RAPID CITY REGIONAL AIRPORT

REQUEST FOR PROPOSALS (RFP)
FOR
Food, Beverage, and Vending (FB&V) Concessions

Proposal Due Date & Time:
December 22, 2026, 2:00 PM MT

EXECUTIVE DIRECTOR
Patrick Dame

AIRPORT BOARD MEMBERS

Robert Hall
Ally Formanek
John Pierce
Bob Conway
Caleb Arceneaux

SECTION 1
RAPID CITY REGIONAL AIRPORT
NOTICE FOR REQUEST FOR PROPOSAL
FOOD, BEVERAGE, AND VENDING (FB&V) CONCESSION

Notice is hereby given that sealed Requests For Proposals (RFP) to provide food, beverage, and vending concession in accordance with the documents prepared by the Airport staff, will be received in the offices of the Rapid City Regional Airport, Rapid City, South Dakota until 2:00 PM MT, December 22, 2026.

RFP documents are on file and may be obtained at the Rapid City Regional Airport Office, 4550 Terminal Road, Suite 102, Rapid City, South Dakota 57703, or https://rapairport.com/request-for-proposals-bids-or-qualifications/

The Rapid City Regional Airport, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4), 28 CFR § 50.3, and 49 CFR Part 21, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, all contractors will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of the owner's race, color, national origin, sex, creed, age, or disability in consideration for an award.

Publication Dates: November 14 & 21, 2026

SECTION 2
GENERAL INFORMATION

It is the intention of the Airport Board to issue a non-exclusive right through an Agreement to provide food, beverage, and vending concessions. This RFP does not obligate the Airport to enter into an Agreement or pay any costs incurred in the preparation of a Proposal pursuant to this RFP or incurred in subsequent negotiations. It is the intention of the Airport to negotiate an Agreement with the Proposer(s), also referred to as "Contractor" within this document, it deems most beneficial to the Airport. During the Proposal evaluation process, the Airport may request additional information or clarification from Proposers.

The Airport reserves the right to accept or reject any or all Proposals, award multiple contracts to more than one Proposer, to waive any informalities and irregularities in the Proposal submission process, to extend the date for submittal of responses, to request additional information from any or all Proposers, to supplement, amend or otherwise modify the RFP prior to the closing date and time, to cancel this request with or without the substitution of another RFP, to negotiate with any Proposers, to re-solicit or cancel the procurement process, or to accept a Proposal which is considered to be in the best interest of the Airport.

By submittal of a Proposal pursuant to this RFP, the Proposer certifies that no fee or commission, or any other thing of value, has been paid or agreed to be paid to any employee, agent, representative, official or current Proposer of the Airport in order to procure the contract described in this RFP. The Proposer also certifies that the financial information in its proposal has been arrived at independently and without consultation, communication or agreement with the Airport, or other Proposers, to restrict competition as to any matter relating to this RFP.

Proposers shall assume full responsibility to review and evaluate the entirety of this RFP, the appendices hereto and any Addendum which may be issued, and to become fully informed of the detailed instructions and requirements of this RFP and the future Agreement expectations. Proposers shall thoroughly examine and become familiar with this RFP, the Proposal forms, the specimen Agreement, and all related documents comprising this RFP and any written Addendum thereto. Each Proposer shall judge for itself all conditions and circumstances within this solicitation having relationship to its respective Proposal.

Submission of a Proposal shall constitute an acknowledgment that the Proposer has thoroughly examined and is familiar with this RFP and Addendum which may be issued. The failure or neglect of a Proposer to receive or examine any RFP documents or Addendum shall in no way relieve Proposer from any obligation with respect to the Proposal or the obligations that result from submitting a successful Proposal. No claim based upon lack of knowledge or understanding of this RFP or its contents shall be allowed. The provisions and terms of the Agreement may be revised or adjusted by the Airport prior to final execution.

Equal Employment Opportunity
Rapid City Regional Airport is an Equal Employment Opportunity (EEO) organization, which does not discriminate on the basis of race, color, national origin, creed, sex, age, or the presence

of any sensory, mental or physical disability in consideration of a contract award. The successful Proposer will be required to comply with all federal, state, and local laws and regulations.

Prohibition Against Lobbying

The Proposer shall not lobby, either on an individual or collective basis, the Airport (its associated City employees, or outside advisors) or any federal, state, or local elected or public officials or staff regarding this RFP or its written Proposal. Proposers, the Proposer's acquaintances, friends, family, outside advisors, agents, or other representatives shall not contact the Airport (its associated City employees, or outside advisors) or any federal, state, or local elected or public officials or Airport staff to arrange meetings, visits, or presentations to influence the outcome of the selection process. Violation of this provision, by or on behalf of a Proposer, intentionally or unintentionally, will result in disqualification of the Proposer and/or rejection of a written Proposal.

Questions, Inquiries and Contact with Airport Staff

The Airport is committed to providing all interested parties with accurate and consistent information in order to ensure that no Proposer obtains an undue competitive advantage. To this end, from the date of this RFP through award of contract, the Airport contact is Toni Broom, Deputy Airport Director for Finance & Administration. All questions from Proposers must be submitted in writing, electronically, to toni.broom@rcgov.org by 5:00 PM MT, Friday, December 11, 2026. It will be the sole responsibility of the Proposer to ensure questions are submitted in a timely manner. Answers to questions, other clarifications and/or Addendums will be posted on the Airport's web site.

It shall be the Proposer's responsibility to monitor the Addendums that may be issued under and as a part of this RFP. Copies of this RFP, and any Addendum issued, are available for viewing at the following link: https://rapairport.com/request-for-proposals-bids-or-qualifications/. Any Addendums so issued are to be considered a part of this RFP document. Therefore, receipt of all Addendums issued during this RFP must be acknowledged on **Attachment B** – Designated Company Point of Contact for this Solicitation and Acknowledgement of Addendum Form.

Required Provisions and Nondiscrimination

The final executed Agreement will contain provisions required by the FAA, including but not limited to, civil rights non-discrimination, and will be subordinate to agreements between the Airport, the United States of America and the state of South Dakota.

An Agreement for work described in this Request for Proposals obligates the Contractor to be non-discriminatory in its employment practices in accordance with the City of Rapid City's Non-Discrimination Policy. In compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the rehabilitation act of 1973, the age discrimination act of 1975, the Americans with disabilities act of 1990, and other nondiscrimination authorities, it is the policy of the City of Rapid City to provide benefits, services, and employment to all persons without regard to race, color, national origin, sex, disabilities/handicaps, age, or income status. No distinction is made among any persons in eligibility for the reception of benefits and services provided by or through the auspices of the City of Rapid City. If the Contractor has any concerns regarding the provisions of services

or employment on the basis of disability/handicap, the Contractor may contact the City's ADA/Section 504 coordinator at (605)394-4136.

Prohibited Entity Certification
The Proposer must submit a Certification of Prohibited Entity Status (**Attachment C**) with its Proposal that certifies that the Proposer is not a Prohibited Entity as defined in SDCL 5-18A-1(19A), defined as a company or organization which is ultimately owned or controlled by a foreign parent entity or the government of the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela. This Certification shall be provided in a form acceptable to the Board. A Proposer shall provide any information requested by the Board to verify the certification, upon request; however, the Board may rely on the certification without conducting any further investigative research or inquiry.

Debarment/Suspension Certification
The Proposer must submit a Certification Regarding Debarment and Suspension (**Attachment D**) with its proposal that certifies that the Proposer is not presently debarred or suspended from bidding by any government entity or is not otherwise prohibited from entering into this Agreement. A Proposer shall provide any information requested by the Airport to verify the certification, upon request; however, the Airport may rely on the certification without conducting any further investigative research or inquiry.

Airport Environment
It is important for Proposers to note that the Airport environment presents a set of unique challenges which are not typical of an off-airport setting.

Facilities must be open three hundred and sixty-five (365) days a year with operating hours and staffing levels reflecting the fluctuation in seasonal and daily passenger traffic. In 2025, 905,211 passengers came through our facility.

The Airport is subject to specific federal security requirements and Proposer employees will be required to abide by all current and future security requirements at all times. Any employee of the selected Proposer who is on-site must pass a TSA mandated security background check and shall be properly badged. Badges must be clearly displayed at all times in the Airport. The cost of badging Proposer employees is the responsibility of the Proposer.

SECTION 3
INFORMATION AND INSTRUCTIONS TO PROPOSERS

Project Overview
Currently the Airport has two restaurant locations: one pre-security and one post-security. The pre-security restaurant has a total footprint of approximately 627 square feet which includes a full kitchen, service counter, and bar. There is an ample amount of seating available for customers which is not included in the restaurant concession footprint. However, this area is cleaned and maintained by the concession. Passengers dining in this area also have access to an outside patio

area. There is a full kitchen with refrigerator, freezer and a food preparation area. The Board owns all the dining tables and chairs, along with a Thermo-Kool (THER-P1500-1) Walk-In Cooler/Freezer combo. All other kitchen equipment is owned by the current concessionaire.

The post-security restaurant has a total footprint of approximately 903 square feet which includes a full kitchen with limited preparation area, a small refrigerator, and freezer. There is a full bar, seating area and grab-and-go line. Seating in this area is more limited. This area was completely renovated in 2018 by the Board which owns all the dining tables and chairs, and the majority of the restaurant equipment. The selected Proposer will be responsible for operating and maintaining the spaces and equipment. A list of Board-owned equipment, fixtures, and furniture is attached hereto as **Exhibit A**.

There is space for two (2) vending machines on the pre-security side and three (3) machines on the post-security side. A map of the restaurant and vending locations is attached hereto as **Exhibit B**.

Past Concessionaire Financial Performance:

As a point of information, the following are the Gross Revenues for the Food, Beverage, and Vending concessions for the past five years:

Calendar Year	Gross Revenue
2025	$3,614,411.45
2024	$3,161,400.50
2023	$2,305,734.68
2022	$1,973,352.39
2021	$1,341,746.12

Future Expansion

The Airport is currently in the final design phase of a concourse expansion project which will significantly change the overall footprint and design of the terminal. The expansion will increase the gate space from 7 total gates to 12 total gates. The construction is slated to start in September, 2027, however, an initial stair/elevator area may be constructed in the interim stage along the current restaurant area. That will allow the airport to ground board passengers during the concourse expansion. We will also be renovating the current concourse during the construction period as well. The footprint for the existing restaurant is planned to be reduced (not eliminated) and a new, larger concession space (restaurant/bar) will be developed in the new section of the concourse. This will provide two concession spaces in the concourse when it is completed in approximately September, 2029.

It is critical to get a concessionaire on board now to work with our Architects (Mead & Hunt) and our Construction Manager at Risk (CMAR) (McGough) to design the new space. The Airport intends to provide the concessionaire with a shell and expect the concessionaire to build out the space to their business needs. Proposal scoring will also include a section to analyze the idea and

investment committed by the concessionaire for the available spaces in the concourse. Concessionaire is expected to commence meetings with Mead & Hunt and McGough the week of January 18th, 2027.

Scope of Work
The Airport has a vital role as an economic development engine for and gateway to Western South Dakota. The Board wishes for the Airport concession program to present the cuisine, products, and brands of the region, in addition to nationally recognized brands. The Board encourages Proposers to incorporate established local, regional, and national brands in all aspects of their proposed programs, to the extent possible. This inclusion should be seen throughout the programming, in terms of:

- **Brands** – Seek out local and nationally recognized brands. Having a strong brand is important to this program.
- **Product & Merchandise Offering** – Provide a diverse product offering that can accommodate the full suite of a passenger's food and beverage needs while at the Airport.
- **Revenue Generation** – Ability to optimize and increase concession revenues.
- **Customer Service** – Provide a first-class program that focuses on customer service.

Proposers should seek to include each of these four goals into the concession program, as demonstrated through the Brand Proposal (described in Section VII of this RFP). It is expected that the successful Proposer(s) will be those who can best integrate well-recognized brands with an understanding of the Airport's local and regional passenger needs.

FINANCIAL OBLIGATIONS OF CONCESSIONAIRE

Concession Fee
As consideration for the non-exclusive right granted under the Concession Agreement, the Concessionaire is expected to pay, monthly during the term of the Agreement, the greater of either: a) the Minimum Annual Guarantee (MAG), beginning the first full calendar year; or b) a sum of the percentage of Gross Receipts derived from the operation of the leased locations (Percentage Rent).

Percentage Rent Payments
By the 10th of each month following the opening of the first Concession Location, the Operator will submit a detailed report showing sales by location, and where applicable, sales by category within each location. These sales will be utilized to calculate the monthly Percentage Rent, to be remitted with the report. A sample breakdown of sales is listed below.

Concession Subtype	Minimum % Rent Bid Range
Counter Service – Grab and Go (food and non-alcoholic beverages)	14%
Convenience Items (limited to pre-secured side)	15%
Vending	17%
Alcoholic Beverages (sold anywhere)	18%

Minimum Annual Guarantee (MAG)
Prior to the end of each full calendar year following the commencement of the term, the Board will compare the Percentage Rent paid by the Concessionaire over the course of the calendar year to the Minimum Annual Guarantee. If the total Percentage Rent due over such year is less than the MAG, then the Board will invoice the Concessionaire for the difference, which must be remitted within 15 days. If the total MAG and Percentage Rent paid over such year is greater than the total Percentage Rent due, the Board will issue a credit memo to the Concessionaire.

