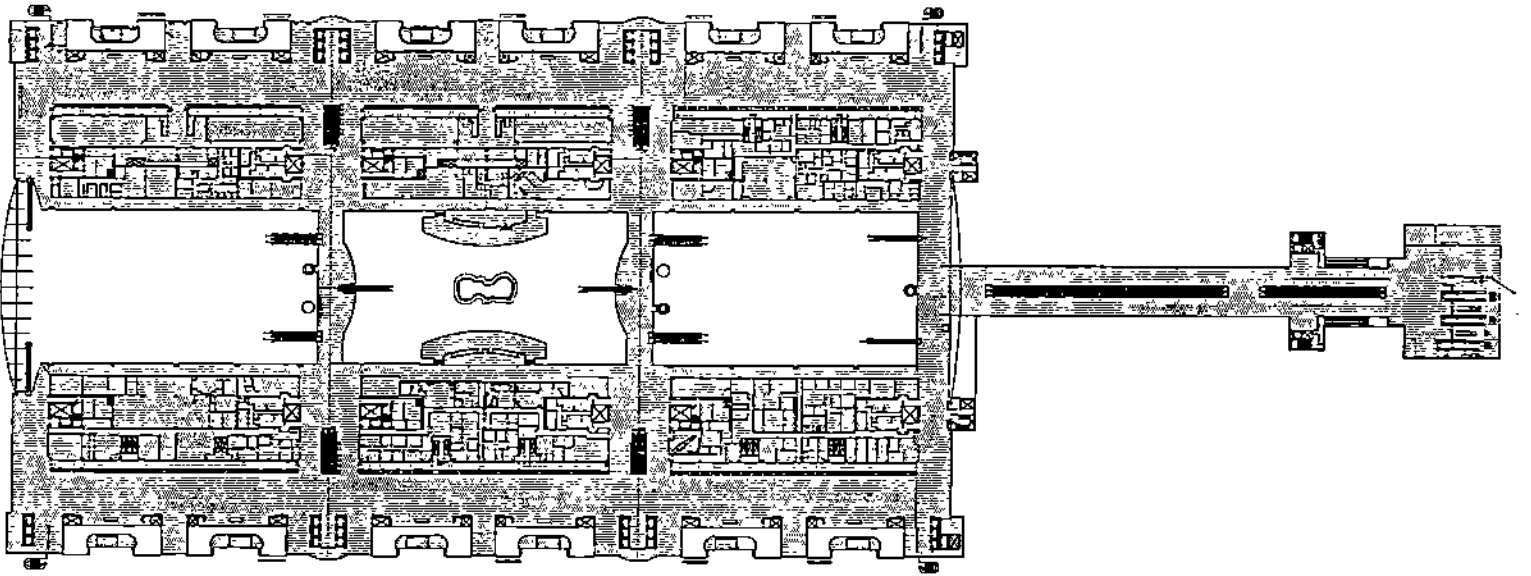
Title: *President - CEO*

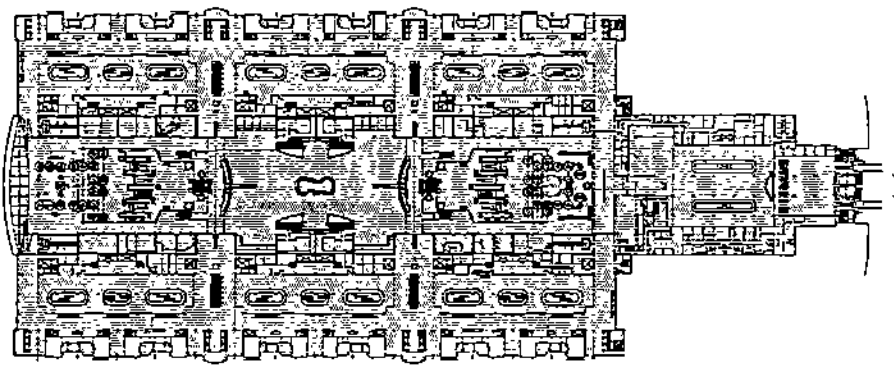
"RMES COMMUNICATIONS, INC."

