

# City of Albuquerque

## Request for Proposals

**Solicitation Number: RFP2007-010-SB**

**“Design, Develop, and Operate  
Food and Beverage Concessions at  
Albuquerque International Sunport”**



**Mandatory Pre-Proposal Conference: Thursday, March 1, 2007**

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**Proposal Due Date: Friday, April 6, 2007 - NLT 4:00 PM (MDT)**

*The date and time proposals are due shall be strictly observed.*

City of Albuquerque  
Department of Finance and Administrative Services  
Purchasing Division

February 2, 2007

# TABLE OF CONTENTS

## Introduction

**Part 1** Instructions to Offerors

**Part 2** Proposal Format

**Part 3** Scope of Services

**Part 4** Evaluation of Offers

**Part 5** Checklist and *Required* Proposal Forms

**Offeror's Checklist (1 page)**

**Proposal Form 1 – Local Preference Certification Instructions & Form (2 pages)**

**Proposal Form 2 – Business Information Statement (4 pages)**

**Proposal Form 3 – Qualifications and Experience Statement (2 pages)**

**Proposal Form 4 – Financial Information Statement (4 pages)**

**Proposal Form 5 – Food and Beverage Concession Master Plan (3 pages)**

**Proposal Form 6 – Investment and Compensation Offer (8 pages)**

**Proposal Form 7 – Local Participation Form (4 pages)**

**Proposal Form 8 – Disadvantaged Business Enterprises Participation Form (5 pages)**

**Proposal Form 9 – Offeror's Disclosure Form (2 pages)**

**Part 6** Proposed Food and Beverage Concession Lease and Agreement

**Part 7** Proposal Bond Format

## INTRODUCTION

The City of Albuquerque Aviation Department ("City") is requesting proposals from all interested and qualified Offerors desiring to design, develop, and operate Food and Beverage Concessions ("Concessions") at the Albuquerque International Sunport ("Airport").

Four (4) separate Concession Packages will be awarded. However, in order to provide a range of competitive services to the traveling public, and to maximize revenues to the City, no Offeror will be awarded more than two (2) Concession Packages. Separate proposals must be submitted for each Concession Package. Proposals that include more than one (1) Concession Package will not be considered.

The purpose of this Request for Proposals ("RFP") is to provide a format for the evaluation of offers from concessionaires who have the experience and qualifications necessary to meet the following goal and objectives for a new Food and Beverage Concessions Program at the Airport.

*Goal: To develop a new Food and Beverage Concessions Program for the Albuquerque International Sunport that is unique and creative, offers value to the traveling public and other users of the Sunport, and will enhance the image of the Sunport as a world-class airport.*

### Objectives:

- Provide the highest quality of food and beverage services available through a range of concepts and services that include local and regional flavors, as well as national brands that broaden customer appeal.
- Emphasize design and development standards for high-quality, contemporary, attractive, and creative facilities that promote a strong sense of place and reflect the unique culture and character of Albuquerque and the Southwest region, and that complement the architecture of the terminal building.
- Provide a high-level of customer service with a balanced mix of variety and choice of food and beverage products, competitive pricing, friendly service that reflects positively on the community, and clean inviting facilities.
- Encourage diversity of food and beverage concepts and competition between concessionaires as a means to optimize sales and to maximize revenues to the City of Albuquerque Aviation Department.

- Provide, to the greatest extent possible, opportunities for participation by qualified and experienced local small businesses through a first-step mentoring program.
- Meet or exceed the City's Disadvantaged Business Enterprise goals for the Food and Beverage Concessions Program.

A Food and Beverage Concession Lease and Agreement ("Agreement") will be awarded to the Offerors that submit a proposal that best meets all of the qualifications required by the City as set forth herein and offers the greatest overall benefit to the City.

The documents contained in this Request for Proposals use the terms "proposal" and "offer," and "Proposer" and "Offeror" interchangeably.

**General Information – Albuquerque International Sunport:** The Albuquerque International Sunport is the principal air carrier airport serving the Albuquerque Metropolitan Area and the State of New Mexico. Owned by the City of Albuquerque and operated by the City's Aviation Department, the Airport is 5 miles southeast of downtown Albuquerque.

The passenger facilities of the Airport include a terminal complex with more than 500,000 square feet of interior space, including twenty-three (23) air carrier aircraft gates as well as one (1) regional/commuter gate area. The twenty-three air carrier gates are situated in a linear east-west concourse alignment, parallel to the terminal complex and connected to it via a terminal-concourse connector. The eastern portion of the concourse is referred to as Concourse A and the western portion is referred to as Concourse B. An International gate is located at the west end of the terminal complex and is used for International arrivals only. The surrounding terminal area includes a two-level terminal loop roadway system, a 3,400-space automobile parking structure, and a 534 space surface parking lot.

The Airport has three (3) principal runways for air carrier use: Runway 8-26 (reconstructed in 1997), the primary air carrier/military runway, is 13,775 feet long and 300 feet wide; Runway 3-21, reconstructed in 1995 as an air carrier runway, is 10,000 feet long and 150 feet wide; and Runway 17-35, a crosswind runway, is 10,000 feet long and 150 feet wide. In 1999, Runway 12-30 was reconstructed in concrete to extend and expand the runway to 6,000 feet in length and 150 feet in width and is used primarily as a general aviation aircraft runway. In addition to the reconstruction of Runways 3-21 and 8-26, recent improvements to the airfield at the Airport include the expansion of an air cargo apron, and reconstruction of various Taxiways.

On March 17, 2001, the Airport opened a new Consolidated Rental Car Facility, which is located on approximately 76 acres of Airport property southwest of the terminal complex. The new facility is comprised of a customer service building, ready/return parking area and service center facilities. The Consolidated Rental Car Facility is currently utilized by eight (8) rental car companies including Avis, Budget, Dollar, Hertz, Advantage, Thrifty, Enterprise, and Vanguard.

**Statistical Information:** The Albuquerque International Sunport is classified as a medium hub airport by the Federal Aviation Administration (“FAA”). In 2005, approximately 6.4 million passengers used the Airport. According to Airports Council International-North America records, Albuquerque ranked as the 58th busiest passenger airport in the United States in 2005. The Airport primarily serves an origination-destination (O&D) air traffic market, with approximately 95% of the passengers using the Airport to begin or end their trips in the Albuquerque area and other parts of the State.

### Historical Passenger Activity

Calendar Year	Enplanements	Deplanements
1996	3,308,048	3,310,703
1997	3,138,663	3,151,355
1998	3,069,629	3,079,568
1999	3,131,951	3,131,853
2000	3,146,208	3,146,250
2001	3,089,703	3,093,903
2002	3,063,036	3,054,610
2003	3,033,839	3,018,040
2004	3,174,051	3,150,098
2005	3,244,646	3,221,789
2006	3,261,463	3,225,813

The Airport is centrally located in the State of New Mexico and is the only airport in the State that provides scheduled major national airline service. Currently, eight (8) major national commercial passenger airlines (American, Continental, Delta, Frontier, Northwest, Southwest, United, and US Airways), and two (2) commuter airlines (Mesa Airlines and Great Lakes Airlines) provide scheduled airline service at the Airport. Today, the airlines offer nonstop flights to more than 36 cities from Albuquerque.

Southwest Airlines uses the Airport as a connecting point for its service between cities in Texas to the east and cities in Arizona, California, Nevada, Oregon, Utah, and Washington to the west. Southwest Airlines continues to be the Airport's major carrier with just over half of the market share in 2005. Since 1987, Southwest has more than doubled its share of enplaned passengers at the Airport, from 21.3% to 53.6%.

Monthly passenger activity, including enplanements and deplanements for the past three (3) years is shown on the table below:

<b>Month/Year</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
<b>January</b>	420,707	413,073	430,414
<b>February</b>	384,491	424,467	418,483
<b>March</b>	510,205	543,098	545,146
<b>April</b>	457,273	517,720	509,389
<b>May</b>	528,366	549,597	563,158
<b>June</b>	564,960	593,623	604,526
<b>July</b>	611,109	619,038	648,249
<b>August</b>	567,041	583,651	598,621
<b>September</b>	476,252	509,008	532,603
<b>October</b>	555,420	574,818	581,297
<b>November</b>	466,985	489,603	510,754
<b>December</b>	509,070	506,453	523,795
<b>TOTAL</b>	6,051,879	6,324,149	6,466,435

In addition to the commercial passenger airlines, three (3) major air cargo airlines (DHL USA, FedEx, and United Parcel Service) provide service at the Airport.

**Food and Beverage Historical Sales Performance:** Sales per enplaned passenger is the standard measure of concession sales performance in the airport industry. Historical food and beverage sales per enplaned passenger at the Airport Terminal Building and the Consolidated Rental Car Facility are as follows:

<b>Calendar Year</b>	<b>Sales Per Enplaned Passenger</b>
2000	\$3.49
2001	\$3.70
2002	\$4.08
2003	\$4.11
2004	\$4.08
2005	\$4.21

Included as **Attachment A** to this section of this RFP, are the monthly historical gross revenues shown by location, for the years 2003 through 2006, for the existing food and beverage program.

**Additional Information:** For more information regarding the Airport visit our website, <http://www.cabq.gov/airport>.

**ATTACHMENT A  
HISTORICAL MONTHLY  
FOOD AND BEVERAGE GROSS REVENUES  
BY LOCATION CY2003 – CY2006**

**ALBUQUERQUE INTERNATIONAL SUNPORT  
FOOD CONCESSIONS GROSS REVENUE REPORT  
CALENDAR YEAR 2003**

MONTH	MICRO BREWERY	QUIZNO'S	ENCHANTMENTS	JR'S BBQ	BAR B	PIZZERIA	COMIDA BUENA	BASKIN ROBBINS	LA HACIENDA	VENDING MACHINES	WINNERS	GARDUNO'S	BLACK MESA COFFEE	BLACK MESA - RAC	TOTAL
JANUARY	\$ 119,639.07	\$ 96,757.98	\$ 9,284.00	\$ 16,165.80	\$ 5,967.35	\$ 20,301.71	\$ 133,758.23	\$ 24,350.64	\$ 55,549.68	\$ 365.00	\$ 41,262.34	\$ 207,315.05	\$ 156,763.79	\$ 12,301.71	\$ 899,782.35
FEBRUARY	\$ 116,921.19	\$ 91,711.75	\$ 9,350.31	\$ 15,331.01	\$ 6,021.45	\$ 17,393.00	\$ 130,134.65	\$ 22,002.97	\$ 53,927.30	\$ 335.00	\$ 41,684.71	\$ 188,692.45	\$ 141,645.78	\$ 11,979.57	\$ 847,131.14
MARCH	\$ 148,718.65	\$ 108,983.46	\$ 12,409.32	\$ 18,752.60	\$ 7,954.25	\$ 23,184.02	\$ 165,505.18	\$ 38,002.77	\$ 80,574.45	\$ 275.00	\$ 50,850.18	\$ 225,347.57	\$ 175,698.52	\$ 14,522.24	\$ 1,070,778.21
APRIL	\$ 131,897.22	\$ 88,782.70	\$ 9,904.17	\$ 17,440.12	\$ 7,452.80	\$ 20,509.42	\$ 147,805.25	\$ 35,496.05	\$ 70,978.51	\$ 100.00	\$ 40,791.54	\$ 192,702.31	\$ 155,245.65	\$ 13,637.55	\$ 932,743.29
MAY	\$ 152,220.62	\$ 108,363.01	\$ 13,303.16	\$ 18,508.58	\$ 8,157.25	\$ 23,314.89	\$ 170,275.83	\$ 40,813.73	\$ 80,328.95	\$ 415.00	\$ 45,635.18	\$ 222,981.06	\$ 174,238.01	\$ 16,045.18	\$ 1,074,600.45
JUNE	\$ 166,671.98	\$ 115,219.34	\$ 14,053.27	\$ 18,136.69	\$ 7,844.55	\$ 32,979.29	\$ 178,513.30	\$ 46,224.09	\$ 78,930.82	\$ 265.00	\$ 45,652.91	\$ 228,336.50	\$ 187,033.04	\$ 18,016.51	\$ 1,137,877.29
JULY	\$ 164,745.83	\$ 121,820.59	\$ 11,915.71	\$ 17,960.12	\$ 7,630.60	\$ 37,280.01	\$ 187,613.25	\$ 48,925.67	\$ 81,365.97	\$ 295.00	\$ 46,315.81	\$ 250,042.62	\$ 198,695.31	\$ 21,261.51	\$ 1,195,868.00
AUGUST	\$ 164,515.72	\$ 106,452.10	\$ 10,895.60	\$ 15,252.66	\$ 7,311.60	\$ 30,523.54	\$ 178,864.32	\$ 40,702.63	\$ 75,477.75	\$ 80.00	\$ 48,994.36	\$ 250,268.64	\$ 190,783.53	\$ 20,026.15	\$ 1,140,148.60
SEPTEMBER	\$ 147,619.57	\$ 91,624.82	\$ 9,703.39	\$ 14,750.45	\$ 6,322.35	\$ 18,901.69	\$ 157,542.22	\$ 27,975.77	\$ 68,339.35	\$ 90.00	\$ 43,094.96	\$ 217,691.92	\$ 155,891.35	\$ 15,717.27	\$ 975,265.11
OCTOBER	\$ 168,420.48	\$ 106,765.16	\$ 11,803.66	\$ 15,316.34	\$ 7,876.70	\$ 23,345.35	\$ 178,876.35	\$ 28,459.37	\$ 76,286.02	\$ 165.00	\$ 53,440.19	\$ 248,017.66	\$ 181,213.76	\$ 17,569.97	\$ 1,117,556.01
NOVEMBER	\$ 147,350.09	\$ 97,251.47	\$ 8,404.22	\$ 14,605.04	\$ 6,487.30	\$ 17,532.49	\$ 153,504.01	\$ 26,116.68	\$ 65,996.94	\$ 155.00	\$ 47,514.34	\$ 219,477.82	\$ 159,078.86	\$ 13,780.47	\$ 977,254.73
DECEMBER	\$ 154,620.70	\$ 109,554.55	\$ 9,232.93	\$ 14,277.98	\$ 7,156.95	\$ 18,574.20	\$ 164,141.45	\$ 26,727.04	\$ 68,894.91	\$ 58.00	\$ 48,687.54	\$ 219,591.86	\$ 172,493.99	\$ 14,904.76	\$ 1,028,916.86
<b>TOTALS</b>	<b>\$ 1,783,341.12</b>	<b>\$ 1,243,286.93</b>	<b>\$ 130,259.74</b>	<b>\$ 196,497.39</b>	<b>\$ 86,183.15</b>	<b>\$ 283,839.61</b>	<b>\$ 1,946,534.04</b>	<b>\$ 405,797.41</b>	<b>\$ 856,650.65</b>	<b>\$ 2,598.00</b>	<b>\$ 553,924.06</b>	<b>\$ 2,670,465.46</b>	<b>\$ 2,048,781.59</b>	<b>\$ 189,762.89</b>	<b>\$ 12,397,922.04</b>

**ATTACHMENT A**

**ALBUQUERQUE INTERNATIONAL SUNPORT  
FOOD CONCESSIONS GROSS REVENUE REPORT  
CALENDAR YEAR 2004**

MONTH	MICRO BREWERY	QUIZNO'S	ENCHANTMENTS	JR's BBQ	BAR B	PIZZERIA	COMIDA BUENA	BASKIN ROBBINS	LA HACIENDA	VENDING MACHINES	WINNERS	GARDUNO'S	BLACK MESA COFFEE	BLACK MESA-(RAC)	TOTAL
JANUARY	146,793.71	92,671.81	7,303.29	13,388.05	6,264.15	15,888.13	142,034.31	24,566.50	53,848.08	95.00	41,923.06	200,022.72	146,354.92	12,846.59	904,000.32
FEBRUARY	159,047.36	95,881.24	7,407.25	16,271.35	6,241.50	16,037.47	139,059.68	23,846.90	56,062.97	85.00	45,429.54	195,532.58	133,140.01	13,807.18	907,850.03
MARCH	188,696.16	118,497.35	10,410.24	21,625.62	8,160.25	22,670.92	167,454.11	32,500.47	66,953.48	265.00	53,267.46	226,296.08	161,163.46	16,996.79	1,094,957.39
APRIL	169,942.43	112,852.60	10,252.44	23,351.83	6,631.00	21,618.12	165,733.58	31,635.56	62,512.40	244.00	49,363.86	204,432.62	154,018.14	16,341.48	1,028,930.06
MAY	182,629.87	115,849.17	12,208.55	23,584.54	8,232.50	24,288.05	189,434.72	36,054.02	74,785.63	401.00	47,567.23	225,543.11	164,028.63	17,152.07	1,121,759.09
JUNE	189,491.04	123,048.34	12,087.56	24,324.97	9,336.50	30,886.71	200,244.66	42,407.35	76,618.88	165.00	50,571.22	235,691.87	177,933.54	18,793.37	1,191,601.01
JULY	191,650.66	132,770.55	12,815.86	24,675.60	9,289.75	37,710.85	208,282.81	46,004.51	81,363.57	245.00	49,633.39	237,781.66	192,954.47	23,452.50	1,248,631.18
AUGUST	190,780.06	123,501.54	12,790.03	23,857.49	8,498.75	32,768.83	201,271.53	39,720.32	77,682.36	240.00	50,389.26	239,398.80	187,133.08	22,015.44	1,210,047.49
SEPTEMBER	185,571.69	103,198.60	10,022.53	21,303.73	8,387.75	24,041.53	171,999.32	28,346.78	70,725.64	236.00	49,713.09	196,600.50	155,743.43	20,497.46	1,046,388.05
OCTOBER	217,264.43	118,740.89	12,799.64	20,856.00	10,220.00	29,101.51	206,459.02	37,010.03	79,351.35	365.00	61,468.99	217,177.99	179,066.95	21,316.79	1,211,198.59
NOVEMBER	187,741.60	106,291.14	10,496.23	18,927.50	10,387.25	26,384.81	173,488.69	25,538.49	74,184.73	315.00	51,066.99	203,995.51	170,392.87	17,428.74	1,076,639.55
DECEMBER	188,626.50	116,046.05	10,228.50	18,547.72	10,048.00	27,621.97	173,750.98	23,269.08	75,482.26	315.00	51,041.05	218,762.39	187,265.60	19,785.99	1,120,791.09
<b>TOTALS-&gt;</b>	<b>\$2,198,235.51</b>	<b>\$1,359,349.28</b>	<b>\$128,822.12</b>	<b>\$250,714.40</b>	<b>\$101,697.40</b>	<b>\$309,018.90</b>	<b>\$2,139,213.41</b>	<b>\$390,900.01</b>	<b>\$849,571.35</b>	<b>\$2,971.00</b>	<b>\$601,435.14</b>	<b>\$2,601,235.83</b>	<b>\$2,009,195.10</b>	<b>\$220,434.40</b>	<b>\$13,162,793.85</b>

**ATTACHMENT A**

**ALBUQUERQUE INTERNATIONAL SUNPORT  
FOOD CONCESSIONS GROSS REVENUE REPORT  
CALENDAR YEAR 2005**

MONTH	MICRO BREWERY	QUIZNO'S	ENCHANTMENTS	JR's BBQ	BAR B	PIZZERIA	COMIDA BUENA	BASKIN ROBBINS	LA HACIENDA	VENDING MACHINES	WINNERS	GARDUNO'S	BLACK MESA COFFEE	BLACK MESA - (RAC)	TOTAL
JANUARY	156,259.16	96,897.61	8,117.70	18,294.50	7,463.00	22,124.90	150,484.98	20,929.93	67,499.72	213.00	41,633.62	190,052.99	152,991.74	15,821.80	948,784.65
FEBRUARY	163,296.02	90,572.84	8,058.19	17,171.63	7,934.75	23,269.41	134,752.83	23,703.20	67,134.74	160.00	44,642.20	175,819.60	141,743.34	18,116.69	916,375.44
MARCH	190,036.03	117,589.16	11,052.81	19,003.72	9,642.00	32,150.77	167,981.35	31,758.44	83,379.72	110.00	51,709.17	215,270.12	181,322.87	25,657.08	1,136,663.24
APRIL	180,756.74	100,145.48	11,269.74	19,283.36	9,624.25	25,299.06	186,904.98	28,523.38	72,109.73	74.00	46,490.38	193,847.01	168,630.49	18,751.54	1,061,710.14
MAY	192,108.56	110,449.87	12,061.77	18,539.14	10,247.75	30,406.37	213,714.52	33,913.61	75,984.80	72.00	47,689.91	214,269.53	177,506.98	21,650.34	1,158,615.15
JUNE	190,676.01	128,598.14	12,354.72	18,145.47	9,466.25	39,045.25	218,021.65	43,100.62	80,561.05	140.00	49,610.60	233,014.90	192,080.59	23,202.45	1,238,017.70
JULY	208,999.20	146,304.87	12,967.93	16,003.94	10,618.25	52,685.79	234,350.03	52,903.25	83,334.29	230.00	52,533.19	255,033.92	210,131.91	27,127.74	1,363,224.31
AUGUST	206,827.05	126,476.60	10,937.99	17,029.51	9,321.75	42,137.15	216,194.81	43,230.35	78,212.10	130.00	51,697.44	239,479.58	192,724.12	25,711.40	1,260,109.85
SEPTEMBER	190,571.67	107,809.77	9,308.75	14,290.39	9,440.75	31,777.09	190,941.38	30,024.72	74,249.80	280.00	53,584.06	208,147.98	168,742.56	24,129.09	1,113,298.01
OCTOBER	218,656.62	121,965.22	12,201.93	15,667.31	11,131.50	37,098.30	226,554.99	32,146.05	81,247.81	240.00	58,393.97	230,680.61	184,878.08	23,490.61	1,254,353.00
NOVEMBER	202,307.38	111,789.74	9,240.03	16,991.53	9,866.00	33,751.12	199,533.93	24,492.12	73,848.27	200.00	51,344.30	202,501.12	168,456.00	18,739.65	1,123,061.19
DECEMBER	209,540.99	122,846.97	9,139.88	15,669.73	10,053.00	36,339.41	193,482.77	24,132.36	74,374.45	170.00	52,798.70	220,778.50	181,722.45	22,421.00	1,173,470.21
<b>T O T A L S .-&gt;</b>	<b>\$2,310,035.43</b>	<b>\$1,381,446.27</b>	<b>\$126,711.44</b>	<b>\$206,090.23</b>	<b>\$114,809.25</b>	<b>\$406,084.62</b>	<b>\$2,332,918.22</b>	<b>\$388,858.03</b>	<b>\$911,936.48</b>	<b>\$2,019.00</b>	<b>\$602,127.54</b>	<b>\$2,578,895.86</b>	<b>\$2,120,931.13</b>	<b>\$264,819.39</b>	<b>\$13,747,682.89</b>

**ATTACHMENT A**

**ALBUQUERQUE INTERNATIONAL SUNPORT  
FOOD CONCESSIONS GROSS REVENUE REPORT  
CALENDAR YEAR 2006**

MONTH	MICRO BREWERY	QUIZNO'S	ENCHANTMENTS	JR'S BBQ	BAR B	PIZZERIA	COMIDA BUENA	BASKIN ROBBINS	LA HACIENDA	VENDING MACHINES	WINNERS	GARDUNO'S	BLACK MESA COFFEE	BLACK MESA - (RAC)	TOTAL
JANUARY	\$ 175,874.45	\$ 108,287.48	\$ 6,488.29	\$ 12,032.19	\$ 7,205.75	\$ 30,342.40	\$ 172,695.74	\$ 23,470.36	\$ 61,482.00	\$ 220.00	\$ 45,594.16	\$ 192,443.56	\$ 150,586.27	\$ 18,170.62	\$ 1,004,893.27
FEBRUARY	\$ 172,544.60	\$ 107,592.50	\$ 6,981.85	\$ 13,622.96	\$ 7,594.75	\$ 31,564.34	\$ 163,439.67	\$ 25,993.09	\$ 59,262.26	\$ 71.00	\$ 50,673.94	\$ 220,995.30	\$ 142,727.48	\$ 22,339.51	\$ 1,025,403.25
MARCH	\$ 208,790.26	\$ 136,900.07	\$ 10,550.99	\$ 16,001.83	\$ 10,276.50	\$ 42,461.17	\$ 202,249.43	\$ 37,066.02	\$ 75,072.15	\$ 90.00	\$ 59,623.10	\$ 273,899.80	\$ 182,072.47	\$ 28,860.29	\$ 1,283,914.08
APRIL	\$ 182,791.04	\$ 119,244.32	\$ 9,027.65	\$ 14,128.88	\$ 7,965.50	\$ 38,470.23	\$ 191,089.25	\$ 33,759.89	\$ 67,193.01	\$ 220.00	\$ 48,766.08	\$ 262,446.00	\$ 166,742.30	\$ 23,653.12	\$ 1,165,497.27
MAY	\$ 207,226.41	\$ 127,980.53	\$ 11,597.13	\$ 10,900.50	\$ 9,241.00	\$ 40,943.14	\$ 211,806.99	\$ 38,721.03	\$ 74,538.12	\$ 180.00	\$ 51,097.62	\$ 290,755.06	\$ 185,442.33	\$ 26,012.43	\$ 1,286,442.29
JUNE	\$ 193,898.58	\$ 132,785.61	\$ 10,131.84	\$ 12,398.53	\$ 8,266.25	\$ 44,827.88	\$ 205,711.68	\$ 40,520.29	\$ 77,584.67	\$ 122.00	\$ 53,854.42	\$ 292,923.75	\$ 194,258.02	\$ 30,633.36	\$ 1,297,916.88
JULY	\$ 184,275.19	\$ 139,286.43	\$ 10,737.22	\$ 12,080.93	\$ 7,741.75	\$ 48,911.68	\$ 215,160.68	\$ 44,040.91	\$ 80,821.24	\$ 193.00	\$ 48,747.12	\$ 320,645.20	\$ 211,347.44	\$ 26,595.24	\$ 1,350,584.03
AUGUST	\$ 221,236.92	\$ 128,224.11	\$ 9,746.07	\$ 10,648.14	\$ 9,388.00	\$ 48,051.60	\$ 228,313.67	\$ 44,049.63	\$ 81,510.12	\$ 175.00	\$ 58,162.33	\$ 308,331.87	\$ 200,306.99	\$ 26,876.11	\$ 1,375,020.56
SEPTEMBER	\$ 200,273.88	\$ 109,071.81	\$ 8,286.37	\$ 10,556.83	\$ 8,278.25	\$ 38,751.27	\$ 196,456.04	\$ 32,041.15	\$ 73,371.05	\$ 190.00	\$ 55,644.67	\$ 277,650.96	\$ 169,263.95	\$ 28,430.90	\$ 1,208,267.13
OCTOBER	\$ 231,920.76	\$ 132,375.51	\$ 12,963.68	\$ 12,811.45	\$ 9,408.00	\$ 49,299.33	\$ 244,794.26	\$ 39,013.08	\$ 80,958.98	\$ 340.00	\$ 65,280.55	\$ 322,812.89	\$ 199,965.48	\$ 26,481.02	\$ 1,428,424.99
NOVEMBER	\$ 200,314.52	\$ 125,344.75	\$ 8,114.93	\$ 12,210.00	\$ 6,432.25	\$ 42,133.38	\$ 206,415.03	\$ 33,011.79	\$ 74,867.75	\$ 231.00	\$ 59,932.33	\$ 271,282.11	\$ 180,236.88	\$ 22,522.07	\$ 1,243,048.79
DECEMBER	\$ 211,724.50	\$ 126,933.77	\$ 8,782.07	\$ 12,482.50	\$ 6,775.45	\$ 43,363.68	\$ 212,474.59	\$ 30,531.08	\$ 75,290.28	\$ 250.00	\$ 60,139.14	\$ 294,597.02	\$ 195,717.69	\$ 24,070.03	\$ 1,303,131.80
<b>TOTALS</b>	<b>\$ 2,390,871.11</b>	<b>\$ 1,494,026.89</b>	<b>\$ 113,408.09</b>	<b>\$ 149,874.74</b>	<b>\$ 98,573.45</b>	<b>\$ 499,120.10</b>	<b>\$ 2,450,607.03</b>	<b>\$ 422,218.32</b>	<b>\$ 881,951.63</b>	<b>\$ 2,282.00</b>	<b>\$ 657,515.46</b>	<b>\$ 3,328,783.52</b>	<b>\$ 2,178,667.30</b>	<b>\$ 304,644.70</b>	<b>\$ 14,972,544.34</b>

**ATTACHMENT A**

## **PART 1 INSTRUCTIONS TO OFFERORS**

**1.1 RFP2007-010-SB, "Design, Develop, and Operate Food and Beverage Concessions at Albuquerque International Sunport."**

**1.2 Proposal Due Date: Friday, April 6, 2007, NLT 4:00 PM (MDT)**  
The time and date of Proposal submittal closing will be strictly observed.

**1.2.1 Mandatory Pre-Proposal Conference.** A mandatory pre-proposal conference is scheduled as follows:

**Date and Time: Thursday, March 1, 2007 at 10:00 a.m. (MDT)**  
**City of Albuquerque - Aviation Department**  
**Albuquerque International Sunport - Press Room**  
**2200 Sunport Blvd., SE**  
**Albuquerque, New Mexico 87106**

**1.2.2 Mandatory Pre-Proposal Conference Attendance.** This is a *mandatory* pre-proposal conference. Failure to attend by an authorized representative of the Offeror will result in the rejection of any subsequent offer submitted. In the case of a joint venture, the attendance by any authorized representative of any of the parties to the joint venture will satisfy this requirement.

**1.2.3** The City will have in attendance key personnel to answer questions or discuss issues that may arise. **The City requests that all questions be prepared prior to the pre-proposal conference and a copy of such questions submitted to the purchasing representative on or before the day of the pre-proposal conference. However, oral questions may be accepted at the meeting and a written response will be provided to all registered participants.**

**1.3 City Purchasing Office.** This Request for Proposals ("RFP") is issued on behalf of the City of Albuquerque Aviation Department by the City Purchasing Office, which is the sole point of contact during the procurement process. All communications regarding this RFP shall be directed in writing to the Purchasing Office to the attention of Suzanne Boehland as stated herein. Written communication may be made via email, facsimile, U.S. mail, or delivery service.

**1.4 Authority.** Chapter 5, Article 5 of the Revised Ordinances of the City of Albuquerque, 1994, ("Public Purchases Ordinance"). The City Council, pursuant to Article 1 of the Charter of the City of Albuquerque and Article X, Section 6 of the Constitution of New Mexico, enacted this Ordinance to provide maximum local self-

government. To that end, it is intended that this Ordinance govern all purchasing transactions of the City and serves to exempt the City from all provisions of the New Mexico Procurement Code, as provided in Section 13-1-98.K, NMSA 1978.