The MAG will be adjusted each lease year during the initial term and any subsequent renewal terms. The total base MAG in the first lease contract year (Year One MAG) of the initial term will be a minimum of $426,000. Thereafter, the MAG will be adjusted to the greater of eighty percent (80%) of the total rent payments due to the Board during the previous lease contract year, or the Contract Year One MAG, whichever is greater. The MAG is to be paid monthly on the first of each month. The Airport is willing to consider adjustments to the MAG based on construction interruptions of business should they occur.

ACDBE Reporting and Good Faith Efforts
It is the Airport's policy to ensure that Airport Concession Disadvantaged Business Enterprises (ACDBEs) have full opportunity to compete for and participate in concession opportunities at the Airport. The Airport's total ACDBE goal for the concession program (excluding car rental) for 2026 is 1.35%, and is subject to change. The Concessionaire will be required to provide monthly and annual Gross Revenue reports, along with annual ACDBE reports, throughout the entire term of the Food, Beverage and Vending Concession Agreement as provided in the Agreement. The Concessionaire may meet the ACDBE goal through the purchases of goods and services from qualified ACDBEs in the state of South Dakota. Good faith efforts are required to be made, documented, and provided to the Airport throughout the term of the Agreement. The Commitment & Acknowledgment for ACDBE should be submitted on **Attachment E**. A list of SD certified ACDBEs can be found at the following link: https://dot.sd.gov/doing-business/contractors/disadvantaged-business-enterprise-dbe/.

Mandatory Pre-Proposal Briefing and Site Visit
A Mandatory pre-Proposal briefing and site tour will be held to discuss this RFP on Thursday, December 3, 2026 at 2:00 PM MT to discuss the Scope and answer questions. The meeting will be held in the Airport Board Room located on the second floor of the terminal at 4550 Terminal

Road, Rapid City, SD 57703. Staff will be available to present a brief overview of the proposed Concession Agreement, answer questions about the scope and selection process, and provide a conceptual overview of the planned facility expansion. Attendance at the meeting is mandatory. You must give at least forty-eight (48) hours advance notification to the Airport by email to toni.broom@rcgov.org of persons attending. A tour of the Airport Terminal Building will be provided at the close of the meeting. The entire meeting and tour are anticipated to be less than two hours in duration.

This pre-Proposal briefing will be the only opportunity afforded potential Proposers to discuss, as a group, the scope and requirements of this RFP and to be given a tour of the Terminal.

Specimen Agreement
A specimen FOOD, BEVERAGE, AND VENDING CONCESSION AGREEMENT (referred to herein as the "Concession Agreement") is attached hereto as **Exhibit C**.

The purpose of the Concession Agreement is to grant the non-exclusive right and privilege to the selected Proposer(s) to provide Food, Beverage, and Vending Concessions in the Airline Terminal Building at the Rapid City Regional Airport. **The Board intends for the Concession Agreement to be no less than five (5) years up to ten (10) years based on negotiations with the successful proposer. Contract will commence March 1, 2027, through the end of February, 2032, unless additional time is granted through the negotiation process.** Additional term may be negotiated based on the level of investment provided by the Proposer upon mutual agreement of the parties. The provisions and terms of the Concession Agreement may be revised or adjusted by the Board prior to final execution.

Proposer Responsibilities
Proposers shall thoroughly examine and become familiar with this RFP, the Proposal forms, the specimen Agreement, and all related documents comprising this RFP and any written Addendum thereto.

It is the responsibility of each Proposer to investigate and be satisfied as to the facts and conditions associated with this RFP prior to submitting a Proposal. The Board makes no representation or warranties and accepts no responsibility for the accuracy or completeness of any information supplied. Proposers are responsible for obtaining their own independent financial, legal, accounting, and technical advice on all proposal matters.

Submission of a Proposal shall constitute an acknowledgment that the Proposer has thoroughly examined and is familiar with this RFP and any Addendum which may be issued. The failure or neglect of a Proposer to receive or examine any RFP documents or Addenda shall in no way relieve Proposer from any obligation with respect to the Proposal or the obligations that result from submitting a successful Proposal. No claim based upon lack of knowledge or understanding of this RFP or its contents shall be allowed.

Term of Contract

THE TERM OF THE NON-EXCLUSIVE AGREEMENT WILL BE FROM MARCH 1, 2027, THROUGH END OF FEBRUARY, 2032.

Indemnity and Insurance

The Proposer shall defend, indemnify and hold harmless the City of Rapid City and the Airport and shall obtain and maintain, at its expense, the following minimum limits of occurrence-based insurance coverage for the duration of this agreement:

Workers Compensation	As required by South Dakota law
WC Employer Liability	$100,000.00
Comprehensive General Liability	$1,000,000.00
General Aggregate	$2,000.000.00 per occurrence
Business Automobile Insurance	As required by South Dakota law

Such insurance policies shall name the "City of Rapid City and the Rapid City Regional Airport Board, individually and collectively, and its representatives, officers, officials, employees, agents and volunteers" as additional insured with respect to all activities arising out of the performance of the Work and/or services under this agreement. Acceptable Certificates of Insurance and Endorsements confirming the above coverage shall be filed with the Airport before commencing any work and/or services. Such Certificates shall afford City thirty (30) days written notice of cancelation or material change of coverage. Department's failure to obtain from Contractor a Certificate of Insurance conforming to the foregoing requirements shall not be deemed a waiver of any of the foregoing requirements. This paragraph shall in no way limit the provisions of the indemnity area.

Key Dates:

November 14 & 21, 2026	RFP Advertised
December 3, 2026, 2:00 PM MT	Site Visit Airport Board Room, Terminal
December 11, 2026, 5:00 PM MT	Final Date for Written Questions
December 22, 2026 2:00 PM MT	Proposals Due
January 6 – 8, 2027	Interviews (if needed)
January 12, 2027 9:00 AM MT	Airport Board Contract Award
January 18, 2027 (week of)	Initiate Meetings with Mead & Hunt and McGough
March 1, 2027	Contract Commencement Date

Proposal Instructions

Proposals should include three (3) originals and one electronic copy of the proposal on a flash drive or other such device.

Proposals must be submitted in sealed envelopes address to: Rapid City Regional Airport, Administration Office, 4550 Terminal Road, Suite 102, Rapid City, SD 57703 and received no later than 2:00 PM, MT, December 22, 2026. No proposals will be received after the deadline.

All Proposals will be time-stamped upon receipt and any Proposals received after the time specified above will be returned unopened. In bold lettering, mark the sealed envelope with the following words: **"FOOD, BEVERAGE, AND VENDING PROPOSAL"**. Faxed or emailed

copies will not be accepted. In lieu of physical delivery, Proposers may request a secure link to upload their Proposal by emailing toni.broom@rcgov.org. Such submittals must be received no later than 2:00 PM, MT, December 22, 2026.

All responsive Proposals become the property of the Airport and must be provided without cost to the Airport. Except as otherwise provided for herein, Proposals which are incomplete or which are not in conformance with the law, may be rejected as non-responsive.

Proposal Information
The Proposer's documents must include the following information:

1. Completed Attachments:
   a. Attachment A – Contractor's Proposal
   b. Attachment B – Designated Company Point of Contact for this Solicitation and Acknowledgement of Addendum Form
   c. Attachment C – Certification of Prohibited Entity Form
   d. Attachment D – Certification Regarding Debarment and Suspension
   e. Attachment E – Commitment Acknowledgement for ACDBE
   f. Attachment F – Financial Consideration

2. Exhibits:
   a. Exhibit A – Board-owned equipment, fixtures, and furniture
   b. Exhibit B – Map of Concession Spaces
   c. Exhibit C – Specimen Agreement

3. Executive Summary – List important features of the proposal, explaining why you would like to be awarded the contract and what you will bring as the preferred vendor.

4. Management and Operational Plan – Indicate the company structure including the CEO, COO, history/background of service, and qualifications to provide services.

5. Three references.

Scoring and Ranking

Proposals will be ranked from highest to lowest based on the total point scores received in each category as follows:

Category	**% of Total**
Business Experience and Qualifications • Experience successfully operating and managing food, beverage, and vending concessions of similar scale at a comparable airport(s); • Experience with the specific brand(s) proposed.	25%
Financial Considerations • Financial benefit to the Airport based upon projected sales performance and proposed percentage fee; • Demonstrated ability to increase F&B and vending concession revenue year-over-year. • Level of Investment into the concessionary space.	30%
Management and Operations Plan • Demonstrated understanding of the unique demands of operating in the airport environment; • Procedures and standards expressed represent a first-class concession experience.	25%
Brand Proposal • Proposed brand(s) is highly recognized and regarded by the Airport's passenger demographic; • Merchandising mix satisfies the range of passenger needs.	15%
Overall Proposal Quality and Completeness of Information Provided	5%
Total Points	100%

Proposal Evaluation Criteria **Scoring (Circle One)**

1: Business Experience and Qualifications – 25% of total

- Experience successfully operating and managing food, beverage, and vending concessions of similar scale at a comparable airport(s);
- Experience with the specific brand(s) proposed.

1 2 3 4 5 6 7 8 9 10

2: Financial Considerations – 30% of total

- Financial benefit to the Airport based upon projected sales performance and proposed percentage fee;
- Level of investment into the concessionary space;
- Demonstrated ability to increase F&B and vending concession revenue year-over-year.

1 2 3 4 5 6 7 8 9 10

3: Management and Operations Plan – 25% of total

- Demonstrated understanding of the unique demands of operating in the airport environment;
- Procedures and standards expressed represent a first-class concession experience.

1 2 3 4 5 6 7 8 9 10

4: Brand Proposal – 15% of total

- Proposed brand(s) is highly recognized and regarded by the Airport's passenger demographic;
- Merchandising mix satisfies the range of passenger needs.

1 2 3 4 5 6 7 8 9 10

5: Overall Quality and Completeness of Information Provided – 5% of total

1 2 3 4 5 6 7 8 9 10

Score:

1 Fails to meet the expectations of the reviewer in this category.

10 Fully meets the expectations of the reviewer in this category.

ATTACHMENT A
CONTRACTOR'S PROPOSAL
To be returned with Proposal

NAME OF PROPOSER: _____

ADDRESS: _____

PHONE NO: (_____) _____ FAX NO.: (_____) _____

E-mail address: _____

Include Executive Summary, Management & Operations Plan, and a list of experience and three (3) Business References.

ATTACHMENT B
To be returned with Proposal

*Proposer Name:*_____

DESIGNATED COMPANY POINT OF CONTACT FOR THIS SOLICITATION AND ACKNOWLEDGEMENT OF ADDENDUM FORM

The person or persons listed below should include those designated by the Proposer as being the authorized company point(s) of contact. The person or persons listed below should be qualified and authorized to provide, or arrange to be provided, any additional information which may be requested, or answer any questions regarding the Proposal submittals.

Name_____

Title_____

Company_____

Phone Number(s)_____

Mailing/Parcel Delivery
Address _____

_____

_____

Email Address_____

ADDENDA – https://www.rapairport.com/about-the-airport/doing-business. It is Proposer's responsibility to check for issuance of any addenda at the above website. The authorized representative hereby acknowledges receipt of the following addenda:

Addenda No:_____ Date: _____ Addenda No:____ Date: _____

Addenda No:_____ Date: _____ Addenda No:____ Date: _____

ATTACHMENT C
To be returned with Proposal

Proposer Name:_____

CERTIFICATION OF PROHIBITED ENTITY STATUS
SDCL 5-18A-51

SDCL 5-18A-1(19A) defines "Prohibited Entity" as follows:

"[A]n organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled by:

(a) A foreign parent entity from the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela; or

(b) The government of the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.

A prohibited entity does not include a citizen or legal permanent resident of the United States, or an individual foreign national;

The undersigned hereby certifies the following:

1. I am an authorized representative and agent of _____ _____ ("Proposer");

2. Check one:

___ **Proposer is not a Prohibited Entity as defined by SDCL 5-18A-1(19A); or**
___ **Proposer is a Prohibited Entity pursuant to SDCL 5-18A-1(19A) but grounds for waiver exist pursuant to SDCL 5-18A-52.** ***If marking this option, provide the basis for the requested grounds for waiver.***

3. I understand that a Proposer who becomes a Prohibited Entity, as defined above, at any time after making this certification that it is not a Prohibited Entity, Proposer must provide written notice to the Board, who may terminate the contract.

4. I understand that the Rapid City Regional Airport Board has the right to terminate a contract with any contractor who submits a false certification, and that any bidder who submits a false certification may be subject to suspension or debarment under SDCL 5-18D-12.

Dated this _____ day of _____, 20___.

_____
(Contractor Business Name)
By: _____
Printed name: _____
Title: _____

ATTACHMENT D
To be returned with Proposal

Proposer Name:_____

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

1. The Contractor certifies to the best of its knowledge and believe that it and its principals:

   (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

   (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery bribery, falsification or destruction of records, making false statements, or receiving stolen property;

   (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

   (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. The Contractor also certifies to the best of its knowledge that it and its principals are not presently debarred or suspended by the South Dakota Highway Commission; have not been served with a notice of intent to debar or suspend by the South Dakota Highway Commission; and will not subcontract with a debarred or suspended business for performance of this contract (A.R.S.D. Chapter 70:07:04).

3. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

Dated this ___ day of _____, 20___.

_____
(Contractor Business Name)

By: _____

Printed name: _____

Title: _____

ATTACHMENT E

To be returned with Proposal

*Proposer Name:*_____

COMMITMENT ACKNOWLEDGEMENT FOR ACDBE

Proposers wishing to receive consideration for ACDBE participation shall include in this section the name and address of each ACDBE participant, the participant's proposed level and method of participation in performance of the Concession Lease, and the dollar amount of estimated purchases of goods and services for each ACDBE participant. The selected Proposer shall agree to perform Good Faith Effort to assist the Airport in reaching its goals.