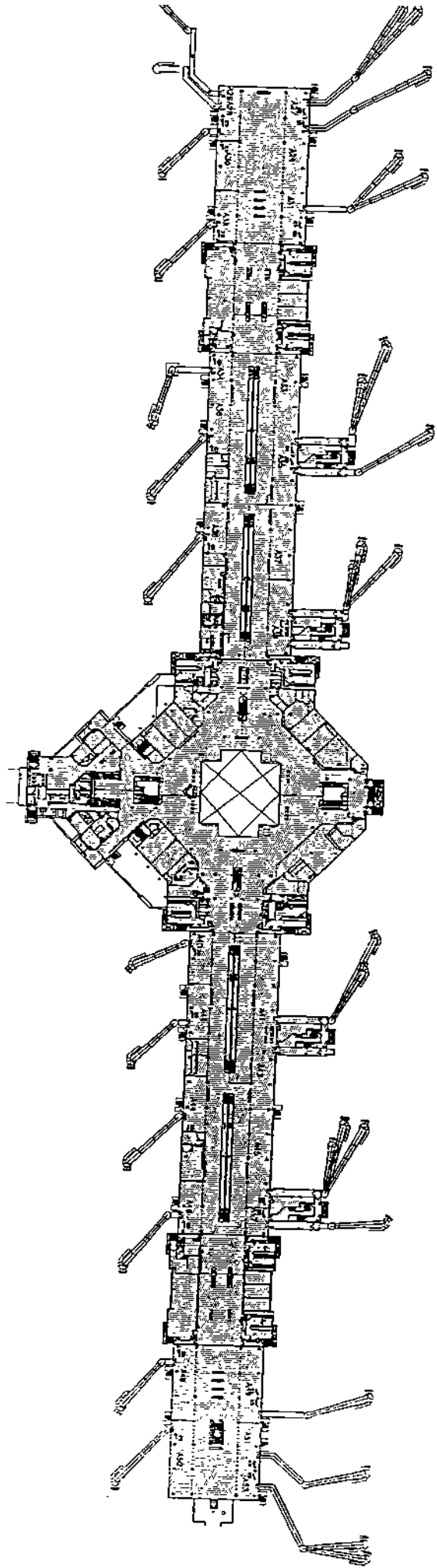
PARTY OF THE SECOND PART

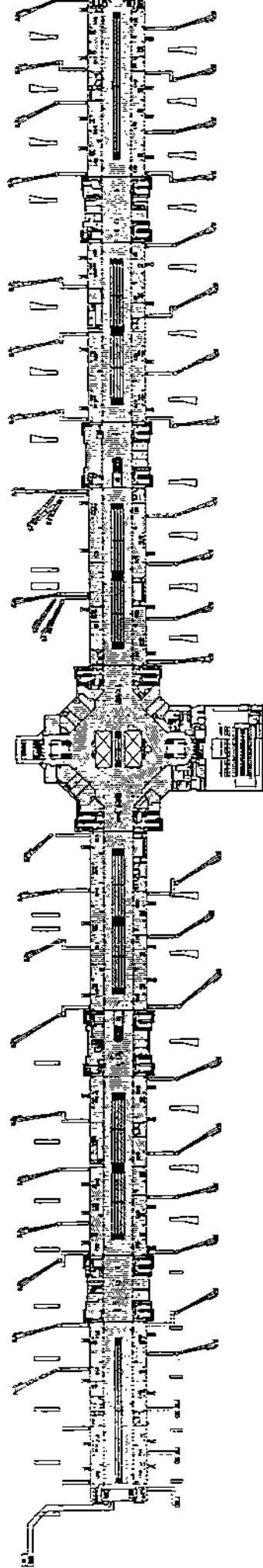
**EXHIBIT A**

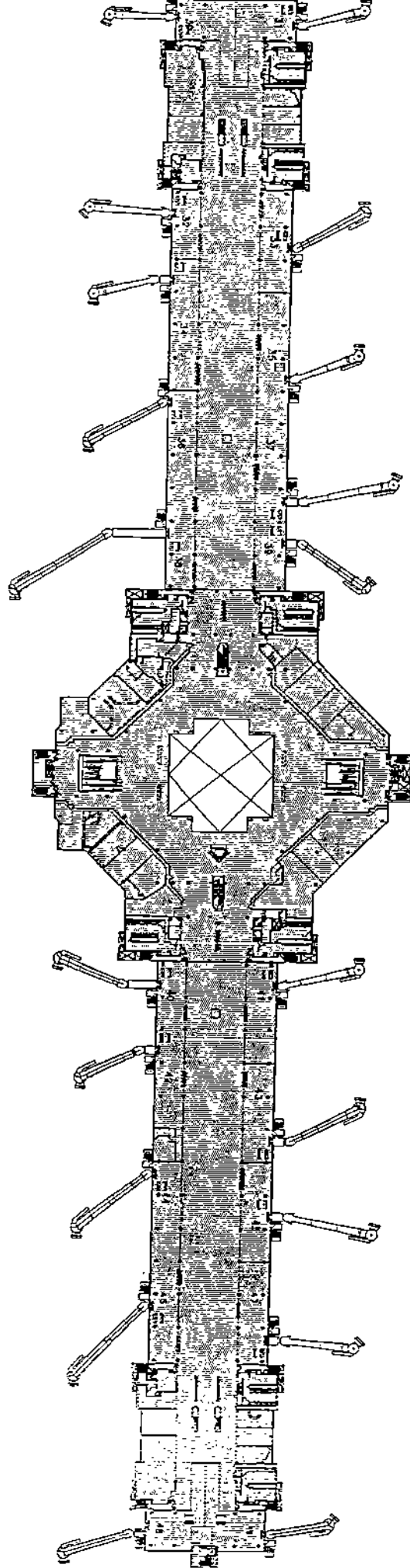
**CONCESSION SPACE PLAN**











## EXHIBIT B

### DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

#### RMES COMMUNICATIONS, INC.

**SECTION 1 – GENERAL.** Except as the context otherwise requires and unless otherwise expressly provided herein, the capitalized terms in this Exhibit to the Agreement shall have the same meaning as any similarly capitalized terms defined in the Agreement or in any exhibit thereto.

**SECTION 2 – DBE OBLIGATION.** This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23 and Part 26. Concessionaire agrees that disadvantaged business enterprises as defined in 49 CFR Part 23 and Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. In this regard, Concessionaire shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 and Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR Part 23 and Part 26.

**SECTION 3 – OTHER AGREEMENTS.** The Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters into and cause those businesses to similarly include the statements in further agreements.

**SECTION 4 – DBE PARTICIPATION IN THIS AGREEMENT.** Concessionaire has represented that it is qualified as a disadvantaged business enterprise (DBE) under 49 CFR Part 23 and Part 26 of the regulations of the U.S. Department of Transportation.

**EXHIBIT C**

**INSURANCE CERTIFICATE**

PLEASE GIVE THIS FORM TO YOUR INSURANCE AGENT FOR COMPLETION. THIS IS THE ONLY CERTIFICATE FORM THAT WILL BE ACCEPTED BY THE CITY AND COUNTY OF DENVER.

**CITY AND COUNTY OF DENVER  
CERTIFICATE OF INSURANCE FOR DEPARTMENT OF AVIATION (02/07/01)**

Original COI

Advice of Renewal

Change

Party to Whom this Certificate is Issued:

Name and Address of Insured:

CITY AND COUNTY OF DENVER  
Manager of Aviation  
Denver International Airport  
8500 Peña Boulevard, Room 8810  
Denver CO 80249

**CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES:**

**I. MANDATORY COVERAGE**

**WC-1 Colorado Workers' Compensation and Employer Liability Coverage**

Coverage	Minimum Limits of Liability (In Thousands)	Policy No. & Company	Policy Period
COLORADO Workers' Compensation and Employer's Liability	WC Limits: \$100, \$500, \$100  Limits:		

Any Policy issued under this section must contain, include or provide for the following:

- All States Coverage or Colorado listed as a covered state for the Workers' Compensation
- Waiver of Subrogation and Rights of Recovery against the City and County of Denver (the "City"), its officers, officials and employees.

**CGL-1 Commercial General Liability Coverage**

Coverage	Minimum Limits of Liability (In Thousands)	Policy No. & Company	Policy Period
Commercial General Liability (coverage at least as broad as that provided by ISO form CG0001 or equivalent)	Each Occurrence: \$1,000 General Aggregate Limit: \$2,000 Products-Completed Operations Aggregate Limit: \$1,000 Personal & Advertising Injury: \$1,000 Fire Damage Legal - Any one fire \$50 (\$300 if a City facility is leased)		

Any Policy issued under this section must contain, include or provide for the following:

- City, its officers, officials and employees as additional insureds, per ISO form CG2026.
- Coverage for defense costs of additional insureds outside the limits of insurance, per CG0001.
- Contractual Liability.
- The full limits of coverage must be dedicated to apply to this project/location, per ISO form CG2503 or equivalent.
- Waiver of Subrogation and Rights of Recovery, per ISO form CG2404 or equivalent.