**1.5 Acceptance of Offer.** Acceptance of Offer is contingent upon Offeror's certification and agreement by submittal of its offer, to comply and act in accordance with all provisions of the following:

**1.5.1 City Public Purchases Ordinance.**

**1.5.2 City Purchasing Rules and Regulations.** These Rules and Regulations ("Regulations") are written to clarify and implement the provisions of the Public Purchases Ordinance. These Regulations establish policies, procedures, and guidelines relating to the procurement, management, control, and disposal of goods, services, and construction, as applicable, under the authority of the Ordinance.

**1.5.3 Civil Rights Compliance.** Acceptance of Offer is contingent upon the Offeror's certification and agreement by submittal of its offer, to comply and act in accordance with all provisions of the Albuquerque Human Rights Ordinance, the New Mexico Human Rights Act, Title VII of the U.S. Civil Rights Act of 1964, as amended, and all federal statutes and executive orders, New Mexico statutes and City of Albuquerque ordinances relating to the enforcement of civil rights. Offeror additionally certifies to abide by and cooperate in the implementation of the policies and practices set forth in the City Affirmative Action Plan. Questions regarding civil rights or affirmative action compliance requirements should be directed to the City of Albuquerque Human Rights Division, Community Services Department.

**1.5.4 Americans with Disabilities Act Compliance.** Offeror certifies and agrees, by submittal of its Offer, to comply and act in accordance with all applicable provisions of the Americans with Disabilities Act of 1990 and Federal regulations promulgated thereunder.

**1.5.5 Bonding Compliance.**

**1.5.5.1 Proposal Bond.** Each Proposal shall be accompanied by a Proposal Bond issued by a surety duly authorized to conduct business in the state of New Mexico and acceptable to the City in the amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00). The Proposal Bond is submitted as a guaranty that the Offeror, if awarded the Food and Beverage Concession Lease and Agreement ("Concession Agreement"), will promptly execute such Concession Agreement in accordance with this Request for Proposals and in the manner and form required by the

Concession Agreement documents. The Proposal Bond of all offerors will be retained until the Concession Agreement is awarded or other disposition is made thereof.

The Proposal Bond of all Offerors will be promptly returned following the occurrence of one of the following, a) the Concession Agreement has been executed and the required security deposit, proof of insurance, performance bond, and labor and materials bond, have been furnished to the City; b) the time specified in the proposal documents has elapsed so that Offeror may withdraw the Offer; or c) all Proposals have been rejected.

Should Offeror refuse to enter into such Concession Agreement or fail to furnish such bonds or proof of insurance, the amount of the Proposal Bond shall be forfeited to the City as liquidated damages, not as a penalty. Proposals submitted without the required Proposal Bond, written by a surety, as stated above will **automatically be rejected**. The awarded Offeror must be named as principal on the bonds.

#### **1.5.5.2 Proposal Bond Requirements.**

**1.5.5.2.1 All bonds must be written by a surety duly authorized to conduct business in the State of New Mexico and listed as approved in the current Federal Register listing. The bonds shall be written on the forms provided in this Request for Proposals.**

**1.5.5.2.2 NO THIRD PARTY BONDS WILL BE ACCEPTED.**

**1.5.5.2.3 CASHIER'S CHECKS, CERTIFIED CHECKS, PERSONAL CHECKS, LETTERS OF CREDIT, CASH OR OTHER SUBSTITUTES WILL NOT BE ACCEPTED IN LIEU OF THE BOND.**

**1.5.5.2.4 FAILURE TO SUBMIT THE PROPOSAL BOND WRITTEN BY A SURETY AS STATED ABOVE WILL BE CAUSE FOR AUTOMATIC REJECTION OF THE OFFER.**

#### **1.5.6 Ethics.**

**1.5.6.1 Fair Dealing.** The Offeror warrants that its proposal is submitted and entered into without collusion on the part of the Offeror with any person or firm, without fraud and in good faith. Offeror also warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or will be offered or given by the Offeror, or any agent or representative of the Offeror to any officer or employee of the City with a view toward securing a recommendation of award or subsequent Concession

Agreement or for securing more favorable treatment with respect to making a recommendation of award.

**1.5.6.2 Conflict of Interest.** The Offeror warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under the Concession Agreement resulting from this RFP. The Offeror also warrants that, to the best of its knowledge, no officer, agent or employee of the City who shall participate in any decision relating to this RFP and the resulting Concession Agreement, currently has, or will have in the future, a personal or pecuniary interest in the Offeror's business.

**1.5.7 Participation/Offeror Preparation.** Offeror may not use the consultation or assistance of any person, firm, or company who has participated in whole or in part in the writing of these Specifications or Scope of Services, for the preparation of its offer or in the management of business if awarded this Concession Agreement.

**1.5.8 Debarment or Ineligibility Compliance.** By submitting its offer in response to this RFP, the Offeror certifies that a) it has not been debarred or otherwise found ineligible to receive funds by any agency of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States; and b) should any notice of debarment, suspension, ineligibility, or exclusion be received by the Offeror, the Offeror will notify the City immediately.

**1.5.9 Goods Produced Under Decent Working Conditions.** It is the policy of the City not to purchase, lease, or rent goods for use or for resale at the City owned enterprises that were produced under sweatshop conditions. The Offeror certifies, by submittal of its offer in response to this solicitation, that the goods offered to the City were produced under decent working conditions. The City defines under decent working conditions as production in a factory in which child labor and forced labor are not employed; in which adequate wages and benefits are paid to workers; in which workers are not required to work more than forty-eight (48) hours per week (or less if a shorter workweek applies); in which employees are free from physical, sexual or verbal harassment; and in which employees can speak freely about working conditions and can participate in and form unions. [*Council Bill No. M-8, Enactment No. 9-1998*]

**1.6 DBE Requirements.** The City of Albuquerque Aviation Department has established an Airport Concession Disadvantaged Business Enterprise ("ACDBE") program, and as part of its Federally approved FAA ACDBE Program, and in accordance with 49 CFR Part 23, has included a Disadvantaged Business Enterprise ("DBE") participation goal of 8.67% for non-car rental concessions for FY 2006 through FY 2008.

Based on the nature of the services to be provided by the successful Offeror regarding this RFP, the City of Albuquerque Aviation Department has determined that a race-neutral measure (refer to Part 5, Proposal Form 8 of this RFP) will be a part of this RFP, in accordance with 49 CFR Part 26.51(b). The successful Offeror is, therefore, strongly encouraged to make a good faith effort to assist the City of Albuquerque Aviation Department in reaching its overall DBE participation goal by using the services of Small Business Enterprises (SBE)/ Woman Business Enterprises (WBE)/and Certified DBE's whenever possible. Race-neutral measure means a program that is, or can be, used to assist all small businesses. For purposes of this section, race-neutral includes gender-neutrality.

The Concession Agreement resulting from this RFP is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The successful Offeror agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in the connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

The successful Offeror agrees to include the above statements in any subsequent concession sublease or contract covered by 49 CFR Part 23, that it enters into and shall cause those businesses to similarly include the statements in further agreements.

**1.7 City Contact.** Suzanne Boehland, Senior Buyer, City of Albuquerque, Department of Finance and Administrative Services, Purchasing Division, PO Box 1293, Albuquerque, New Mexico 87103. FAX: (505) 768-3355 or email: [sboehland@cabq.gov](mailto:sboehland@cabq.gov). All questions must be submitted in writing throughout the procurement process, within the timeframe provided below.

**1.8 Contracting Agency.** The Concession Agreement resulting from this RFP will be administered by the City of Albuquerque Aviation Department.

**1.9 Clarification.** Any explanation requested by an Offeror regarding the meaning or interpretation of this Request for Proposals must be submitted to the City Contact in writing not less than fifteen (15) working days prior to the hour and date specified for the receipt of offers to allow sufficient time for a reply to reach Offerors before the submission of their offers. Oral explanations or instructions given before the submission of offers will not be binding. Any information given to a prospective Offeror concerning this RFP will be furnished to all prospective Offerors as an addendum of this RFP if such information is necessary to Offerors in submitting offers on this RFP or if the lack of such information would be prejudicial to uninformed Offerors.

**1.10 Submission of Offers.** The Offeror's sealed proposal must be in the format outlined in Part 2 of this RFP and mailed or delivered pursuant to the following requirements:

**1.10.1 Envelope Preparation.** Offers and modifications thereof shall be enclosed in sealed envelopes and have the following identifying information on the outside:

- 1.10.1.1 Name and Address of Offeror
- 1.10.1.2 Closing Date and Time of RFP
- 1.10.1.3 RFP Number
- 1.10.1.4 RFP Title

**1.10.2 Ship, Deliver, or Hand-Carry Sealed Offers to:** Office of the City Clerk, City /County Government Center, 11th Floor, One Civic Plaza, Albuquerque, New Mexico 87102. **Mark all packages as stated above.** Use this address for packages sent via non United States Postal Service carriers.

**1.10.3 Mail Sealed Proposals to:** Office of the City Clerk, Post Office Box 1293, Albuquerque, New Mexico 87103. (Certified Mail is recommended). The City shall not be responsible for the failure of mailed offers to actually be received by the Office of the City Clerk by 4:00 PM (MDT) of the day of closing.

**ALL SEALED PROPOSALS MUST BE RECEIVED BY THE OFFICE OF THE CITY CLERK AS SPECIFIED HEREIN.**

**1.10.4 No other methods of offer delivery.** Neither telephone, facsimile, electronic, nor telegraphic offers shall be accepted.

**1.10.5 Submit one (1) original and nine (9) copies of your Proposal.**

**1.10.6 Modification.** Offers may be modified or withdrawn only by written notice, provided such notice is received prior to the Proposal Due Date.

**1.10.7 Failure to Submit Offer.** If no offer is to be submitted, the recipient shall not return the Request for Proposals.

**1.11 Receipt of Proposals.** The only acceptable evidence to establish the time of receipt of Proposals at the City Clerk's Office is the time-date stamp of that Office on the Proposal wrapper or other documentary evidence of receipt maintained by that Office.

**1.12 Acknowledgment of Addenda to the Request for Proposals.** Receipt of Addenda to this RFP by an Offeror must be acknowledged a) by signing and returning the Addenda, or b) by letter. Such acknowledgment may be submitted with the offer. Such acknowledgment must be received prior to the hour and date specified for receipt of offers.

**1.13 Proposed Concession Agreement.** An example of the proposed Concession Agreement to be entered into is provided in Part 6 of this RFP. Please state that you accept the terms and conditions of the Concession Agreement, or note exceptions pursuant to Part 5, Proposal Form 5, Section 6, of this RFP. Any exceptions to the Concession Agreement will be considered in the evaluation of Offers.

**1.14 Evaluation Period.** The City reserves the right to analyze, examine and interpret any offer for a period of ninety (90) days after the hour and date specified for the receipt of offers.

**1.15 Evaluation Assistance.** The City of Albuquerque, in evaluating proposals, reserves the right to use any assistance deemed advisable, including City contractors and consultants.

**1.16 Rejection and Waiver.** The City reserves the right to reject any or all offers and to waive informalities and minor irregularities in offers received.

**1.17 Debarment of Offeror.** Any proposal received from an Offeror that is, at the time of submitting its proposal or prior to receipt of award of a Concession Agreement, debarred by or otherwise ineligible to receive funds from any agency of the State of New Mexico, any local public body of the State, or any state of the United States, shall be rejected.

**1.18 Award of Contract.**

**1.18.1 When Award Occurs.** Award of contract occurs when evidence of acceptance by the City is provided to the Offeror. **A Recommendation of Award does not constitute award of the Concession Agreement.**

**1.18.2 Award.** If a contract is awarded, it shall be awarded to the responsive and responsible Offeror whose offer conforming to this RFP will be most advantageous to the City as set forth in the Evaluation Criteria.

**1.18.3 Approval of Bonds, Insurance, and Security Deposit.** Even though the Offeror may have been given notice to proceed, it shall not begin any work under the Concession Agreement until the required bonds, insurance, and security

deposit have been obtained and the proper certificates (or policies) filed with the City. Neither approval nor failure to disapprove bonds, certificates, policies, or the insurance by the City shall relieve the Offeror of full responsibility to maintain the required insurance in full force and effect. If Offeror enters into a sublease agreement, Offeror shall include all such sublessees in its insurance policies, and require the sublessee to secure insurance to protect itself against all hazards enumerated herein, which are not covered by the Offeror's insurance policies.

**1.18.4 Concession Agreement Term.** The initial Concession Agreement Term shall be for a period of ten (10) years commencing upon the completion of the construction of the required facilities. The City, at its sole discretion, shall retain an option to extend the Term for two (2) additional one (1) year periods.

**1.18.5 Type of Contract.** Food and Beverage Concession Lease and Agreement.

**1.18.6 Debarment/Cancellation of Contract.** Upon receipt of notice of debarment of an Offeror awarded a contract as a result of this RFP or other ineligibility of the Offeror, the City shall have the right to cancel the contract with the Offeror for cause as provided in accordance with the terms of said contract.

**1.18.7 Graffiti Free.** When required, the Concessionaire shall furnish equipment, facilities, or other items required to complete these services that are "graffiti free." Failure of Concessionaire to comply with this requirement may result in cancellation of the contract resulting from this RFP.

**1.19 Cancellation.** This RFP may be canceled and any and all proposals may be rejected in whole or in part when it is in the best interest of the City.

**1.20 Negotiations.** Negotiations may be conducted with the Offeror recommended for Award of the contract.

**1.21 City-Furnished Property.** No material, labor, or facilities will be furnished by City unless provided for in this RFP.

**1.22 Proprietary Data.** This RFP shall be open to public inspection after award of contract, except to the extent the Offeror designates trade secrets or other proprietary data to be confidential. Material so designated shall accompany the Proposal and each page shall be clearly marked and readily separable from the Proposal in order to facilitate public inspection of the non-confidential portion of the Proposal. The City of Albuquerque will endeavor to restrict distribution of the material designated as confidential or proprietary to only those individuals involved in the review and analysis

of the Proposals. Offerors are cautioned that materials designated as confidential may nevertheless be subject to disclosure under the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq, NMSA 1978).

**1.23 Local and Resident Preferences.** A preference for local and state businesses is available under the City of Albuquerque Public Purchases Ordinance for this RFP. The “**Local Preference Certification Form**” and instructions are in Part 5 of this RFP. If a completed Local Preference Certification Form, or a current and correct Resident Preference Number, or evidence to indicate that a company is a manufacturer (if applicable) is not received with the Offeror's response, a preference will not be applied for that offer. The Form, the Number or other evidence will not be acceptable after the Proposal Due Date. For those offerors qualifying for the preference, a 1.05 multiplier will be applied to the total raw score. Only one preference will apply for this procurement. Local Preference supersedes all other preferences.

#### **1.24 REQUEST FOR PROPOSALS (“RFP”) PROTEST PROCESS.**

**1.24.1 When.** If the protest concerns the RFP components or other matters pertaining to the RFP documents, it must be received by the City Purchasing Officer no later than ten (10) working days prior to the Proposal Due Date.

**1.24.2 Recommendation of Award.** If the protest concerns other matters relating to this RFP, the protest must be filed within ten (10) working days after the receipt of notice of the Recommendation of Award.

**1.24.3 Timely Protests.** Protests must be received by the City Purchasing Officer prior to the appropriate deadline as set out herein, or they will not be considered valid. The City Purchasing Officer may waive the deadline for good cause, including a delay caused by the fault of the City. Late delivery by the U.S. Postal Service or other carrier shall not be considered good cause.

**1.24.4 How to File.** Protests shall be addressed to the City Purchasing Officer, must be submitted in written form and must be legible. Protests may be hand-delivered or mailed. Facsimile, telephonic, telegraphic, or electronic protests will not be accepted.

**1.24.5 Required Information.** Protests shall contain at a minimum the following:

- The name and address of the protesting party;
- The number and title of the RFP;
- A clear statement of the reason(s) for the protest;

- Details concerning the facts, which support the protest;
- Attachments of any written evidence available to substantiate the claims of the protest; and
- A statement specifying the ruling requested.

**Address Letters as follows:**

- John Vigil
- Purchasing Manager
- City of Albuquerque
- DFAS, Purchasing Division
- P.O. Box 1293
- Albuquerque, New Mexico 87103

**Envelopes should clearly indicate:**

**RFP Number and Title  
PROTEST**

**1.24.6 All protests will be responded to by the City Purchasing Officer upon evaluation.** The City Purchasing Officer will, after evaluation of a protest, issue a response. Only the issues outlined in the written protest will be considered by the City Purchasing Officer.

**1.24.7 Protest Hearing.** If a hearing is requested, the request must be included in the Protest and received within the time limit to be allowed. A filing fee of Twenty and 00/100 Dollars (\$20.00) must accompany the request for hearing. Only the issues outlined in the protest will be considered by the City Purchasing Officer, or may be raised at a protest hearing. The granting of a hearing shall be at the discretion of the City Purchasing Officer following review of the request.

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## **PART 2 PROPOSAL FORMAT**

**2.1 Proposal Format.** Offerors must complete and submit all required proposal forms and other documentation as required, and must adhere to all instructions contained in this RFP. Proposals are to be prepared in such a way as to provide a straight forward, concise delineation of capabilities to satisfy the requirements of this RFP. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content. The information contained in the subsections of this Part 2 are intended to assist in the completion of the required proposal forms in Part 5 of this RFP.

The materials and information requested in Part 5 of this RFP must be completed in full as a condition of the Proposal and submitted in one (1) original and nine (9) copies. The original Proposal shall be clearly marked as "Original" on the cover of the Proposal. A checklist of items to be completed and submitted with Offeror's Proposal is provided at the beginning of Part 5.

**2.1.1 Local Preference Certification** (Part 5, Proposal Form 1 of this RFP).

**2.1.2 Business Information** (Part 5, Proposal Form 2 of this RFP).

- a) Name and address of Offeror.
- b) The form of organization, e.g., individual, partnership, joint venture, corporation, limited liability company (LLC).
- c) For joint ventures, partnerships and limited liability companies, identify the ownership interest of each party. Include the names, addresses, and telephone numbers of each party.
- d) Name, address, phone number, FAX number, and email address of the person who represents the Offeror.
- e) Provide a representative listing of other business entities, including contact person and telephone number, with a description of each entity's business activities, with which the Offeror, or any of its owners, officers, directors or management employees are affiliated in a decision-making or managerial capacity. Such representative listing must include all business entities that do business in the state of New Mexico.

**2.1.3 Minimum Qualifications and Experience** (Part 5, Proposal Form 3 of this RFP). City has set a criteria for the Minimum Qualifications and Experience that the Offeror must meet or exceed to be considered as submitting a responsive Proposal. Any Offeror who does not meet these Minimum Qualifications and Experience shall not have its Proposal considered by the City.

The Minimum Qualifications and Experience listed below pertain to the Offeror's business entity. If the business entity is a partnership, LLC, or a joint venture, the partners, LLC investors, or joint venture parties that will design, develop, and operate the Food and Beverage Concessions shall be identified. The business entity shall meet the following Minimum Qualifications and Experience in order to have the Proposal considered by the City:

- a) Offeror must provide evidence that it has the necessary experience and capacity to fulfill the requirements of the Food and Beverage Concession Lease and Agreement ("Concession Agreement"). At a minimum, within the last seven (7) years, Offeror must have at least five (5) years ("Qualifying Years") of continuous experience in the design, development, and operation of a food and beverage concession that is similar in scope and complexity as that which is contemplated under this RFP. Additionally, Offeror must provide evidence of experience designing, developing, and operating at least two (2) other food and beverage concessions essentially the same in size and scope as the Food and Beverage Concessions proposed under this RFP.
- b) Those business entities submitting Proposals that are typically involved in only the design and development of food and beverage concessions such as the those contemplated under this RFP, but not necessarily involved in the management or operation of the food and beverage concessions, must provide evidence of contracts with a qualified business entity to manage and operate the Food and Beverage Concessions, which meets the above requirements.
- c) Provide the name, location, and date, if any, of any of Offeror's food and beverage concessions, management and operating contracts, or any related business ventures for which it has been placed in default and/or which have been terminated, either voluntarily or involuntarily, prior to the expiration of their terms, within the past five (5) years. The reason(s) for such default and/or termination shall be indicated. For the same period of time, list any judgments or orders that have been issued affecting Offeror's business operations and any pending lawsuits for the termination of any businesses operated by Offeror or any of its owners, officers, directors, or management employees.

**2.1.4 Minimum Financial Requirements** (Part 5, Proposal Form 4 of this RFP).

- a) Offeror must have a business entity net worth of at least Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00) and provide at least three (3) satisfactory credit and banking references.
- b) Offeror must have sufficient identified credit and/or funds available for the required Minimum Initial Capital Investment proposed on Part 5, Proposal Form 6 of this RFP, for their selected Concession Package.
- c) Offeror must demonstrate gross revenues of not less than One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) per year for each Qualifying Year as specified in Section 2.1.3.a) above. The gross revenues of Offeror, including all joint venture partners and other business combinations as appropriate, may be included within Offeror's calculation of the gross revenues to meet this requirement.
- d) Provide a statement advising whether Offeror or any of its principals, officers, directors, subsidiaries, or related entity's have been parties to any bankruptcy proceedings in the past seven (7) years.

**2.1.5 Food and Beverage Concession Master Plan** (Part 5, Proposal Form 5 of this RFP). Offeror must provide information, which, at a minimum, includes the following detailed plans and strategies to describe its master plan for the Food and Beverage Concession Package selected by Offeror on Part 5, Proposal Form 5, Section 3 of this RFP. Offeror must demonstrate that its master plan will meet or exceed the scope and complexity of the Food and Beverage Concessions that are contemplated under this RFP and must:

- a) Provide a detailed Food and Beverage Concession Package design and development plan, in conjunction with the Design Criteria and Construction Manual, included as **Attachment D** to Part 3, Section 3.8.a) of this RFP that describes and illustrates each Concession Location. Drawings, photographs, illustrations, renderings, or other information that indicate the design, style, and color scheme of each Concession Location should be included. Plans and renderings submitted with the Proposal should be eight and one-half inches (8½") by eleven inches (11") or eleven inches (11") by seventeen inches (17") folded to eight and one-half inches (8½") by eleven inches (11"). Offerors may submit one additional set of thirty-six inches (36") by twenty-four inches (24") plans and/or renderings in a separate package.

If a franchise is proposed for any Concession Location(s) within the Concession Package, for each such franchise, describe all design concepts, signs, and features required under the franchise agreement.

b) Provide a detailed Transition Plan, which describes the method Offeror will use to provide food and beverage services to the traveling public during the development period of each Concession Location.

c) Provide a detailed Management and Operating Plan that includes the following:

- i. Organizational chart and its relationship to the Offeror's business structure;
- ii. Resumes of key management personnel including resumes of all on-site managers;
- iii. Qualifications, responsibilities, and the decision-making authority of the various levels of personnel;
- iv. Quality Control Program (must provide actual copy of program);
- v. Customer service philosophy;
- vi. Personnel Policies and Training Program (must provide actual copies of the policies and program);
- vii. Staffing; and
- viii. Hours of Operation.

d) Provide a five (5) year forecast of gross revenues for each Concession Location within the Food and Beverage Concession Package selected by Offeror on Part 5, Proposal Form 5, Section 3.D of this RFP. NOTE: City will use Offeror's forecast of gross revenues only for comparison to City's projected forecast of gross revenues.

e) Provide, if applicable, the following information concerning Offeror's proposed sublessee(s):

- i. Written evidence that Offeror's proposed sublessee(s) has the qualifications and experience necessary to manage and operate a Concession Location;
- ii. Full disclosure of all financial consideration between Concessionaire and its proposed sublessee; and
- iii. A copy of Offeror's proposed sublease(s). At a minimum, such sublease shall include as essential elements: 1) terms and conditions which are identical to the terms and conditions contained in this Agreement, including but not limited to: clauses pertaining to use of the Premises, Capital Investment requirements,

references to requirements pursuant to the Standards of Operations Manual, approvals and limitations of menus, approvals and limitations of menu pricing, payment of rents and fees, detailed reporting requirements, and insurance requirements; 2) a provision stipulating that the term of the sublease agreement shall not extend beyond the expiration date of Concessionaire's agreement with City; 3) rents and fees which are in accordance with the provisions of this Agreement; 4) terms of Concessionaire's cost recovery fee that it is entitled to charge sublessee for the recovery of its proportional share of Concessionaire's operating costs relating to security procedures, refuse removal, utilities, custodial services, maintenance, and capital cost recovery for sublessee's Capital Improvements, if any, which are provided by Concessionaire as required in Concessionaire's agreement with City; and 5) the provision to incorporate Concessionaire's agreement with City as an exhibit, into the sublease agreement.

- f) Provide a detailed menu listing all proposed food and beverage items with their initial prices for each Concession Location within the selected Food and Beverage Concession Package. NOTE: Please refer to Part 3, Scope of Services of this RFP for menu concepts and pricing guidelines.

#### **2.1.6 Minimum Investment and Compensation Requirements** (Part 5, Proposal Form 6 of this RFP).

- a) Offeror must state a cost commitment for the **Minimum Initial Capital Investment** for the costs associated with the design, construction, and furnishings for all Concession Locations within the Food and Beverage Concession Package selected by Offeror on Part 5, Proposal Form 5, Section 2 of this RFP. Although the City has set a minimum threshold for the Minimum Initial Capital Investment for each Food and Beverage Concession Package, **Offeror may propose a higher Minimum Initial Capital Investment.**

No more than fifteen percent (15%) of Offeror's proposed Minimum Initial Capital Investment shall be for architectural, engineering, construction management and oversight, financing, loan acquisition or lender's fees, intra-company charges and all other "soft" costs. No less than eighty-five percent (85%) of the proposed Minimum Initial Capital Investment shall be for labor and materials.

NOTE: Any deficit in the actual Minimum Initial Capital Investment relative to the proposed Minimum Initial Capital Investment must be paid to the City as additional compensation.

b) Offeror must state an **Initial Minimum Monthly Guarantee** that will be required during the term of the Concession Agreement. Although the City has set a minimum threshold for the Initial Minimum Monthly Guarantee for each Food and Beverage Concession Package, **Offeror may propose a higher Initial Minimum Monthly Guarantee.**

At the end of each full Calendar Year during the term of the Concession Agreement, the Minimum Monthly Guarantee shall be adjusted for the next Calendar Year to a sum of money representing one-twelfth (1/12) of eighty-five percent (85%) of the Percentage of Gross Revenues Fee payable for the preceding Calendar Year provided, however, that in no event shall the Minimum Monthly Guarantee for any month be less than the Initial Minimum Monthly Guarantee.

c) City has set a **Percentage of Gross Revenues Fee** for each Food and Beverage Concession Package that will be required during the term of the Concession Agreement. **Any increase in the Percentage of Gross Revenues Fee proposed by Offeror shall not be considered by City.**

**2.1.7 Local Participation Plan** (Part 5, Proposal Form 7 of this RFP). Describe the extent of local participation in the areas of responsibility pertaining to the design, development, and operation of Offeror's selected Food and Beverage Concession Package. Local participants may include joint ventures, limited liability companies, partners, sublessees, and licensees.

Attach to your Proposal a Local Participation Form for each Local Participant in your Proposal and copies of all agreements, subleases, or other documentation, actual or proposed, that is basis for the business relationship between Offeror and Local Participants. Local Participation (not to be confused with Local Preference) is **highly encouraged**, but is not mandatory.

**2.1.8 Disadvantaged Business Enterprises ("DBE") Participation Plan** (Part 5, Proposal Form 8 of this RFP). Describe the extent of DBE participation in the areas of responsibility pertaining to the design, development, and operation of Offeror's selected Food and Beverage Concession Package. DBE participants may include joint ventures, limited liability companies, partners, sublessees, and licensees.

Attach to your Proposal a Disadvantaged Business Enterprises Participation Form for each DBE included in your Proposal and copies of all agreements, subleases, or other documentation, actual or proposed, that is basis for the business relationship between Offeror and DBE Participants. **NOTE: Offerors are required to take all necessary and reasonable steps to achieve the City of Albuquerque Aviation**

**Department's DBE goal, as further explained in Part 1, Section 1.6 of this RFP.**

**2.2 Additional Information.** Include all additional information, which Offeror considers to be relevant to its Proposal, but may not be required in Section 2.1 above.

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## **PART 3**

### **SCOPE OF SERVICES**

**3.1 Food and Beverage Concession Objectives.** The City of Albuquerque ("City") desires to enter into a Food and Beverage Concession Lease and Agreement ("Concession Agreement") with a qualified and responsive entity or individual ("Concessionaire") to design, develop, and operate an innovative Food and Beverage Concession at the Albuquerque International Sunport ("Airport"). The City is seeking a Food and Beverage Concessions Program at the Airport that will accomplish the following objectives:

- a) Provide the highest quality of food and beverage services available through a range of concepts and services that include local and regional flavors, as well as national brands that broaden customer appeal.
- b) Emphasize design and development standards for high-quality, contemporary, attractive, and creative facilities that promote a strong sense of place and reflect the unique culture and character of Albuquerque and the Southwest region, and that complement the architecture of the terminal building.
- c) Provide a high-level of customer service with a balanced mix of variety and choice of food and beverage products, competitive pricing, friendly service that reflects positively on the community, and clean inviting facilities.
- d) Encourage diversity of food and beverage concepts and competition between Concessionaires as a means to optimize sales and to maximize revenues to the City of Albuquerque Aviation Department.
- e) Provide, to the greatest extent possible, opportunities for participation by qualified and experienced local small businesses through a first-step mentoring program.
- f) Meet or exceed the City's Disadvantaged Business Enterprise goals for the Food and Beverage Concessions Program.

**3.2 Food and Beverage Concessions Opportunities.** The new Food and Beverage Concessions Program is divided into four (4) separate Concession Packages consisting of fifteen (15) Concession Locations, which are shown on **Attachment B** to this Part 3 of this RFP. Five (5) of the Concession Locations are pre-security and ten (10) Concession Locations are post-security.

In order to provide a range of competitive services to the traveling public, and to maximize revenues to the City, no Offeror will be awarded more than two (2) Concession Packages. **Separate proposals must be submitted for each Concession Package. Proposals that include more than one (1) Concession Package will not be considered.**

The following is a brief description of each Concession Package including City's required concept, Concession Locations and square footages, and type of menu items for each Concession Location. Offerors may suggest additional menu items in their Proposal; however, City shall be under no obligation to approve additional food and beverage selections, which are not consistent with the character and intent of the concept.