Proposer is a SDDOT Certified ACDBE: _____ YES _____NO

Please provide the following:

1) Names and address of SD certified ACDBE firms and suppliers that will participate in the concession.
2) A description of the work that each SD Certified ACDBE will perform.
3) The dollar amount of the participation of each SD Certified ACDBE firm participating.

In order to be considered, the ACDBE must be certified in the State of South Dakota. A current list can be found at: http://www.sddot.com/business/contractors/docs/DBEDirectory.pdf.

Name & Address of SD Certified ACDBE Firm	Description of Work or Goods & Services to be Purchased	Dollar Amount of Participation

ATTACHMENT F
To be returned with Proposal

*Proposer Name:*_____

Financial Consideration

PROPOSAL OF PERCENT OF GROSS REVENUE (PGR)

Concession Subtype	Minimum % Rent Bid Range	Concession PGR Offer
Counter Service – Grab & Go (food and non-alcoholic beverages)	13%	_____%
Convenience Items (limited to pre-secured restaurant only)	13.5% - 15%	_____%
Vending	15% - 17%	_____%
Alcoholic Beverages (Sold Anywhere)	15% - 18%	_____%
Minimum Annual Guarantee for First Year Initial Term	$426,000.00	$_____
Approximate commitment to concessionary buildout, fit-up, and finishes		$_____

EXHIBIT A

FOODSERVICE EQUIPMENT SCHEDULE - Post Security Restaurant Board Owned

ITEM NO	SOURCE	QTY	UNIT	DESCRIPTION	MANUFACTURER	MODEL
1	KEC	1	LOT	SHELVING		SEE SPECIFICATIONS
2	KEC	1	EA	WORK TABLE, CABINET BASE OPEN FRONT	EAGLE GROUP	OB2490SE-BS
3	KEC	1	EA	HOT FOOD WELL, DROP-IN, ELECTRIC	WELLS	SS-10TDUCIAF
4	KEC	1	EA	PASS SHELF ON WALL		FABRICATED
5	KEC	1	EA	FOOD WARMER	HATCO	GRAL-54D3
6	KEC	1	EA	MICROWAVE OVEN	ACP	RC17S2
7	KEC	1	EA	SANDWICH/SALAD PREPARATION REFRIGERATOR	BEVERAGE AIR	SPED60-16-2
8	KEC	1	EA	SERVING COUNTER, HOT FOOD, ELECTRIC	EAGLE GROUP	SHT2-208
9	KEC	1	EA	WALL/SPLASH MOUNT FAUCET	FISHER	13250
10	KEC	1	EA	WORK TABLE, STAINLESS STEEL TOP	EAGLE GROUP	T3036SE-BS
11	KEC	2	EA	SHELVING, WALL MOUNTED	EAGLE GROUP	SWS1236-16/3
12	KEC	1	EA	REACH-IN FREEZER	BEVERAGE AIR	HFPS1-1HS
13	KEC	1	EA	GAS FRYER	FRYMASTER	FPPH255
14	KEC	1	EA	WORKTOP COOK STAND REFRIGERATOR	BEVERAGE AIR	WTRCS52-1-60
15	KEC	1	EA	GAS COUNTER TOP GRIDDLE	VULCAN	VCRG36-T
16	KEC	1	EA	CHARBROILER, GAS, COUNTERTOP	VULCAN	VCRB25
17	DIV 22/23	1	LOT	CLASS 1 EXHAUST HOOD W/ FIRE SUPRESSION		
18	KEC	2	LOT	WALL CLADDING - STAINLESS		FABRICATED
19	KEC	1	LOT	COVER, STAINLESS STEEL		FABRICATED
20	KEC	1	EA	WORK TABLE, STAINLESS STEEL TOP	EAGLE GROUP	T3036SE-BS
21	KEC	1	EA	HAND SINK	EAGLE GROUP	HSA-10
22	KEC	1	EA	REACH IN, REFRIGERATOR (located in pre security restaurant)	BEVERAGE AIR	HRPS1-1S
23	KEC	1	EA	DISHWASHER, UNDERCOUNTER	HOBART	LXEH-2
24	KEC	1	EA	THREE (3) COMPARTMENT SINK	EAGLE GROUP	FN2054-3-24-14/3
25	KEC	1	EA	DISHTABLE SORTING SHELF	EAGLE GROUP	606301
26	KEC	1	LOT	SHELVING		SEE SPECIFICATIONS
27	KEC	2	EA	DISPOSABLE CUP DISPENSER	DISPENSE-RITE	ADJ-1
28	KEC	1	EA	SELF-SERVICE REFRIGERATED CASE	STRUCTURAL CONCEPTS	CO45R (MOVED TO PRESECURITY)
29	KEC	1	EA	SELF-SERVICE REFRIGERATED CASE	STRUCTURAL CONCEPTS	CO45R (MOVED TO PRESECURITY)
30	KEC	2	EA	DISPOSABLE CUP DISPENSER	DISPENSE-RITE	ADJ-1
31	KEC	1	EA	DRAFT BEER DISPENSING TOWER	CHILL-RITE	THT-6-MF-A-5-LED-F

EXHIBIT A

32	KEC	1	EA	BACK BAR CABINET, NON-REFRIGERATED	GLASTENDER	BLD-30-S
33	KEC	1	EA	MODULAR BAR SYSTEM	GLASTENDER	MD
34	KEC	1	EA	UNDERBAR ADD-ON UNIT	GLASTENDER	DWB-15R
35	KEC	1	EA	HAND SINK	GLASTENDER	DHSB-12
36	KEC	1	EA	BOTTLE DISPLAY	GLASTENDER	LDB-36
37	KEC	1	EA	GLASS RACK	GLASTENDER	DBGR-24
38	KEC	1	EA	CORNER ANGLE FILLER	GLASTENDER	IFC-24/24
39	KEC	1	EA	UNDERBAR ADD-ON UNIT	GLASTENDER	DWB-12
40	KEC	1	EA	SODA GUN HOLDER & TUBING CHASE	GLASTENDER	SHB-6
41	KEC	1	EA	ICE BIN	GLASTENDER	IBA-30-CP10-ED
42	KEC	1	EA	BLENDER STATION	GLASTENDER	BSA-12
43	KEC	1	EA	GLASS FROSTER	GLASTENDER	MF36-B2
44	KEC	1	EA	UNDERBAR ADD-ON UNIT	GLASTENDER	DWB-15R
45	KEC	1	EA	HAND SINK	GLASTENDER	DHSB-12
46	KEC	1	EA	UNDERBAR SINK UNITS	GLASTENDER	TSA-60-S
47	KEC	1	EA	GLASS WASHER	BAR MAID	A-200
48	KEC	1	EA	DRAFT BEER DISPENSING TOWER	CHILL-RITE	WM-6-LED
49	KEC	1	LOT	SHELVING	METRO	SEE SPECIFICATIONS
50	KEC	4	EA	STANCHION	LAVI	26-20400WB/BK
51	KEC	3	EA	CORNER GUARD	FABRICATION	
52	KEC	1	LOT	WALK IN COOLER	IMPERIAL MFG.	SEE SPECIFICATIONS
53	KEC	2	LOT	KEG SHELVING	NEW AGE	1288
54	KEC	1		12 TAP DISPENSING SYSTEM	CHILL-RITE	BEER SYSTEM
55	OWNER	1	EA	ESPRESSO CAPPUCCINO MACHINE	RANCILIO GROUP	EGRO ONE-PURE COFFEE
56	OWNER	1	EA	COFFEE BREWER	BUNN	34800.0000
56	OWNER	1	EA	COFFEE GRINDER	BUNN	33700.0000
57	OWNER	1	EA	ICE CUBER	MANITOWOC	IY-0454A
58	OWNER	1	EA	ICE BIN FOR ICE MACHINES	MANITOWOC	B-400
59	OWNER	1	EA	BACK BAR CABINET, REFRIGERATED	TRUE FOOD SERVICE EQUIPMEN	TBB-4G-HC-LD
60	OWNER	1	EA	BACK BAR CABINET, REFRIGERATED	TRUE FOOD SERVICE EQUIPMEN	TBB-4G-HC-LD