**BAL-1. Business Automobile Liability Coverage**

Coverage	Minimum Limits of Liability (In Thousands)	Policy No. & Company	Policy Period
Business Automobile Liability (coverage at least as broad as ISO form CA 0001)	Combined Single Limit \$1,000		

Any Policy issued under this section must contain, include or provide for the following:

- Symbol 1, coverage for any auto. If no autos are owned, Symbols 8 & 9, (Hired and Non-owned) auto liability.
- If this contract involves the transport of hazardous cargo such as fuel, solvents or other hazardous materials may occur, then Broadened Pollution Endorsement, per ISO form CA 9948 or equivalent and MCS 90 are required.
- City, its officers, officials and employees as additional insureds, per ISO form CG2026 or its equivalent.

## II. ADDITIONAL COVERAGE

(Coverage is required only when City has checked the box to the left of each coverage section)

### X UL-1 Umbrella Liability

Coverage	Minimum Limits of Liability (In Thousands)	Policy No. & Company	Policy Period
Umbrella Liability X Non-restricted area access	Each occurrence and aggregate \$1,000		
<input type="checkbox"/> Unescorted airside access	Each occurrence and aggregate \$9,000		

Any Policy issued under this section must contain, include or provide for the following:

1. City, its officers, officials and employees as additional insureds.
2. Coverage in excess of, and at least as broad as, the primary policies in sections WC-1, CGL-1, and BAL-1.
3. If operations include unescorted airside access at DIA, then a \$9 million Umbrella Limit is required.

## III. ADDITIONAL CONDITIONS

It is understood and agreed, for the benefit of the City, that the following additional conditions shall apply to all coverage specified herein:

1. All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
2. With the exception of professional liability, and auto coverage, a Waiver of Subrogation and Rights of Recovery against the City, its officers, officials and employees is required for each coverage period.
3. The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
4. Advice of renewal is required
5. All insurance companies issuing policies hereunder must carry at least an A -VIII rating from A.M. Best Company or obtain a written waiver of this requirement from the City's Risk Administrator.
6. Compliance with coverage requirement by equivalent herein must be approved in writing by the City's Risk Administrator prior to contract execution.
7. No changes, modifications or interlineations on this Certificate of Insurance shall be allowed without the review and approval of the Risk Administrator prior to contract execution.

## IV. NOTICE OF CANCELLATION

It is understood and agreed that should any Policy issued hereunder be cancelled or non-renewed before the expiration date thereof, the issuing company or its authorized Agent shall mail to the address shown above, by mail, return receipt requested, forty-five (45) days prior written notice ten (10) days for non-payment of premium, referencing the contract/project number set forth herein.



**EXHIBIT D**

**EQUIPMENT AND SERVICE**  
**REQUIREMENTS**

# Technical Proposal

## Technical Discussion

The RMES solution for Denver International Airport will have Millennium multi-pay terminals at its core. The Millennium pay telephone allows calls to be made with coin, credit and calling card. The terminal connects to a standard analog central-office (CO) line with answer supervision and a supplemental low-voltage DC power source. The Millennium terminal uses a packet-switched network (PSN) to interconnect to the Millennium Manager software. The terminals use this central computer system to receive: card authorizations, coin and credit card call rating, call billing, terminal-alarm routing and functional tables. The terminal sends the following information up to the Millennium Manager: terminal statistics, alarms status messages and billing records. If the supplemental power fails, the terminal uses power from the telephone line to provide minimum service, which can be determined at any time. Typically these include: free, local, emergency, and operator-assisted calls.

Millennium pay telephone specifications are as follows:

Height:	533MM (21 inches)
Width:	194mm (7.8 inches)
Depth:	155mm (6.1 inches)
Weight:	19.05kg (42 pounds)
Handset:	Enhanced G-Type Electret microphone and dynamic receiver Armored cable connection
Environment:	Temperature: Operating -40C to +60C Non-operating -50C to +70C Maximum temperature shock -40C to +60C in 5 minutes Humidity: Operating & Non-operating up to 95% at +40C
Power:	Supplementary power*