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## **PACKAGE A – SPECIALTY COFFEE AND BAKERY CONCEPT (4 LOCATIONS)**

### **Location 1 – Terminal Building Level 3 Pre-Security**

**Approximate square footage: 2,416 sq. ft.**

#### Predominant Food Selection to include:

- Bakery Items - a wide variety of freshly prepared pastries, croissants, turnovers, scones, bagels, rolls, muffins, breads, etc.
- Dessert Items – a wide variety of freshly prepared cakes, pies, cookies, brownies, cheesecake, pudding, etc.
- Deli-style Sandwiches – a wide variety of made-to-order cold sandwiches.
- Hot Food Items – freshly prepared made-to-order breakfast sandwiches, soups, baked potatoes, and quiches.
- Additional Food Items – sandwich wraps, salads, pre-packaged chips, fruit cups, yogurt cups, and pre-packaged ice cream novelties.

#### Predominant Beverage Selection to include:

- Coffee – a wide variety of hot and cold specialty coffee drinks, to include espresso and cappuccino.
- Tea – a wide variety of hot and cold specialty tea drinks, to include herbal teas.
- Juices – a variety of fresh and/or bottled juices.
- Smoothies – a variety of made-to-order fresh fruit smoothies.
- Miscellaneous Beverages - a variety of fountain and bottled sodas, milk, and bottled water.

### **Location 7 – Terminal Building Level 3 Concourse A Post-Security**

**Approximate square footage: 1,209 sq. ft.**

#### Predominant Food Selection to include:

- Bakery Items - a wide variety of freshly prepared pastries, croissants, turnovers, scones, bagels, rolls, muffins, breads, etc.
- Dessert Items – a wide variety of freshly prepared cakes, pies, cookies, brownies, cheesecake, pudding, etc.
- Pre-packaged Food Items – a variety of freshly prepared breakfast sandwiches, cold sandwiches, sandwich wraps, chips, salads, fruit cups, and yogurt cups.

#### Predominant Beverage Selection to include:

- Coffee – a wide variety of hot and cold specialty coffee drinks, to include espresso and cappuccino.

- Tea – a wide variety of hot and cold specialty tea drinks, to include herbal teas.
- Juices – a variety of fresh and/or bottled juices.
- Miscellaneous Beverages - a variety of fountain and bottled sodas, milk, and bottled water.

**Location 9 – Terminal Building Level 1 Bag-Claim Pre-Security Kiosk**  
**Approximate square footage: 105 sq. ft.**

Predominant Food Selection to include:

- Bakery Items - a variety of freshly prepared pastries, croissants, turnovers, scones, bagels, rolls, muffins, breads, etc.
- Dessert Items – a variety of freshly prepared cakes, pies, cookies, brownies, cheesecake, pudding, etc.
- Pre-packaged Food Items – a variety of freshly prepared breakfast sandwiches, cold sandwiches, sandwich wraps, chips, salads, fruit cups, yogurt cups, and ice cream novelties.

Predominant Beverage Selection to include:

- Coffee – a variety of hot and cold specialty coffee drinks, to include espresso and cappuccino.
- Tea – a variety of hot and cold specialty tea drinks, to include herbal teas.
- Juices – a variety of fresh and/or bottled juices.
- Smoothies – a variety of made-to-order fresh fruit smoothies.
- Miscellaneous Beverages - a variety of bottled sodas, milk, and bottled water.

**Location 11 – Consolidated Rental Car Facility**  
**Approximate square footage: 732 sq. ft.**

Predominant Food Selection to include:

- Bakery Items - a wide variety of freshly prepared pastries, croissants, turnovers, scones, bagels, rolls, muffins, breads, etc.
- Dessert Items – a wide variety of freshly prepared cakes, pies, cookies, brownies, cheesecake, pudding, etc.
- Deli-style Sandwiches – a wide variety of made-to-order cold sandwiches.
- Hot Food Items – freshly prepared made-to-order breakfast sandwiches, soups, baked potatoes, and quiches.

- Additional Food Items – sandwich wraps, salads, pre-packaged chips, fruit cups, yogurt cups, and pre-packaged ice cream novelties.

Predominant Beverage Selection to include:

- Coffee – a wide variety of hot and cold specialty coffee drinks, to include espresso and cappuccino.
- Tea – a wide variety of hot and cold specialty tea drinks, to include herbal teas.
- Juices – a variety of fresh and/or bottled juices.
- Smoothies – a variety of made-to-order fresh fruit smoothies.
- Miscellaneous Beverages - a variety of fountain and bottled sodas, milk, and bottled water.

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## **PACKAGE B—FULL SERVICE CASUAL DINING RESTAURANT & BAR CONCEPTS AND BRANDED QUICK-SERVE CONCEPT (3 LOCATIONS)**

Package B is structured to support the City's strategy to provide opportunities for participation in the new Food and Beverage Concessions Program by qualified and experienced local small businesses. Any Offeror submitting a proposal for this Concession Package must enter into a sublease arrangement with a local small business to operate and manage at least one (1) of the Concession Locations in this package.

### **Location 2 – Terminal Building Level 3 Pre-Security Approximate square footage: 14,210 sq. ft.**

#### Predominant Menu to include:

- A wide variety of authentic Mexican food dishes prepared fresh daily, which reflect the unique flavor of New Mexico and the Southwest region.

#### Additional Requirements:

- As an alternative to the Mexican food selections, a variety of traditional American food dishes must also be provided.
- A children's menu that includes a selection of Mexican and American food dishes should also be offered.
- A bar menu offering a limited selection of appetizers, snacks, and entrees.
- Breakfast, lunch, and dinner menus must be offered.

#### Alcoholic Beverages:

- A complete selection of beer, wine, and liquor must be available for dining patrons as well as bar-only patrons.

### **Location 4 – Terminal Building Level 3 Post-Security Approximate square footage: 5,174 sq. ft.**

#### Predominant Menu to include:

- A selection of appetizers, soups, salads, sandwiches, and a wide range of beef, pork, poultry, and seafood entrées typically found in casual dining restaurants, which will appeal to a broad cross-section of the traveling public. A very limited selection of Mexican food menu items may be offered.

#### Additional Requirements:

- Breakfast, lunch, and dinner menus must be offered.

- A children's menu must be offered.
- A bar area must be provided at one end of the restaurant facility. The bar should be an integral part of the restaurant but offer the option of seating at the bar or table seating within the bar area. A selection of appetizers, snacks, sandwiches, and entrées should be offered for the bar patrons. Large-format televisions such as flat panels or projection TV's are permitted and encouraged.

Alcoholic Beverages:

- A complete selection of beer, wine, and liquor must be available for dining patrons as well as bar-only patrons.

**Location 12 – Terminal Building Level 3 Post-Security**

**Approximate square footage: 644 sq. ft.**

Predominant Food Selection to include:

- Branded quick-serve concept offering a combination of fresh juice, fresh fruit, and other fresh or natural ingredients blended together to create made-to-order nutritional based beverages.
- A limited selection of pre-packaged protein energy bars and other nutritional items.

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## **PACKAGE C – VARIOUS QUICK-SERVE CONCEPTS AND SMOKERS BAR & GRILL (7 LOCATIONS)**

Package C is structured to support the City's strategy to provide opportunities for participation in the new Food and Beverage Concessions Program by qualified and experienced local small businesses. Any Offeror submitting a proposal for this Concession Package must enter into sublease arrangements with local small businesses to operate and manage at least two (2) of the Concession Locations in this package.

### **Location 3 – Terminal Building Level 3 Post-Security**

**Approximate square footage: 5,930 sq. ft.**

Location 3 consists of four (4) individual spaces for quick-serve concepts. Each space will require its own individual concept. Suggested concepts are Asian, Mexican, American, and Ice Cream.

### **Location 5 – Terminal Building Level 3 Concourse B Post-Security**

**Approximate square footage: 1,159 sq. ft.**

Predominant Food Selection to include:

- A variety of Italian food dishes prepared fresh daily including pizza, spaghetti, lasagna, calzones, meatball and sausage sandwiches, breadsticks, etc.
- A limited selection of freshly prepared salads.
- A limited selection of pre-packaged chips and desserts.
- Fountain sodas, bottled sodas, and bottled water.

### **Location 8 – Terminal Building Level 3 Concourse B Post-Security**

**Approximate square footage: 1,411 sq. ft.**

Historically there have been two locations within the terminal building designated as smoking areas. In the new Food and Beverage Concessions Program, this Concession Location will be the only area within the terminal building where smoking is allowed. As such, special attention must be given to the design and construction of this Concession Location to ensure adequate ventilation of the space.

Predominant Menu to include:

- A wide selection of finger-food appetizers, salads, sandwiches, and entrées typically found in Bar and Grill-style restaurants.
- Breakfast, lunch, and dinner menus must be offered.

Alcoholic Beverages:

- A complete selection of beer, wine, and liquor must be available for dining patrons as well as bar-only patrons.

**Location 10 – Terminal Building Level 2 Pre-Security**

**Approximate square footage: 1,203 sq. ft.**

This location has historically been a quick-serve concept with the primary patronage being commuter airline passengers and airport employees. Because of the loyalty established with the airport employees and the consistent repeat business, this Concession Location has potential for improved performance with a larger and more efficient layout. The City is requesting an employee discount pricing strategy for this Concession Location.

Predominant Menu to include:

- A limited breakfast and lunch/dinner menu consisting of American, Mexican, Asian, and other selected food types presented in a short-order format. Daily Blue Plate Specials are encouraged.
- A very limited selection of bakery and dessert items.

Beverage Selection to include:

- Filter coffee (no specialty coffee or espresso drinks), hot tea and iced tea (no specialty tea drinks).
- Lemonade, punch, and milk.
- Limited selection of fountain and bottled soda, juice, and bottled water.

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**PACKAGE D – BRANDED FRANCHISE QUICK-SERVE SANDWICH CONCEPT  
(1 LOCATION)**

**Location 6 – Terminal Building Level 3 Concourse A Post-Security  
Approximate square footage: 2,005 sq. ft.**

Predominant Food Selection to include:

- Branded franchise sandwiches made-to-order using premium meats, cheeses, and fresh toppings, served hot and cold.
- A low-carb sandwich option should also be provided.
- A variety of freshly prepared soups and salads.
- A limited selection of fresh, hot breakfast sandwiches.
- A limited selection of pre-packaged chips and desserts.

Predominant Beverage Selection to include:

- Filter coffee (no specialty coffee or espresso drinks), hot tea and iced tea (no specialty tea drinks).
- Lemonade, punch, milk, fountain and bottled soda, and bottled water.

Additional Requirements:

- A small bar area with very limited seating must be provided at one end of the facility. The bar should be an integral part of the facility, but should not be the main focus of the concept.

Alcoholic Beverages:

- A complete selection of beer, wine, and liquor must be available for dining patrons and bar-only patrons.

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**3.3 Additional Menu Items.** From time to time Concessionaire may request to add additional food and beverage items to the menu of individual Concession Locations. All such additional items **must be** consistent with the food and beverage concept for that Concession Location pursuant to Section 3.2 above. In order for Concessionaire to include additional menu items, it must submit for approval, a written request for such additional menu items to the Aviation Department at least thirty (30) days prior to offering such new food and beverage items. In order to establish street pricing for those items, Concessionaire must provide menus from three (3) approved comparable community locations and those menus must be included with Concessionaire's request. The Aviation Department however shall be under no obligation to approve additional food and beverage selections that are not consistent with the character and intent of the concept.

**3.4 Sales of Alcoholic Beverages.** City has designated specific Concession Locations for the authorized sale of alcoholic beverages at the terminal building. If Concessionaire is awarded a Concession Package containing one (1) or more of such Concession Locations pursuant to this RFP, then in addition to executing the Concession Agreement, Concessionaire or its sublessee shall also execute a Liquor License Lease and Agreement in substantially the same form as that which is attached as **Exhibit J** to Part 6 of this RFP.

If Concessionaire, by and for itself, intends to operate each Concession Location authorized to sell alcoholic beverages, and if for any reason whatsoever, Concessionaire cannot qualify for a liquor license, then City shall be under no obligation to execute the Concession Agreement, and shall have the right to award the Concession Package, in its entirety, to another concessionaire.

If Concessionaire proposes to designate a sublessee to operate a Concession Location authorized to sell alcoholic beverages, and such sublessee cannot qualify for a liquor license, then City shall be under no obligation to approve the sublease agreement.

**3.5 Street Pricing Policy.** The Aviation Department has instituted a street pricing policy to ensure that Airport food and beverage prices are comparable to prices for similar food and beverage items in the Albuquerque Metropolitan Area. The Concessionaire and its sublessees shall be required to charge no more than street prices as determined in accordance with the following methodology:

- a) **Comparable Community Locations.** To determine initial street prices for food and beverage items, Concessionaire will select three (3) Albuquerque Metropolitan Area restaurants offering items of similar type, quality, and serving size, as proposed comparable locations for price comparisons. Concessionaire must submit for approval by the Aviation Department, its list

of proposed comparable locations and their published menus. The price of each item listed on Concessionaire's menu will be the average of the prices for that item shown on the published menus from the three (3) approved comparable locations plus no more than ten percent (10%). If there are no comparable locations for comparison purposes for certain items on Concessionaire's menu, Concessionaire shall submit a reasonable price for each such item for final approval by the Aviation Department.

b) **Existing Community Locations.** For all Concession Locations, including franchise locations, which essentially duplicate the concept and menu of an existing restaurant in the Albuquerque Metropolitan Area, the Concessionaire may not charge an amount higher than ten percent (10%) above the published price for each menu item of the existing restaurant.

c) **Price Increases.** In order for Concessionaire to increase its menu prices for any Concession Location, it must submit for approval, a written request for such price increase to the Aviation Department at least thirty (30) days prior to any anticipated price increase. Justification for all such requests must be based upon menu prices from the three (3) prior approved comparable community locations, and those menus must be included with Concessionaire's price increase request. No more than one (1) price increase request will be approved during any calendar year during the term of the Concession Agreement.

d) **Price Verification.** Prices may be checked periodically to ensure compliance with the Aviation Department's street pricing policy. A selection of items, picked at random from any Concession Location, will be compared to similar items identified in the menus of the approved comparable locations. The Aviation Department may appoint professional shoppers to survey and shop Concession Locations.

**3.6 Concessionaire's Operating Requirements.** The Concessionaire for each Concession Package shall be required to provide the Food and Beverage concepts and services as described in this RFP, and in accordance with the Standards of Operations Manual, **Attachment C** to this Part 3 of this RFP. At a minimum, Concessionaire shall:

a) Provide quality control audits, assure cleanliness of the Concession Location, timeliness of service, quality of the product.

b) Provide on-site staff to perform daily functions as required by the Standards of Operations Manual identified in this RFP.

- c) Maintain, or cause the sublessee to maintain the Concession Locations pursuant to the Aviation Department standards as may be promulgated from time to time.
- d) Coordinate and maintain general oversight of deliveries of goods and products for the concession operations from any designated on or off-Airport storage area.
- e) Coordinate and implement regular employee customer service training programs, to include employees from both the Concessionaire and its sublessees, if applicable.
- f) Respond to customer complaints on a timely basis and ensure customer service program compliance. The Concessionaire and its sublessees will submit their customer service training program within thirty (30) days of the Effective Date of the Concession Agreement, for the Aviation Department's review and approval.
- g) Ensure compliance, or cause sublessees to comply with the Aviation Department and other governmental agency security requirements.
- h) Implement any new policies, procedures, and operational directives as issued from time to time by the Aviation Department.

**3.7 Concessionaire Subleasing Requirements.** For all Concession Locations, which Concessionaire will sublease, Concessionaire shall provide the Aviation Department with evidence that Concessionaire's sublessee has the qualifications and experience necessary to manage and operate the Concession Location.

Each sublease agreement must include, as essential elements of that agreement, the following terms and conditions:

- a) Each sublease agreement shall contain identical terms and conditions, including but not limited to, use clauses, insurance, pricing, capital expenditures, quality of food and beverage items, hours of operation, detailed reporting of sales, payment of rents and fees, and signage as may be applicable to those contained in the Concession Agreement between Concessionaire and City. The Concession Agreement shall be incorporated as an attachment to any sublease agreement, and each sublease agreement shall require the written consent of City.

b) The financial terms of each sublease agreement shall be in accordance with the rents and fees pursuant to the Concession Agreement between Concessionaire and City.

c) In addition to the rents and fees referred to in Section 3.6.b) above, Concessionaire shall be entitled to charge sublessee a cost recovery fee for the recovery of its proportional share of operating costs relating to security procedures, refuse removal, utilities, custodial services, maintenance, and capital cost recovery for capital improvements, if any, provided by the Concessionaire as required in the Concession Agreement.

d) The term of any sublease agreement shall not extend beyond the expiration date of the Concession Agreement between Concessionaire and City.

e) Full disclosure of all financial consideration between the Concessionaire and the proposed sublessee, and agree that full disclosure of financial relationships of any kind will be made by both parties upon the written request of the Aviation Department.

For all Concession Locations which Concessionaire will sublease, Concessionaire must submit, in its final form, subject to review and approval by the Aviation Department, a sublease agreement for each Concession Location, no later than thirty (30) days following City's execution of the Concession Agreement.

**3.8 Concession Package Requirements.** In order to provide the Food and Beverage concepts and services as described in this RFP, Concessionaire shall be required to completely develop, to continually maintain, and to ensure future improvements for all of its Concession Locations within its selected Food and Beverage Concession Package. At a minimum Concessionaire must:

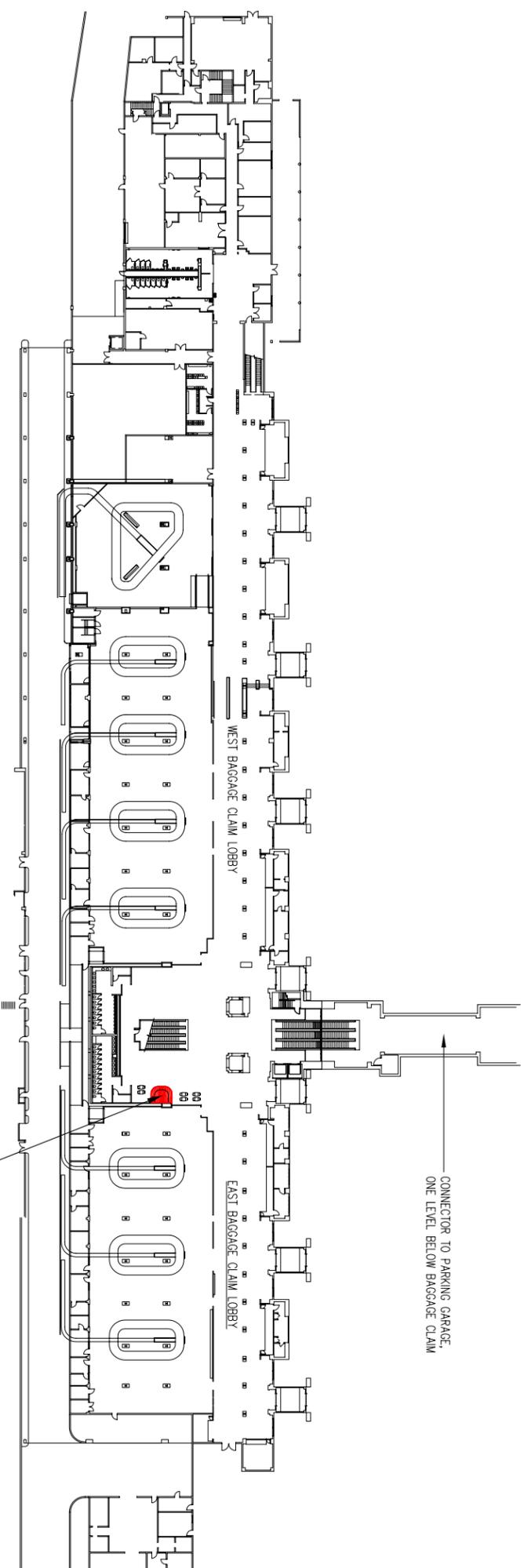
a) **Development Requirements.** For each Concession Package, Concessionaire shall be required to make an Initial Capital Investment in an amount no less than the amount of its Minimum Initial Capital Investment offer pursuant to Part 5, Form 6 of this RFP, for the design, engineering, construction, furniture, fixtures, and equipment for each Concession Location. Offerors are encouraged to use their creativity, innovation, and experience, in conjunction with the Design Criteria and Construction Manual, included as **Attachment D** to this Part 3 of this RFP, in the design and development of a first-class, user-friendly Concession Locations to provide exceptional customer service and maximize revenues to City.

b) **Maintenance Requirements.** Throughout the term of the Concession Agreement, Concessionaire shall keep and maintain each Concession Location in a clean, orderly, safe, and sanitary condition, and shall make all repairs, renewals, and replacements as and when necessary. This requirement shall pertain to all improvements constructed thereon, as well as all furniture, fixtures, and equipment. Concessionaire shall keep each Concession Location free of safety hazards and unlawful obstructions. Guidelines for maintenance requirements are set forth in the Design Criteria and Construction Manual and the Standards of Operations Manual, both of which are contained in this RFP.

c) **Mid-Term Capital Investment.** In order to ensure that Concessionaire's Concession Location(s) remain in a first-class condition throughout the term of the Concession Agreement, Concessionaire shall make a Mid-Term Capital Investment in an amount not less than Sixty and 00/100 Dollars (\$60.00) per square foot for each Concession Location. The Mid-Term Capital Investment required to be expended shall be used for renovation and remodeling of Concessionaire's Capital Improvements, and shall not be used for ordinary maintenance expenses. Such renovation and remodeling shall be completed free and clear of all liens, encumbrances and security interests. Concessionaire shall complete such renovations and remodeling in the ninety (90) day period commencing January 1 and continuing through March 31 of the sixth (6<sup>th</sup>) full Calendar Year.

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**ATTACHMENT B  
CONCESSION LOCATIONS**



LOCATION 9  
 PACKAGE A  
 SPECIALTY COFFEE AND BAKERY CONCEPT  
 KIOSK AREA 105 SF PRE-SECURITY



CITY OF ALBUQUERQUE  
 PUBLIC WORKS DEPARTMENT  
 ENGINEERING DEVELOPMENT GROUP

TITLE: ALBUQUERQUE INTERNATIONAL AIRPORT  
**TERMINAL BUILDING LEVEL 1 - CONCESSION**

Design Review Committee City Engineer Approval  
 06/29/76 06/29/76

City Project No.	Zone Map No.	Drawing No.	Sheet	Of
	M-16			

AS BUILT INFORMATION	
Contractor	
Work Staked By	Date
Inspector's Acceptance By	Date
Field Verification By	Date
Drawings Corrected By	Date
MICRO-FILM INFORMATION	
Recorded By	Date
No.	

BENCH MARKS		

SURVEY INFORMATION		
Field Notes		
No.	By	Date

ENGINEER'S STAMP & SIGNATURE			

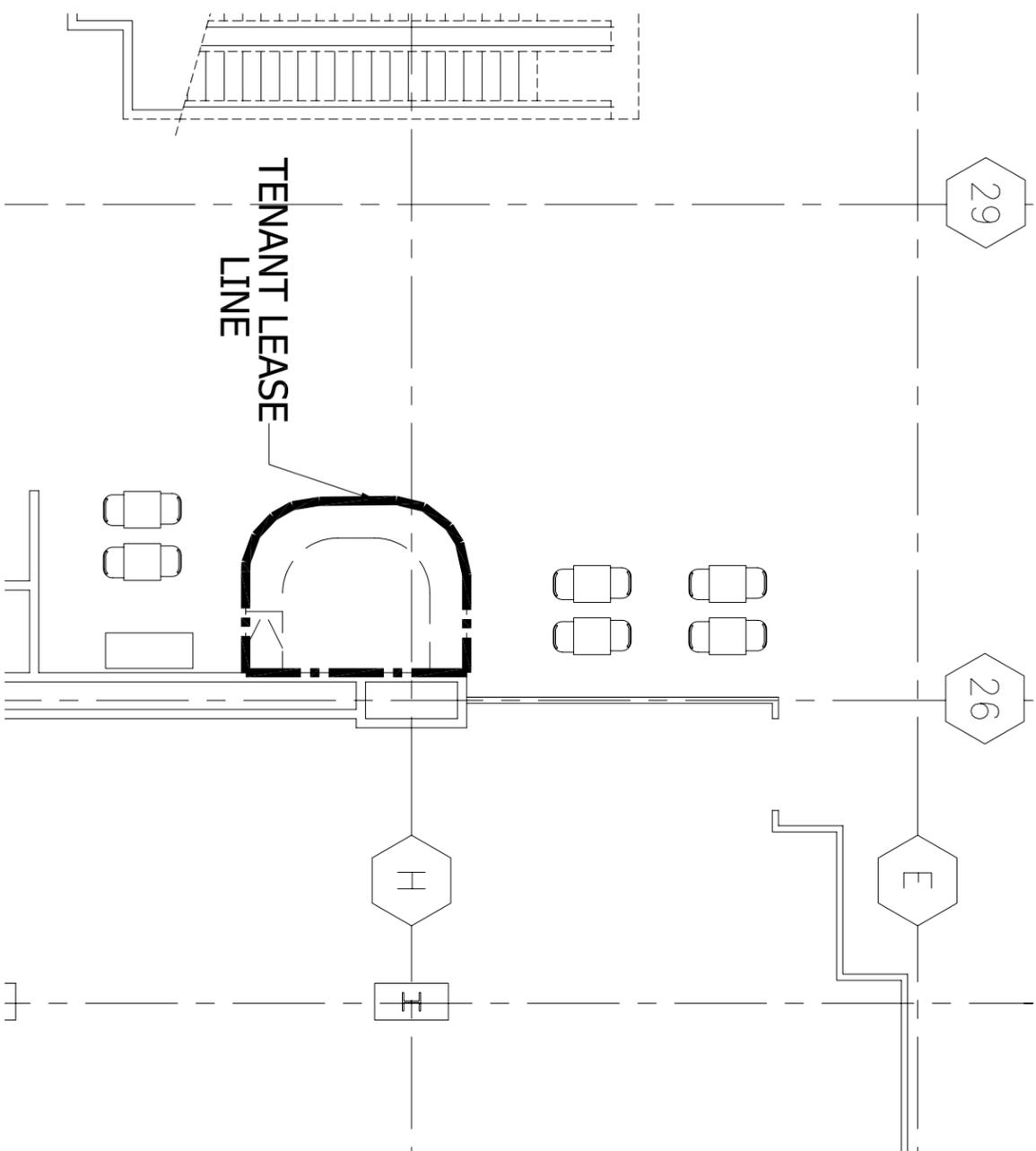
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TERMINAL BUILDING LEVEL 1 - BAG CLAIM

**LOCATION 9  
PACKAGE A  
SPECIALTY COFFEE & BAKERY CONCEPT  
KIOSK AREA: 105 SF PRE-SECURITY**



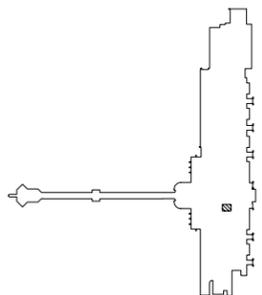
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**TERMINAL BUILDING LEVEL 1 - BAG CLAIM**

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ENGINEERING DEVELOPMENT GROUP  
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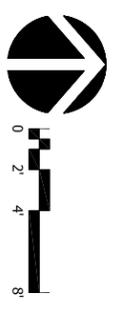
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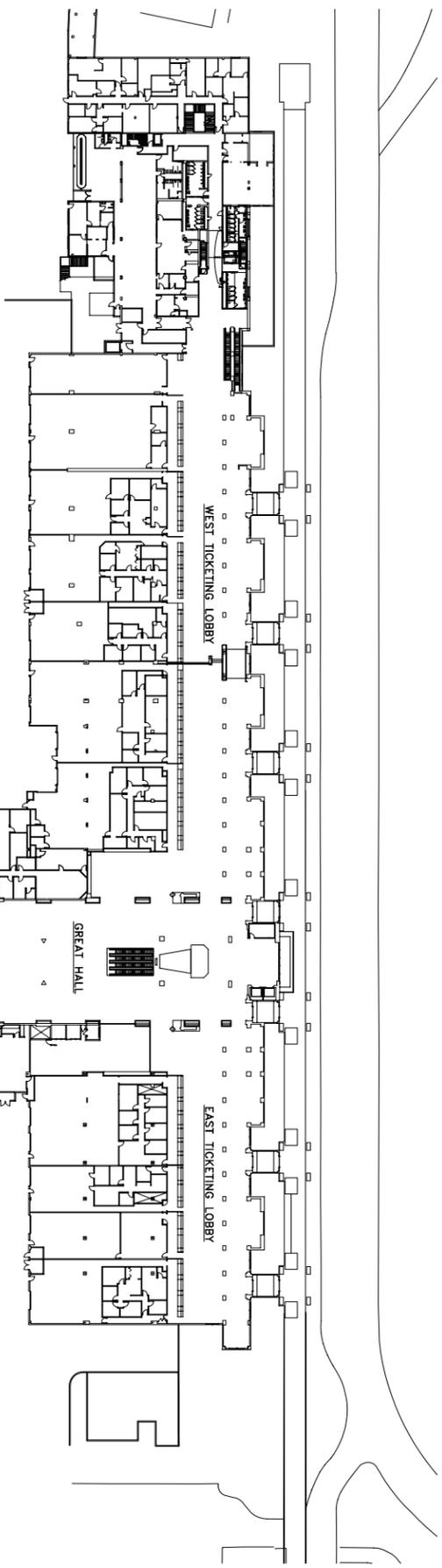
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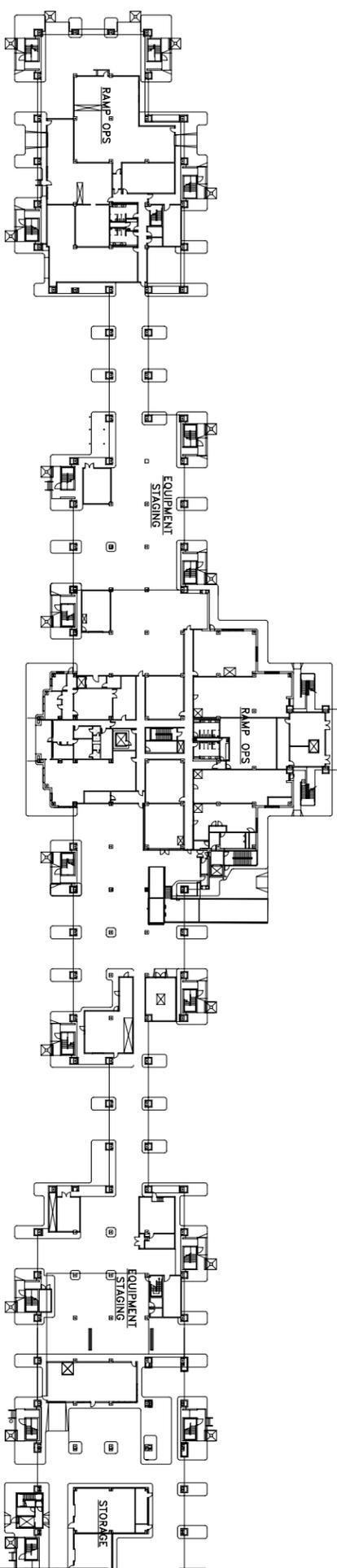
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LOCATION 10  
 PACKAGE C  
 VARIOUS QUICK-SERVE CONCEPTS  
 AREA 1,203 SF PRE-SECURITY