EXHIBIT B - PREMISES

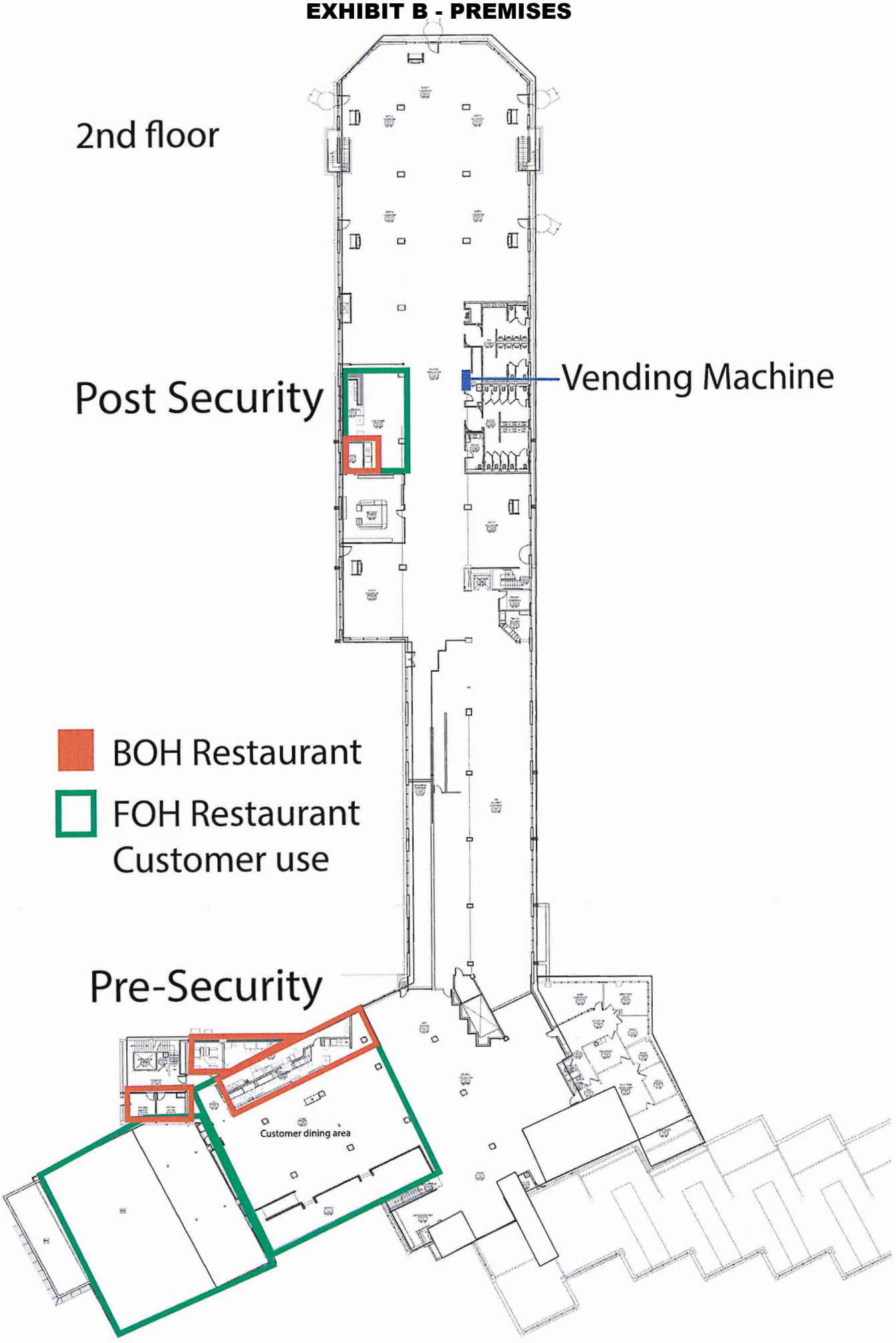

EXHIBIT B - PREMISES

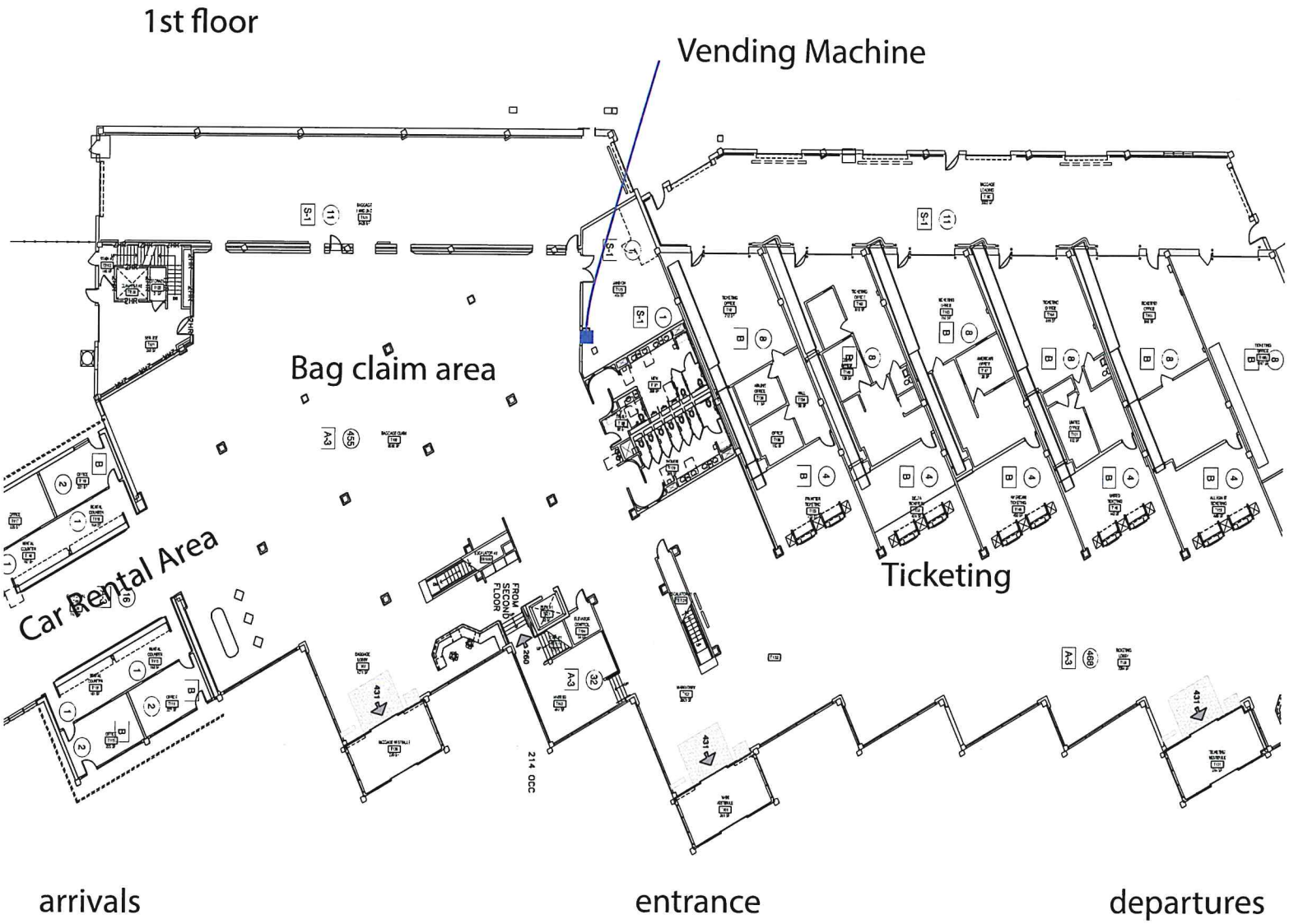

EXHIBIT C
Food, Beverage, and Vending Concession Specimen Agreement

This Agreement ("Agreement") is made and entered into as of this ____ day of _____, _____, by and between the **CITY OF RAPID CITY, SOUTH DAKOTA** (the "City"), by and through the **RAPID CITY REGIONAL AIRPORT BOARD** (the "Board); and _____ qualified to transact business in the State of South Dakota (the "Concessionaire" or "Contractor"). The Board and Concessionaire together shall be referred to as the "Parties".

WHEREAS, the Board owns and operates the Rapid City Regional Airport (the "Airport") for the use and benefit of the public; and

WHEREAS, the Board is empowered and authorized to grant concession agreements on behalf of the City; and

WHEREAS, pursuant to the Board's Request for Proposals ("RFP") dated November 14, 2026, attached hereto and incorporated herein as Exhibit A, the Board has advertised for proposals for the non-exclusive privilege of operating a Food, Beverage, and Vending Concession at the Airport;

WHEREAS, Concessionaire is engaged in the business of operating food and beverage establishments in commercial airports, and represents that it has the requisite experience, financial capacity and human resources necessary to sell consumer goods and services at the Airport in a first-class manner; and

WHEREAS, Concessionaire is the successful respondent and desires to operate a Food, Beverage, and Vending Concession at the Airport in accordance with the terms and conditions set forth herein, in the RFP, and in the Proposal attached and incorporated herein as Exhibit B; and

WHEREAS, the Board has selected Concessionaire to conduct the permitted uses hereunder, and Concessionaire is prepared to conduct the permitted uses and otherwise comply with the terms and conditions of this Agreement.

NOW, THEREFORE, in recognition and reliance on the foregoing, and in consideration of the mutual covenants and promises herein contained, and other valuable consideration, the Board and Concessionaire agree as follows:

ARTICLE I
PREMISES

Section 101. The Agreement.

The Concessionaire hereby hires and takes from the Board the exclusive possession of those areas of the Terminal as depicted on Exhibit C and incorporated herein by reference (hereinafter the "Premises"). The Premises are provided to Concessionaire subject to the terms and conditions of this Agreement and the reservations specified in Section 106 hereof.

DRAFT

Section 102. Access by Concessionaire.

Concessionaire shall have the right of ingress to, egress from and access to the Premises to perform the uses permitted in Article III, for it and its employees, agents and invitees, and its machinery, equipment and vehicles and other property over aprons, drives, foot walks, ramps and roadways now or hereafter in existence, provided that Concessionaire's ingress to, egress from and access to the Premises do not materially interfere with the safe, secure and efficient operations of the Airport and the Terminal.

Section 103. Employee Parking.

The Board shall make ground vehicle parking for Concessionaire's owners and employees available at the published rate for employee parking, as may be adjusted by the Board from time to time.

Section 104. Access by the Board.

The Board and its authorized officers, employees, agents, contractors, and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Concessionaire's operations as is reasonably practicable) to enter upon and in the Premises for the following purposes:

A. To inspect the Premises to determine whether Concessionaire has complied and is complying with the terms and conditions of this Agreement.

B. To perform maintenance and make repairs pursuant to Section 706, and in any case where Concessionaire is obligated to perform maintenance or repairs, but has failed to do so, after the Board has given Concessionaire notice to do so, in which event Concessionaire shall reimburse the Board for the cost thereof plus a charge of 15% for overhead promptly upon demand.

C. To gain access to the mechanical, electrical, utility and structural systems of the Airport and the Terminal for the purpose of inspecting, maintaining and repairing such systems.

D. To gain access to the Premises to consider Concessionaire's compliance with any Safety Management System or Environmental Management System as may be adopted by the Board for the Airport to include the Premises.

Section 105. Condition of the Premises; Continued Operation of Airport.

Concessionaire has made such investigations and inspections of the Premises as it deems necessary and accepts the Premises in "as-is" condition except as otherwise specified herein. The Board is not required to alter or improve the Premises, except to the extent of latent defects later discovered or as otherwise specified. Notwithstanding the foregoing, the Board warrants and represents that Concessionaire's intended and permitted use does not contravene any applicable building code and that there are no facts known to the Board which materially affect the intended use of the

DRAFT

Premises or which have not been disclosed to Concessionaire. The Board shall maintain and keep in operation and repair the landing area of the Airport and all publicly owned facilities of the Airport, it being understood that the continued operation of the Airport is a material inducement to Concessionaire entering into this Agreement.

Section 106. Reservations.

A. The Board reserves the right to maintain and keep in repair the landing area of the Airport and all Board-owned facilities of the Airport, together with the right to direct and control operations on or about the Airport.

B. The Board reserves the right to further develop or improve the landing area and all Board-owned air navigation facilities of the Airport as it sees fit, regardless of the desires or views of Concessionaire, and without interference or hindrance of or by Concessionaire.

C. The Board reserves the right to take any action considered necessary to protect the aerial approaches of the Airport against obstruction or hazard, together with the right to prevent Concessionaire from erecting, or permitting to be erected, any building or other structure on the Airport which in the opinion of the Board or the Federal Aviation Administration would limit the usefulness of the Airport or constitute a hazard to air navigation.

D. During time of war or national emergency, the Board shall have the right to enter into an agreement with the United States government for military use of all or part of the landing area, the Board-owned air navigation facilities and/or other areas or facilities of the Airport. If any such agreement is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the agreement with the federal government, shall be suspended during the duration of such war or national emergency and for a reasonable time thereafter.

E. It is understood and agreed that the rights granted by this Agreement will not be construed, interpreted, or exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or further development, expansion or extension of the Airport.

F. There is hereby reserved to the Board, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the airspace above the surface of the Premises herein conveyed, together with the right to cause in said airspace such noise, vibration, smoke, fumes, glare, dust, fuel, particles and all other impacts as may be inherent in the operation of aircraft, now known or hereinafter developed and used for navigation of or flight in the air, using said airspace for landing at, taking off from, or operating on or about the Airport.

G. This Agreement shall be subordinate to provisions of any existing or future agreement between the Board and the United States of America or any agency thereof relative to the improvement, expansion, extension, operation, development or maintenance of the Airport. Should the Board receive a determination or order from the Federal Aviation Administration or a court of competent jurisdiction concluding that any provision of this Agreement is inconsistent with any such agreement between the Board and the United

DRAFT

States, the Parties shall amend this Agreement as necessary to resolve the inconsistency. If the Parties are unable to agree on the required amendments, the Board shall have the right to unilaterally amend this Agreement to resolve the inconsistency.

H. The Board reserves the right to remove and replace any or all portions of the Premises to substitute areas of the Terminal comparable in size and utility for the permitted uses hereunder. The Board shall provide Concessionaire no less than sixty (60) days prior written notice of the relocation, except if earlier relocation is required to comply with the regulations or directives of the Transportation Security Administration or Federal Aviation Administration. The Parties thereafter shall modify Exhibit C as necessary to reflect the substituted area. Board shall be responsible for Concessionaire's unamortized costs to improve the area withdrawn from the Premises, to be calculated as a credit to the Concession Fee owed by Concessionaire in accordance with Article IV. Board shall not otherwise be liable or responsible for any inconvenience or loss by Concessionaire of revenue resulting from the relocation provided that the Board takes all commercially reasonable efforts to prevent or minimize such inconvenience or loss. Concessionaire shall have the right to reject the substituted area and terminate this Agreement, provided that the Board shall have no liability or responsibility to compensate Concessionaire in such event.

I. The Airport Executive Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the Airport or Terminal, and Concessionaire hereby releases and discharges the Board from any and all claims or causes of action arising out of the closing of any right-of-way, the Airport or Terminal.

ARTICLE II
TERM

Section 201. Term.

The term of this Agreement shall commence on March 1, 2027, (the "Commencement Date") and shall end on December 31, 2032, (the "Initial Term").

Section 202. Holdover.

A. The Board may permit Concessionaire to hold over beyond the expiration of this Agreement in order for the Board to conclude a solicitation process or to prepare for a follow-on concession tenancy either with Concessionaire or another business or businesses selected by the Board. The Board will notify Concessionaire in writing of the Board's offer of a holdover tenancy. Within thirty (30) days of receipt of the Board's notice, Concessionaire shall notify the Board in writing as to Concessionaire's acceptance of said holdover tenancy. If Concessionaire fails to so notify the Board in writing within said thirty-day period, Concessionaire shall be deemed to have rejected the Board's offer of holdover tenancy.

DRAFT

B. If the Board permits Concessionaire to holdover, such a holding over shall not be deemed a renewal or extension of this Agreement but shall create a month-to-month tenancy on the same terms and conditions of this Agreement in effect immediately prior to the commencement of the holding over. The Board may terminate the holdover upon thirty (30) days' written notice to Concessionaire. Other than as specified in this section, Concessionaire may not otherwise remain on the Premises for any reason beyond expiration of the Term.

Section 203. Surrender of Possession and Restoration of Premises.

Concessionaire shall, on the expiration date of the Term, or upon the earlier termination hereof, peaceably surrender possession of the Premises, free and clear of all liens and encumbrances, other than those, if any, permitted under this Agreement or otherwise created or consented to by the Board. Concessionaire shall remove any and all of Concessionaire's tangible movable personal property, except those specifically identified by the Board to be retained, and will return the Premises in "broom clean" condition, capable to be relet by Board without significant repair, excepting only reasonable wear and tear. All such costs of removal and restoration shall be borne by Concessionaire, without contribution by the Board.

ARTICLE III
USE OF PREMISES

Section 301. Permitted Uses.

The Board hereby grants to Concessionaire, subject to all the terms, covenants and conditions of this Agreement, the right, license and privilege, to the extent allowed by law, to operate food and beverage and automated vending services within the Premises. For purposes of this Agreement, food and beverage concessions shall include sit-down, counter service, carry-out/take-away and food delivery within the Terminal. Food and beverage concessions include the sale of beer, wine, spirits, and mixed drinks for on-site consumption, provided Concessionaire maintains liquor liability insurance as part of, or in addition to, the commercial general liability insurance required hereunder. Automated vending refers to the five (5) vending machines within the Terminal which dispense prepackaged food and canned or bottled beverages.

Section 302. Prohibited Uses.

A. Concessionaire shall have no right to perform any service or offer for sale any goods or services or to engage in any other business or commercial activity on the Airport that is not specifically granted under this Agreement.

B. Concessionaire shall neither use nor occupy the Premises or any part thereof for any unlawful or hazardous business purposes, nor operate or conduct its business in a manner constituting a public or private nuisance.

DRAFT

C. Concessionaire shall not sell beer, wine or spirits (included powdered alcohol) for consumption *outside of the Premises*, and shall advise customers upon inquiry that off-Premises consumption of alcohol, including the carrying of alcohol onto aircraft for purposes of consumption on the aircraft, is strictly prohibited.

Section 303. No Exclusivity to Conduct Concession Activities.

Concessionaire acknowledges and agrees that nothing specified in this Agreement, and no statements or representations made by the Board or any person, commission or other authority, independently or on behalf of the Board, prior to or contemporaneously with the execution of this Agreement, shall be deemed to grant or imply an exclusive right or privilege to conduct concession activities at the Airport on an exclusive basis. The Board reserves the authority to grant the right to provide similar or related concession services to any other entity, except that, subject to the terms and provisions contained in this Agreement, Concessionaire shall have the exclusive right to possession of the Premises.