	<p>Local power Wall plug-in class 2 transformer (110VAC) or Direct current from a central location</p> <p>*In the event of a power failure, Millennium will automatically switch to its power-fail mode so customers can still reach emergency numbers and place operator assisted calls.</p> <p>Recommended Source: 0.5A, 24VDC+/- 15%</p> <p>Acceptable Voltage After Startup 14VDC to 30VDC</p>
Line Requirements:	Standard analog loop, central office (CO) line; not a coin line
Design Features for the Physically Challenged:	<p>Visual and voice prompts</p> <p>Adjustable volume control</p> <p>Recessed coin slot</p> <p>Oversized, wide-set dialing buttons</p>
Compliance for Hearing Aids:	EIA RS504 and CSA CAN#-T515
Display:	Vacuum Fluorescent (VFD)
Languages: (Primary/Secondary)	<p>English</p> <p>French</p> <p>Spanish</p> <p>Japanese</p>

### External Terminal Features

- Push-button keypad.
- Vacuum fluorescent display (VFD) a high-quality 2-line-by-20-character, 5X7 dot matrix VFD that displays visual prompts to guide users through making calls, etc.
- Card reader: accepts selected credit and calling cards.
- Volume control – allows users to change handset volume. Four levels are included. Volume reverts to the lowest level when the handset is hung up.
- Next-call button – allows users to place another call without reinserting a card providing the handset has not been returned to the hook.
- Language button – the voice and visual prompts can be heard and displayed in an

alternative language. The language button toggles between two languages.

- Voice prompts – heard through the headset, the voice prompts back up the visual prompts.
- Quick access keypad for one-button dialing of pre-selected numbers.
- Hearing-aid compatible handset with armored cord.
- Coin vault sensors to monitor the status of the lock and coin box.
- Advertising display – The bottom line of the VFD can be used to display advertising or information messages.
- Voice and data on a single line – can make data and voice calls on the same line.
- Power-fail mode – if both primary and supplementary power fail, the terminal reverts to a power-fail mode, so a user can make emergency and operator-assisted calls.

RMES is the incumbent provider of both payphones and calling cards at DIA. As a result, it will be able to immediately respond to the Notice to Proceed. Existing cabling, wiring, etc. are well known to RMES team members. It is in a unique position of being able to quickly enact changes that come with the new contract with a minimum of disruption to DIA and its passengers. The team will not have to procure new service – it is already “up and running”.

For example, all the pay telephones at DIA are capable of placing local, IntraLATA, InterLATA and international calls. RMES has to do nothing additional. It crossed those hurdles over ten years ago. The same can be said for 911,800,866,877,411 and 211 calls. All are routed directly and not through an intermediary. Similarly, all TDD/TTY equipment is approved and operating and meet all DIA rules.

RMES' proposed system complies with the applicable provisions of Federal and State Occupational Safety and Health Acts, the Telecommunications Act of 1996 and the Americans With Disabilities Act. It is also consistent with all the rules and regulations pursuant to those statutes as well as the electrical and building codes of Denver County and the State of Colorado and all other applicable laws, regulations, etc. of any governmental entities that have jurisdiction. All electrical and electronic components have UL approval and meet all OSHA requirements were applicable.

The pay telephone system at DIA is built to use regular “POTS” lines to connect. A single ‘POTS’ line brings service to the Millennium multi-pay terminal. There are no switches.

RMES uses APS Millennium Manager to remotely manage system operations. That will not change. The in-place system will change little. For example, the credit card swipe that is currently used works and will stay in place.

The Millennium system (developed by Nortel and later sold to QuorTech) was an industry leader in the 1997-98 timeframe. Little, if any, technical development has been created for the line since that time. RMES management believes little or no further technology development on the Millennium system will take place.

Therefore, RMES hereby would like to reserve the possibility to offer a non-QuorTech solution to DIA at some point. RMES believes that DIA and its customers may be better served with a more modern payphone solution that has the ability to offer more services.

The seventeen Opal Manufacturing prepaid calling card vending machines are similar to the ones currently installed at DIA. The Company plans to upgrade the current machines to a more modern model as part of the installation process of this contract. These vending machines have the capability to either stand on a pedestal or be mounted into recessed locations. Flexibility is one of the reasons RMES made this the product of choice. The vending machines, similar to the pay telephones, contain diagnostic routines as well as reporting and other functions. On-site RMES personnel are trained to operate and make repairs on this equipment.

## EXHIBIT X

### PROVISIONS FOR DESIGN AND CONSTRUCTION OF IMPROVEMENTS

#### GENERAL PROVISIONS

SECTION 1: GENERAL. Except as the context otherwise requires and unless otherwise expressly provided herein, the capitalized terms in this Exhibit X to the Agreement shall have the same meaning as any similarly capitalized terms defined in the Agreement or any exhibit thereto. Reference to Denver International Airport (DIA), Department of Aviation or Manager of Aviation shall mean that entity specifically, or that division or individual authorized to represent that entity. Reference to Tenant shall include "Concessionaire" as the context requires.