TERMINAL BUILDING LEVEL 2



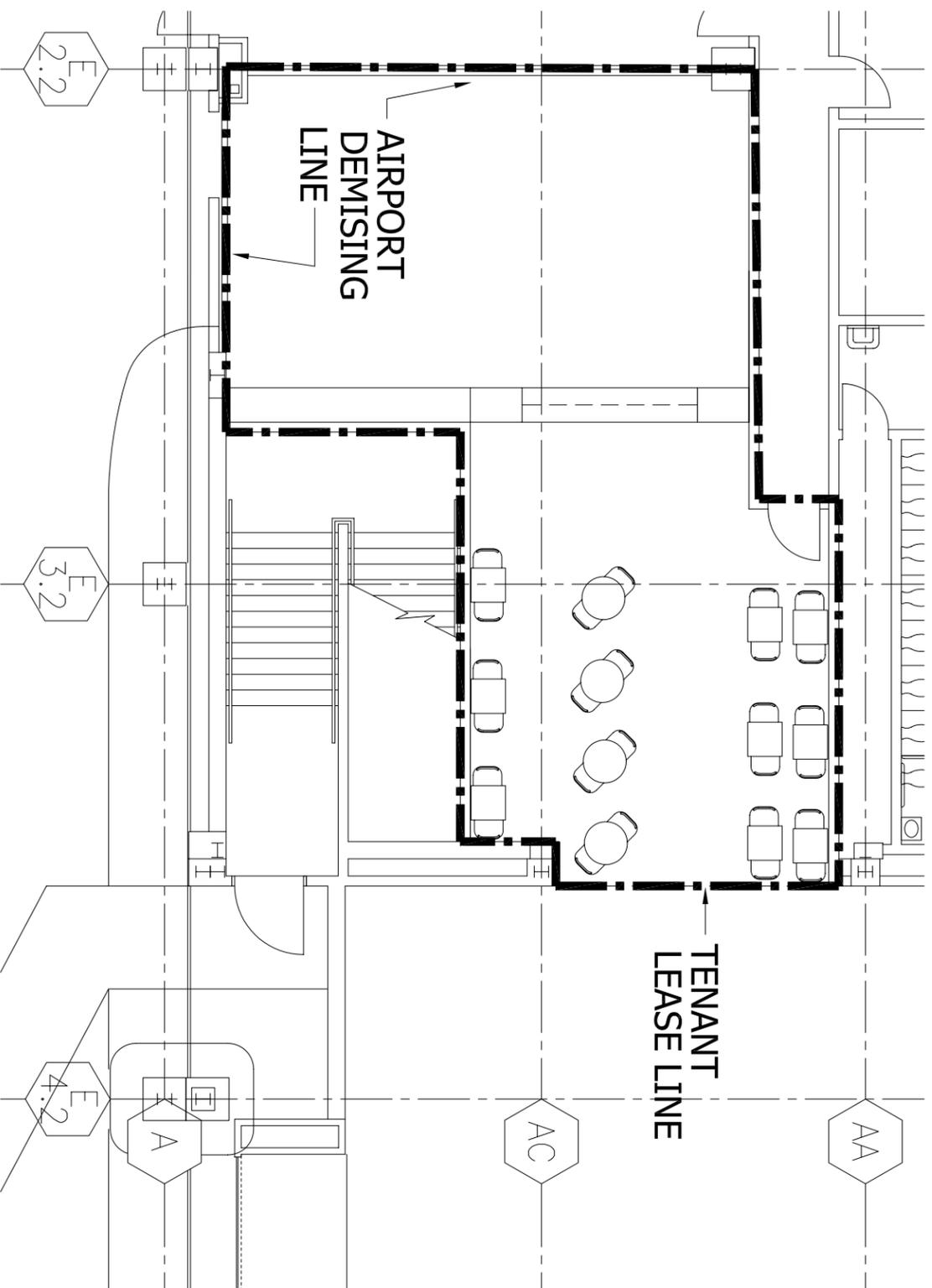
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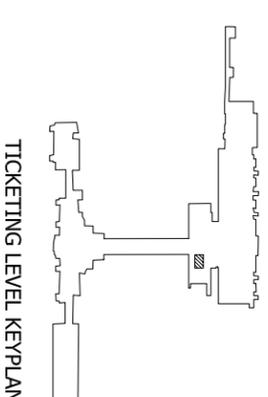
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PACKAGE C  
VARIOUS QUICK-SERVE CONCEPTS  
AREA 1,203 SF PRE-SECURITY**



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**TERMINAL BUILDING LEVEL 2**



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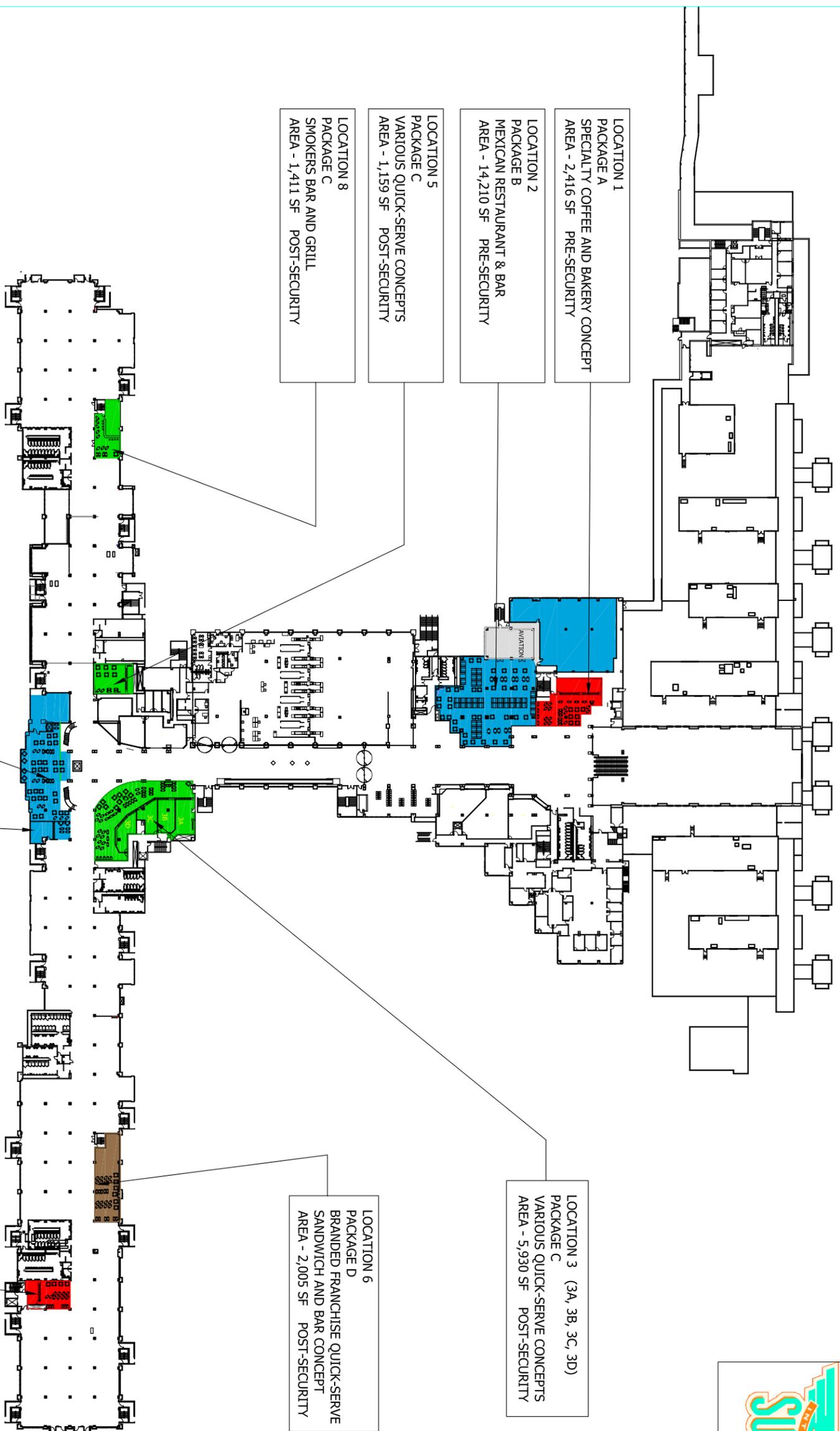
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TITLE: ALBUQUERQUE INTERNATIONAL AIRPORT

Design Review Committee City Engineer Approval

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**LOCATION 1**  
PACKAGE A  
SPECIALTY COFFEE AND BAKERY CONCEPT  
AREA - 2,416 SF PRE-SECURITY

**LOCATION 2**  
PACKAGE B  
MEXICAN RESTAURANT & BAR  
AREA - 14,210 SF PRE-SECURITY

**LOCATION 5**  
PACKAGE C  
VARIOUS QUICK-SERVE CONCEPTS  
AREA - 1,159 SF POST-SECURITY

**LOCATION 8**  
PACKAGE C  
SMOKERS BAR AND GRILL  
AREA - 1,411 SF POST-SECURITY

**LOCATION 4**  
PACKAGE B  
CASUAL DINING RESTAURANT & BAR  
AREA 4,968 SF POST-SECURITY

**LOCATION 12**  
PACKAGE B  
BRANDED QUICK-SERVE CONCEPT  
AREA - 773 SF POST-SECURITY

**LOCATION 7**  
PACKAGE A  
SPECIALTY COFFEE AND BAKERY CONCEPT  
AREA - 1,209 SF POST-SECURITY

**LOCATION 6**  
PACKAGE D  
BRANDED FRANCHISE QUICK-SERVE  
SANDWICH AND BAR CONCEPT  
AREA - 2,005 SF POST-SECURITY

**LOCATION 3 (3A, 3B, 3C, 3D)**  
PACKAGE C  
VARIOUS QUICK-SERVE CONCEPTS  
AREA - 5,930 SF POST-SECURITY

**TERMINAL BUILDING LEVEL 3**



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ENGINEERING DEVELOPMENT GROUP

TITLE:  
ALBUQUERQUE INTERNATIONAL AIRPORT  
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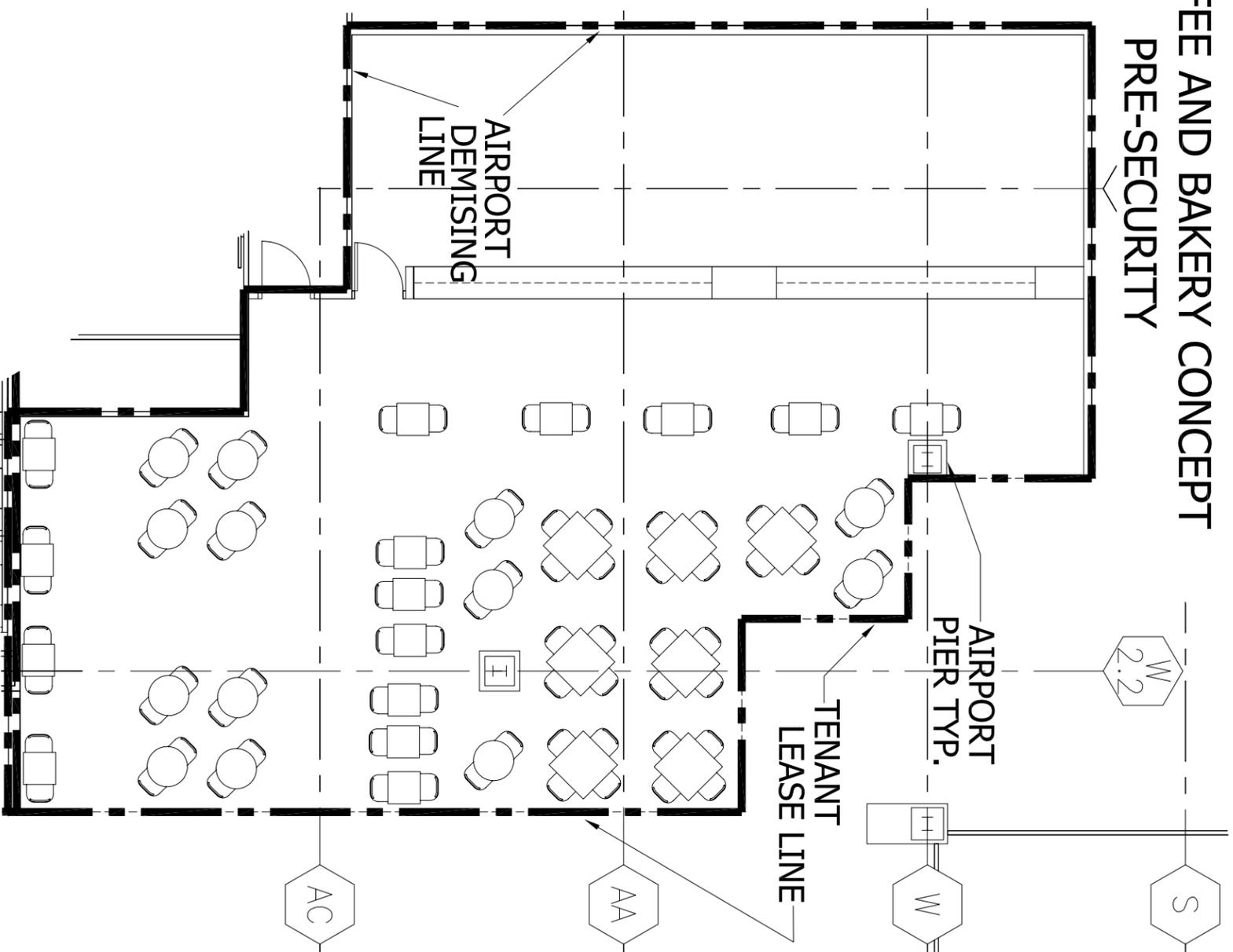
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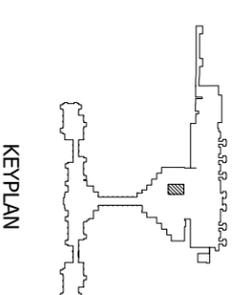
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SPECIALTY COFFEE AND BAKERY CONCEPT  
AREA: 2,416 SF PRE-SECURITY**



**TERMINAL BUILDING LEVEL 3**



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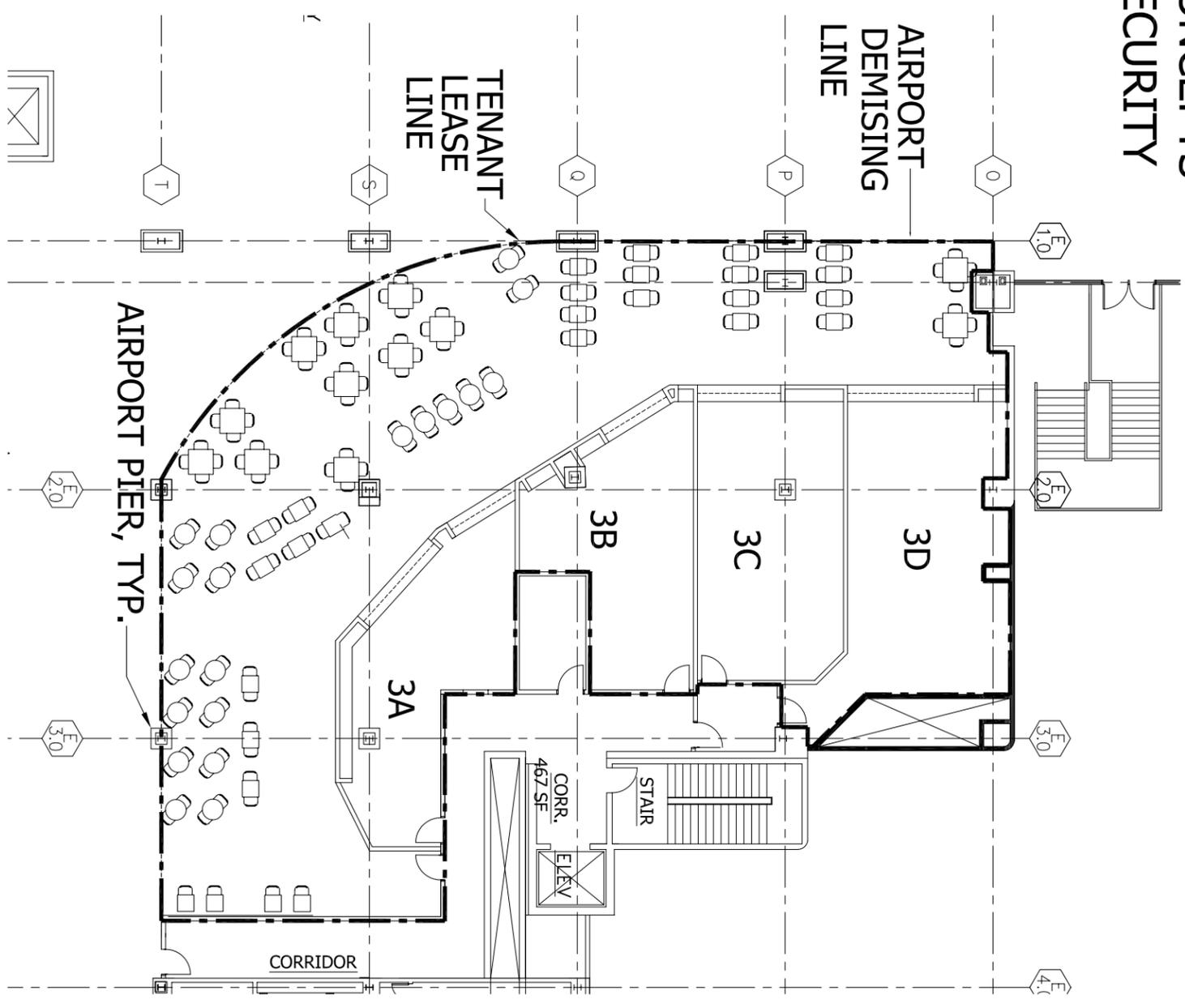
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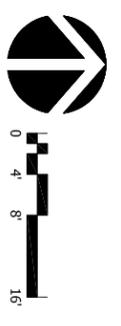
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**LOCATION 3 (3A,3B,3C,3D)  
 PACKAGE C  
 VARIOUS QUICK-SERVE CONCEPTS  
 AREA: 5,930 SF POST-SECURITY**



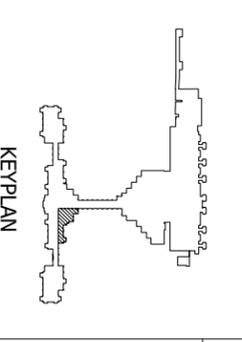
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**TERMINAL BUILDING LEVEL 3**



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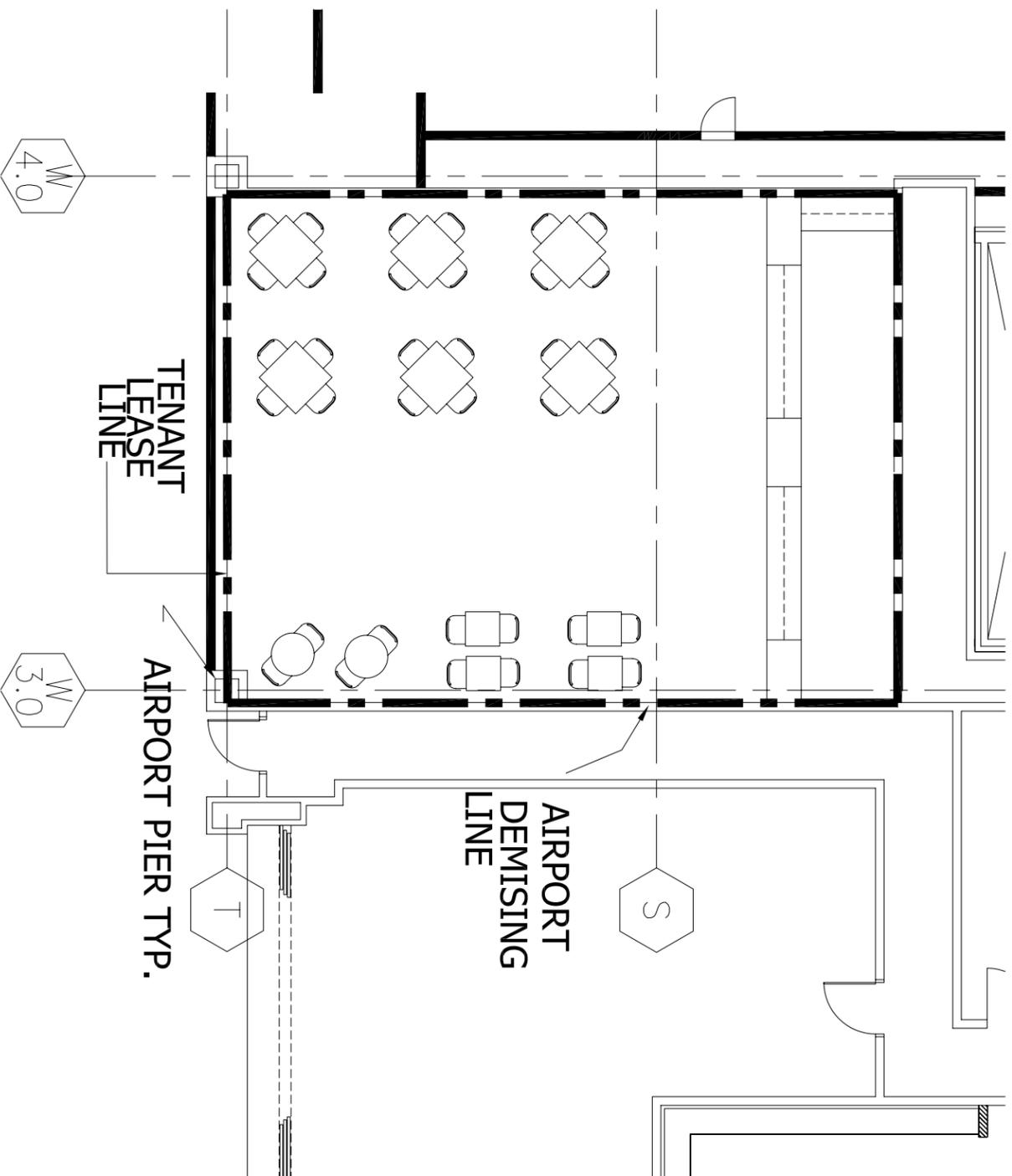
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Design Review Committee	City Engineer Approval	City Project No.	Zone Map No.	Drawing No.	Sheet	Of
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Last Design Update						



**LOCATION 5  
PACKAGE C  
VARIOUS QUICK-SERVE CONCEPTS  
AREA 1,159 SF POST-SECURITY**



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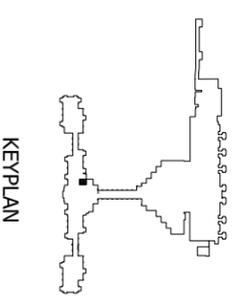


**TERMINAL BUILDING LEVEL 3**



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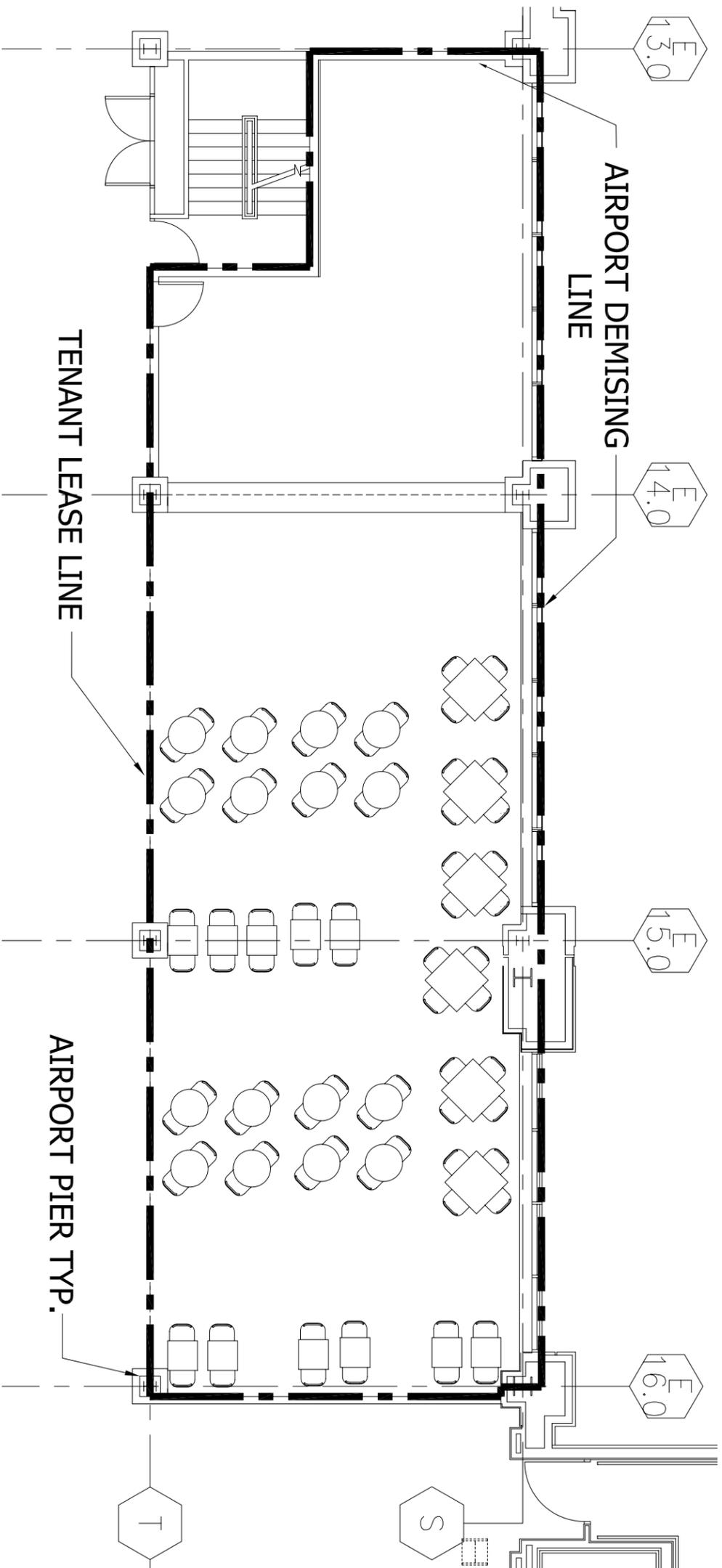
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Design Review Committee	City Engineer Approval	W: 05/27/15	W: 05/27/15
City Project No.	Zone Map No.	Drawing No.	Sheet
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**LOCATION 6  
PACKAGE D  
BRANDED FRANCHISE QUICK-SERVE  
SANDWICH & BAR CONCEPT  
AREA: 2,005 SF POST-SECURITY**



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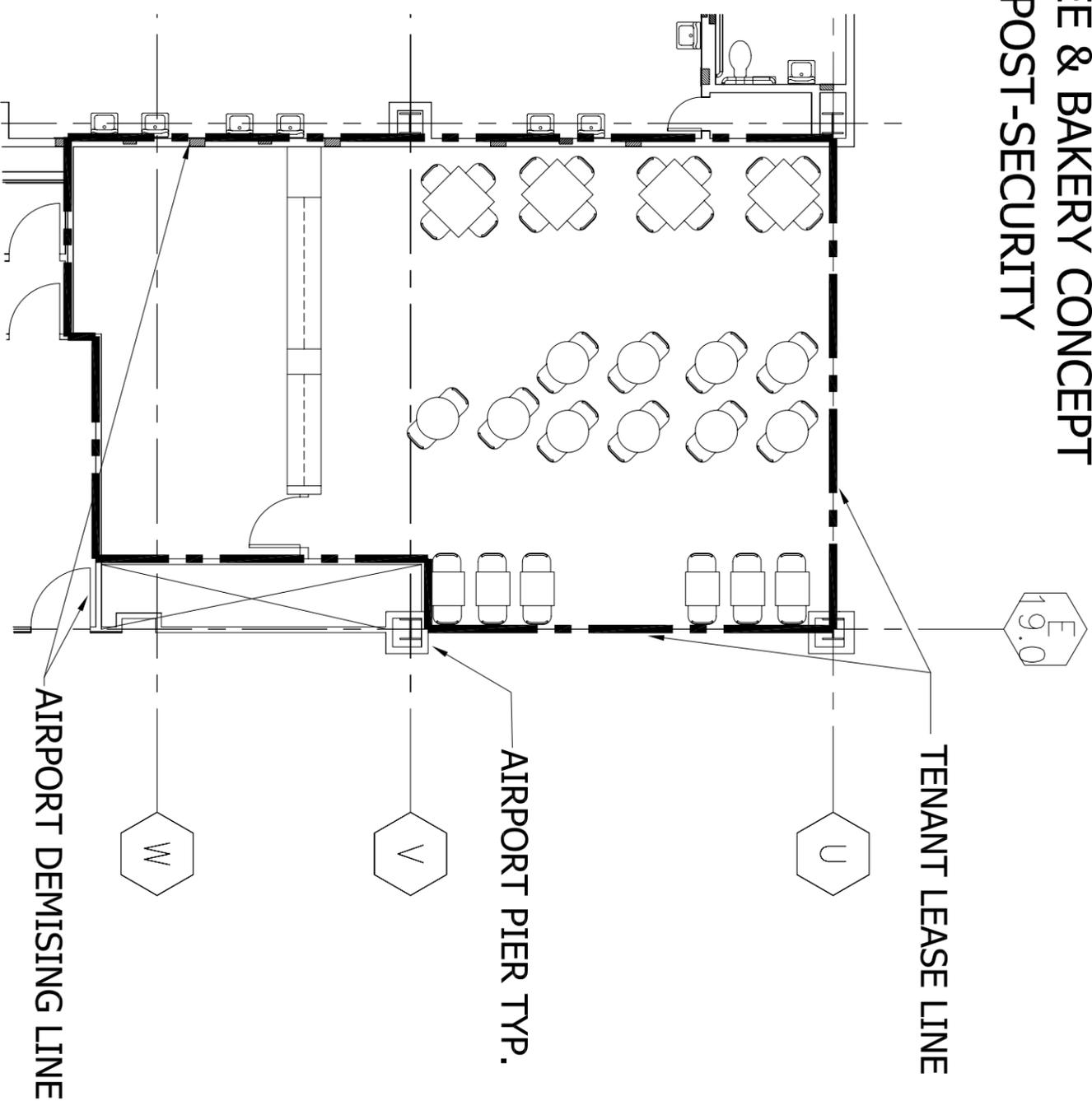
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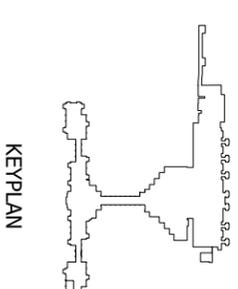