ARTICLE IV
FINANCIAL OBLIGATIONS

Section 401. Obligation to Pay Concession Fee and Charges.

Concessionaire, for and in consideration of the rights and privileges granted herein, agrees to pay the fees set forth in this Article IV, without demand, during and throughout the Term.

Section 402. Concession Fee.

A. Concessionaire shall pay the Board monthly for the rights and privileges granted to it herein, for each Agreement Year, the greater of (a) the Percentage Fee; or (b) the Minimum Annual Guarantee (MAG). The MAG for Agreement Year One, "Base MAG", shall be _____ Dollars; which MAG is based on an Agreement Year from January to December, and shall be payable in 12 equal monthly installments on or before the first day of each month. The first year shall be pro-rated based on the March commencement date.

   The MAG for each year thereafter shall be equal to the greater of (i) eighty percent (80%) of the prior Agreement Year's Percentage Fees, or (ii) the Year One MAG, whichever is greater. In no event shall the MAG for the forthcoming Agreement Year be less than the Year One MAG.

   In the event Lessee's cumulative payments for an Agreement Year equal or exceed the MAG, Lessee shall be relieved from its obligation to pay one-twelfth (1/12) of the MAG on or before the first of each month and shall only be obligated to make its Percentage Fee payment, which shall be made on or before the tenth of each month for the remainder of that Agreement Year.

B. The Percentage Fee shall be calculated on Gross Revenues as follows:

DRAFT

- Counter Service/Grab & Go Food & Beverage (excluding alcohol) ___%
- Convenience Items (limited to pre-secured side) ___%
- Vending ___%
- Alcoholic Beverages (sold anywhere in terminal) ___%

Section 403. Definition of Gross Revenue.

Gross Revenue shall mean the gross receipts from all sales made and services performed for cash or credit at the Airport, regardless of the point of origin or delivery of the order, and any other revenue of any type arising out of or in connection with Concessionaire's operations at the Airport, whether performed by the Concessionaire, its sublessees, subsidiaries, associated companies or otherwise. The following shall be excluded or deducted, as the case may be, from Gross Revenues:

i. federal, state, county and municipal sales taxes or other sales taxes separately stated and collected from customers;
ii. cash or credit refunds given to customers for returned products purchased at the Airport;
iii. the value of any supplies or equipment exchanged or transferred from or to other locations of Concessionaire's business not made for the purpose of avoiding a sale at the Airport;
iv. receipts in the form of refunds from or the value of merchandise, supplies or equipment returned by shippers, suppliers or manufacturers;
v. the sale or trade-in value of any equipment or fixtures approved for removal by the Airport Executive Director and owned by Concessionaire;
vi. the amount of any finance, insurance, or service charges on credit sales originated or delivered to the Airport or the Premises.

Section 404. Payment of Concession Fee.

A. By the tenth (10th) day of each month Concessionaire shall pay the Board the Percentage Fee. Concessionaire shall submit a Monthly Sales Report in the form set forth in Exhibit D with each Percentage Rent payment.

B. Payment of fees and all other charges shall be delinquent if not paid prior to the tenth (10th) day of the month in which they are due. Late or unpaid rents and charges will bear a fee as set annually by the Airport Board.

C. At the end of each full calendar year, the Board shall compare Concessionaire's Percentage Fee payments over the year to the MAG. If the total Percentage Fee paid over such year is less than the MAG, the Board shall invoice Concessionaire for the difference, which amount must be remitted to the Board within fifteen (15) calendar days. If the total MAG and Percentage Fee paid over such year is more than the total Percentage Fee owed and paid, the Board shall issue a credit memo to the Concessionaire for the difference.

DRAFT

Section 405. MAG Adjustment

A. At the beginning of each Agreement year during the Initial Term and any subsequent Renewal Term(s), the MAG shall adjust to the greater of (i) eighty percent (80%) of the total Rent payments to the Board during the previous Agreement year, or (ii) the MAG set forth in Section 402(A). Under no circumstances shall the MAG be less than the Base MAG set forth in Section 402(A).

B. As an exception to the foregoing, Concessionaire may petition the Board to waive MAG if, for any reason during the Term, the number of enplaned passengers at the Airport during any Agreement Year shall be less than seventy-five percent (75%) of the number of enplaned passengers (in accordance with such traffic records as are maintained by the Board) in the calendar year period of the preceding year; and the Concessionaire satisfactorily demonstrates to the Board that, through no fault of its own, the operations of the Concessionaire's business have been materially impacted by such decrease in enplaned passengers. Such petitions will be considered by the Board on a case-by-case basis, provided that Concessionaire continues to operate all concession locations in accordance with this Agreement, including but not limited to Article V (Performance and Operating Standards).

Section 406. Recording of Gross Revenue.

Concessionaire agrees to provide for the collection of all monies and provide accounting, audit and reports of Gross Revenue as required by this Article IV. These records are to be retained by Concessionaire and may be examined upon request of the Airport Executive Director.

Section 407. Annual Audit.

A. Concessionaire shall perform, at its sole cost and expense, an audit of Gross Revenues in each new calendar year throughout the Term. The audit will be performed by an independent Certified Public Accountant licensed to do business within the State of South Dakota. The audit reports shall be provided to Board prior to the end of January and at a minimum certify the accuracy of (i) reported total accumulated Gross Revenue, (ii) accumulated Gross Revenue separated into the three (3) Percentage Rent product categories, (iii) the calculation of the total amount payable to Board based upon accumulated Gross Revenue for the calendar year, the product categories and the Percentage Rent, and (iv) the dollar value of ACDBE participation. The audit reports shall also include a schedule showing the total of actual payments to Board during the calendar year and shall state an opinion as to the correctness of the computation of Gross Revenue without exception.

B. If through such audit report, it is established that additional fees are due Board, Concessionaire shall pay such additional fees to Board no later than fifteen (15) days after completion of such audit and receipt of written notice from the Director. If it is established that Concessionaire has overpaid the Board, then such overpayment from Concessionaire shall be credited to the Concession Fee next thereafter due from Concessionaire.

DRAFT

C. At the time of submission of the audit report, Concessionaire shall provide Board with an estimate of projected monthly Gross Revenue for the subsequent calendar year by product category as set out above.

Section 408. Charges.

Concessionaire shall pay the following fees, charges and taxes (singularly, a "Charge" and collectively the "Charges") to the appropriate vendor or taxing authority, as the case may be:

A. If applicable, all Charges for occupational or business licenses and permits, security badges, and other licenses and permits necessary in the operation of the business to be conducted by Concessionaire upon the Premises, all of which Concessionaire agrees to keep current and in force;

B. The telephone system in the Passenger Terminal Facility is owned by the Board and is provided to the Concessionaire for use in conducting its business operations. No other telephone system may be installed or operated by the Concessionaire without the express written consent of the Board. Concessionaire agrees to pay for the usage of the telephone system as per the Board's current rates and charges. The Board will maintain the telephone system and associated equipment in good working condition and Concessionaire will be responsible for any damage to the same caused by Concessionaire. Concessionaire agrees to contact the Board for any desired changes to or issues with telephone system or associated equipment; and

C. If applicable, all sales and use taxes due as a result of business conducted by Concessionaire on the Premises, and personal property taxes, if any, assessed against Concessionaire's personal property situated thereon, as well as any and all state, Board and local taxes payable during the Term arising with respect to Concessionaire's use of the including but not limited to real property taxes and leasehold improvement taxes, or the conduct of Concessionaire's operations from the Premises.

Section 409. Unpaid Concession Fees and Charges.

Concessionaire covenants and agrees that all sums Concessionaire is to pay to the Board as Concession Fees or Charges under this Agreement, if not paid within ten (10) days of the date when due, shall bear interest from the date when due on the unpaid portion thereof at a rate of eighteen percent (18%) per annum or at the highest rate legally chargeable, or as set by the Airport Board of Directors through its annual published Rates and Charges, whichever is lower.

Section 410. Security Deposit.

In the event Concessionaire fails to timely pay a monthly installment of the Concession Fee when due two (2) or more times during the Term, the Board shall have the right to demand that Concessionaire deposit with the Board an amount equal to twice the monthly MAG then payable hereunder as a security deposit to be held by the Board and applied to any damage, Concession Fee or Charge due to the Board from Concessionaire with respect to the Premises which are not

DRAFT

paid when due, subject to any notice and cure periods specified herein (hereinafter the "Security Deposit"). If the Board applies all or part of the Security Deposit, Concessionaire shall within ten (10) days after demand from the Board to Concessionaire replenish the portion of the Security Deposit so applied. If the Board does not use the Security Deposit and if Concessionaire substantially complies with all provisions contained in this Agreement, the Board shall return the Security Deposit, without interest, to Concessionaire upon the expiration or earlier termination of the Agreement and vacation by Concessionaire of the Premises.

Section 411. Mechanics' and Materialmen's Liens.

Concessionaire agrees not to permit any mechanics' or materialmen's or any other lien to be recorded against the Premises or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

Section 412. Accounting Records and Reports.

Concessionaire will, during the term hereof, make available in Rapid City true, accurate, complete and auditable records of all business conducted by it at the Airport. Concessionaire will make same records available to the Board for one year following the termination of this Agreement. These records will be accessible during usual business hours to the Board or its duly appointed agents or auditors.

Section 413. Contest of Charges.

Concessionaire shall have the right to contest the amount or validity of any Charge by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving Concessionaire of its covenant to pay any such Charge or any applicable penalties, costs and interest related thereto. Concessionaire shall not be in default hereunder in respect to the payment of any tax or assessment which Concessionaire is in good faith contesting if contest of such tax or assessment without payment is permitted by law. Board shall execute such documents as may be requested by Concessionaire from time-to-time for the purpose of receiving notices of reassessment, tax bills and the like or making tax-related claims.

Section 414. Notice, Place and Manner of Payment.

Payments will be made at the Office of the Airport Executive Director, 4550 Terminal Road, Suite 102, Rapid City, South Dakota 57703-8706, or such other location as the Board may hereafter notify Concessionaire and will be made by check.

ARTICLE V
OPERATING AND PERFORMANCE STANDARDS

DRAFT

Section 501. First-Class Concession.

Concessionaire shall furnish goods and services to Airport passengers, employees and users in a first-class manner, consistent with the highest quality delivery of goods and services in like settings. Concessionaire shall offer prompt and efficient services that are adequate to meet all reasonable demands thereof at the Airport on a fair, equal and nondiscriminatory basis to all categories of users and in a manner that will reflect credit upon Concessionaire and the Board. Concessionaire shall offer quality products and shall equip, organize, put into service and manage the Premises so as to provide service within an attractive and pleasant atmosphere. Concessionaire shall operate and maintain the Premises in satisfaction of all public health and safety standards and maintain the highest standards of cleanliness.

Section 502. Hours of Operation.

A. The minimum hours of staffed operation for serving the public shall be two (2) hours before departure of the first scheduled flight each day and until thirty (30) minutes after the departure of the last flight out each day. Concessionaire may not permanently change the hours of operation without written application to and the written approval of the Airport Executive Director. The Airport Executive Director may reasonably require Concessionaire to change its hours of operation to reflect changing operational circumstances at the Airport provided that Concessionaire is given ten (10) days advance written notice.

B. In the event that scheduled flights are delayed past the normal last scheduled departures due to weather or other causes, or that unscheduled flights are diverted to the Airport, Concessionaire agrees to reasonably accommodate the needs of the public and employees until such time that the delayed or diverted flights have departed or have been canceled.

Section 503. Pricing Program.

A. Concessionaire shall ensure that prices charged for all pre-packaged consumer products are no more than fifteen percent (15%) greater than prices charged for the same product at off-airport retail businesses within the Rapid City metropolitan area. Board reserves the right to audit compliance with this requirement. Concessionaire shall offer a refund to any customer who demonstrates that they were charged more than fifteen percent (15%) markup for the same product.

Section 504. Automated Vending

Concessionaire shall service and fill the vending machines at intervals which ensure the machines are fully stocked and the products are fresh. Upon notification by a Board representative that a machine is empty or low in inventory, the machine must be serviced/stocked within twenty-four (24) hours of the notification. Concessionaire must maintain an agreed-upon minimum stock of product at all times.

Section 505. Marketing and Promotion.

DRAFT

A. Concessionaire covenants that it shall take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it hereunder. Concessionaire shall not divert or cause or allow any business to be diverted from the Airport by referral or any other method.

B. Concessionaire commits to spend no less than one (1) percent of Gross Revenues on an annual basis to publicize and promote concession services, including for example and without limitation seasonal, themed, special event and general promotions.

Section 505. Management.

A. Concessionaire shall at all times retain one or more qualified, competent and experienced local managers who shall manage and supervise the operations at the Premises and represent and act for Concessionaire. The manager shall ordinarily be available during regular business hours. A responsible subordinate shall be in charge and available at all times during the manager's absence.

B. Concessionaire's local manager shall be responsible to monitor and supervise the Premises each day to ensure that the Premises are operated and maintained in a safe and secure manner and kept clean and clear of any safety hazards or unsightly spills and debris and the accumulation of products on the floor prior to restocking.

C. Concessionaire's local manager shall attend monthly tenant management meetings conducted by the Board to discuss any relevant issues which may affect Concessionaire's operation or other operations at the Airport. Concessionaire shall also be available for meetings at other times reasonably required by the Airport Executive Director.