SECTION 2: IMPROVEMENTS. "Improvements", which may also be known as "Concession Improvements" or "Tenant Improvements", shall mean any new construction, equipment, finishes, fixtures, systems, furnishings and furniture installed by Tenant, as well as modifications or alterations to existing construction, equipment, finishes, fixtures, systems, furnishings and furniture which conform to drawings and specifications approved in writing by the Manager of Aviation. Such drawings and specifications must provide for the necessary and proper operation of the business contemplated under this Agreement.

SECTION 3: COMPLIANCE WITH LAWS AND REGULATIONS. Tenant agrees to comply with and require its contractors to comply with all applicable federal, state and local laws and all general rules and regulations applicable to construction at DIA, including but not limited to payment of prevailing wages and sales and use taxes, compliance with the Americans with Disabilities Act, 42 USC 12,000 et seq. and its regulations.

In addition to the above, the Tenant and its contractors shall comply with all DIA specific rules and regulations regarding site access, use of site, safety, security, design and construction and shall obtain and pay for all related permits. Failure to comply will be grounds for denial of access and/or suspension of construction activities. Regulations in force specific to DIA include but are not limited to the following:

The Denver Municipal Airport System Rules and Regulations  
DIA Design Standards  
DIA Tenant Development Guidelines

SECTION 4: PAYMENT OF PREVAILING WAGE RATES. Tenant shall require its contractor and all of its subcontractors to pay every worker, laborer or mechanic employed by them in the performance of the construction of the Improvements prevailing wages, including fringe benefits or their cash equivalent, for the same class and kind of work in the City and County of Denver, as determined by the Career Service Board under the provisions of Section 20-76 of the Denver Revised Municipal Code. The wages shall be those prevailing at the time of the contractor's final bid, and the Tenant shall require the contractor to submit with its bid the wage schedule applicable. The contractor shall post in a prominent and easily accessible place at the site of the Improvements the scale of wages to be paid by the contractor and all subcontractors at any tier working under the contractor. The contractor shall furnish to the Mayor's Office of Contract Compliance and to the Auditor, or his authorized representative, each week during which work is in progress, a true and correct copy of the payroll records of all workers employed to perform the work. All payroll records shall include information showing the number of hours worked by each worker, the hourly pay of such worker, any deductions made from pay, and the net amount of pay received by such worker for the period covered by the payroll. The payroll record shall be accompanied by a sworn statement of the contractor that the copy is a true and correct copy of the payroll records of all workers performing the work, either for the contractors or subcontractors, that payments were made to the workers as set forth in the payroll records, that no deductions were made other than those set

forth in such records, and that all workers were paid the prevailing wages as of the contractor's final bid for the work. Compliance with above requirements shall be deemed a work "specification" as such word is used in Section 5-18(d), Denver Revised Municipal Code. Violation of the prevailing wage requirement and its documentation, hereinabove set forth, shall result in an order from the Manager of Aviation for the work to cease until there is satisfactory evidence that the violation has been remedied and will not reoccur. The issuance of a stop-work order shall not relieve contractor's surety of any liability on contractor's bond or bonds, but such a stop-work order shall be deemed a default by the contractor insofar as said surety's obligation is concerned.

**SECTION 5: SBE PARTICIPATION.** Tenant agrees that it shall provide for participation of Small Business Enterprises (SBEs) in the design and construction of Improvements, in compliance with Article VII, Division 1 of Chapter 28, Denver Revised Municipal Code (D.R.M.C.), or any successor ordinance effective at the time of any design and construction which Tenant may carry out during the life of this Agreement. The goal for percentage of design and construction work to be performed by SBE firms is set forth on the Construction Summary Page, and Tenant shall make a good faith effort to meet such goals as have been set in accordance with the ordinance. Further, the City and County of Denver encourages Tenants to utilize SBEs and to divide the design and construction work into economically feasible units or segments to allow the most opportunity for subcontracting.

**SECTION 6: INSURANCE REQUIREMENTS.** Refer to Appendix B of Manual 1 of the DIA Tenant Development Guidelines for insurance requirements for Tenant, Tenant's Design Consultants, and Tenant's Contractors for required insurance coverage for design and construction of Improvements and completed Improvements, including requirements for submittal of certificates and renewals of insurance.