**TERMINAL BUILDING LEVEL 3 - CONCOURSE A**

**LOCATION 7  
PACKAGE A  
SPECIALTY COFFEE & BAKERY CONCEPT  
AREA: 1,209 SF POST-SECURITY**



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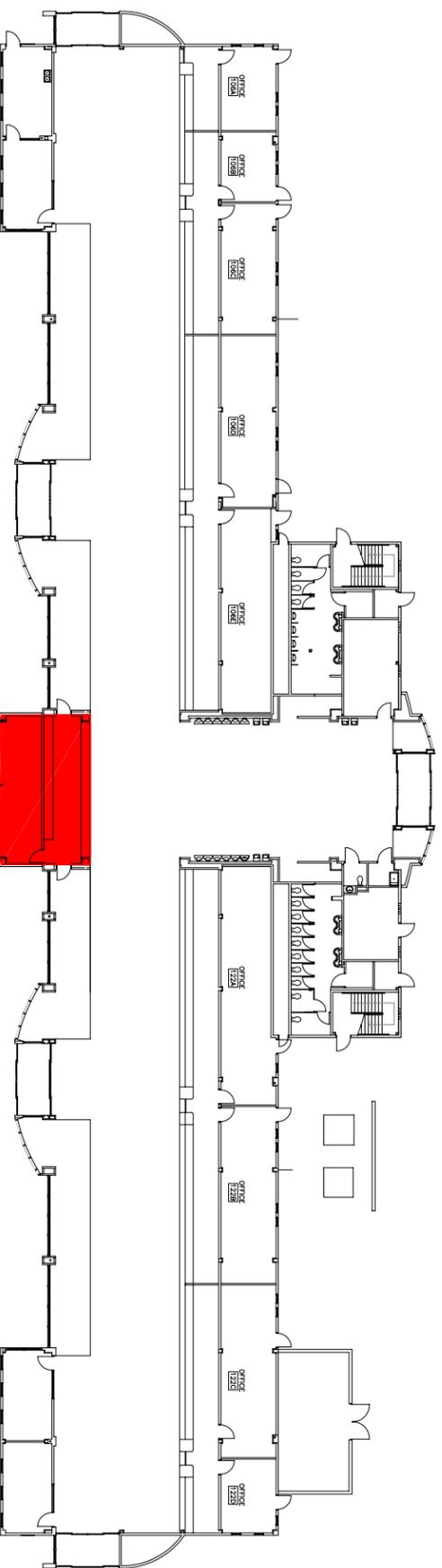
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**TERMINAL BUILDING LEVEL 3 - CONCOURSE A**







LOCATION 11  
PACKAGE A  
SPECIALTY COFFEE AND BAKERY CONCEPT  
AREA 732 SF

CONSOLIDATED RENTAL CAR FACILITY



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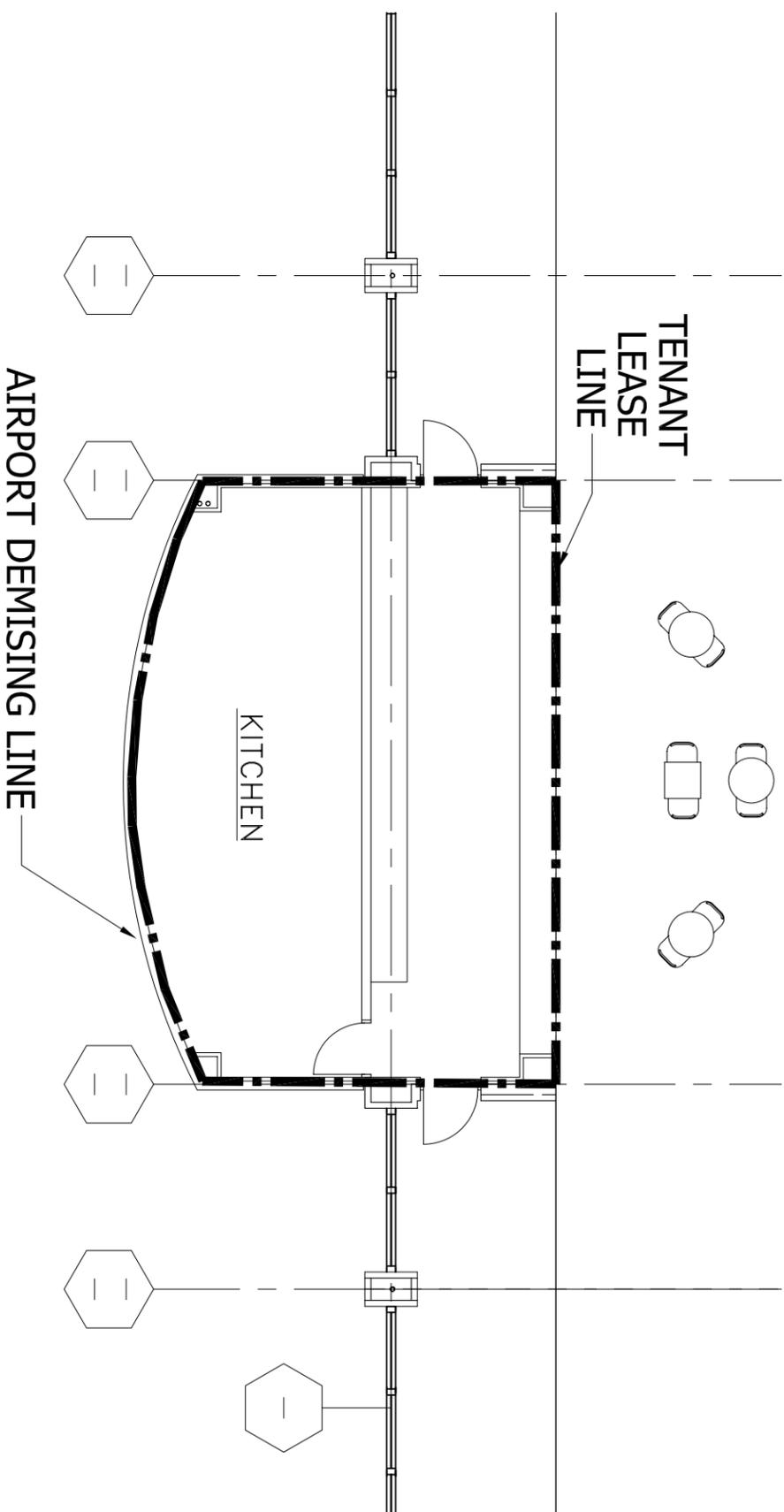
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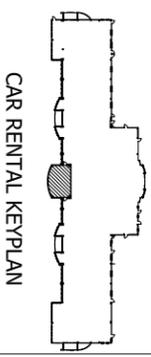
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RENTAL CAR FACILITY

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			M-16				

**LOCATION 11  
PACKAGE A  
SPECIALTY COFFEE AND BAKERY CONCEPT  
AREA: 732 SF**



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**CONSOLIDATED RENTAL CAR FACILITY**



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Design Review Committee	City Engineer Approval	City Project No.	Zone Map No.	Drawing No.	Sheet	Of
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**ATTACHMENT C  
STANDARDS OF OPERATIONS MANUAL**

# ALBUQUERQUE INTERNATIONAL SUNPORT

## STANDARDS OF OPERATIONS MANUAL FOOD AND BEVERAGE CONCESSIONS

### INTRODUCTION

This Standards of Operations Manual was developed by the City of Albuquerque Aviation Department for the purpose of providing reasonable and customary standards for the operation of Food and Beverage Concessions at the Albuquerque International Sunport. These performance standards have been established to provide guidance in four primary areas of concern; Customer Service, Concessionaire's Employees, Concession Operations, and Concession Maintenance.

The Director of Aviation or his designated representative will periodically evaluate these Standards of Operations and make revisions as required to respond to changes in the dynamic environment of the Sunport. Concessionaire shall fully comply with all provisions of this Standards of Operations Manual in its current form, or as amended.

**A. Customer Service.** The success of the Food and Beverage Concession Program is based primarily on the level and continuity of the service provided to Concessionaire's customers. Other elements of Concessionaire's operations affect the customer's experience, but exceptional customer service is the measure of success. Therefore, Concessionaire's policies and procedures related to customer service must include, at a minimum, the following:

1) Every customer should be immediately acknowledged and greeted with a warm, friendly smile. This first friendly hello sets the standard for service in the Concession Location and creates a sense of ease for the customer. A smile is invaluable in reinforcing the sincerity and welcome of the greeting.

2) Food and beverage orders shall be taken promptly and in a friendly and courteous manner. Every staff member should be completely knowledgeable about menu items, proportion sizes, prices, and important menu item features. All employees, including the cashier, have opportunities for suggestive selling or add-on selling.

3) There is no more important feature of dining than speed of service. Service shall be timely, attentive, and friendly. For table service Concession Locations, employees must request customer feedback at various times during the meal. Employees must be observed asking for customer feedback or customer satisfaction at a minimum of four (4) times during the meal:

- a. when the meal is served;
- b. five (5) minutes after the meal is served;
- c. fifteen (15) minutes after the meal is served; and
- d. upon the conclusion of the meal.

Within three (3) minutes of the server collecting the customer's payment for the meal, the server shall return to the table with the cash register receipt and the correct change.

4) Self-service paper goods and condiments shall be easily seen and accessible, and must be replenished in a timely manner to provide complete availability of all items at all times.

5) Processing of payments for food and beverages shall be completed in a prompt manner. The register line should not exceed three customers in length and the wait time should not exceed thirty (30) seconds per customer. Employees must be able to enter sales accurately, make correct change, accept traveler's checks for payment, process credit card transactions, and access the appropriate validation information. Concessionaire must accept at least three (3) major credit cards for any purchase.

6) All customers shall be given a receipt which must be properly itemized, reflect precisely the actual food and beverage order, and present individual prices, totals, and taxes.

7) All customers must be thanked for their patronage and should be extended an invitation to make a return visit.

8) Each Concession Location should have a written exchange/return policy that allows customers to return or exchange items, within reason. This policy should be easily understood by the customer, and the conditions under which exchanges and returns are allowed should be clearly described and should allow a degree of customer flexibility. The policy must be easily implemented by all employees without supervisory approval.

**B. Concessionaire's Employees.** The key element in determining the success of any organization is the quality and character of its employees. In order to ensure the highest level of success, Concessionaire must make every effort to recruit and train only the most qualified individuals for its management organization and service staff team, and this team must actively coordinate in order to provide excellent customer service.

1) Staffing Requirements. Concessionaire shall at all times have present at each location, an experienced manager or supervisor qualified and authorized to act on behalf of Concessionaire in all matters pertaining to its food and beverage operation at

the Sunport. In addition, an appropriate number of employees must be present at each location to adequately satisfy all customer demands and expectations.

2) Employee Training. Employees shall conform to, and Concessionaire shall enforce, all applicable requirements established by Concessionaire's policies and procedures, all rules and regulation established by the Aviation Department, and all laws and regulations adopted by federal, state, or local authorities. All employees must be aware of the policies and procedures, and must be capable of applying them to all customer service situations.

In situations where special certificates, forms or other reference materials are requested or required, employees should be able to easily access those materials without delay or questioning of other employees. Each staff member should be familiar with Concessionaire's customer service policies, able to access a written copy of the relevant policy for the customer, and be able to readily apply the policy to the situation before them.

3) Discipline or Discharge of Employees. Concessionaire shall discipline and, if necessary, discharge any staff member who fails to conform to the foregoing standards while working at the Sunport.

4) Employee Service Expectations. Concessionaire should communicate clearly and concisely its expectations for all employees in providing excellent customer service. All employees that are visible to the public must be actively engaged in doing their respective jobs provided however, that when a customer enters the Concession Location, those employees shall discontinue any secondary assignments or activities and assist the customer immediately. In order to provide the highest level of customer service, employees are required to abide by the following procedures:

a. All employees must be polite, positive, and constructive in their interactions with customers and with each other.

b. When responding to a question or a request from a customer, the employee must respond immediately or involve the appropriate staff member to assist the customer in answering the question or meeting the request.

c. All employees at each Concession Location must demonstrate an awareness of their work environment and an awareness of their job responsibilities and how those job responsibilities impact customer service. Employees should be completely aware of the products and menu items being sold, to include an understanding of all menu items, the cost of each item, and any special menu features. In addition, employees must be aware of all promotions, current and upcoming, and new menu items being offered. Employees should have a thorough understanding of

the concept and quality level of the Concession Location in which they work, and how it relates to other locations at the Sunport.

d. Employees should be familiar with the various activities and operations at the Sunport, and be capable of directing travelers to specific airline ticket counters for check-in, appropriate airline departure gates, baggage claim area, ground transportation counter, rest rooms, and other amenities.

e. Under no condition shall conversations between employees interfere with their ability to provide excellent customer service or create a situation in which an employee is unwilling to try to assist the customer. While on duty, employees shall not be allowed to read books or magazines, watch TV, listen to a personal electronic device, or any other activity, which would distract the employee from the primary focus of providing excellent customer service.

5) Employee Appearance and Cleanliness. The appearance of each and every employee should be maintained at the highest possible level. Appearance is extremely important, as it will make a first and lasting impression on the customer. All employees, whether management staff, service staff, or food preparation staff, should be required to maintain the highest possible standards regarding personal appearance. Prior to the start of each shift, managers should check and review the appearance of their employees, and those employees not meeting the following standards should not be allowed to work.

a. Uniform. All employees must wear the proper uniform per the standards of each Concession Location. The uniform should be worn exactly to specification without variation or modification. The uniform must be clean and well pressed and all uniforms should have good color fastness to maintain a consistent color and tone from uniform to uniform. Colors will have a tendency to fade over time, but all efforts should be undertaken to have color continuity.

➤Name Badge. All employees must wear a name badge as part of their uniform, and the name badge must be visible at all times.

➤Shoes. Worn to specification or standard and kept properly clean and polished. No holes or worn spots should be allowed.

➤Socks. Worn to specifications in color and should be of proper style.

➤Stockings or Hose. Women working in short skirts or dress style uniforms must wear stockings of some type. Uniforms standards will specify color.

➤Pants, Skirts, or Dresses. Pants, skirts, and dresses must be to specification and of proper style and color. Variations should not be allowed and they should be kept spotlessly clean and always well pressed and maintained. They should also be properly fitted.

➤Shirts or Blouses. Shirts and blouses should be worn to specifications and always be the proper color and style. They should fit properly with no missing buttons. White shirts or blouses should be washed properly to stay very white. Shirts and blouses should always be well pressed.

➤Ties. If specified, ties should be standard for employees and should be kept clean and well pressed. Ties with spots or pulls should not be allowed.

➤Jackets, Coats, or Vests. Jackets, coats, vests or other over garments should be worn only to specification and always be clean and well pressed with no holes or stains.

➤Additional Clothing. Employees will not be allowed to add additional visible items of clothing to their uniforms.

b. Personal Hygiene. Employees with inferior personal hygiene will not be allowed to work.

➤Hair must be clean, neatly trimmed, combed, and must be kept off the face and shoulders. Hair reaching the shoulders must be worn up or tied back.

➤Nails should be clean and well manicured, not too long and no loud nail polish should be worn. Chipped polish should be repaired.

➤Jewelry should be minimal and subdued and in general, should be kept simple and not in excess.

➤Makeup should be simple and not worn in excess.

➤Perfume should be subtle and understated, and should not be distracting or overwhelming to customers and other employees.

c. Sanitary Practices. Concessionaire must ensure that at all times employees practice proper sanitary procedures within the Concession Location. Unsanitary acts such as uncovered coughing and sneezing, improper hand washing, open cuts or sores, etc. create a potential health risk to customers as well as other employees. Proper hand washing shall be used to prevent a potential health risk to customers and other employees. The Concession Location should have a written sanitary practices and procedure manual, which must be followed in all cases.

Remember: cleanliness is the absence of dirt while sanitary is the control of bacteria to an acceptable level. The sanitary practices and procedure manual must address, at a minimum, the following:

➤ Proper hand washing should be used before starting work, after restroom usage, after smoking, eating, drinking or as often as is necessary to keep hands clean and sanitary to prevent any health risk to customers.

➤ Sanitary gloves must always be worn in the preparation of food items and must be worn by all service staff when those employees have minor cuts or wounds on their hands. The use of sanitary gloves does not relieve the employee of following proper hand washing requirements. Sanitary gloves need to be used and disposed of as directed by applicable health codes.

➤ Hairnets, hats, scarves or similar hair coverings that effectively restrain head and facial hair shall be required for all employees working in food preparation areas. Employees working in other areas of the Concession Location shall arrange their hair to prevent the contamination of food, equipment, and utensils.

➤ Employees may only eat, smoke or drink in designated areas of the airport. Employees may not eat, drink, or smoke in the food preparation or service area of the Concession Location.

➤ No employee handling money, or having made change for a customer can proceed to touch food items without first washing his or her hands.

d. Employee Health and Well-Being. The employees of the Concession Location should not be allowed to work when they are sick due to the potential health and safety risks created for customers and other employees. The Concession Location should have a written procedure, which clearly specifies "fitness for duty", which is followed in all cases.

**C. Concession Operations.** Concessionaire shall operate in such a manner that ensures its customers have an exceptional dining experience at the Sunport by offering the highest quality of food products and providing excellent customer service. Those efforts shall include but not be limited to the following:

1) Hours of Operation. Concessionaire must adhere to hours of operation for each Concession Location, which are consistent with the passenger traffic patterns and activity in the terminal building. Periodic flight schedule changes must be accommodated, therefore, the manager on duty must have the authority to make decisions related to changes in shift schedules, staffing levels, and opening or closing times.

a. Opening. Opening shall mean opening the Concession Location with all necessary products and employees to completely and properly serve the customers. All Concession Locations must provide appropriate menu items based on time of opening and all items must be offered in a properly clean and well-maintained surrounding. Designated Concession Locations must open at least one and one-half (1½) hours prior to the first scheduled flight of each day, 365 days a year.

b. Closing. Closing shall mean closing the Concession Location only after each customer is completely and properly served through the specified hour of closing. For example, if the hour for closing is midnight, customers shall be served until midnight and not refused service before midnight. Nothing should be done before closing to make the Concession Location look less than fully open, such as reducing light levels, putting up chairs, bringing out mops, etc.

c. Exceptions. Specific requests for exceptions to approved hours of operation for each Concession Location for holidays, operating considerations, or other reasons must be submitted to City at least thirty (30) days before the proposed change, and City shall provide its approval or disapproval of the request, in part or in total, within ten (10) days after receipt of such request.

2) Staffing Requirements. In order to provide the highest level of customer service, Concessionaire must at all times, have an experienced manager or supervisor on duty, qualified and empowered to operate the Concession Location. The manager on duty needs to ensure that there are sufficient employees on duty during the required hours of operation to conveniently and efficiently serve the public. All employees need to be cross-trained in order to change roles to meet the needs of customers at any point in time. Service staff should easily transition into cashiers, opening new registers as needed. Similarly, cashiers may be called upon to assist customers if there is no register line and customers are waiting for information or service.

3) Menus. Menus are an important aspect in the delivery of exceptional customer service and careful consideration must be given to the design of the menu, and the information contained within the menu. Below are the guidelines Concessionaire is required to follow regarding all types of menus:

➤Printed menus must be accurate, clear, and compatible in scope and in style with the Concession Location's concept. Menus that become soiled or damaged must be replaced immediately.

➤Printed menus presented to guests must be in a type style that is legible and easily understood by all customers, and in colors that accentuate the lettering.

➤Printed menus shall include the appropriate use of descriptive terminology that accurately describes the food items or beverages being offered, and must not include any false or misleading claims. Portion sizes for menu items, when applicable, must be correct, and all prices shown in the menu must be current.

4) Interior Signage of Concession Locations. All signage, regardless of purpose, size, description, or message, shall be consistent in style, lettering, and color, and must conform to the predominant theme of each Concession Location. There shall be no hand-lettered or hand-modified signs of a permanent nature.

a. Menu Signage. Menu signage should be visible from all points in the Concession Location, must be clear and concise, must list all items offered, and must show the associated price for each item. Menu signage shall be designed using colors that complement the theme of the Concession Location and must be prominently displayed with typeface sufficiently large to be easily read from an appropriate distance.

If the Concession Location will typically have a queuing line, additional menu signage shall be provided so customers in the queuing line are made aware of all items being offered prior to reaching the service counter to promote speed of service. Menu signage must be absolutely accurate in description and price, and all items listed must be available for purchase.

b. Promotional Signage. Interior promotional signage shall convey all elements of any promotional offer including a complete and accurate description of the items being offered, the promotional price, and other information, which may be required to clearly illustrate the limits of the offer. The promotional signage should be located in key spots within the Concession Location in order to attract the most attention.

c. Point-of-Purchase Signage. Point-of-purchase signage must convey a complete and accurate description of the items being offered, and must show the associated price for each item. Point-of-purchase materials shall be clear and concise and must communicate a simple message, which is easily understood by all customers. All items displayed must be available for purchase, and must meet the customer's expectations created by the description. Point-of-purchase materials that become soiled or damaged must be replaced immediately.

d. Informational Signage. Each Concession Location must provide appropriate informational signage containing an adequate level of information on each sign to accommodate convenient use of the Concession Location by all customers. Signage shall be designed using colors that complement the theme of the Concession Location and must be prominently displayed with typeface sufficiently large to be easily read from an appropriate distance.

5) Merchandising. Concessionaire shall develop and implement creative and effective merchandising methods within the Concession Location. Innovative methods may include prominent food and beverage displays, appealing menu boards and tabletop menus, tempting pictures of food, full food display cases, promotional displays, attractive packaging, and the use of promotional reusable containers. All elements of Concessionaire's merchandising plan must receive written approval from the Aviation Department prior to implementation.

a. Cold Food Displays. All items in cold food display cases should be freshly prepared using only the highest quality food products. In order to meet customer expectations, the display cases must be appropriately stocked with a variety of cold food choices for purchase. Lettuce should be crisp and all fruits and vegetables should exhibit bright colors and a firm, fresh appearance. If ice bins are used for food or beverage displays, bins should be completely full, and new ice added to the bins as needed. Display cases should never appear to have an inadequate supply of food or beverage items and any food items that have the appearance of deterioration should be removed and replaced immediately.

b. Hot Food Displays. Products offered from hot food displays must be held at temperatures ranging from 140°F to 160°F to prevent food spoilage. All hot foods presented on a service line should appear fresh and appealing, and garnishes should be used to enhance the basic appearance of the display and to add color to the service area. Hot food should be supplied in adequate amounts to meet customer demands, and additional product should be continually added to keep the presentation full and fresh. Hot products should be stirred or mixed, if applicable, before serving. When possible, hot foods should be covered to maintain the proper heat and moisture content.

c. Self-Service Bar. Salad bars or other self-service type bar areas must be maintained at the highest level of cleanliness at all times. Food products should be physically separated and neatly displayed in appropriate containers and must appear fresh and inviting. In order to meet Health Department requirements, sneeze guards must be properly installed to protect fresh foods from the possibility of contamination. Sneeze guards should be constructed of glass or Plexiglas, and should be clean and free of scratches at all times. Bar areas should be well lit and plates, bowls, utensils, and other service ware, including service trays, neatly arranged in a clean area, and in adequate supply, so customers can easily help themselves. If an ice bin is to be used for display of self-service items, the bin must be completely full at all times with fresh ice, must be watertight, and must have a drain. Floor areas around the self-service bar should be continually checked for cleanliness.

d. Food to Go. Concessionaire shall develop and implement creative and effective merchandising methods to suggest sales for the "to-go" customers.

These methods may include displays of food items that are prepared and packaged to carry on an airplane, packaging that accommodates easy transportation of carry out food items, pre-wrapped eating utensils, napkins, salt and pepper, and other condiments.

6) Point-of-Sale Operations. In order to provide an accurate record of concessions transactions and to provide a high level of service to customers, all cash registers or other point of sale terminals used in each Concession Location must have a reasonable number of segregated category addresses to allow for analysis of sales trends and sales by types of products, an input device consisting of a keyboard, scanner or both, and a customer fee display of sufficient size and legibility to be readily observed by the customer during the processing of a transaction.

In addition, each cash register or other point of sale terminal must have the capability a) to record transactions by sequential control number to the audit tape or computer files; b) to print a transaction history to tape or file by hour (time of day), day, month and year; c) to print a customer receipt showing the amount due, amount tendered and the change due to the customer together with the time and date, as well as the printed customer service number; and d) unless otherwise approved by City prior to opening a Concession Location, the capability to accept at least three (3) major credit cards and, wherever commercially reasonable, to provide a so-called "swipe and go" credit card service to customers.

7) Customer Queuing. Queuing areas shall be clearly defined using only those devices approved by the Aviation Department, well organized, and be of adequate size to accommodate customers with luggage. Queuing areas must, whenever possible, be minimized in order that the customer's perception of the potential time in the queuing line is acceptable in relation to their discretionary time prior to departure.

8) Service Guidelines. In order to maximize the use of each Concession Location and provide the highest level of customer service, Concessionaire must implement a service requirements plan, which fulfills the customers' needs and meets their high expectations. The following list is a general guideline for service requirements, and although every item may not apply to each Concession Location, the list is intended to encompass standards for all Concession Locations:

➤Furniture shall be organized in rows allowing proper allocation of space for customer and employee circulation, and all circulation corridors must be easily discernible. Tables shall be positioned evenly between the booth seats with ample access between tables to provide bag storage areas. Chairs shall be positioned evenly along the sides or around the table.

➤At appropriate times during the meal and immediately following completion of the meal, service ware should be cleared from the dining area. Service ware, trays, and trash shall be removed from unoccupied tables, counters, and service areas every few minutes. All soiled service ware shall be cleared to the appropriate container. Items and containers used in the cleaning and clearing of soiled service ware, including table linens, must be clean, well maintained and removed from the area when not in use.

➤Dining surfaces, chairs, stools, and tables shall be thoroughly cleaned after each meal, including all cracks and creases. Arms, rungs, and legs of chairs must also be cleaned frequently to avoid dust and dirt buildup. All seats, whatever style or type, must be in good condition with all tears, cuts, or burns in seat banquettes or other upholstery quickly repaired or seats must be completely replaced. Barstool seats, legs and rungs shall be clean and free of cuts or burns and should not be blemished.

➤Cash registers shall be clean and the adjacent station areas shall be free of clutter, orderly, and organized. There should be enough room for placement of customer's purchase and for completion of the transaction. The area around the register shall be well lit and easily accessible. There shall be a sufficient number of cash registers to adequately handle the level of business.

➤All counter areas where the food is served, the food is prepared, and the food is displayed, be it cafeteria style, quick-serve style, or self-serve style, shall be clean, orderly, and organized on a continual basis.

➤Table settings shall be proper and orderly, with the exact components of the center setting determined by the theme and size of the restaurant. There should be a standard setting of napkins and flatware, as well as an arrangement of condiments in the center of each table, comprised of salt, pepper, sugar, and other items. Every effort shall be made to ensure that the entire table setting is arranged exactly the same on all tables, providing uniformity to the dining area.

➤Salt and pepper shakers shall be full and clean and holes open for easy pour. Be sure salt is in the salt shakers, and pepper is in the pepper shakers. Keep grains of rice, no more than three, in the salt shaker to absorb moisture. Salt and pepper shall be clean, dry, and of adequate supply to keep shakers full.

➤Sugar bowls shall be full of appropriately packaged sugar or artificial sweetener. Sugar bowls must not be chipped and must be clean inside and out. If it is a dispenser, it must be clean, full of sugar, and tightly covered.

➤Napkins shall be of the proper size, color, and fold, with no holes. If paper, they shall be of the correct size, color, and ply and properly positioned on the

table. Where applicable, napkin dispensers shall be clean, shiny, and always full of the correct napkin size and color.

➤ Flatware shall be clean and polished, unstained by food, and free of water spots and tarnish. Flatware shall be properly positioned depending on design of table, and must be in accordance with the standard setting for the specific restaurant.

➤ Place mats, if applicable, shall be clean, unblemished, and set squarely on the place setting.

➤ Water pitchers and coffeepots shall be in adequate supply, clean, and in good condition.

➤ Service stations and condiment areas shall be clean, organized, and well stocked. All doors, drawers, and shelves shall be in proper working order with all appropriate hardware and fasteners.

➤ Cups, mugs, and lids should be organized by size and adequately stocked. Straws, stir sticks, and disposable flatware, if applicable, shall be well stocked and neatly stored in clean containers.

➤ Creamers shall be well stocked, chilled, and ready for use.

➤ Condiments such as ketchup, mustard, steak sauce, Worcestershire sauce, Tabasco sauce, honey, etc. shall be stocked in adequate supply in clean dispensers, and shall be filled on a regular basis and ready for use.

➤ Pre-packaged condiments such as salt, pepper, sugar, sugar substitute, ketchup, mustard, honey, etc. shall be well stocked and neatly stored in clean containers.

9) Food Product Standards. In order to provide the highest level of customer satisfaction, Concessionaire must purchase food products, which meet or exceed the minimum food grade specifications established below. Products shall be purchased from only reputable commercial food vendors, and shall be received, transported, and stored in a manner that ensures the quality does not decline.

a. Quality Standards. Products must meet the minimum food grade specifications established below and any products that have deteriorated below the acceptable quality for the product in question shall be discarded.

➤ All meats, meat products, poultry, poultry products, and fish must be government inspected.

- Beef, lamb, and veal shall be USDA Grade "choice" or better.
- Pork shall be US No. 1 or US No. 2.
- Poultry shall be US Government Grade A.
- Fresh fish and seafood shall be top grade.
- Frozen fish or seafood shall be a nationally distributed brand that is packed under continual USDA inspection.
- Eggs shall be fresh USDA or state Grade A.
- Butter shall be USDA Grade A.
- All grated cheese shall be USDA Grade A.
- Milk and milk products shall be USDA Grade A.
- All graded fresh fruits and vegetables shall be USDA "fancy" to USDA No. 1.
- Frozen fruits and vegetables shall be USDA Grade A.
- Dry stored items and canned goods shall be Grade A fancy.

NOTE: All products to be served including beverages or hot or cold foods should be properly rotated using the First In, First Out method of control.