D. Concessionaire shall be responsible for notifying the Airport Executive Director of any problem which reduces service levels or sales or in any way impairs Concessionaire's operation. The Board will undertake, in its sole discretion, reasonable efforts to assist in eliminating such problems.

Section 506. Personnel.

A. Concessionaire shall require its employees (except managerial and supervisory employees) to wear appropriate uniforms, and all of its employees to wear badges indicating company trade name and employee's first name. Concessionaire shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each of whom shall be proficient in the duties to be performed in the operation of the concession. Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules and regulations. Concessionaire shall prohibit and restrain its employees, vendors, and agents from loud, noisy, boisterous or otherwise objectionable behavior. Upon notice from the Airport Executive Director concerning the conduct or appearance of any such persons, Concessionaire shall immediately take all steps necessary to remove the cause of the objection.

DRAFT

B. Concessionaire shall be responsible to train and supervise its employees in the proper handling of food items and compliance with all applicable public health and safety codes and standards.

C. Concessionaire agrees to provide staff in reasonable numbers adequate to provide a high level of service and maximize sales but commercially reasonable when considering, among other things, the number of expected customers.

D. Concessionaire assumes responsibility to recover any Airport-issued security badge or similar credential and any keys for Airport doors or locks from personnel that no longer are employed by Concessionaire. Concessionaire shall take all reasonable efforts to recover credentials and keys from any such employee immediately upon termination or separation.

Section 507. Deliveries.

Concessionaire shall monitor the movement of deliveries to avoid conflict with other functions and users of the Airport and shall coordinate its use of the receiving area with other users. All deliveries are the responsibility of Concessionaire and not the Board. Concessionaire and its vendors shall only use delivery carts equipped with pneumatic tires and rubber bumpers. Carts shall not have any exposed brackets or bolts.

Section 508. Operation.

A. Concessionaire shall be responsible for all aspects of the management and operation of the concession. Further, Concessionaire will provide employees and necessary components of the operation, including inventory, fixtures, equipment and supplies, except as otherwise provided in this Agreement.

B. The Board shall not be responsible for the security of any goods, merchandise or equipment used, maintained or stored at the Premises, nor will it be responsible for damage to such goods or merchandise resulting from flood, fire, explosion, vandalism or other causes outside the control of Board.

Section 510. Airport Concession Disadvantaged Business Enterprises.

A. This Agreement concerns an airport concession and therefore is subject to the requirements of 49 C.F.R. Part 23 (Participation of Disadvantaged Business Enterprise in Airport Concessions) ("Part 23") and, by reference in Part 23, certain requirements of 49 C.F.R. Part 26 (Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs). This Agreement further is subject to the requirements of the Board's ACDBE Program, as may be adopted and amended by the Board from time to time.

B. The terms used in this section shall have the meaning set forth in Part 23. For purposes of this Agreement, "ACDBE" shall mean a business that meets the requirements set forth in

DRAFT

49 C.F.R. Section 23.3 and that has been certified by the South Dakota Department of Transportation

C. The Board has established a total goal of 1.35% ACDBE participation for FFY ending 2026 for all non-car rental concession activities at the Airport. Concessionaire shall make and document good faith efforts to ensure participation of certified ACDBEs to assist the Board in reaching its goal. ACDBE participation towards this goal shall be counted in the manner set forth in 49 C.F.R. Section 23.55. This goal may be adjusted from time to time.

D. Concessionaire shall make good faith efforts to replace any ACDBE subtenant, subcontractor, joint venture partner or vendor that is terminated, withdraws, or otherwise ceases to participate in the concession activity with another ACDBE to participate at the same or similar level. The Parties agree and acknowledge that, to the extent this Agreement constitutes a long-term, exclusive agreement pursuant to 49 C.F.R. Section 23.75, Concessionaire shall comply with requirements of Section 23.75 and the applicable policies of the Federal Aviation Administration in replacing any ACDBE subtenant, subcontractor, joint venture partner or vendor.

E. Failure by Concessionaire to carry out the requirements of this section will constitute a material breach of this Agreement and may result in termination.

Section 511. Americans With Disabilities Act.

A. Concessionaire agrees that it shall develop, manage, use, and occupy the Premises in accordance with the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq. (hereafter collectively the "ADA"), including, without limitation, modifying the Concessionaire's policies, practices, and procedures, and providing auxiliary aids and services to disabled persons.

B. The Concessionaire acknowledges that, pursuant to the ADA, programs, services, and other activities provided by a public entity, whether directly or through a contractor, must be accessible to disabled persons. The Concessionaire shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state, or Board disability rights legislation. The Concessionaire agrees not to discriminate against disabled persons in the provision of services, benefits, or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the Concessionaire shall constitute a material breach of this Agreement.

ARTICLE VI
IMPROVEMENTS

Section 601. Improvements. This section will be negotiated based on the selected proposal.

DRAFT

Section 602. Title to Premises.

Fee simple title to the Premises shall at all times remain in the Board, subject to Concessionaire's rights arising under and pursuant to this Agreement.

Section 603. Signs.

A. Concessionaire shall not erect, maintain or display any signs on the Premises, without the prior written approval of the Director which approval shall not be unreasonably withheld. The term "sign" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, Concessionaire shall have the right to install such advertising and identification signs as may be necessary for the proper conduct of concession activities on the Premises as contemplated hereunder. Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Terminal.

B. Concessionaire shall be responsible for the cost of any modifications to the Airport directory and other signs. All modifications to these signs must be approved by the Airport Executive Director and are subject to all applicable requirements of this Section 603.

C. Prior to the erection, construction or placing of any sign, Concessionaire shall submit to the Airport Executive Director for approval, drawings, electrical details, sketches, designs, elevations, mounting details and dimensions of such signs. Any conditions, restrictions or limitations with respect to the use thereof as agreed in writing shall become conditions of this Agreement.

D. Concessionaire shall not obstruct its counter space with advertising matter, displays or other literature not directly pertaining to its concession activities. Concessionaire shall not place any signs outside of the Premises.

ARTICLE VII
USE AND MAINTENANCE OF PREMISES

Section 701. Compliance with Laws and Regulations.

A. Concessionaire shall comply with statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements (hereinafter collectively referred to as "Laws") of federal, state and local governmental authorities which are applicable to the Premises and the Airport or to any adjoining public ways, or to the manner of use or the condition of the Premises and the Airport or of adjoining public ways; provided that nothing herein contained shall be construed as estopping or preventing Concessionaire from contesting in good faith the validity or applicability to the operations of Concessionaire hereunder of any Laws, including without limitation the exhaustion of all appeal rights.

DRAFT

B. Concessionaire's use of the Airport and the Premises shall be subject to the Airport Rules and Regulations and such other similar rules and directives of the Airport Executive Director, each as may be adopted and amended from time to time.

C. Concessionaire shall comply with all applicable health, safety and sanitary laws, regulations and inspections concerning its operations. Concessionaire shall keep applicable licenses and permits displayed on the Premises, as may be required by law.

Section 702. Sale of Alcoholic Beverages

A. The Parties acknowledge that the Board owns, and shall continue to own throughout the Term, all applicable licenses and permits issued by government authorities to sell beer, wine, liquor, and other alcoholic beverages at the Airport (collectively, such licenses and permits shall be referred to as "Liquor Licenses"). The Board agrees to obtain all necessary consents and approvals from government authorities to allow Concessionaire to use and manage the Liquor Licenses in connection with Concessionaire's business conducted under this Agreement.

B. Concessionaire, for its part, agrees that is shall manage the Liquor Licenses in compliance with Laws pertaining to the sale and consumption of alcoholic beverages.

C. Annually, upon demand, Concessionaire shall reimburse the Board for all renewal fees paid by the Board to maintain the Liquor Licenses in good standing.

Section 703. Interference with Air Navigation.

No obstructions or hazards to air navigation, as such are defined from time to time by application of the criteria contained in 14 C.F.R. Part 77, as amended, or subsequent and additional regulations of the FAA, will be constructed or permitted to remain on the Premises. Any such obstructions and hazards erected by Concessionaire shall be removed by Concessionaire at its expense within a time period reasonably established under the circumstances by the Airport Executive Director. Concessionaire shall not install any structures, objects, machinery or equipment that interfere with the operation of navigation aids or the safe operation of the Airport, or the operations of other tenants and users of the Airport.

Section 704. Property of the Board.

Some of the fixtures, furniture, and equipment ("FFE") within the Premises are owned by the Board. A list of all FFE owned by the Board is set forth in the attached Exhibit E.

Section 705. Property of Concessionaire.

Any trade FFE and other personal property owned by Concessionaire which are brought, installed or placed in, on or about the Premises shall be and remain the property of Concessionaire, except as otherwise herein provided. Concessionaire shall have the right at any time during the Term to

DRAFT

remove any or all of its property, subject to the obligation of Concessionaire to substantially repair all damage to the real property and the improvements thereon, if any, resulting from such removal.

Section 706. Disposition of Concessionaire's Property at End of Agreement Term.

All such trade fixtures, equipment and other personal property of Concessionaire shall be removed by Concessionaire from the Premises by no later than the expiration or earlier termination of the Term, provided that Concessionaire is not then in default under the Agreement. Any such trade fixtures, equipment and personal property remaining after the expiration or earlier termination of the Term may be removed at the election of the Board and the Board shall not be liable for damages or otherwise for such property's removal, breakage, damage or disposal, and provided further that Concessionaire shall reimburse the Board for all of its expenses incurred in such removal and disposal.

Section 707. Board Maintenance Obligations.

Concessionaire will provide and pay for all repairs and maintenance of the Premises, except the following, which shall be the responsibility of the Board:

A. The structural components of the Terminal in which the Premises are located.

B. The utility system up to Concessionaire's point of connection, except where the utility systems are owned or controlled by the utility companies.

C. The washing of the exterior of windows in the Terminal.

D. Costs for malfunctions or replacement of equipment owned by the Board, except where such malfunction or need for replacement was caused by Concessionaire (in excess of regular wear-and-tear).

Section 708. Concessionaire Maintenance Obligations.

Concessionaire agrees to perform the following functions as part of its responsibilities in the repair and maintenance of the Premises. The following list includes certain functions but Concessionaire's responsibilities are not limited to those functions:

A. Regularly service, maintain in good working order, and repair all Board-owned FFE. Concessionaire shall keep records of all such maintenance, which records shall be provided to the Board upon request. Concessionaire shall report to the Airport Executive Director or his/her designee any needed repairs, failures, damage, and/or malfunction of the Board-owned FFE that it deems beyond normal wear-and-tear as soon as practical after discovery of the same. The Airport Executive Director shall make a determination as to whether the required maintenance is beyond normal wear-and-tear, and thus the responsibility of the Board. In either case, the responsible party shall conduct the required maintenance as soon as reasonably possible. The responsible party may engage a third-party vendor to repair

DRAFT

and/or replace the Board-owned FFE. Board will provide the maintenance and replacement of dining tables and chairs.

B. Perform custodial and cleaning services daily, and as necessary during hours of operation, to maintain a continuous sanitary environment including, but not necessarily limited to the following: mopping and sweeping of floors; vacuuming of carpets; cleaning surfaces of counters, trash receptacles, tables, windows, equipment, signs and chairs; polishing brass; dusting and polishing wood surfaces and other surfaces where dust accumulates; emptying trash receptacles; and, regularly cleaning any grease traps and drains to prevent leakage. These requirements pertain not only to the Premises footprint of the kitchen and exclusive areas, but also to the dining room on the pre-secured side of the terminal.

C. Concessionaire shall implement a preventative and routine maintenance program, the provisions of which shall be subject to periodic review by the Airport Executive Director. Concessionaire, from time to time, upon request, shall provide the Airport Executive Director with a written schedule of Concessionaire's cleaning and maintenance program. Concessionaire will perform all needed maintenance and repair of the equipment and fixtures provided by Concessionaire on a timely basis.

D. Keep Premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.

E. Repair all damage to the Premises and the Terminal when such damage results from the careless or negligent acts of Concessionaire or Concessionaire's employees, agents, guests, patrons and invitees.

F. Store and dispose of all waste matter in a manner satisfactory to the Airport Executive Director. Concessionaire agrees to arrange for the timely disposal, at its own expense, of all waste material. Concessionaire may not dispose of any such items in the public areas. This may require the use of special devices including, but not limited to, special containers, compactors and disposal systems. Concessionaire agrees to promptly provide and install same and to abide by these requirements. In transporting waste matter, trash, and refuse from the Premises, Concessionaire shall use only carts or conveyances that are covered, leak-proof, and equipped with wheels suitable for operating on carpets without damage thereto. Concessionaire will maintain and implement written plan of its methods of handling and disposal of trash, garbage and refuse, which shall be subject to the approval of the Airport Executive Director.

G. Confine all handling and holding of Concessionaire's property to the Premises.

H. No storage will be permitted on the exterior areas of the Premises nor on the Terminal perimeter. Ground level storage may be leased from the Board at its current rates and charges dependent upon space availability.

I. Keep Premises free of pests and provide pest control services as needed. Such pest control services shall use humane and pain-free methods whenever possible.

DRAFT

Section 709. Security.