**SECTION 7: EVIDENCE OF INSURANCE.** Certified copies of required insurance policies, or certificates, in the standard form required, evidencing the existence thereof, or binders, shall be delivered to the DIA Division of Planning and Development at least 15 days prior to the commencement of any design work to be performed by Tenant's consultants and any construction work for Improvements. If a binder is delivered, it shall be replaced within 30 days by a certified copy of the policy or the required certificate. Policies shall be in a form and of a company acceptable to and approved by the City, and certificates shall be on standard City and County of Denver Certificate of Insurance forms.

Each such policy or certificate shall contain a valid provision or endorsement that the policy may not be canceled, terminated, changed or modified without 45 days prior written notice (10 days for nonpayment of premium) given by certified mail, return receipt requested, to the Manager of Aviation, 8500 Peña Boulevard, Denver, Colorado 80249-6340.

Each such policy or certificate shall further provide that any coverage afforded the City and County of Denver as an additional insured under the policy shall apply as primary insurance and any other insurance issued to the City and County of Denver shall apply as excess and noncontributing insurance.

Any renewal certificate shall be delivered to the Manager of Aviation at least 10 days prior to the expiration of each expiring policy. If at any time any of the insurance policies shall be or become unsatisfactory to the Manager of Aviation as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to the Manager of Aviation, Tenant shall promptly obtain a new and satisfactory replacement policy.

**SECTION 8: LIMITATION ON LIABILITY.** Tenant agrees that no liability shall attach to the City for any damages or losses incurred or claimed by Tenant or any other person or party on account of the construction or installation of the Improvements or other Improvements to the Tenant's site made by the Tenant. Tenant agrees that no liability shall attach to the City for any interference or delay caused by construction in adjacent areas, travelers, other businesses or airport operations, including without limitation damages or losses in the nature of delay damages, lost labor

productivity, and impact damages. Tenant agrees to indemnify, defend and hold harmless the City from any loss, cost, damage or expense incurred, claimed, asserted or arising in connection with Tenant's or its contractors' or agents', construction or installation of the Improvements or other Improvements to the site made by the Tenant.

## DESIGN PROVISIONS

**SECTION 9: DESIGN PROCEDURES.** Refer to Manual 1 of the DIA Tenant Development Guidelines for procedures and requirements regarding design, including but not limited to design process and schedule, submittal requirements, review and approval process, design modifications and project coordination.

Approval of the Manager of Aviation extends to and includes consideration of architectural, structural, mechanical, electrical, specialty systems, site, signage, landscaping and aesthetic matters, and DIA reserves the right to reject any design submitted and to require Tenant to resubmit designs and layout proposals until they meet with the approval of the Manager of Aviation. No substantial changes or alterations shall be made in said drawings or specifications after approval by the Manager of Aviation, and no alterations or improvements shall be made to or upon the Tenant's site without prior approval.

**Tenant CADD Submittal Requirements:** All issue for construction and project record drawings shall be provided by the tenant to DIA in AutoCAD Rel. 14 or 2000 .dwg file format in accordance with DIA CADD standards set forth in Design Standards Manual 1.

**Concession CADD Submittal Requirements:** AutoCAD Rel. 14 or 2000 .dwg format CADD files that match the tenant's hardcopy drawings must be submitted via: CD-ROM, 3.5" disk, IOMEGA Zip/JAZZ(1gb) disk in MS-Windows format. All drawings must represent precision input and follow industry standard CADD practices. The drawings must reflect true design dimensioning and must NOT be graphic representations of the design. All site, civil and utility drawings MUST be produced using units in feet and the DIA Grid Coordinate System. The DIA project manager must approve submittal and may require adherence to the requirements set forth in DIA design standards.

In addition to the above, Tenant is responsible for coordination with the Denver Building Inspection Division, Zoning, Fire Department, Wastewater Management, Consumer Protection, Health and Hospitals, etc. as may be required to comply with submittal, review and approval requirements in order to obtain all required permits. Prior to the issuance of a Notice to Proceed with Improvements from the Manager of Aviation, the Tenant shall obtain and pay for all approvals, licenses and permits required for the Improvements. Whenever a conflict arises between state or local law, ordinances or regulations and federal law or regulations, the most stringent law or regulations applicable to this Agreement shall control.

**SECTION 10: DESIGN STANDARDS.** First-class standards of design and construction are required, and all Improvements shall conform with applicable statutes, ordinances, building codes, and regulations as well as the DIA Design Standards and DIA Tenant Development Guidelines. The approval given by the Manager of Aviation shall not constitute a representation or warranty as to such conformity; therefore, responsibility remains with the Tenant at all times.