10) Food Preparation. The center of operations of each Concession Location is the food preparation area including food prep tables, counter areas, refrigerated food storage, pantries, and associated kitchen equipment. In order to promote effective and efficient use of the food preparation area, this area should be continually cleaned and emphasis must be placed on maintaining the area in an organized manner. All food deliveries must be immediately stocked in proper locations to eliminate congestion in the food preparation area.

a. Storage. The storage of supplies and dry food items in pantries, on counters, or in containers should be clean, neat, and organized. Supplies of any service ware such as plates, bowls, cups, utensils, or wraps should be neatly stored and separated. In order to eliminate the possibility of contamination of food items, cleaning supplies must never be stored within food storage areas.

b. Refrigeration Cases. Products stored in refrigerated display cases, which are visible to the customers should be kept neat and organized at all times. These cases should be well maintained, with glass fronts continually cleaned to remove fingerprints and smudges, and stainless steel elements polished regularly. As bulk raw products are removed from refrigerated cases, and portions of those products are used, the remaining amount should be immediately returned to the case, and the containers for the products should be cleaned.

c. Made to Order Food Items. Some Concession Locations may have an area where made to order food items are prepared in view of the customer. These areas must be carefully monitored and must be continually cleaned to meet customer expectations of cleanliness and to ensure a positive customer experience. After each made to order item is prepared, the food preparation area should be immediately cleaned and all food and other waste should be removed and disposed of properly. Utensils, pots, pans, and other equipment used in the preparation of the food item should immediately be cleaned, or if necessary, removed from the food preparation area.

d. Hot Food Storage. A steam table or heat lamp should be used for storing prepared hot foods to be used in the preparation of menu items. The equipment, including the pans that sit within it, should be continuously cleaned, and the area continually wiped to eliminate spills or drips. Pans should fit properly and should be covered, and there should be no open spaces in the steam table to allow steam out. Utensils used for serving should be clean and readily available use.

e. Ice Bin Storage. Ice bins used for chilling foods or beverages should be wiped free of condensation, cleaned to remove dirt or food particles, and completely filled with fresh ice.

f. Waste Removal. Garbage containers in adequate size and number, should be provided in the food preparation area, and must be immediately accessible to those employees preparing menu items. These containers should be emptied frequently, must be wiped clean, and to the extent possible, kept out of view of customers.

11) Quantity and Variety. Concessionaire shall keep on hand sufficient quantities of all products to allow preparation of all menu items to meet the demands of its customers. Portions shall be consistent in weight and size to products served in comparable restaurants in the greater Albuquerque metropolitan area. In addition, Concessionaire shall provide a broad variety of products to satisfy customer demands and meet their expectations.

12) Cleanliness of the Concession Location. Concessionaire must implement appropriate cleaning practices and procedures to ensure the highest level of cleanliness within the Concession Location. Concessionaire must provide a written cleaning practices and procedures manual, specific to each Concession Location, which must be followed during the course of each day to achieve the maximum level of cleanliness. Remember: cleanliness is the absence of dirt while sanitary is the control of bacteria to an acceptable level. The cleaning practices and procedures manual must address, at a minimum, the following:

➤ Concession Location and surrounding areas shall be free of debris, trash, spills, soiled dishes, soiled glassware, soiled flatware, soiled linen (e.g. napkins, aprons, uniforms, etc.), or soiled cleaning supplies (e.g. rags and buckets) originating from Concessionaire's operations or customers.

➤ All kitchen equipment, walls, floors, counters, and other surfaces shall be cleaned and sanitized frequently. Kitchen areas, food preparation areas, serving areas, and employee areas shall be cleaned daily.

➤ If an ice cream machine is used, it should be frequently disassembled and thoroughly cleaned to eliminate the possibility of contamination.

➤ Ice cream cabinets should be frequently cleaned inside and out, and ice should not be allowed to accumulate within the cabinet. Scoops or dippers should be placed in a dipper well with fresh water flowing through the well.

➤ At all bar service areas, glassware racks and shelves shall be spotlessly clean and completely free of dust and there shall be an adequate supply of glassware to accommodate the typical service requirements. Proper handling techniques for all glassware, using only the base or stem, must be implemented.

➤ Concession Location including public areas shall be free of hazardous conditions originating from Concessionaire's operations. Concessionaire shall promptly notify the Aviation Department of other hazardous conditions in the public areas outside of the Concession Location.

➤ Seating areas within, and adjacent to, the Concession Location shall be monitored to ensure that they are kept clean and orderly. Tables and chairs must be clean and properly aligned, and dishes, trays, and trash must not be allowed to accumulate.

➤ Cleaning supplies and other materials that may be hazardous must not be stored in kitchen areas, food preparation areas, food storage areas, or food service areas.

➤All walls, floors, ceilings, equipment, and fixtures must be properly cleaned and maintained to eliminate the presence of rodents, flies, roaches, and other pests that cause health or safety hazards. A professional pest control service must be used, at least monthly, to ensure adequate prevention of harborage or feeding of insects or rodents. Copies of pest control inspections and pest control service reports must be provided to the Aviation Department's Contract Manager within twenty-four (24) hours after such service has been performed.

➤All refuse containers located in the food preparation area and public areas must have tight fitting lids and shall be regularly emptied and cleaned to prevent odors.

➤Boxes, cartons, barrels, trash containers, or other similar items shall not be allowed to remain within view of the public. Concessionaire shall be granted the right to use the Aviation Department's trash compactors for disposal of trash and debris generated from its operations. Concessionaire must ensure that its trash and debris are placed completely within the compactor and the area around the compactor is kept clear of trash and debris, or Concessionaire's right to use such compactors may be revoked at City's sole discretion.

13) Deliveries and Concession Location Stocking. The Aviation Department has implemented the following specific rules and regulations that Concessionaire must follow to ensure the timely and orderly delivery and stocking of Concessionaire's food items and other goods. Deliveries and Stocking are divided into the following two categories:

a. Pre-Security Deliveries and Concession Location Stocking.

➤Concessionaires who have Concession Locations within the pre-security portion of the terminal building should receive deliveries of food items and other goods for those locations at the loading dock located in the terminal building west end delivery tunnel. No vendor delivery vehicles will be allowed to enter the tunnel area unless escorted by Concessionaire or Concessionaire's authorized employees and all deliveries must be checked and verified by those employees prior to entering the tunnel area. Vendors must be monitored at all times while unloading their delivery vehicles, and must then be escorted out of the tunnel area. All deliveries received at this location must follow current airport security requirements.

In addition, Concessionaire shall ensure, after each of its deliveries, that all trash, debris, crates, and pallets are immediately removed from the loading dock and disposed of properly. Failure to comply with this requirement may result in revocation of Concessionaire's right to use City's loading dock.

➤ If stocking of pre-security Concession Locations from a common storage area is required, such stocking shall be accomplished at appropriate times and with proper transportation carts in order to minimize the effect on the traveling public and Concessionaire's operations. All transportation carts must have non-marking wheels made of a soft rubber composite material to reduce noise when in use in the terminal building. All movement of food and food supplies shall be coordinated with the Aviation Department for routes, schedules, limitations, and restrictions.

➤ Under certain circumstances, Concessionaire may take delivery of freshly prepared or freshly baked food items for immediate sale by using one of the following areas:

- curbside, lower roadway, furthest point on the west end, or
- curbside, upper roadway, furthest point on the east end.

➤ Food items and other goods being transported within the terminal building shall be handled with care and in a manner that ensures that all items are packaged within containers and that the containers are properly covered and are not leaking.

➤ All transportation carts, including those used for food items or trash disposal, must be attended at all times by Concessionaire's employees whenever present in public areas.

➤ All deliveries made from the transportation carts must be made completely within the Concession Location, and must not interfere with the passengers' use of public areas.

b. Post-Security Deliveries and Concession Location Stocking.

➤ Concessionaires who have Concession Locations within the post-security portion of the terminal building must receive deliveries of food items and other goods for those locations at designated ramp level delivery sites within the Security Identification Display Area ("SIDA") of the airport. No vendor delivery vehicles will be allowed to enter the SIDA unless escorted by Concessionaire or Concessionaire's authorized employees and all deliveries must be checked and verified by those employees prior to entering the SIDA. Vendors must be monitored at all times while unloading their delivery vehicles, and must then be escorted out of the SIDA. All deliveries received at these sites must follow current airport security requirements.

➤ Approved days and times for deliveries of food items and other goods at the designated ramp level delivery sites are Tuesdays and Fridays between the hours of 8:00 a.m. and 11:00 a.m. The Aviation Department reserves the right to adjust the days and times as necessary.

➤If stocking of post-security Concession Locations from a post-security common storage area is required, such stocking shall be accomplished at appropriate times and with proper transportation carts in order to minimize the effect on the traveling public and Concessionaire's operations. All transportation carts must have non-marking wheels made of a soft rubber composite material to reduce noise when in use in the terminal building.

➤If stocking of post-security Concession Locations from a pre-security common storage area is required, access to the post-security Concession Locations is permitted via card-reader access to the SIDA or through the security checkpoint. Current airport security requirements and Transportation Security Administration ("TSA") requirements will be strictly enforced regarding these stocking procedures.

➤Food items and other goods being transported within the terminal building shall be handled with care and in a manner that ensures that all items are packaged within containers and that the containers are properly covered and are not leaking.

➤All transportation carts, including those used for food items or trash disposal, must be attended at all times by Concessionaire's employees whenever present in public areas.

➤All deliveries made from the transportation carts must be made within Concessionaire's Concession Location, and must not interfere with the passengers' use of public areas.

14) Music or Media. All music and media devices, and the anticipated use of such devices, must have prior written approval from the Aviation Department and such devices must not interfere with or hinder airport operations. It shall be Concessionaire's sole responsibility to meet any licensing requirements prior to installation or use of such devices, and to pay all installation costs and user fees, if applicable.

15) Contact Information. Concessionaire must provide to the Aviation Department a current listing of those employees that have authority to make decisions on behalf of Concessionaire for its Concession Locations at the Airport. This list must include, at a minimum, the name of the contact person and their title, their business phone number, a 24-hour emergency phone number, and an email address, if applicable.

16) Reporting Incidents.

➤Any property damage incident caused by Concessionaire or its employees, its subcontractors, its vendors, or others acting on behalf of Concessionaire must be reported immediately to the Aviation Department's Communication Center to ensure proper notification of Aviation Department staff.

➤Any form of a security violation by Concessionaire or its employees, its subcontractors, its vendors, or others acting on behalf of Concessionaire must be reported immediately to the Aviation Department's Communication Center to ensure proper notification of Aviation Department staff.

➤Any form of an injury accident or event arising in any manner from Concessionaire's food and beverage operations that results in or might have resulted in bodily injury or personal injury, must be reported immediately to the Aviation Department's Communication Center to ensure proper notification of Aviation Department staff. In addition, Concessionaire shall provide a written accident report to City within twenty-four (24) hours, or as soon as possible, but no more than two (2) business days following such accident or event.

17) Health Inspections. Concessionaire shall provide to the Aviation Department's Contract Manager a copy of all City of Albuquerque Environmental Health or State of New Mexico health inspection reports within twenty-four (24) hours following Concessionaire's receipt of such report. If a health inspection does not result in a written report by the inspecting agency, Concessionaire shall prepare and submit to the Aviation Department's Contract Manager a written summary of the nature of the inspection and of the inspector's findings as they were communicated to Concessionaire.

Any citations resulting from a health inspection by local or state agencies, or by a controlling franchise entity, if applicable, must be submitted to the Aviation Department's Contract Manager within twelve (12) hours following Concessionaire's receipt of such citation. Within twenty-four (24) hours following receipt of any citation, Concessionaire must provide, to the Aviation Department for its approval, a written action plan to correct all deficiencies and violations noted in the citation.

18) Mystery Shoppers. If, at any time, Concessionaire employs the use of mystery shoppers to evaluate the level of performance at its Concession Location, Concessionaire shall provide copies of the performance evaluation to the Aviation Department's Contract Manager.

19) Comment Cards. If, at any time, Concessionaire employs the use of comment cards to evaluate the level of performance at its Concession Location,

Concessionaire shall provide copies of such comment cards to the Aviation Department's Contract Manager. All other forms of commentary received by Concessionaire in relation to the performance of its Concession Location including verbal communication, letters, and email, must be submitted to the Aviation Department's Contract Manager on a monthly basis.

20) Conflict Resolution. On occasion, conflicts may arise between concessionaires in relation to their concession operations at the Sunport. If the concessionaire's cannot resolve the conflict in a mutually acceptable manner, then either party to the conflict may request intervention by the Aviation Department. If such request is made, the concessionaire must submit a written statement detailing the conflict to the Aviation Department's Contract Manager for resolution, and a copy of the written statement shall be delivered to the other party. The other party may then submit a written response to the Aviation Department within ten (10) calendar days.

The Aviation Department will issue a decision resolving the conflict within thirty (30) calendar days after receipt of the statement of conflict. The Aviation Department's decision resolving the conflict shall be final and binding upon the concessionaires.

**D. Concession Maintenance.** Concessionaire shall, at its sole cost and expense, maintain each of its Concession Locations in a first-class manner in order to provide the highest level of customer service. Maintenance shall include, but not be limited to, the following:

1) Floor Surfaces and Related Items.

➤ Tile, vinyl, or hard surface floors shall be swept and mopped as necessary throughout the hours of operation to remove spills, eliminate food particles, and remove trash. Proper detergent shall be used in order to minimize dust, eliminate dirt, and maintain the highest possible level of color and luster on all floor surfaces.

➤ Tile, vinyl, or hard surface floors and transitions shall be properly maintained to ensure that they are free of burns, stains, cuts, cracks, and breaks. All corners and edges must lay flat and must be completely bonded to the sub-floor so that they do not become trip hazards for the customers.

➤ Carpeted floors shall be cleaned and vacuumed as necessary throughout the hours of operation, and all spots must be removed in a timely manner. Carpeting shall be professionally cleaned on a periodic basis to restore the body of the carpet and to maintain a bright appearance.

➤ Floor drains shall be kept clear of trash and debris and must be cleaned on a periodic basis to eliminate the danger of backups and offensive odors.

➤Molding at the base of walls and around corners shall be kept clean and free of scuffs, dirt, cracks, and stains.

2) Wall Surfaces and Wall Hangings.

➤All wall surfaces including wood, wallpaper, marble, bronze, tile, and painted walls shall be free of soil, smudges, cracks, stains, burns, discoloration, and chipped paint.

➤All wall surfaces, including wainscots and moldings, shall be cleaned as necessary throughout the hours of operation with appropriate cleaning products to ensure the highest level of cleanliness and sanitation in the Concession Location. Soft wall surfaces containing fabric or other materials shall be kept clean using only those products recommended by the manufacturer or architect, and shall be maintained free of cuts, burns, stains, and dust.

➤Corners of walls shall be free of cracks, breaks or chips, and shall be properly covered and protected with appropriate corner guards in high traffic areas.

➤Wall hangings shall be properly secured, appropriately positioned, and properly cleaned.

3) Windows and Mirrors. All glass surfaces, including windows and mirrors, shall be cleaned as necessary throughout the hours of operation to remove smudges and fingerprints, and all frames and trim shall be dusted on a consistent basis.

4) Lighting. Lighting levels throughout each Concession Location shall be suitable to achieve the appropriate ambiance for each location. All lamps shall be of specified wattage, tone, and color as per design for each fixture, and all lamps must be immediately replaced as they burn out.

➤All light fixtures shall be 100% operational as designed, with all parts of each light fixture, whether floor lamp, ceiling, or wall mounted, in proper working order. Light shades and lenses must not be broken, cut, or otherwise damaged.

➤Light fixtures and light shades shall at all times be clean and free of dust, lint, or other debris, and must be maintained properly to prevent discoloration resulting from age, smoke, and dirt.

5) Ceilings and Vents.

➤Ceilings shall at all times, be clean and free of dust, lint, or other debris. Ceilings should be maintained to prevent discoloration resulting from age, smoke, and dirt. Ceilings should be completely sound with no cracks or cuts in the paint or surface.

➤Vents shall be cleaned frequently to avoid the collection of dust, lint, or other debris, and ductwork should be professionally cleaned on a periodic basis.

6) Furniture. All furniture shall be sturdy, strong, and stable, and all connections must be completely tightened and secure. Furniture shall not have rough or sharp edges that could tear clothing or cause injury to customers. Furniture with vinyl or fabric covered seats, whatever style or type, must be in good condition, and all seats with tears, cuts, or burns must be quickly repaired or completely replaced.

7) Concession Counters. The customer service counter area, whether it is cafeteria style, quick-serve style, or self-serve style, shall be completely clean and organized. Counter areas for food preparation, food presentation, and food service shall be continually cleaned and sanitized. All counter surfaces shall be maintained so that they are free of burns, stains, cuts, cracks, and breaks, and all surfaces must be flat and completely bonded to the support materials.

8) Beverage Stations. All beverage service areas, including those areas in front of and around the beverage equipment and dispensing units, must be continually cleaned and sanitized throughout the hours of operation using only those cleaning products recommended for use in service areas. All dispensing equipment must be fully operational and functioning correctly and must be, at all times, properly maintained to ensure the highest level of cleanliness and sanitation.

➤All cold beverage dispensing equipment for soda, iced tea, lemonade, milk shakes, juice, water or jet sprays shall be continually cleaned and sanitized, and all drip trays must be empty and free of debris.

➤All ice dispensing equipment shall be fully operational and functioning properly, and all ice bins shall be full and clean at all times and must contain an appropriate ice scoop. In order to avoid creating a possible slip hazard and to prevent damage to drains, plumbing, and floors, ice shall not be dumped into floor drains.

➤All coffee dispensing and brewing equipment shall be fully operational and functioning properly, and the area around the coffee service area must be continually cleaned and sanitized. All drip trays must be empty and free of debris.

➤All hot beverage equipment for hot cocoa, espresso, and tea shall be fully operational and functioning properly, and all adjacent service areas must be continually cleaned and sanitized. All drip trays must be empty and free of debris.

➤All stainless steel dispensing equipment and other associated stainless steel items shall be polished on a regular basis in order to maintain their luster and shine.

9) Restaurant Bar Areas. All bar service areas must be continually cleaned and sanitized throughout the hours of operation using only those cleaning products recommended for use in service areas. All dispensing equipment must be fully operational and functioning correctly and must be, at all times, properly maintained to ensure the highest level of cleanliness and sanitation.

➤The bar service counter surfaces shall be maintained so that they are free of burns, stains, cuts, cracks, and breaks, and all surfaces must be flat and completely bonded to the support materials.

➤Bar arm and foot rails, shall be properly maintained, and shall be replaced if broken or substantially damaged. All brass elements shall be polished on a regular basis in order to maintain their luster and shine.

➤All bar service area cabinets, shelves, drawers, and doors shall be in proper working order and properly aligned, and all handles, latches, hinges, and other hardware must be completely attached and functional.

➤All bar service dispensing equipment including beer taps, liquor dispensers, and soda dispensers must be continually cleaned and sanitized throughout the hours of operation using only those cleaning products recommended for use in service areas. All dispensing equipment must be fully operational and functioning correctly and must be, at all times, properly maintained to meet all federal, state, and local regulations.

➤All bar service area sinks, ice bins, and drip trays shall be cleaned as necessary to eliminate the typical bar odor. Floor drains shall be kept clear of trash and debris and must be cleaned on a periodic basis to eliminate the danger of backups and offensive odors. Soda dispensing equipment must be properly maintained and drained to eliminate syrup build-up and offensive odors.

10) Hand Sink. All hand-washing sinks should be separate from sinks used in the preparation of food, and must be clean, well maintained, and available for use by each employee within the Concession Location. There shall be no boxes, equipment, or other items of storage, which may impede the employee's ability to properly wash their

hands. There should be an ample supply of hand soap and hand sanitizer along with proper sanitary towels or other hand drying devices conveniently located at each hand sink.

11) Drains and Grease Interceptors. Drains and grease interceptors shall be cleaned on a regular basis to eliminate potential health and safety hazards as well as the danger of backup and offensive odors. Regularly scheduled preventative maintenance shall be performed on all plumbing associated with each Concession Location. All scheduled preventative maintenance must be documented and must be available for Aviation Department review. All equipment requiring special drainage must be 100% operational as designed and must be maintained on a regular basis. Concessionaire's emergency contact numbers, as well as emergency contact numbers for the grease interceptor maintenance company, must be posted at each grease interceptor location. Response time to an emergency situation must not exceed fifteen (15) minutes.

12) Kitchen Hoods, Exhaust Fans, and Fire Suppression Systems. Intake grilles should be checked regularly for obstructions and should be cleaned as necessary to ensure proper airflow and to prevent any health or safety hazards. All exhaust fans should have scheduled service to include examination of the filters, bearings, fan belts, and fan blades. All fire suppression systems including fire extinguishers and other safety equipment, must be checked and certified in accordance with local, state, and federal regulations.

13) Food Service Equipment. All food service equipment shall be thoroughly cleaned and properly maintained on a regular basis. Cash registers, drink dispensers, meat slicers, refrigeration units, and all other equipment used in Concessionaire's operations should be clean and well maintained. Concessionaire must comply with all local, state, and federal health codes related to equipment cleanliness and maintenance. All unused, unnecessary, or abandoned equipment must be removed from the Concession Location and subsequently from the airport.

➤All coolers and freezers must have a thermometer in the cabinet, accurate to plus or minus three (3) degrees Fahrenheit, located to measure the air temperature in the warmest part of the cabinet and easily readable from the exterior of the cabinet. Coolers must be operating in the temperature range of 33-45 degrees Fahrenheit and freezers must be operating in the range of 0 to 10 degrees Fahrenheit. All coolers and freezers that indicate temperature readings outside of the required temperature zones must be discontinued from use and repaired immediately or removed from the Concession Location. All food products, whose quality may have been compromised due to the inability of a cooler or freezer to maintain proper temperatures, must be disposed of immediately.

➤The interior of all cooler and freezer cabinets must be cleaned monthly to ensure a clean and sanitary area in which to store food products. In order to operate efficiently, cooler and freezer condenser coils must be cleaned on a monthly basis to eliminate dirt, grease, or dust build-up.

➤All heatwells and other hot food holding equipment must be wiped down daily and thoroughly cleaned weekly to ensure a clean and sanitary area to store and serve hot food products. All heatwells and hot food holding devices must have an externally visible thermometer to ensure a minimum internal temperature of 140 degrees Fahrenheit or higher during display and service. Any food product being stored or served in a heatwell or hot food holding device that is not maintaining the required internal temperature, must be disposed of immediately.

14) Other Equipment. All equipment must be cleaned monthly to ensure that it is clean and sanitary when used for food preparation and delivery. Improper equipment cleaning and maintenance may cause equipment operate inefficiently, and may result in food spoilage, food contamination, or safety and health hazards.

➤All food service utensils must be cleaned, sanitized, and stored in a way to protect the utensils from contamination.

➤Any CO2 or pressurized tanks used or stored within the Concession Location or storage area must be secured as required by local, state, or federal regulations.

**E. Violations and Fines.** Failure to comply with any of the provisions, guidelines, regulations, etc. that are identified in this Standards of Operations Manual or failure to comply with any of the provisions, agreements, or conditions outlined in Concessionaire’s Food and Beverage Lease and Agreement (“Agreement”) with City may result in the following fines. Fines may be imposed beginning on the date each Concession Location is open for business and continuing throughout the term of the Agreement and any renewal period.

Violation	Fine
Concessionaire’s failure to remove unapproved Capital Improvements or other equipment [Agreement: subsection 8.8]	\$100.00 per day that the violation exists.
Concessionaire’s failure to abide by its hours of operation, as approved by City, for each Concession Location [Agreement: subsection 9.3].	\$500.00 per day that the violation exists.
Deficiencies in Product Quality, Customer Service, Cleanliness, Hospitality and Employee Courtesy, or Maintenance. [Agreement: subsections 9.4, 9.8, and 9.9].	\$250.00 for the first violation during any Calendar Year and \$500.00 for each additional violation during such Calendar Year.

Concessionaire's failure to provide for each of its grease interceptors: a) a monthly inspection report, b) monthly cleaning, or c) an immediate response to a malfunctioning grease interceptor [Agreement: subsection 9.9].	\$500.00 for the first violation during any Calendar Year and \$1,000.00 for each additional violation during such Calendar Year.
Concessionaire's failure to perform in strict compliance with its approved menu for each Concession Location [Agreement: Section 10].	\$500.00 per day that the violation exists.
Concessionaire's failure to adhere to City's Street Pricing Policy for the items listed on its approved menu for each Concession Location [Agreement: subsection 11.3].	\$500.00 per day that the violation exists.
Concessionaire's failure to cause the recommencement of full food and beverage operations within a vacated Concession Location within the time period required [Agreement: subsection 20.3.1].	\$1,000.00 per day that the violation exists.
Concessionaire's failure to use City's compactors and loading dock in an appropriate and sanitary manner [SOP Manual: C.12 and C.13].	\$100.00 per occurrence.
Concessionaire's failure to submit Pest Control Inspection Reports and Health Inspection Reports [SOP Manual: Sections C.12 and C.17]	\$100.00 per day per required document or report

Failure to immediately impose fines shall not prohibit the Aviation Department from issuing a fine at a later time or include the fine in a subsequent violation. If \$5,000.00 of operational fines are assessed in a twelve (12) month period, Concessionaire shall be deemed to be in material default of its Agreement with City and City may exercise its rights in terminating the Agreement pursuant to the provisions of the Agreement.

Violations and fines may be contested by submitting a written protest to the Aviation Department's Planning Manager for Business Development. Such protest must be submitted within ten (10) days following the issuance of the violation and fine and must include details concerning the facts that support the protest. The Planning Manager will evaluate the protest and issue a decision, and such decision shall be final and binding.

ALBUQUERQUE INTERNATIONAL SUNPORT  
CONCESSION STANDARDS CORRECTIVE ACTION FORM

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Concession Name: \_\_\_\_\_ Date: \_\_\_\_\_

Location: \_\_\_\_\_ Time: \_\_\_\_\_

Description of Infraction: \_\_\_\_\_

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Action Required:  Immediate  24 Hours  3 Days  5 days  Other \_\_\_\_\_

Submitted By: \_\_\_\_\_ Date: \_\_\_\_\_

Received By: \_\_\_\_\_ Date: \_\_\_\_\_

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Corrective Action Taken: \_\_\_\_\_

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Submitted By: \_\_\_\_\_ Date: \_\_\_\_\_

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Approved By: \_\_\_\_\_ Date: \_\_\_\_\_

Disapproved By: \_\_\_\_\_ Date: \_\_\_\_\_

**ATTACHMENT D  
DESIGN CRITERIA AND CONSTRUCTION MANUAL**

**ALBUQUERQUE INTERNATIONAL SUNPORT**

**DESIGN CRITERIA AND  
CONSTRUCTION MANUAL**

**FOOD AND BEVERAGE CONCESSION PROGRAM**

**INTRODUCTION**

This Design Criteria and Construction Manual has been created to assist Concessionaires, and their architects and engineers, in the preparation of their Proposals in response to the Request for Proposals for the new Food and Beverage Concession Program at the Albuquerque International Sunport. Specific design standards and construction requirements have been established by the City of Albuquerque Aviation Department to ensure that each Concession Location is designed and developed through the implementation of aesthetically coordinated designs and the use of high-quality materials and finishes. This Manual will also be incorporated as an exhibit to the Food and Beverage Concession Lease and Agreement, and all principles of design, and all elements of construction shall be in strict compliance with the provisions of this Manual.

The design for each Concession Location is critical to the success of the overall Food and Beverage Program. Concessionaires are encouraged to use creativity in developing a design that accentuates the dominant theme of each food and beverage concept, while complimenting the architecture of the Terminal Building. Design concepts should emphasize high-quality, contemporary, attractive, creative facilities that promote a strong sense of place and reflect the unique culture and character of Albuquerque and the Southwest region. This emphasis on traditional regional architecture, when integrated with imaginative expressions of contemporary architecture and design, is intended to create a unique texture and appeal for the new Food and Beverage Concession Program, and to establish an identity, which is both distinctive and memorable.

The information contained in this Manual must be reflected in each Concessionaire's illustrated design concepts, and each concept must be submitted with their Proposal as a requirement of the RFP. The City of Albuquerque is committed to improving the health of its citizens, increasing the production and the use of renewable and non polluting energy sources, reducing the volume of waste, increasing the use of recycled materials, conserving water, reducing CO<sub>2</sub> emissions, and encouraging sustainable economic development. It is highly recommended that all products used in the construction of facilities at the Albuquerque International Sunport utilize the most recent green building technologies and materials. Concessionaires are strongly encouraged to become familiar with the intent and details of this Manual prior to the submittal of their RFP Proposal. Concessionaires should be aware of the special

characteristics of each Concession Location and how architectural elements, finishes, and materials will affect individual Concession Location design solutions, and how those solutions will compliment the design objectives of the Sunport. It is imperative that Concessionaires, their contractors, and their designers incorporate the standards outlined in this Manual in the design of each Concession Location.

The Airport Architectural Design Review Committee (“AADRC”) shall have the absolute right to review and approve all aspects of Concessionaire’s design concepts, as well as the discretion to waive any of the design criteria in this Manual, provided that the concept, quality, and character of the Food and Beverage Concession Program is not significantly affected. The Director of Aviation or his designated representative will periodically evaluate this Manual and make revisions as required to respond to changes in the dynamic environment of the Sunport. Concessionaires shall fully comply with all provisions of this Manual in its current form, or as amended.

#### **A. Concessionaire Design Concepts.**

The Aviation Department is committed to creating a profitable commercial environment through the pursuit of excellence in the development of the Food and Beverage Concession Program at the Sunport. Concessionaires are strongly encouraged to incorporate designs that offer a balanced use of contemporary and traditional elements in order to convey a strong expression of their individual food and beverage concepts and identity in a manner compatible with the essential character of the surrounding Terminal Building. Sensitive design integration among the Concession Locations is important in order to provide maximum accessibility and convenience to the customers, and must be achieved without compromising the overall creativity of the Food and Beverage Concession Program.

Designs using sophisticated colors, graphics, and lighting are highly recommended and encouraged as these types of designs are appealing and welcoming to the customers. Incorporating appropriate regional themes and other artistic elements while using organized, decorative, and attractive displays enhance the customer’s experience, and showcases the Concession Location, as well as the Sunport.

Paramount to the success of the new Food and Beverage Concession Program will be the incorporation of unique, contemporary, creative interiors at each Concession Location that evokes a sense of attraction and excitement for the customer. This criterion includes four basic objectives that each Concessionaire is expected to integrate in the design of its Concession Locations.