A. The Board is required by Transportation Security Regulations, 49 C.F.R. Part 1542, as amended, to adopt and implement a security program which provides for the safety and security of persons and aircraft operating in air transportation, including procedures designed to prevent and deter persons and vehicles from unauthorized access to air operation areas (hereinafter "AOA") and other secured areas. The Board represents that it has satisfied the security program requirements by developing an Airport Security Plan (hereinafter the "ASP") for the Airport. The Board shall deliver to Concessionaire a copy of those portions of the ASP, as amended, relevant to the operations of Concessionaire at the Airport, and upon receipt thereof Concessionaire agrees to comply during the term hereof with the requirements of the ASP in connection with the exercise by Concessionaire of the rights granted to Concessionaire under this Agreement. Concessionaire shall prepare and submit for approval by the Airport Executive Director plans proposed by Concessionaire to prevent and deter persons and vehicles from unauthorized access to the AOA and other restricted areas in the Airport from and through the Premises in accordance with the provisions contained in the portion of the ASP delivered to Concessionaire and applicable laws and regulations, as amended. The Parties acknowledge that portions of the ASP are deemed Sensitive Security Information ("SSI") in accordance with 49 C.F.R. Part 1520 and that Concessionaire may be unable to view those portions of the ASP deemed SSI and/or may be required to comply with handling and protecting those portions deemed SSI if it is determined that Concessionaire has a need to know the information.

B. Concessionaire shall reimburse the Board for any civil penalties or fines assessed against the Board by the Transportation Security Administration for violation of 49 C.F.R. Part 1542 or the Airport Security Plan that are caused by, or directly attributable to, the action or omissions of Concessionaire.

C. Concessionaire and its employees shall submit to a Criminal History Records Check and any other background inquiries necessary to obtain a security badge or similar credential. Concessionaire or its employees shall pay all associated fees in connection with securing badging.

Section 710. Damage and Destruction.

The Board shall be responsible to repair or replace the Premises upon the occurrence of any casualty, except as may be caused by the acts or omissions of Concessionaire. The Board shall repair or replace any and all improvements to the condition existing immediately prior to the casualty event, provided that Concessionaire shall be responsible to repair or replace any furniture, fixtures and equipment that it owns damaged or destroyed during the casualty event. The Board shall abate any Concession Fee during any period in which the Premises are closed to the public as a result of the casualty event, provided that the Board shall not otherwise be responsible to Concessionaire for lost revenue, lost profit or any other injury, loss or inconvenience suffered by Concessionaire attributable to the casualty event or to share in any insurance proceeds received by the Board.

DRAFT

ARTICLE VIII
INSURANCE

Section 801. Insurance Coverage.

A. Concessionaire agrees to procure and maintain throughout the Term insurance coverage conforming to the minimum requirements as stated below. Concessionaire shall provide to the Board a standard Acord Certificate(s) of Insurance as proof of insurance. Except for worker's compensation liability insurance, all policies shall include the "City of Rapid City and the Rapid City Regional Airport Board, individually and collectively, and its representatives, officers, officials, employees, agents and volunteers" as additional insureds.

B. All policies of insurance required under this Agreement shall provide Board no less than thirty (30) days advance written notice of any material change, cancellation or non-renewal.

C. All coverage required by this Agreement shall be provided by insurance companies authorized to transact business under the laws of the State of South Dakota, and acceptable to the Board. The insurance companies providing coverage shall have a Best's Policyholder's Rating of "A" or better, and a Financial Rating of not less than "VII." Board shall have the right to approve the amount of any policy deductible or retention.

D. Commercial General Liability coverage shall be on an occurrence form providing the following coverage: Premises/Operations, Products/Completed Operations, Blanket Contractual Liability, Independent Contractors, Broad Form Property Damage, Fire Legal Liability, Personal Injury and Medical Expense.

E. Limits for Commercial General Liability, including Bodily Injury, shall be no less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence and TWO MILLION DOLLARS ($2,000,000) in the aggregate. Fire Legal Liability shall have a limit of no less than $500,000. Medical Payments coverage shall have a limit of not less than $5,000 per person. Limits for Commercial General Liability, including Bodily Injury, shall increase to no less than $5,000,000 combined single limit per occurrence and in the aggregate.

F. Automobile Liability coverage shall be afforded on all owned, non-owned and hired vehicles whether private passenger or other than private passenger, and shall include Uninsured and Underinsured motorists. Limits for the Automobile Liability, Uninsured and Underinsured Motorist coverages, shall be no less than $1,000,000 combined single limit for Bodily Injury and Property Damage.

G. Workers' Compensation coverage shall be afforded for all operations conducted under this Agreement as required by State of South Dakota statute. Employer's Liability coverage shall be provided for not less than $500,000 each accident, $500,000 disease-policy limit, and $500,000 disease-each employee.

DRAFT

H. "All Risk" property insurance, including Earthquake coverage, shall be afforded on Concessionaire's business personal property, build-outs, improvements and betterments, and alterations. Coverage shall be sufficient to provide for the full replacement of Concessionaire's property as well as any "business interruption" expense incurred by Concessionaire in order to remain "open for business," or to resume normal business operations in a manner and timeframe acceptable to Board.

I. Liquor Liability coverage shall be sufficient to cover liabilities arising under South Dakota Codified Laws Chapter 35-4.

J. The amounts of insurance required in this section may be satisfied by multiple policies which, when combined together, provide the total limits of insurance specified.

K. The insurance amounts and types of insurance set forth in this Section 801 shall be reviewed from time to time by the Board and may be adjusted by the Board if the Board reasonably determines such adjustments are necessary to protect the Board's interests.

Section 802. Review of Requirements.

These insurance requirements shall be subject to annual review by the Board, and may be modified at any time due to changes in Concessionaire's operations or exposures, or due to changes in legal requirements or insurance industry standard coverages, or if the Board reasonable determines such adjustments are necessary to protect the Board's interests.

Section 803. Adjustment of Claims.

Concessionaire shall provide for the prompt and efficient handling of all claims arising out of activities of Concessionaire under this Agreement.

Section 804. Right of Board to Obtain Insurance.

If Concessionaire shall fail to obtain and keep in force the insurance as required herein, the Board may, but shall not be under any obligation, to affect such insurance by taking out policies in one or more companies satisfactory to the Board. The amount of the premium or premiums paid for such insurance by the Board shall be payable by Concessionaire to the Board as a Charge under the terms of this Agreement.

ARTICLE IX
INDEMNIFICATION

Section 901. Indemnification.

DRAFT

A. Concessionaire shall indemnify and hold harmless the Board and its respective officers, directors, agents and employees, and its successors and assigns, individually or collectively, from and against all claims, damages, expenses, or losses for injury to or death of any person or loss of damage to any property arising out of or incident to the conduct of Concessionaire's business in connection with this Agreement and/or the use or occupancy of the Premises and caused by the acts or omissions of Concessionaire's officers, agents, employees, contractors, subcontractors, licensees, guests or invitees, whether occurring on the Premises or on the Airport to the extent resulting from:

i. A failure by Concessionaire to perform any of the terms or conditions of this Agreement;

ii. Any occurrence, personal injury or property damage happening on or about the Premises or appurtenances resulting from the condition, maintenance, construction or operation of or upon the Premises that are under Concessionaire's care, custody or control;

iii. Any occurrence, personal injury or property damage happening on or about the Premises or appurtenances resulting from any act or omission to act on the part of Concessionaire's agents, employees, invitees or guests, whether sustained by Concessionaire or its servants, employees, agents, licensees, guests or invitees;

iv. A failure by Concessionaire to comply with any law, ordinance, rule or regulation of any governmental authority, or any department or agency thereof, including but not limited to any and all health and sanitation, environmental, or other such provisions;

v. Any mechanic's lien or security interest filed against the Premises or any fixtures, equipment, or personalty therein or appurtenant thereto; or

vi. Any construction, work, alterations or improvements to or on the Premises or appurtenant thereto.

Section 902. Notice; Defense or Settlement; Cooperation; Approval of Counsel.

Board shall provide Concessionaire with at least 60 days' notice of any claim or occurrence that is likely to give rise to a claim that will fall within the scope of the foregoing indemnity. The Board will provide Concessionaire an opportunity to defend or settle any such claim and will cooperate with Concessionaire in any such defense or settlement. In carrying out its defense obligations under Section 902, Concessionaire shall not use counsel to which the Board has made reasonable written objections prior to the date on which Concessionaire retains such counsel.

Section 903. Survival of Indemnification.
The indemnification provisions of this Article IX shall survive the expiration or earlier termination of this Agreement.

ARTICLE X
ENVIRONMENTAL COMPLIANCE

DRAFT

Section 1001. Environmental Requirements.

Concessionaire, in conducting any activity within the Premises or in any other areas of the Airport, shall comply with all applicable federal, state, and local laws, statutes, ordinances, and regulations, now or hereafter in effect relating to the regulation and protection of human health, safety, the environment and natural resources. Environmental Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 (2003), et. seq.), as amended; Resources Conservation and Recovery Act (42 U.S.C. Section 6901 (2003), et. seq., as amended; the Federal Water Pollution Control Act (33 U.S.C. Section 1251 (2003), et. seq., as amended; the Hazardous Materials Transportation Act of 1990 (49 U.S.C. Section 1801 (2003), et. seq., as amended; the Toxic Substance Control Act of 1976 (15 U.S.C. Section 2601 (2003), et. seq.), as amended; and the Clean Air Act of 1970 (42 U.S.C. Section 7401 (2003), et. seq.), as amended.

Section 1002. Hazardous Materials and Substances.

Concessionaire shall act with due care and consistent with industry practices in connection with materials and substances used by Concessionaire at the Airport, even if such materials and substances are not regulated by law, so as not to pose a hazard to the health or safety of Airport users or other tenants. Concessionaire further agrees to execute and deliver to the Board any documents reasonably required by the Board in connection with any environmental matter, including disposal.

Without limiting the generality of the foregoing, Concessionaire shall not cause any Toxic or Hazardous Substance to be improperly used, stored, discharged, released, or disposed of on the Premises or the Airport. "Toxic or Hazardous Substances" shall be interpreted broadly to include, but not be limited to, any material or substance that is defined or classified as (i) a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 Section 101, 42 U.S.C. Section 9601(14) (2003), as amended, and pursuant to the Federal Water Pollution Control Act Amendments of 1972 Section 311(b)(2)(A), 33 U.S.C. Section 1321(b)(2)(A) (2003), as amended; (ii) a "hazardous waste" pursuant to the Resources Conservation and Recovery Act Sections 1004 and 3001, 42 U.S.C. Sections 6903(5) and 6921 (2003), as amended; (iii) a "toxic pollutant" pursuant to the Federal Water Pollution Control Act Section 307(a)(1), 33 U.S.C. Section 1317(a)(1) (2003), as amended; (iv) a "hazardous air pollutant" pursuant to the Clean Air Act of 1970 Section 112(a)(6), 42 U.S.C. Section 7412 (2003), as amended; (v) toxic or hazardous pursuant to regulations promulgated now or hereafter under the Environmental Laws; and (vi) asbestos, polychlorinated biphenyls, petroleum and petroleum derivatives, urea formaldehyde, or any perfluoroalkyl or polyfluoroalkyl substance.

Section 1003. Release Response.

In the case of any release or discharge of Toxic or Hazardous Substances 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 indemnify, defend, and hold harmless the Board for any penalties

DRAFT

and all cost and expense, including without limitation attorney's fees, incurred by the Board as a result of the release or discharge by Concessionaire of any Toxic or Hazardous Substances on the Airport.

Section 1004. Due Diligence.

Concessionaire understands and agrees that the Board has not performed any environmental assessments or studies of the Premises as of the Commencement Date, and Concessionaire accepts the Premises "as is."

ARTICLE XI
ASSIGNMENT AND SUBLETTING

Section 1101. Assignment and Subletting by Concessionaire.

Concessionaire may not assign this Agreement or let or sublet the whole or any part of the Premises without the prior written approval of the Board. Notwithstanding the foregoing, Concessionaire shall have the right to (i) assign the Agreement or sublease the Premises or any portion thereof to any subsidiary or affiliate of Concessionaire (however, Concessionaire shall provide written notice thereof along with a true and complete copy of the sublease or assignment document no later than ten (10) days prior to the effective date of such sublease or assignment) and/or (ii) assign the Agreement or sublease the Premises in the event of a merger or a sale of all or substantially all of Concessionaire's assets, and in any event shall notify the Board in writing within ten (10) days prior to the effective date of such assignment or sublease. For the purposes hereof, "affiliate" shall mean an entity that controls, is controlled by or is under the common control with, Concessionaire. Concessionaire shall remain liable under the terms of this Agreement if Concessionaire exercises its rights under this Section 1101, but if Concessionaire is not the surviving entity in any merger or acquisition, the surviving entity shall be bound as Concessionaire hereunder.

Section 1102. Assignment and Subletting by Board.

The Board, and its successors, reserve the right to assign this Agreement. Until notice of such assignment shall be given to Concessionaire, Concessionaire shall look to the Board or the last identified assignee for performance of the obligations on the part of the Board to be performed under this Agreement.

ARTICLE XII
EVENTS OF DEFAULT AND TERMINATION

Section 1201. Board's Right to Terminate.

DRAFT

The Board, acting by and through the Airport Executive Director, may declare this Agreement terminated in its entirety, in the manner provided in Section 1203 hereof, upon the happening of any one or more of the following events. By example, but not by way of limitation, the following acts or omissions shall constitute a default:

A. If the fees, charges, or other money payments which Concessionaire herein agrees to pay or any part thereof, shall be unpaid after the date the same shall become due; provided, however, that Concessionaire shall be given written notice of this failure to pay and shall have twenty (20) days thereafter to cure such failure to pay.