## CONSTRUCTION PROVISIONS

**SECTION 11: CONSTRUCTION PROCEDURES.** Refer to Manual 1 of the DIA Tenant Development Guidelines for procedures and requirements regarding construction, including but not limited to construction schedule, submittal requirements, review and approval process, construction inspections, construction modifications and project coordination.

DIA shall at all times have the right of access to the construction site and to monitor and inspect the construction of all Improvements to insure that all Improvements are constructed and installed in

compliance with approved drawings and specifications. DIA shall have the right to halt construction of the Improvements or deny access to the site at any time if construction is at material variance from the approved drawings and specifications until such variance is corrected, or if such construction poses an immediate safety hazard, until such safety hazard is eliminated.

In order to assist DIA in monitoring and inspecting construction, the Tenant shall submit, or cause to be submitted for information and record, copies of all field test reports, certificates of insurance, waivers of liens, material certificates, shop drawings and submittals for review for compliance with DIA design and construction standards, contractor application for payment requests, construction progress reports, notification of substantial completion of Improvements and final acceptance, copies of maintenance and operation manuals, as-built documents, and any other documents related to the construction of the Improvements which may be reasonably requested by DIA.

No change order or other contract modification which materially changes the scope of the Improvements shall be executed without prior approval of the Manager of Aviation. The Building Inspection Division of the City and County of Denver shall also receive copies of all change orders. Any conditional approval or disapproval shall be accompanied by an explanation of the reasons.

Tenant is responsible for all temporary utilities required during construction. Tenant, at its sole cost and expense, shall obtain and make utility connections, hook-ups or taps as necessary or as stipulated in this Agreement, securing all necessary applications or permits and paying all associated fees. Tenant, at its sole cost and expense, shall provide meters, calibrated by the utility company, and maintain equipment as required to provide accurate measurement of usage and consumption. DIA makes no warranty as to the location of structures, wiring, fixtures, or systems, and Tenant accepts them on an "as is" basis without further recourse against DIA as to their location, number or suitability for the particular purposes of the Tenant.

Tenant is responsible for maintaining a clean, orderly and safe construction site, free of accumulated construction debris and waste materials, and shall be responsible for legal removal of same. Construction shall be accomplished without interfering with travelers, airport operations or other businesses, providing barricades and/or construction enclosures as required.

**SECTION 12: CONSTRUCTION BONDS AND PERMITS.** Prior to Notice to Proceed with construction Improvements, Tenant and its contractor shall deliver to the Manager of Aviation performance and payment bonds and copies of all required permits and licenses as required by Manual 1 of the DIA Tenant Development Guidelines.

**SECTION 13: MODIFICATIONS AND ALTERATIONS.** Modifications and alterations to existing tenant improvements are subject to the same requirements and provisions as new tenant improvements as itemized in this Exhibit X and the Lease Agreement.

**SECTION 14: AS-BUILT DOCUMENTS.** Not later than 60 days after completion of all work for the Improvements, Tenant shall provide DIA complete sets of as-built documents prepared in accordance with DIA requirements. If Tenant fails to provide as-built documents after written notice from DIA, DIA may elect to have the documents completed and charge the Tenant for the costs associated therewith. Tenant agrees that, upon the request of DIA, Tenant will inspect the Improvements jointly with DIA to verify as-built documents.

## APPENDIX NO. 1

### STANDARD FEDERAL ASSURANCES

NOTE: As used below the term "contractor" shall mean and include the "Party of the Second Part," and the term "sponsor" shall mean the "City".

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

1. Compliance with Regulations. The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, creed or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontractors, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. Information and Reports. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor of the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
  - b. Cancellation, termination, or suspension of the contract, in whole or in part.
6. Incorporation of Provisions. The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## APPENDIX NO. 2

### STANDARD FEDERAL ASSURANCES

NOTE: As used below, the term "DOT" means the United States Department of Transportation.

1. The Party of the Second Part for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Party of the Second Part shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

2. The Party of the Second Part for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land: (1) that no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Party of the Second Part shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

## APPENDIX NO. 3

### NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES

The Party of the Second Part assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the Party of the Second Part or its transferee for the period during which Federal assistance is to provide, or is in the form of personal property or real property or an interest herein or structures or improvements thereon. In these cases, this Provision obligates the Party of the Second Part or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

**It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or handicap in public services and employment opportunities.**