**1. Concept of Design.** Concessionaire must strive to achieve a concept of design for each Concession Location that coordinates storefront architecture with

its own unique interior design, and that compliments and ensures compatibility with the design and architecture of the Terminal Building.

**2. Contemporary Interior Design.** Each Concession Location should project a contemporary, casual, current image present in local dining environments and should incorporate the culture and character of the southwest region in its architectural design. Although the designs for each Concession Location will vary significantly, this contemporary concept provides an appropriate point of reference.

**3. Creative Adaptation of Identity.** The unique architectural features of the Terminal Building will require Concessionaire to consider new and innovative ways of communicating their individual identities to their customers. Creative adaptations of standard food and beverage concept designs are strongly encouraged within the requirements of the criteria. All design elements should reasonably project the concept theme so as to be easily recognized and understood by the traveling public, but must not distract from the surrounding design features of other Concession Locations or the Terminal Building. There shall be no devices, which produce sounds, physical movements, or flashing or flickering lights incorporated in the design.

**4. Customer Experience Enhanced.** When considering the design of each Concession Location and the various elements to be incorporated into that design, the goal of each Concessionaire should be to enhance the customer's experience at the Sunport. A strong commitment to pride of ownership should be evident, not only in the unique design elements of each concept, but also in the quality of materials used in the construction of each Concession Location. This commitment will ensure a lasting and memorable experience for the customer.

**B. Storefront Design Criteria.** The following Design Criteria are meant to provide common points of reference for Concessionaire's interior design and signage at Sunport. This list features approved materials and architectural details to assist Concessionaire in its design efforts. A total food and beverage image coordinates the storefront and interior design concept around unique aspects of the business operation or product type.

All Concessionaires, including those with established contemporary storefront designs, will be expected to follow these storefront design criteria to assure compatibility with neighboring Concessionaires, and the overall image of the Sunport.

Concessionaires should be creative and original in their merchandising efforts, incorporating quality materials and fixtures with creative signage to project their images onto the storefronts for clear identity from public areas.

## 1. General Storefront Criteria.

- a) All storefront designs and plans, including materials, are subject to AADRC approval.
- b) Closure systems shall be designed, fabricated and installed by Concessionaire at its sole expense pursuant to the storefront criteria below.
- c) The level of the finished floor within each Concession Location must precisely meet the airport finish floor at the storefront. No recessed or raised floors will be permitted.
- d) No alterations to existing storefront surrounds outside the Concession Location lease line will be allowed.
- e) All storefront construction shall be self-supporting from the floor and braced directly to the overhead structure as per storefront manufacturer recommendations.
- f) Except for signage, storefront construction shall not extend beyond the lease line. No display fixture or temporary signage shall protrude beyond the lease line or Concession Location opening throughout the term of the Agreement. Concessionaire's signage and blade signage shall be allowed in the sign portal and one blade sign allowed per Concession Location.
- g) Remote illumination at all Concession Locations must screen the light source from view or shall be carefully designed as an integral feature of the storefront.

**2. Storefront Criteria.** Concession Locations shall be designed with no door/storefront/security system separating the dining portion from the Terminal Building common space. Each Concessionaire may have railings or full height fixed glass partitions in conjunction with sliding glass doors as desired for their needs but the Concessionaire must use the material standards listed below to maintain a uniform, consistent image throughout the Terminal Building.

- a) Fixed glass partition systems with matching sliding glass stacking doors shall be manufactured by Southwest Glass and Glazing, Albuquerque, NM, or a system approved as equal by the AADRC. The system shall, in all appearances, match the existing storefronts of the Retail Concessions at the Sunport.
- b) Fixed glass railing system if used shall be Blumcraft of Pittsburgh  $\frac{3}{4}$ ", Railglass two piece mounting system with continuous #324

Aluminum top rail (return to base at exposed end conditions) and RG 200S base system (FS 311) anchored at 12" oc. Provide clear anodized finish.

c) Concessionaire must submit actual product information sheets showing exact locations, anchoring, and elevations to show conformance with these Design Criteria in the preliminary design stage for each type of glass front shown.

d) Roll down grilles, if necessary, will be permitted at the counter areas and shall be Raynor, "Dura Shutter", flat slat Stainless Steel with #4 finish. Storefronts at these locations shall be recessed back to the counter or the back wall. Concession Locations must be secured at the counter allowing lobby and corridor traffic to spill into Concession Locations, hence creating a more open area for seating and circulation.

### **3. Storefront Criteria at the Designated Smoking Location.**

a) All closure systems will be glass storefront construction with fixed hinged glass doors approved by the AADRC.

b) Glazing system for Concessionaire's storefront must conform to the AADRC's selected storefront criteria, as noted in the Technical Criteria below and supplied by an approved manufacturer.

c) All glass storefront construction shall be supported from the floor and be laterally braced directly to the overhead structure forming the storefront opening.

d) Pressure sensitive graphic logos shall be applied to the interior face or sliding glass doors and glass panels adjacent to doors. Graphics shall be an approved color applied as a film at 42-inch height above finish floor. The purpose of the graphic logos is to warn pedestrians of the presence of the glass.

e) Store front doors, as approved by the AADRC, shall comply with ADA requirements. All doors shall have self-closing hardware and smoke seals.

f) Glass storefront setbacks from the storefront lease line will be prohibited and must follow the lease line.

**C. Graphic and Signage Criteria.** The following criteria have been established to ensure high quality graphic design and the ability to express individual identity of the food and beverage concept at each Concession Location.

Proper graphics help set the image of the Concession Location, and shall be a visual asset to all Concessionaires. In that appearance and function are interrelated, a

sign's aesthetic appeal shall greatly improve its ability to communicate. This signage criterion strives to ensure the graphics in general, and each sign in particular, become a viable, integral part in expressing the food and beverage concepts at each Concession Location.

The intent of the signage criteria is to establish a basis for imaginative graphic design. Imaginative designs that depart from the traditional are encouraged. Every effort should be made to create graphic identification that is an inherent part of the Concession Location rather than mere appliqué. Verbiage on signs will be limited to Concessionaire's trade name, logo, and/or logotype.

**1. Signage Requirements.** Signs should be creatively integrated with the architectural elements to form an attractive composition. For this reason the City, as part of the architecture, has provided a signage board located at each location above the entrance that will match the signage boards at the Retail Concession Locations. Signing must occur within parameters provided for the storefront at the sign portal. Proposed signage designs must be submitted as part of the RFP proposal and in the preliminary design phase. Signs shall be clearly detailed in the construction documents.

The following statements reflect the basic concept for storefront signs:

- a) Signing shall be an integral part of the storefront design, at the signage board and at the blade sign.
- b) Signs shall incorporate graphic symbolism of each Concession Location's name or concept rather than written advertising.
- c) Variety and individuality within each Concessionaire's signage program and throughout the Terminal Building shall be emphasized.
- d) Sign area is measured by a box drawn around the tallest vertical element to the lowest and from the farthest elements horizontally. See Items 3 & 4 below for sizes.
- e) No sign advertisement, notice or lettering other than the Concession Location's name or approved logo shall be exhibited, inscribed, painted or affixed on any portion of any storefront or have major visibility from the public areas unless specifically approved in writing by the AADRC.
- f) The use of a corporate crest, logo or insignia shall be permitted within the area identified, provided such crest, logo or insignia is part of the Concessionaire's trade name.

g) Manufacturer labels, underwriter labels, clips, brackets, or any other form of extraneous advertising attachment and/or lighting devices shall be fully concealed from public view.

**2. Sign Types.** Conventional box signs will not be approved. The following types of signs and logos will be permitted:

- a) Non-internally illuminated signs.
- b) Dimensional non-illuminated wood, metal, glass or other durable permanent materials.

**3. Blade Signs.** Blade signs have been identified for use in the Terminal Building Concourse areas. The following requirements will apply for blade signs:

- a) Blade signs shall be a maximum size of 18" wide x 12" deep and shall be mounted on columns at heights approved by the AADRC.
- b) Acceptable blade sign materials shall be painted, polished, or patina metal, painted and stained wood, or painted fiberglass.
- c) The lowest point of any blade sign shall be approved by the AADRC.
- d) Suspension of the blade sign will be reviewed by the AADRC and shall be presented in the design phase. Ambient lighting will be sufficient for blade sign lighting.

**4. Signage Boards.** Signage boards, which match those at the Retail Concessions, shall be provided at all Concession Locations in the Sunport for Concessionaire to attach its logo. Typical signage board is approximately 96"W x 22"H.

**5. Individual Letters.** Individual letters are a common and effective sign type and shall be in a durable, permanent material such as wood, metal or glass. A metal letter has a variety of finish options including polished, painted, and patina. Installations of individual letter signs are defined by storefront type.

**6. Exposed LED.** Exposed LED signs, when utilized discreetly can serve as a unique accent to a storefront design. The use of LED signs shall be limited to small areas to maintain the architectural features of the Sunport.

Where LED are allowed and used, the following criteria shall be met:

a) Any proposed use of LED must be presented in the RFP proposal and in the preliminary design phase and must identify location, design and color.

b) All ballast support mechanisms, and other non-illuminated elements must be concealed from public view.

c) LED color shall be respectful of the existing color palette. Accent colors will be accepted but harsh tones will not be allowed.

**7. Prohibited Sign Types.** The following sign types are prohibited for Concessionaire's use:

a) "Can" signs with illuminated translucent backgrounds and silhouette letters.

b) Vacuum formed plastic lettering.

c) Plexiglas channel letters.

d) Plastic materials including acrylic letters or Plexiglas panels.

e) Standard sandblasted wood signs in natural wood finish with painted, raised letters and/or logos; exceptions may be granted for carved and painted wood signs that are artistically creative in their expression of three-dimensional detail.

f) Signs employing luminous painted paper or cardboard, stickers or decals hung around or behind storefront glazing.

g) Signs employing exposed raceways, ballast boxes, transformers, crossovers, or conduits.

h) Blinking, moving, or flashing signs visible from anywhere in the Terminal Building or Concourses.

i) Neon signage.

j) No signage will be allowed except as defined as sign portal or blade signage for the term of the Agreement.

**D. Food and Beverage Interior Design Criteria.** Recent trends in food and beverage design are evolving into more transparent storefronts. The way the Concessionaire arranges seating and fixture layout and the fixtures themselves combine with the storefront architecture to create an image to the public. While it is not the intention of these criteria to unduly restrict the interior of Concession Locations, some materials are unacceptable from a visual and/or maintenance standpoint. All materials, displays, etc. within the Concession Location are subject to review and approval by the AADRC.

All interior finishes and built-ins of the Concession Location will be completely demolished from previous uses by the Aviation Department.

**1. Floor.**

a) Concession Location finished floor elevation must be flush with Terminal Building flooring. Transition strips will be approved by the AADRC and, if required, will meet ADA.

b) No vinyl, asbestos or asphalt tiles will be permitted within Concessionaire's public sitting area.

c) Samples of flooring must be submitted to the AADRC for approval as part of the design submittal.

d) Core drilling is to occur between the hours of 11:30 pm and 4:30 AM and must be coordinated with the Aviation department and the occupants of the space below. All floor penetrations must be waterproofed and sealed with approved fire sealant.

e) Brick pavers matching those which currently exist in Terminal Building common areas may be used as finished flooring. If used, the brick pavers, colors, and patterns must be approved by AADRC.

NOTE: The following materials will not be approved:

a) Any material that would constitute a fire and/or public safety hazard.

b) Any distressed wood.

The AADRC reserves the right to approve all materials and finishes used within each Concession Location, including display fixtures.

## 2. Partitions.

a) All interior partitions must be constructed of non-combustible materials.

b) The Aviation Department will provide the demising walls between Concession Locations and service areas or service corridors. Concessionaire's side of the demising walls will be left open, without gypsum board or other finish. The Concessionaire shall provide the demising walls at commerce space.

c) Concessionaires adjacent to one-hour rated exit or service corridors are required to maintain one-hour rating. Gypsum board must extend from finish floor to underside of the roof deck construction above and sealed with code approved material.

d) All walls and exposed surfaces in the sales areas must be covered with a permanent wall finish.

**3. Floor Membrane.** Each Concessionaire ***MUST*** install a waterproof membrane beneath a tile floor in all kitchen, food preparation, dish washing, restroom, and bar locations. **Membrane must be LATICRETE 9235 Anti-Fracture Membrane manufactured by LATICRETE International, Inc.**

## 4. Ceilings.

a) The ceiling must be either acoustical T-bar with 24" x 24" tile having 3/8" revealed edge, drywall or plaster construction. Acoustical T-bar ceiling with standard modules will be permitted with perforated corrugated metal. All ceiling materials must be noncombustible and have a Class III, 76-200 flame spread rating. Note: Acoustical tile shall only be permitted on horizontal surfaces. Any vertical, beveled, or other type fascia shall be drywall or cement plaster.

b) Concessionaires shall attach their ceiling wires to structural members only; attachment to the deck is prohibited unless special permission is granted, subject to approval of connection methods by the AADRC.

c) The use of wood or other combustible materials above ceilings or in any other attic or concealed spaces is prohibited. Any required access panels and/or catwalks shall be installed at Concessionaire's expense.

d) Certain locations within each Concession Location need to be acoustical lay-in ceiling or the Concessionaire must provide access panels to allow

the Aviation Department to access existing equipment above the ceiling area. The Aviation Department reserves the right to specify locations for access panels.

- e) Only Glare-free type lenses will be permitted for lighting.
- f) Ceiling heights in the Terminal Building vary. Concessionaires may raise the ceiling height in Concession Locations and, with AADRC approval, expose the structure if necessary. Available height in each space should be field verified prior to the design of the location.

NOTE: The following materials are not permitted:

- a) Vinyl composition tile or sheet vinyl is only permitted when used as a featured design element.
- b) Simulated materials such as imitation brick, stone, etc.
- c) Exposed bulbs other than purely decorative unless shielded from the public area.
- d) Acrylic prismatic or translucent eggcrate lenses on fluorescent fixtures within the dining area.
- e) Indoor/outdoor carpeting.
- f) Any material that would constitute a fire and/or public safety hazard.
- g) Any distressed wood.

The AADRC reserves the right to approve all materials and finishes used within each Concession Location, including display fixtures.

## **5. Additional Requirements.**

- a) In each Concession Location, Concessionaires are required to comply with the ADA and shall provide sufficient circulation to allow for wheelchair access and passengers with carry-on luggage.
- b) Only premium quality, new materials shall be used in the construction of the Leased space. These materials are subject to the review and approval of the AADRC.

c) All materials used in traffic areas shall be subjected to high abuse. It is recommended that high impact durable materials be used at columns and all traffic corners of each location.

d) The Concessionaire shall remove all of its trash and debris to centrally located trash receptacles during the construction of its Premises. The location of the trash receptacles is subject to review by the Aviation Department. The removal of construction debris shall be the responsibility of the Concessionaire and its contractor. Unless approved otherwise, all trash and waste products must be transported using sealed containers. Containers without lids are prohibited. All wheeled containers or carts used to move waste must have polyurethane non-marking wheels. Any black wheels or other marking wheels are strictly prohibited.

e) Plan check, building permits, and other City, County and State fees in connection with Concessionaire's construction shall be at Concessionaire's sole expense. All construction shall be done in accordance with this Design Criteria and Construction Manual, and with all City, County, and State ordinances, rules and regulations.

f) The approval of final drawings by the AADRC does not guarantee approval by Governing Authorities, and it shall be the responsibility of the Concessionaire to meet and comply with all national, state and local code requirements.

g) Concessionaire must provide portable fire extinguishers as required by the Fire Department during construction and permanently when the Concession Location is open to the public.

h) All floor penetrations and patching shall conform to the structural and fire rating requirements; such work shall be paid for by Concessionaire and must be approved by the AADRC.

i) All floor penetrations shall be x-rayed and approved by the AADRC.

j) The Terminal Building is a non-smoking facility, except in Concession Location 8. The maximum allowable storefront opening for Concession Location 8 shall be four (4') feet wide with self closing, fixed hinged doors.

**E. Concession Locations (drawings included at the end of this Attachment D).**

## **F. Technical Criteria.**

**1. General Building Criteria.** The following criteria are outlined for the benefit of the Concessionaire and its architect/engineer(s) in designing its Concession Locations. Prospective Concessionaires should pay careful attention to the assignment of responsibility for each item listed below.

a) Licensed Professional Architect. A professional Architect licensed in the State of New Mexico shall prepare all drawings and specifications in accordance with this Design Criteria and Construction Manual, all applicable City, County, and State ordinances, rules and regulations, and all recognized architectural practices.

b) Structure. The construction is Type I, of the International Building Code, 2003 edition. Occupancy type is Group 1 Assembly. No coring will be allowed through existing beams or columns, concrete or steel. Floor must be x-rayed and all coring locations are to be approved by a structural engineer designated by the AADRC.

c) Floor. Finished floor elevations of each Concession Location must be flush with the Terminal Building flooring. Transition strips, if approved, will meet ADA.

d) Closure System. Security is the responsibility of each Concessionaire. Closure systems located at the sales counters shall be Raynor, "Dura Shutter", flat slat Stainless Steel with #4 finish. All display or accessible display cabinetry shall be lockable and the security of the contents will be the responsibility of the Concessionaire. Locks shall be approved by the Aviation Department and must accept interchangeable removable cores.

e) Partitions. Those concession locations, which are adjacent to one-hour rated exit or service corridors are required to maintain the one-hour rating and the gypsum board must extend from finish floor to underside of the structure above and sealed airtight. Concessionaires shall note location of one-hour walls on their construction documents.

Food service operations with excessive noise output may be required by AADRC to provide sound insulation on the ceiling and/or demising walls to protect neighboring Concessionaires from unacceptable noise levels.

f) Ceilings. Concessionaires shall be responsible for construction of ceiling within their Concession Locations. Ceilings must be acoustical T-bar, drywall, plaster or exposed structure. All ceiling materials must be non-combustible

and have a class III 76-200 flame spread rating, and shall be supported by ceiling wires attached to structural members only. Attachment to the deck is prohibited.

g) **Applicable Codes and Ordinances.** All new construction shall comply with the International Building Code, the 2003 International Mechanical Code, the 2005 National Electrical Code, NFPA-101, and all other applicable codes, ordinances, rules and regulations.

h) **Project Review.** The AADRC will review drawings for general compliance with this Design Criteria and Construction Manual, including the Mechanical System Design Criteria and Electrical Design Criteria. It is the Concessionaire's responsibility to ensure that its systems will perform satisfactorily and are in compliance with all applicable codes and regulations. As-built drawings are to be provided and maintained by Concessionaire's Mechanical Contractor and Electrical Contractor and submitted to the AADRC. As-built drawings shall record exact pipe, duct, and equipment routing and location along with all equipment information for Mechanical Systems Design.

i) **Access.** The AADRC will provide reasonable access to file documentation for existing Mechanical and Electrical systems. These documents are to be used for reference only, and all existing conditions must be field verified.

**2. HVAC and Plumbing Systems.** The objective of the Mechanical, Plumbing and Fire Sprinkler Systems design criteria is to provide the Concessionaire with specific instructions to meet the AADRC's basic criteria for construction materials, means, and methods. The AADRC will require and maintain the same standards for all Concessionaires. Incomplete drawings, inferior design or poor construction are unacceptable and will not be permitted.

a) **Licensed Professional Engineer.** A professional engineer licensed in the State of New Mexico shall prepare all calculations, drawings and specifications in accordance with the AADRC's Mechanical and Plumbing Systems Design Criteria, all applicable codes, and all recognized engineering practices.

b) **Project Review.** The AADRC will review drawings for general compliance with the Mechanical and Plumbing Systems Design Criteria. It is the Concessionaire's responsibility to ensure that its systems will perform satisfactorily and is in compliance with all applicable codes and regulations.

The Aviation Department will provide reasonable access to construction document files to the Concessionaire. All pertinent building documentation will be provided for purposes of describing or defining locations of lease lines and demising construction, including the location and arrangement of walls, columns, and other fixed building features, services, and systems to the extent documented. The Aviation

Department offers no assurances or guarantees that such file documentation will be sufficient to provide all information that may be required by the Concessionaire. Concessionaire shall not rely on the accuracy of file documentation, but shall field-verify dimensions, locations, and capacities of all building features, services and systems prior to submitting an initial concept submittal.

As-built drawings are to be provided and maintained by Concessionaire's Mechanical and Plumbing Contractor and submitted to the AADRC. As-built drawings shall record exact pipe, duct, and equipment routings and locations along with all equipment information.

c) HVAC Description. The Aviation Department will provide reasonable access to file documentation for existing systems. These documents are to be used for reference only, and all existing conditions must be field verified. HVAC installation must comply with International Building Code, Uniform Mechanical Code, and ASHRAE 62-2004, "Ventilation for Acceptable Indoor Air Quality."

NOTE: All HVAC systems must be designed and installed to the following minimum standards:

a) No flammable or combustible materials are permitted above the ceiling, as ceiling space is to be considered a return air plenum. The ceiling, all components that make-up the ceiling, and all materials above the ceiling must be rated for installation within a ceiling return air plenum.

b) All new ductwork is to be sheet metal and installed per SMACNA details. Ductboard is not allowed.

c) Flexible ductwork is to be installed without sags or kinks.

d) Provide accessibility to all equipment (terminals boxes, valves, electrical equipment, etc.) per local code and Aviation requirements. Provide min. 3 ft. clearance to the operator side of all terminal boxes.

e) Provide min. 2' x 2' access doors in all hard lid ceilings at all terminal boxes, valves, etc.

f) Thermostats/sensors are to be installed in a location measuring the average temperature within the Concession Location, and must not be install on exterior walls, within confined areas, or near heat producing equipment. Locations must be approved by the AADRC.

g) Any new controls are to be native BacNet provided and installed by an Aviation Department approved controls contractor. All control wiring in to be installed in conduit.

h) Concessionaire's having walk-in coolers, etc. are to use remote compressors located at the exterior of their Concession Location, either roof mounted or on grade. Final locations must be approved by the AADRC.

i) Concessionaire's Contractor must notify the Aviation Department prior to welding or torch cutting.

j) No fountains or water features are permitted within any Concession Location.

The Aviation Department will provide a heating and cooling system to each location as described below.

Concession Location	Airflow CFM* (Max.)	Remarks*
Location 2 Package B	10,735	Total CFM of 12 Mixing boxes
Location 1 Package A	Available	CFM could not be verified at this time
Location 8 Package C	2500	See Criteria for Location 8 which is designated to allowing smoking
Location 5 Package C	1100	
Location 3 Package C	7800	Total CFM of 5 Mixing boxes
Location 4 Package B	8200	
Location 6 Package D	3000	
Location 7 Package A	1000	
Location 10 Package C	1100	

Concession Location	Airflow CFM* (Max.)	Remarks*
Location 9 Package A		Open area in Bag Claim area
Location 11 Package A	3560	
Location 12 Package B	1000	

\*Airflow indicated is for reference only, based on original design information. Actual flow may deviate from values given. Concessionaire shall verify existing capacities during design.

Areas are serviced by a central heating, ventilation and air conditioning (HVAC) system located in penthouses. The HVAC system is fed from a boiler and chiller plant.

Ductwork, additional terminal units, heat coils and associated power/and or piping, diffuser/grilles, etc., downstream of the duct main stubs within each Concession Location, are the responsibility of the Concessionaire.

Additional cooling, if required is the responsibility of each Concessionaire. HVAC design is to be submitted to AADRC for review and approval and to City permitting if required.

**3. Criteria for Concession Location 8.** Concession Location 8 is the designated smoking location for the Terminal Building. HVAC installation for this location must comply with International Building Code, Uniform Mechanical Code, and ASHRAE 62-2004, "Ventilation for Acceptable Indoor Air Quality."

The Concessionaire is responsible to maintain directional airflow away from the Terminal Building Concourse, and toward the Concession Location. Rooftop exhaust fan(s), sized to exhaust 10% above total supply air to the location must be provided, in order to maintain a slight negative pressure to the location. The Concessionaire is responsible to provide any additional makeup air needed to accommodate the smoke exhaust. In addition to the general exhaust described, a Room Air Cleaning Unit to filter the smoke within the space must also be installed. Maintenance and filter replacement is the responsibility of the Concessionaire.

**4. Criteria for Commercial Kitchen Hoods.** Any kitchen hood system including hood, ductwork, exhaust fans, make-up air, fire suppression, etc., must be

installed per Uniform Mechanical Code, and all applicable codes. The Concessionaire is responsible to provide full make-up air to accommodate all kitchen hood exhaust. No provision for such make-up air is provided by the Aviation Department. In addition, a balancing report must be submitted to the Aviation Department certifying the volume of exhaust and make-up air provided. Existing ductwork thru roof penetrations shall be utilized whenever possible.

Each Concessionaire is responsible to clean and maintain the interior of each of its Kitchen Hood Systems, including the hood, ductwork, fans and all other elements requiring scheduled maintenance. All cleaning and maintenance shall be per a schedule established by the Aviation Department and the Fire Department. Lack of proper maintenance is a fire hazard, and, if at any time during the term of the Agreement, Concessionaire fails to perform the required maintenance per its approved schedule, City shall have the right, but not the obligation, to provide such maintenance and invoice Concessionaire for all associated costs thereto plus an administrative fee of 25% of such costs.

Food service equipment shall be certified by NSF or other appropriate national standards organizations acceptable to the AADRC and all other Governmental Authorities having jurisdiction.

Exhaust systems for food preparation shall be fabricated entirely from stainless steel, shall incorporate an integral fire suppression system, and shall otherwise comply with regulations of authorities having jurisdiction.

The complete kitchen service HVAC system design is to be submitted to the AADRC for review and approval and shall be designed to comply with all local codes.

**5. Plumbing Criteria.** The Aviation Department will provide reasonable access to construction document files to the Concessionaire. All pertinent building documentation will be provided for purposes of describing or defining locations of lease lines and demising construction, including the location and arrangement of walls, columns, and other fixed building features, services, and systems to the extent documented. The Aviation Department offers no assurances or guarantees that such file documentation will be sufficient to provide all information that may be required by the Concessionaire. Concessionaire shall not rely on the accuracy of file documentation, but shall field-verify dimensions, locations, and capacities of all building features, services and systems prior to submitting an initial concept submittal.

All Plumbing systems must comply with the International Building Code and Uniform Plumbing Code, and must be designed and installed to the following State of New Mexico and City of Albuquerque standards:

- a) No flammable or combustible materials are permitted above the ceiling, as the ceiling space is to be considered a return air plenum.
- b) Cast iron pipe to be used for waste and vent piping. Type L copper piping is to be used for all water services. No plastic pipe is permitted.
- c) All floor penetrations must be x-rayed before any hole is cut. All floor penetrations are to be provided with a UL fire seal. Piping is to include a sleeve at the floor penetration. Core drilling is to occur between the hours of 11:30 pm and 4:30 am and must be coordinated with the Aviation department and the occupants of the space below.
- d) Provide minimum code clearances for all equipment.
- e) All plumbing fixtures that are piped to a floor sink or drain must be piped to a floor sink or drain within each Concession Location. At no time will it be acceptable for Concessionaire to pipe its plumbing fixtures into a Aviation Department floor drain or floor sink.
- f) Concessionaire's contractor must notify the Aviation Department prior to welding or torch cutting.

The Concessionaire is responsible for all plumbing systems, including all plumbing fixtures, water heaters, fittings, floor mounted grease interceptors, etc., and all piping beyond mains provided by the Aviation Department. New plumbing systems must be located within each Concession Location unless prior approved by the AADRC.

Waste and cold water piping mains will be provided by the Aviation Department to designated Concession Locations. Vent piping connections will be provided by the Aviation Department for Concession Locations not located directly below the roof unless noted otherwise. The vent piping is the responsibility of the Concessionaire for locations located directly below the roof, and Concessionaire must ensure that the installation of its vent piping complies with the Aviation Department's roof warranty. Existing vents thru roof penetrations shall be utilized where possible. Vent piping on roof must comply with code required distances to all outside air intakes.

The cold water and vent pipe, where applicable, will be stubbed into the Concession Location at the ceiling level. The waste piping will be stubbed up from the ceiling space below the Concession Location and the Concessionaire shall be responsible to core drill the floor, and to coordinate with the Aviation Department to work in the ceiling space below. The Concessionaire is limited to the capacities of these services. Water, waste and vent services beyond these limitations, if required, are

the responsibility of each Concessionaire. Complete design must be submitted to the AADRC, including fixture calculations, for review and approval.

Grease waste must be addressed by each Concessionaire per all code requirements. Each Concessionaire is required to provide a properly sized grease interceptor as described in the plumbing code. If a grease interceptor currently exists for its Concession Location, the Concessionaire must prove to the AADRC, by calculation, that it is properly sized for their use. Each Concessionaire is responsible to clean and maintain its grease interceptor. Lack of proper maintenance is a health hazard, and, if at any time during the term of the Agreement, Concessionaire fails to perform the required maintenance per its approved schedule, City shall have the right, but not the obligation, to provide such maintenance and invoice Concessionaire for all associated costs thereto plus an administrative fee of 25% of such costs.

No hot water services are available to any Concession Location. Water heater(s) are the responsibility of the Concessionaire and must be installed only within its Premises. Water heaters are not permitted above the ceiling.

The Aviation Department will provide the following plumbing utilities for each space as described below.

Concession Location	Cold Water	Waste	Grease Waste	Vent	Natural Gas
Location 2 Package B	1-1/2"	4" Note 5	3" Note 3	2" Note 2.	2.5" at 7" w.c.
Location 1 Package A	3/4"	3"		2-1/2"	
Location 8 Package C	1-1/4"	3"		2"	
Location 5 Package C	1-1/4"	4"		2"	
Location 3 Package C	1-1/4" Note 4	4"		3"	
Location 4 Package B	1-1/4"	4"	2" Note 3	3"	
Location 6 Package D	1-1/4"	4"		3"	

Concession Location	Cold Water	Waste	Grease Waste	Vent	Natural Gas
Location 7 Package A	1-1/4"	4"		3"	
Location 10 Package C	1"	3"		2"	
Location 9 Package A	1/2"	1-1/2"		Note 1	
Location 11 Package A	1"	2"		2"	
Location 12 Package B	1-1/4"	4"	2" Note 3		

Note 1: Vent connection by Concessionaire

Note 2: Multiple VTR's located in space

Note 3: Existing Grease Interceptor at this area. See "Plumbing Criteria" for Grease Waste requirements.

Note 4: Four CW lines available at 1-1/4" each.

Note 5: Floor drains and floor sinks are provided in this area for Concessionaire. Concessionaire shall not add any additional floor drains or floor sinks.

Gas service is available to some Concession Locations as listed. Gas line must be located and size verified. Connections to the Aviation Department gas utilities must be coordinated with the Aviation Department not less than two weeks in advance, and must be performed between the hours of 11:00 p.m. and 5:00 a.m.