B. If, during the term of this Agreement, Concessionaire shall:

1. Apply for, or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its assets;

2. File a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;

3. Make a general assignment for the benefit of creditors without the approval of the Board;

4. File a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;

5. File an answer admitting the material allegations of a petition filed against any said assignee or sublessee of a substantial portion of this Agreement in any bankruptcy, reorganization or insolvency proceedings; or if during the term of this Agreement an order, judgment or decree shall be entered by any court of competent jurisdiction, or the application of a creditor, adjudicating Concessionaire a bankrupt or insolvent, or approving a petition seeking a reorganization of Concessionaire, and such order, judgment or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days;

6. Fail to maintain the quality of products or services to the reasonable satisfaction of the Airport Executive Director as required hereunder; provided, however, that Concessionaire shall be given written notice of this failure and shall have twenty (20) days thereafter to cure such failure;

7. Fail to prevent cessation or deterioration of service for a period which, in the reasonable opinion of the Airport Executive Director, materially and adversely affects the overall performance of Concessionaire under this Agreement; provided, however, that Concessionaire shall be given written notice of this failure and shall have ten (10) days thereafter to cure such failure;

8. Suffer to file any lien against Concessionaire or the Premises, equipment or furnishings therein because of or resulting from any act or omission of

DRAFT

Concessionaire and is not removed or enjoined within sixty (60) days of written notice from the Airport Executive Director;

9. Willingly desert, vacate or discontinue all or a portion of its operation of the Premises which, in the reasonable opinion of the Airport Executive Director, results in a failure to provide the public and others the service contemplated hereunder; provided, however, that Concessionaire shall be given written notice of this failure and shall have ten (10) days thereafter to cure such failure;

10. Fail in the performance of any terms, covenants, or condition herein required to be performed by Concessionaire; provided, however, that Concessionaire shall be given written notice of this failure and shall have twenty (20) days thereafter to cure such failure.

Section 1202. Concessionaire's Right to Terminate.

Concessionaire, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1203 hereof for the following causes:

A. If a court of competent jurisdiction issues an injunction or restraining order against the Board preventing or restraining the use of the Airport for Airport purposes in its entirety or substantial entirety.

B. If the Board shall have abandoned the Airport for a period of at least thirty (30) days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers.

C. If the Board shall have failed in the performance of any specific covenant within the control of the Board and required by this Agreement to be performed by the Board.

Section 1203. Procedures for Termination.

No termination declared by either party shall be effective unless and until such defaulting party has had an opportunity to cure such deficiency in the period for cure as set forth herein. If such period is not indicated herein, such period for cure shall be not less than thirty (30) days. Any notice of termination given hereunder shall specify the date and cause for termination, the period to cure and the date of termination of this Agreement should such deficiency not be cured within the applicable cure period.

In the event that suit shall be instituted by the Board upon the default of payment of charges and fees as provided herein, then Concessionaire agrees also to pay reasonable attorneys' fees including costs of collection thereof.

Section 1204. Rights Cumulative.

DRAFT

It is understood and agreed that the rights and remedies of the Board and Concessionaire specified in this Article XII are not intended to be, and shall not be, exclusive of one another or exclusive of any common law right of either of the parties hereto.

ARTICLE XIII
NON-DISCRIMINATION

Section 1301.

Concessionaire agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as Concessionaire. This provision obligates Concessionaire for the period during which the Premises is used or possessed by Concessionaire and the Airport remains obligated to the FAA. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

Section 1302.

During the performance of this Agreement, Concessionaire for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities:

A. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

B. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);

C. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

D. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;

E. The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);

F. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

G. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-

DRAFT

aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

H. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

I. The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

L. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq.).

Section 1303.

Concessionaire, including personal 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 (1) no person on the ground of race, color, or national origin, will 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 ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Concessionaire will use the Premises in compliance with all other requirements imposed by or pursuant to the list of non-discrimination acts and authorities, as enumerated in the preceding subsection. In the event of breach of any of the above nondiscrimination covenants, the Board will have the right to terminate this Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if the Agreement had never been made or issued.

Section 1304.

DRAFT

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq*., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR Part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964) including amendments thereto;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq*.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 .U.S.C. § 6101 *et seq*.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (P.L. 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR Parts 37 and 38;
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681, et seq).

During the performance 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 (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, 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, will not discriminate on the grounds of race, color, national origin), creed, sex, age, or disability in the selection and retention of subcontractors, including

DRAFT

procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21 including amendments thereto.

3. **Solicitations for Subcontracts, 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 will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will 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 to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance: In** the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

    a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or

    b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

ARTICLE XIV
MISCELLANEOUS PROVISIONS

Section 1401. No Personal Liability.

DRAFT

No member, director, officer, employee or other agent of either party shall be personally liable under or in connection with this Agreement absent a tortious act by such person or the express written undertaking of such person to the contrary. Each of the Parties acknowledges and agrees that in entering into this Agreement, and the documents referred to herein, such party does not rely on, and shall have no remedy with respect to, any statement, representation, warranty or understanding (whether intentionally, negligently or innocently made) of any person (whether a party to this Agreement or not) other than as expressly specified in this Agreement.

Section 1402. Binding Effect.

This Agreement and the terms, conditions, covenants and obligations contained herein shall be for the benefit of and shall be binding upon the Board and Concessionaire, and their respective permitted successors and assigns.

Section 1403. Severability.

Except to the extent otherwise specified herein, each covenant and agreement contained in this Agreement shall be for all purposes construed as separate and independent covenants and agreements, and the breach of any covenant or agreement contained herein by either party shall not discharge or relieve the other party from its obligation to perform each and every covenant and agreement contained herein.

Section 1404. Partial Invalidity.

If any covenant, term or condition of this Agreement or the application thereof to any person or circumstance shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such covenant, term or condition of this Agreement, shall be valid and enforceable to the fullest extent permitted by law.

Section 1405. Applicable Law.

This Agreement shall be deemed to have been made in the State of South Dakota and shall be governed by and construed in accordance with the laws of the State of South Dakota, notwithstanding the applicable choice of law provisions or the place of execution hereof, nor the performance of the acts in connection herewith or hereunder occurring in any other jurisdiction. Venue for any action relating to this Agreement shall be in the Circuit Court of Pennington County, South Dakota, and the Parties hereby agree to submit to the jurisdiction of said court.

Section 1406. Time of the Essence.

Time is of the essence with respect to all provisions contained in this Agreement.

Section 1407. Paragraph Headings.

DRAFT

The headings of the various sections of this Agreement have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions contained herein.

Section 1408. Entire Agreement.

This Agreement and the exhibits attached hereto or referred to herein shall constitute the entire agreement between the Parties. Any prior understanding or representation of any kind preceding the execution hereof shall not be binding upon either party except to the extent incorporated in this Agreement.

Section 1409. Modification of Agreement.

Any modification to this Agreement or additional obligations assumed by either party in connection with this Agreement shall be binding only if evidenced in a writing signed by each party.

Section 1410. Relationship of the Parties.

This Agreement shall not be construed as creating any relationship hereunder other than that of lessor and lessee. No other relationships, such as one of partnership, joint venture or otherwise, shall arise by reason hereof. Except as expressly specified in this Agreement, nothing contained herein shall be construed as authorizing either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

Section 1411. Force Majeure.

Neither the Board nor Concessionaire shall be deemed to be in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, terrorism, sabotage or any other circumstances for which it is not responsible or which are not within its reasonable control, provided that nothing herein shall excuse Concessionaire from satisfying the financial obligations set forth in Article IV.

Section 1412. Previous Agreements.

The terms and obligations of this Agreement shall in no way affect or impair the terms, obligations or conditions of any existing or prior agreement between Board and Concessionaire.

Section 1413. Construction of Agreement.

Words of any gender in this Agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural when the context requires. Whenever used herein, the word "Concessionaire" shall be deemed to include its approved successors, sublessees

DRAFT

and assigns; and the word "Board" shall be deemed to include its successors and assigns, unless the context excludes such construction. Each party acknowledges that both Parties participated equally in drafting this Agreement and, accordingly, no court construing this Agreement shall construe it more stringently against one party.

Section 1414. Waiver.

No waiver of a default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by the other party shall be construed, or shall operate, as a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement shall not prevent a party from subsequently requiring compliance with the waived obligation. The rights and remedies herein provided are cumulative and, unless otherwise provided herein, are not exclusive of any rights or remedies provided by law.

Section 1415. Brokerage Fees, Commissions.

The Board and Concessionaire mutually represent that there are no finders, consultants, agents or brokers involved in this transaction and that neither the Board nor Concessionaire has agreed to pay a commission or fee to any finder, consultant, agent or broker in connection with this Agreement. Each party agrees to indemnify and hold harmless the other party from any liability arising from any claim for any such commission or fee alleged to be payable because of any statement, act or omission of the indemnifying party in connection with this transaction, including without limitation reasonable attorney's fees and costs actually incurred in connection with defending said party from any such claim.

Section 1416. Survival of Covenants.

Any covenant or obligation imposed on the Board or Concessionaire by the terms of this Agreement which requires any performance on the part of Board or Concessionaire, as the case may be, after the expiration or earlier termination of this Agreement shall be deemed to survive such expiration or earlier termination.

Section 1417. Debt Instruments.

This Agreement and all rights under this Agreement shall be subordinate to any bond ordinance, indenture or covenant made by the Board with respect to the Airport during the Term and, in the event of a conflict, the requirements of the ordinance, indenture or covenant shall control.

Section 1418. Notice.

Any notice, demand or other communication required or desired under this Agreement shall be sufficiently given or delivered (i) when deposited with a reputable courier or overnight delivery service directed for next business day delivery; provided that the recipient shall have an additional one (1) business day from the date of deposit to respond or otherwise take action as permitted

DRAFT

under this Agreement; (ii) on the date of deposit in the United States mail, registered or certified, postage prepaid, return receipt requested; provided that the recipient shall have an additional three (3) business days from the date of the postmark to respond or otherwise take action as permitted under this Agreement; or (iii) on the date of submission of a facsimile or email transmission which is confirmed; provided that such notice, demand or other communication is also deposited with a reputable courier or overnight delivery service or in the United States mail, registered or certified, postage prepaid, on the same date as the facsimile or email transmission is submitted, as follows:

If to Board:
Rapid City Regional Airport
Attn: Airport Executive Director
4550 Terminal Road, Suite 102
Rapid City, South Dakota 57703-8706
Telephone: 605-394-4195

If to Concessionaire:

The Parties may change the address for notices hereunder by notifying the other party in writing as specified herein.

Section 1419. Counterparts.

This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts shall together constitute and be one and the same instrument.

Section 1420. Quiet Enjoyment.

Upon substantial compliance by Concessionaire with the provisions contained in this Agreement, Concessionaire shall peaceably and quietly hold and enjoy the Premises for the Term without hindrance or interruption by the Board or any other person or persons. Board warrants that it has good and marketable title to the Airport and the Premises and that there are no liens, charges, encumbrances, or rights of third parties that have a prior right to the interest of Concessionaire under this Agreement.

Section 1421. Authority.

The persons executing this Agreement on behalf of the Board and on behalf of Concessionaire have the requisite power and authority to do so and to bind the Parties in the performance of the respective obligations hereunder. Each party has full power and authority to enter into this Agreement and to perform the transactions contemplated herein without the consent or approval of any other person or party whatsoever.

Section 1422. Consents; Approvals.

Any consent or approval required by a party or such party's representative or agent shall, to the extent not otherwise expressly stated, not be unreasonably withheld, delayed or conditioned.

DRAFT

Section 1423. Payment of Less than Full Amount.

Notwithstanding any other provision of this Agreement to the contrary, if one party makes a payment to the other party for an amount owing under this Agreement in an amount less than the full amount then due and payable, the unpaid balance shall remain due and payable, whether or not such unpaid amount is in dispute and whether or not the party making such payment has placed a "Payment in Full" or similar legend on the instrument by which payment is made, unless the Parties have executed and delivered a separate written agreement settling the amount owed (a "Settlement Agreement"). The party receiving value for such partial payment shall not be deemed to have waived its right to receive the balance of the remaining amount due unless such party has executed and delivered a Settlement Agreement waiving its claim to such balance.

Section 1424. No Third-Party Beneficiary.

This Agreement is for the benefit of the Parties and will not be construed as conferring any rights to any third party.

IN WITNESS WHEREOF, the Parties hereto for themselves, their successors and assigns, have executed this Agreement as of the day and year first above written.

RAPID CITY REGIONAL AIRPORT BOARD	**CONCESSIONAIRE**
By: _____	By: _____
Name: _____	Name: _____
Its: _____	Its: _____
Date: _____	Date: _____

ATTEST:

_____

DRAFT

RAPID CITY REGIONAL AIRPORT

For Business Conducted in the Month of: _____

Fiscal Sales - Beginning Balance: _____

	Pre-Security	Post - Security	Total Sales	% Fee	Fee Due
Counter Service - Grab & Go (Food & Non-Alcoholic Beverages)					
Convenience Items (Pre-secured Side Only)					
Vending					
Alcoholic Beverages					
Totals					

Fiscal Sales - Ending Balance: _____

Total Percentage Fee For Month: _____

Monthly MAG:

Total Due for Month: _____

Total Due for the Month is either the Monthly MAG or the Total Percentage Fee; whichever is greater.
Monthly MAG is due on the first of each month. The Percentage Fee is due by the 10th of the month.
Once Percent Fees Exceed Monthly MAG, Monthly MAG is no longer due; only the Percent Fees.
If Monthly MAG is paid and Percent Fees Exceed the MAG, the difference will be due on the 10th.

I certify the above data to be true and correct as per the terms of the lease.

Signed: _____ Date: _____