**6. Electrical System.** The objective of the Electrical Systems design criteria is to provide the Concessionaire with specific instructions for meeting the City's basic criteria for construction materials, means and methods. The City will require and maintain the same standards for all Concessionaires. Incomplete drawings, inferior design or poor construction are unacceptable and will not be permitted.

a) Licensed Professional Engineer. A professional engineer licensed in the State of New Mexico shall prepare all calculations, drawings, and specifications in accordance with the City's Electrical Systems Design Criteria, all applicable codes, and all recognized engineering practices.

b) Project Review. The City will review drawings for general compliance with the Electrical Design Criteria. It is the Concessionaire's responsibility to ensure that the Concessionaire's system will perform satisfactorily

and is in compliance with all applicable codes and regulations. As-built drawings are to be maintained by the Concessionaire Electrical Contractor and submitted to the City.

c) Electrical Systems. The Aviation Department will provide reasonable access to construction document files to the Concessionaire. All pertinent building documentation will be provided for purposes of describing or defining locations of lease lines and demising construction, including the location and arrangement of walls, columns, and other fixed building features, services, and systems to the extent documented. The Aviation Department offers no assurances or guarantees that such file documentation will be sufficient to provide all information that may be required by the Concessionaire. Concessionaire shall not rely on the accuracy of file documentation, but shall field-verify dimensions, locations, and capacities of all building features, services and systems prior to submitting an initial concept submittal.

Electrical installation for all Concession Locations must comply with the latest edition of the National Electrical Code, the State of New Mexico amendments, and the local Fire Marshal for the fire alarm system.

The Concessionaire is responsible for removal, replacing, relocating and/or adding all electrical equipment and devices (i.e., panels, transformers, lighting, receptacles, wiring, conduit, conductors, fusing, etc.) serving its Concession Locations. All abandoned or unused conduit, wiring, lighting, panels, etc., in each Concession Location must be removed prior to new installation. The City has provided a conduit to each Concession Location for their power feeder circuit from the existing 480 volt, 3 phase, metered switchboard. The size of these conduits is as follows:

CONCESSION LOCATION	CONDUIT SIZE	VOLTAGE
Location 2 Package B	2 – 4"	480V, 3 ph
Location 1 Package A	2 ½	480V. 3ph
Location 8 Package C	2 ½	480V. 3ph
Location 5 Package C	2 ½	480V. 3ph
Location 3 Package C (A, B, C, D)	2 ½	480V. 3ph

CONCESSION LOCATION	CONDUIT SIZE	VOLTAGE
Location 4 Package B	2 ½	480V. 3ph
Location 6 Package D	2 ½	480V. 3ph
Location 7 Package A	2 ½	480V. 3ph
Location 10 Package C	2 ½	480V. 3ph
Location 9 Package A	2 ½	480V. 3ph
Location 11 Package A	2 ½	480V. 3ph
Location 12 Package B	2 ½	480V. 3ph

All, transformation, power distribution, lighting, conduits, wiring and devices extending from the City-furnished conduit shall be provided by the Concessionaire, including temporary or standby power sources where required.

The Concessionaire's preliminary design shall show the proposed location of the transformer, disconnect switches, and panelboards as well as feeder information.

Concessionaires requiring power in excess of the amount listed shall pay the entire cost of installing the additional service, including any necessary power distribution equipment.

Any work being performed on the City's electrical equipment shall be coordinated and under direct supervision with the City's electrical division.

All electrical equipment shall be labeled by Underwriters' Laboratories, Inc. (UL) for the intended use.

Shutdown of the existing building service or any main electrical distribution must be coordinated with the City not less than two (2) weeks in advance, and must be performed between the hours of 11:00 PM and 5:00 AM. These times are subject to change; Concessionaire to verify current restrictions. All electrical work required to complete the system to accommodate the Concessionaire's plans shall be performed

by the Concessionaire's Electrical Contractor at the Concessionaire's sole cost and expense.

No flammable materials are permitted above the ceiling, as the ceiling space is to be considered a return air plenum. All wiring (i.e. power, telephone, data, communications, low voltage, controls, etc.) by Concessionaire must be in minimum of 3/4" conduit and Concessionaire may use City cable trays where available. Conduit used shall be EMT in interior spaces. Type 'MC' cable may not be used without written approval from the AADRC. Any conduit routed in areas that are subject to damage from motorized vehicles, machinery, etc. shall be RGS. All special systems must be routed in separate conduit. New panel boards must have hinged covers with door-in-door construction.

Transformers shall be mounted within the Concession Location in a visible and accessible location adjacent to the appropriate electrical panel. In no case shall a transformer be mounted above the ceiling. Floor mounted transformers must be mounted on a 4" concrete housekeeping pad. Connections to transformers are to be liquid-tight flexible conduit. A heavy duty disconnect switch shall be utilized on the primary side of transformer.

The normal power is derived from the metered switchboards in the Sunport's Power Centers. The service utility is Public Service Company of New Mexico (PNM). There is no standby/emergency power source available. The normal power is not conditioned, filtered, isolated, and does not have "transient voltage suppression" equipment. Dedicated/isolated equipment grounds are not readily available.

All floor penetrations must be approved by the Airport and x-rayed before any hole is cut. All floor penetrations are to be provided with a UL fire seal. Piping is to include a sleeve at the floor penetration. Core drilling is to occur between the hours of 11:30 pm and 4:30 am and must be coordinated with the Aviation department and the occupants of the space below. Floor penetrations are not allowed in all areas.

d) Lighting. The use of mercury vapor lamps is not permitted; fluorescent lamps and ballasts shall be T8 or T5 with electronic ballasts.

**7. Telephone and Data.** Telephone cabling from City's Communication Closets shall be provided and installed by the Concessionaire. Communication Closets are available throughout the Terminal Building. The Concessionaire is responsible for all costs associated with telephone and data requirements. Two (2) 1" conduits from the City's telephone room to the Concessionaire Location will be provided by the City. Coordination and approval of telephone cabling terminations in the City's telephone rooms will be by the AADRC and the City's Information Technology Department.

Network cabling and services shall be provided and installed by the Concessionaire. The City maintains an extensive network system and Concessionaire may use this system for outside connectivity.

Switched voice/data services are available through the City's Siemens Hicom 300 Switch with the following features available:

- a) Digital and analog services
- b) Local and long-distance services
- c) Voice mail
- d) Intra-campus 5 digit dialing
- e) Customizable PBX features
- f) Audio-conferencing

Wireless High Fidelity Internet (Wi-Fi) services are also available throughout the Terminal Building.

All connections and use of these systems are subject to City's requirements and there may be additional expenses related to this use. Concessionaire shall coordinate with City's Information Technology Department for further information.

**8. Television.** Television satellite, if required or desired, is to be provided and installed by the Concessionaire. The location of satellite dish (max. of 24" diameter) is to be coordinated with the City for review and approval. All costs associated with television satellite are the sole responsibility of the Concessionaire. Cable television is not available.

**9. Fire Alarm.** The fire alarm system within the Concessionaire Location is the responsibility of the Concessionaire and shall be an extension of the existing Notifier fire alarm system. Fire alarm audibility, intelligibility and visibility devices must meet the requirements of the latest edition of NFPA 72 and local Fire Marshal requirements. Fire Alarm system modifications must be documented and submitted to the local Fire Marshal for approval prior to construction. Conduit routing shall be approved by the AADRC.

**G. Concessionaire Submittal and Construction Submittal Procedures.** There are three (3) approval phases, which must be followed in sequence before final approval for construction drawings can be issued.

**1. Request for Proposals ("RFP") Phase.** The Proposer submits conceptual design drawings, sketches, material boards and written design narratives as part of its RFP Proposal for concessionaire selection. Proposal requirements are outlined in the RFP and are submitted as part of the RFP process.

**2. Concessionaire Criteria/Schematic Design Review Phase.** The purpose of this submittal is to accelerate the design approval process by acquainting the AADRC with the Concessionaire's intended design concept and correcting any criteria compliance problems before proceeding with the final working drawing phase. Design concepts for lighting and signage must be included in this submission.

The AADRC will review and comment on Schematic Design drawings. If drawings are returned to the Concessionaire with comments, and not bearing the conditional approval of the AADRC, the Concessionaire shall revise the drawings to satisfy any comments by the AADRC and shall resubmit for approval as instructed.

Any construction documents received in this phase will be rejected; schematic drawings must be approved first.

If material boards have changed from the RFP Phase to the Schematic Design Phase, they must be resubmitted to the AADRC.

A period of one (1) to two (2) weeks should be allowed for each submittal review, depending on project complexity. The AADRC will then provide a written response with review comments and approval status. The AADRC's approval does not relieve the Concessionaire of responsibility for compliance with its Agreement, compliance with all governing codes and regulations, field verification of existing conditions, or proper engineering and safety.

Concessionaires are required to retain the services of a licensed professional to design their Concession Locations and prepare required drawings. Each design application will be considered on its individual merit and no design will be approved until all required documents have been received.

It is the responsibility of the Concessionaire's architect and engineer to verify all dimensions and field conditions. They shall also thoroughly familiarize themselves with all local building codes, and all City, County and State ordinances, rules and regulations.

When Concessionaire has been awarded its Agreement, electronic background files shall be provided by the shell architects upon request. A signed Media Disclosure Agreement will be required for the release of the CAD files.

For schematic design submittals, send (1) half size hard copy to:

**Paul Browne**  
**ASCG of New Mexico (MPE Consultant)**  
**6501 Americas Parkway, Suite 400**  
**Albuquerque, NM 87110**

The Concessionaire's submission shall include, but not necessarily be limited to, the following:

- a) Floor plans (scale 1/4" = 1'0").
- b) Sections (scale 1/4" = 1'0").
- c) Storefront elevation and section, including signage (scale 1/2" = 1'0").
- d) Front counter details and food presentation concept.
- e) Manufacturers Material Sheets of all finishes, lighting, signage (if used in similar concession), exposed furniture, equipment, trash and storage container, and cabinetry (if pre-manufactured).
- f) Reflected Ceiling Plan (scale 1/4" = 1'-0")
- g) Colored perspective sketches illustrating the design concept or photographs of existing concessions if related to this application.
- h) Materials and finishes samples firmly attached to illustration board and labeled, not to exceed 24" x 36" and weigh more than 10 lbs. per board. Clearly label all materials and reference to plans, elevations, etc.
- i) Design and construction schedule.

**3. Construction Document Review Phase.** Upon approval of schematic design drawings, Concessionaire may prepare and submit Construction Documents for approval by the AADRC. This process includes review of code compliance and life safety requirements.

a) Construction Documents. Following receipt of AADRC's written approval of the Schematic Design drawings, Concessionaire shall submit to the AADRC within 30 calendar days one (1) set of reproducible construction drawings, five (5) sets of prints of full construction drawings and five (5) sets of specifications that shall adhere to the approved design drawings. All drawings shall be 24" x 36" format and must be signed and sealed by an architect and engineer registered in

the State of New Mexico. Additional half size sets of construction drawings and specifications shall be provided for review to the shell architect and the MPE Consultant (1 each).

NOTE: Construction Documents at a minimum shall consist of the following:

- a) Key plan showing location of the Concession Location within the Terminal Building and location of electrical/telephone rooms from where the Concession Location is to be fed;
- b) A ¼" scale floor plan;
- c) Overall sections at minimum ¼" scale;
- d) Reflected ceiling plan (including electrical lighting plan) at ¼" scale;
- e) Plan, elevation, and section of storefront at ¼" scale including all graphics and signage;
- f) Interior elevations at ¼" scale;
- g) Color and finish schedules;
- h) All applicable details;
- i) Electrical plan prepared by a licensed electrical engineer;
- j) Electrical details and fixture and panel schedules, also include a suggested electric load component conforming with technical criteria herein;
- k) Mechanical/Plumbing plan prepared by a licensed mechanical engineer;
- l) Samples of all finish materials;
- m) Specifications for Architectural, Electrical, Mechanical, and signage;
- n) Shop drawings from sign fabricator showing dimensions, letter style, face color, material, thickness, type of lighting, brightness, mounting hardware and location of transformer.

The AADRC will review and comment on final Construction Documents. Concessionaire may simultaneously submit Construction Documents to the City of Albuquerque for permit.

If any of the Construction Documents and specifications are returned to the Concessionaire with comments and not bearing the unconditional approval of the AADRC, Concessionaire shall see that the drawings and specifications are revised to satisfy any comments by the AADRC, and resubmitted for approval within ten (10) days of receipt by Concessionaire.

b) Final Approval. Upon final approval of the Construction Documents, the AADRC shall forward to the Concessionaire two (2) sets of construction drawings with a letter from the AADRC granting approval. Concessionaire's contractor shall have one (1) AADRC approved/permitted set at the job site at all times and may not commence work until these plans are physically within the Concession Location. Notice to proceed will not be issued until the Concessionaire has received all approvals from the AADRC and all appropriate City, County, and State approvals.

**H. Construction Procedures.** The following is provided for overview purposes only.

**1. Pre-Construction Meeting.** Each Concessionaire is required to contact the AADRC to arrange a pre-construction meeting prior to start of construction. Concessionaires, their contractor and main subcontractors shall attend this meeting. This meeting should establish a project construction schedule not to exceed ninety (90) days for each Concession Location with start and end dates, key personnel, emergency numbers, and include a discussion of safety and security issues.

A copy of the Key Personnel Emergency Numbers List shall also be forwarded to the Aviation Department Communication Center and Project Coordinator.

**2. Airport Identification ("ID")/Access Cards.** All construction personnel assigned to the project requiring Sterile Area access except for escorted in-transit material suppliers, shall make application for, and wear at all times while in the Sterile Area or Secured Areas of the Terminal Building, Airport ID/Access Cards. The prime contractor and the subcontractor must make application for the Airport ID/Access Cards through the Aviation Department Access Control Office, and must pay the appropriate fees when the application is made. Airport ID/Access Cards must be issued to each employee who will work on the project.

Attendance is required at a mandatory two (2) hour security-training course prior to the issuance of the Airport ID/Access Cards. There is no separate fee for security training.

**3. Project Coordination.** Concessionaire's contractor shall be responsible for protecting existing construction, and must repair any damage to existing construction at its sole cost and expense.

All noisy work or dusty work will be performed during the hours of 11:00 p.m. and 4:30 a.m. Construction noise shall not interfere with the aircraft gate announcements.

The AADRC shall perform inspections of the project periodically to assure compliance with approved plans and specifications. Inspections by the AADRC will not relieve Concessionaire's contractor of any requirements related to Building Code inspection.

**4. Temporary Construction Signs.** No architect or contractor signs will be allowed on the job site. Signage identifying Concessionaire's name and opening date for the Concession Location must be submitted for review and approval to the AADRC prior to erection.

**5. Project Completion.** Following notification by Concessionaire to the AADRC that the project is completed, the AADRC shall perform a final inspection of the project as required in the approval letter.

Concessionaire shall submit in the following format: two (2) sets of record drawings to the AADRC following completion of the project. One copy shall be submitted on compact disc (CD) in AutoCAD 2006 format, and the second copy shall be as-built drawings sealed by an architect or engineer registered in the state of New Mexico.

## **I. Concessionaire and Contractor Requirements.**

**1. Concessionaire and Contractor Check-In.** Prior to commencing work in the Concessionaire Location, the Concessionaire's Contractor shall comply with the following:

a) No construction shall begin until written approval of all plans and details is received from the AADRC and such approval is on file with the AADRC. Maintain one set of construction drawings with the AADRC during construction.

b) The Food and Beverage Concession Lease and Agreement between the Concessionaire and the City must be fully executed.

- c) Provide evidence of building permits for all trades as required.
- d) Provide City with certificates of insurance as specified in the Food and Beverage Lease and Agreement.
- e) The Concessionaire's Contractor must coordinate with the City a minimum of forty-eight (48) hours prior to start of construction.

**2. Contractors and Subcontractors Insurance.** The Contractor shall not commence work under this contract nor allow any subcontractor to commence work until all insurance required has been procured and such insurance approved by the City. Contractor shall ensure that all insurance as hereinafter provided shall be kept intact and in force throughout the term of its contract.

**3. General Procedures.** The following provisions, with respect to construction procedures, shall be followed by all Contractors and subcontractors:

- a) No equipment, material, or tools will be permitted in the Concourse areas of the Terminal Building.
- b) Do not track dust into the Concourse areas of the Terminal Building. The Contractor must provide an effective means of cleaning dust from employee's shoes.
- c) Movement of all equipment, material, tools, or supplies shall be coordinated with the Aviation Department for routes, schedules, limitations, and restrictions. Construction traffic is not permitted in the Concourse areas of the Terminal Building without the express approval of the City.
- d) The passenger elevators and the escalators shall not be used to transport equipment, materials, or tools.
- e) Any material transported through public areas or stairways, etc., shall be moved on pneumatic rubber tire trucks, using adequate parking, protective cloths, etc., to safeguard existing floors. Any damage resulting from movement of materials, etc., shall be immediately repaired by the Contractor responsible.
- f) Storage of equipment or material must be confined to the Concession Location or other locations specifically designated by the City. Stored materials shall not exceed the loading capacity of the floor. Storage in service corridors, truck docks, vacant lease spaces, or other areas is not permitted at any time. Failure to comply with this requirement will result in removal of all materials from such areas and Concessionaire bearing responsibility for the costs incurred for such removal.

g) Smoking is not permitted anywhere in the Terminal Building, including Concession Locations under construction. Concessionaire's contractor, its employees, and its subcontractors shall smoke only in areas designated by the City.

h) Concessionaire's Contractor shall take all necessary safety precautions to protect workers, the general public, and private and public property from injury or damage, and shall comply with all requirements of the Occupation Safety and Health Act (OSHA).

i) The City requires certain work activities to take place between the hours of 11:30 p.m. and 4:30 a.m. as follows:

- Major service disruptions.
- Jack-hammering, roto-hammering, core drilling or other noisy operations.
- Work requiring blocking of public entrances.
- All other work that would prevent continuous operation of the Terminal Building.
- Hauling of demolished material.
- Erecting and removing construction partitions.
- Delivery of large materials.

j) Make arrangements for temporary utility connections as directed by the AARDC, and pay the cost of all connections, removal, and all utility charges incurred during the project.

**4. Airport Security.** It is essential that during all periods of construction, Airport security be maintained and that construction activity within the Sterile Areas and Secured Areas of the Airport conform to the City's security requirements. When entrance into Secure Areas is required at any time by the Contractor, its employees, or its subcontractors, such access must be coordinated in advance with the City and strict limitations will be set and enforced as to what areas Contractor personnel can access. Any violations of these limits will subject violator to immediate discharge from this project at the City's request.

**5. Interruptions to Airport Operations.** All construction activities must be accomplished in such a manner as to permit normal operations at the Airport and within the Terminal Building at all times. All Concession Locations under construction must be temporarily enclosed from the remainder of the Terminal Building in order that access and all services to the Terminal Building can be maintained at all times. The existing interior circulation corridors and required exits must remain open and unencumbered or provisions made for temporary egress.

All work, including the abandonment or relocation of existing mechanical or electrical utilities, the relocation of existing mechanical or electrical systems or components, or the connection of new mechanical or electrical systems or components to existing systems, which will cause interruptions to the operations of the Airport and the Terminal Building must be scheduled for times other than normal working hours. The Contractor shall schedule and coordinate his work to minimize the required interruptions, and shall notify the City in writing at least forty-eight (48) hours prior to each intended interruption, indicating the estimated duration of the interruption.

**6. Keys and Locks.** No keys will be issued to any Contractor without the prior written approval of the Aviation Department Security Coordinator, which approval shall be at the sole discretion of the Security Coordinator.

**7. Asbestos.** It is believed that Albuquerque International Sunport is asbestos free.

**8. Welding or Cutting.** All welding or cutting shall be reported to the Aviation Department prior to the start of the job, and upon completion of the project, on a daily basis. A fire watch shall be provided by the Contractor, suitable fire extinguishers shall be on hand within 20' of the work being performed and accessible at all times. Welding or cutting shall cease 1/2 hour before closing the job site for the day and inspected prior to the employees leaving the site for the day.

**9. Confined Space Entry Regulations.** The Contractor shall comply with applicable portions of Federal Regulation 29 CFR S 1910.146 and any State regulations regarding employee entrance into confined spaces on this project.

**10. Barricades.** If a construction barricade does not exist in front of a Concession Location at the start of construction, the Concessionaire's Contractor will be required to install a dustproof, solid barricade to separate the Concession Location from the Terminal Building. All barricades shall extend to the ceiling and be located a maximum of 3 feet in front of the lease line. Construction shall be with metal studs 16" on center and 1/2" gypsum board painted with primer and two finish coats the color designated by the AADRC. A clear plastic liner shall be installed on the inside to prevent dust migration to the Terminal Building. Adequate protection of the Terminal Building floor enclosed by the barricade must be provided.

All barricades shall be without opening or passage to the Terminal Building unless the Concession Location has no back door. In this case a 3'-0" x 6'-8" hollow core wood door, swinging in, should be installed with a frame, closure device, and lockset. Door shall be painted to match the barricade.

**11. Parking.** Vehicle parking for Concessionaire's Contractor, its employees, and its subcontractors shall be only in areas designated by City.

**12. Trash Removal.** During construction, fixture installation, and merchandise stocking of each Concession Location, the Concessionaire shall provide trash removal service at areas designated by the City. Concessionaire's Contractor shall provide and pay for trash containers and disposal. It is the responsibility of the Concessionaire and Concessionaire's Contractor to break down and remove all trash and debris from each Concession Location on a daily basis and place such trash and debris in the containers supplied for that purpose.

If the Concessionaire's trash is allowed to accumulate for twenty-four (24) hours or longer within its Concession Location or service corridors, the City shall remove such trash at a charge of one and one-half (1½) times the City's cost for such removal.

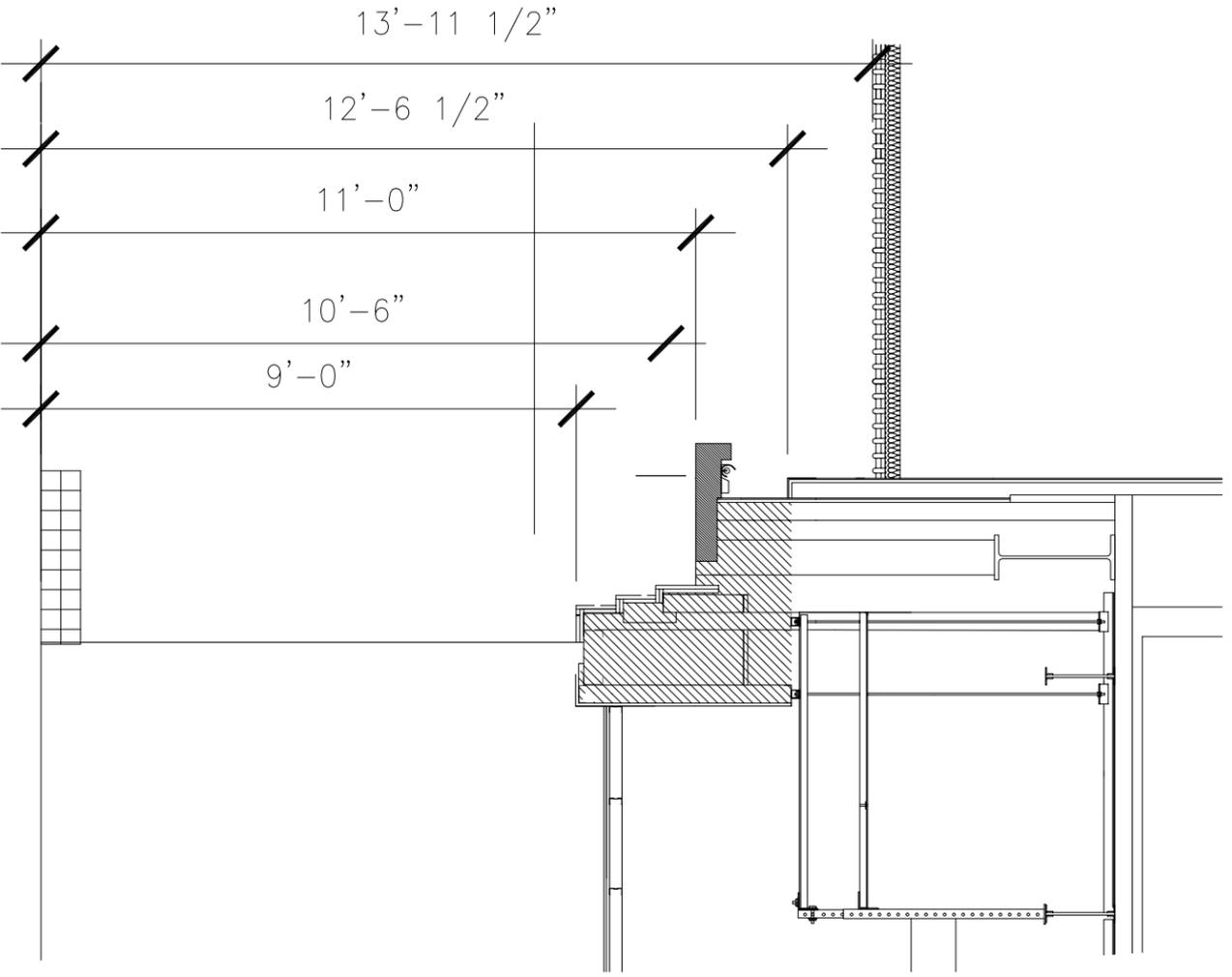
**13. Floors and Roof Penetrations.** Prior to making any roof and/or floor penetrations, Concessionaire's Contractor must obtain approval of the proposed locations from the AADRC. All cutting, patching and core drilling requires written approval by the AADRC before initiating this work. Concessionaire's Contractor is responsible for repairing any damage to reinforcing steel, conduit, wiring, piping, etc., resulting from the operation.

Weatherproofing of all roof penetrations must be performed by the City's authorized roofing contractor at the Concessionaire's expense.

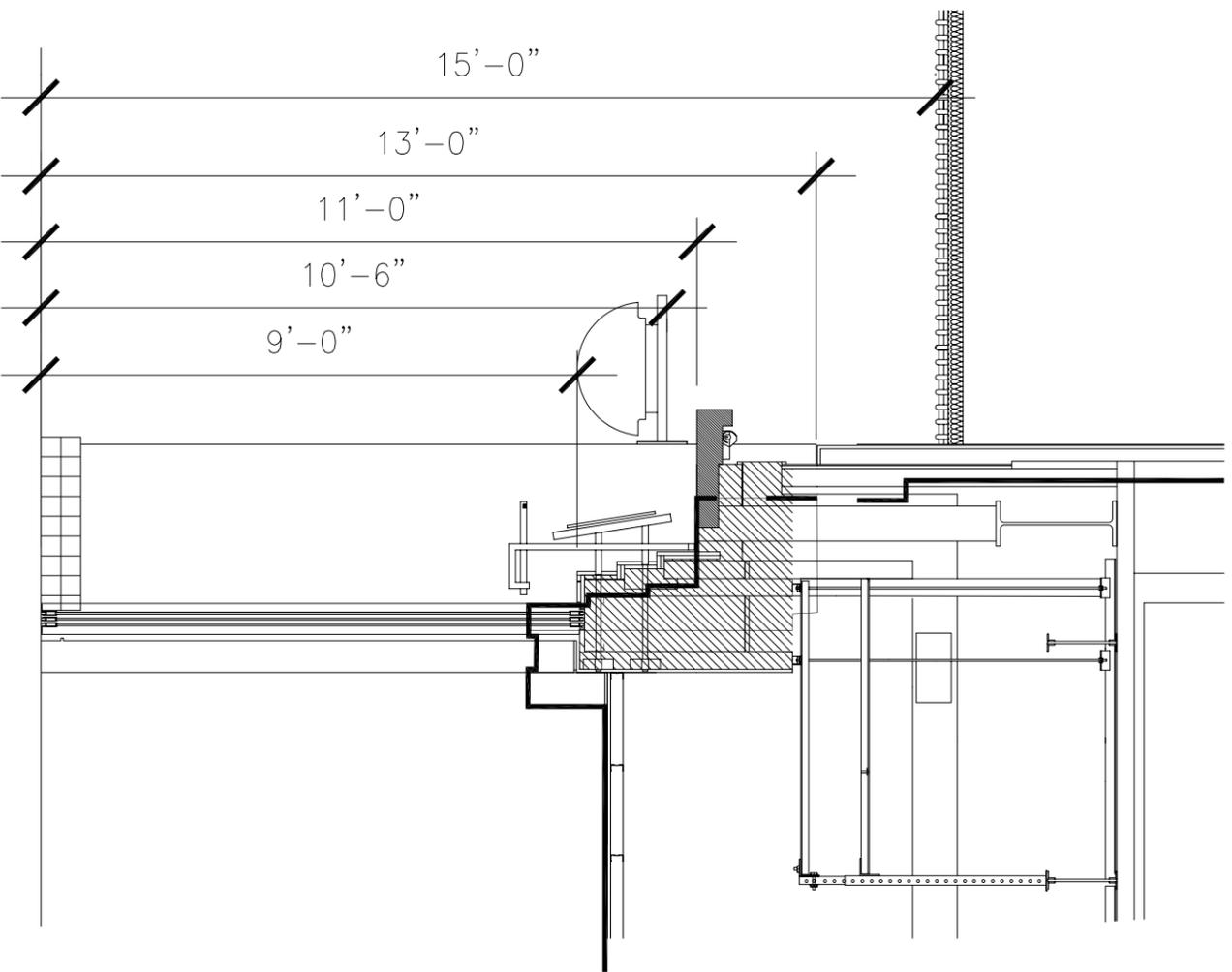
Floor penetrations in upper level spaces with concrete must be core drilled. All penetrations must be sleeved and sealed with one pipe permitted per sleeve.

All upper level floor penetrations shall be completely sealed to prevent permeation of odors or liquids to the space below.

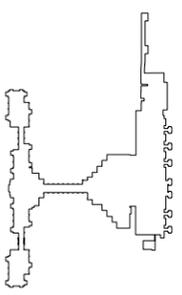
Within the kitchen area of Location 2, Package B, there is a small portion of that floor constructed using concrete double tees. Special attention must be paid to this area, and all penetrations must be pre-approved by the City's structural consultant.



TYPICAL WALL SECTION (SLIDING DOORS)  
SCALE: 3/4" = 1'-0"



TYPICAL WALL SECTION (FIXED GLAZING)  
SCALE: 3/4" = 1'-0"  
(SAME TYPICAL NOTES AS SECTION A, U.N.O.)



**ASCG**  
**INCORPORATED**  
ENGINEERS - ARCHITECTS - SURVEYORS - PLANNERS  
601 ALBUQUERQUE AVENUE, SUITE 400  
ALBUQUERQUE, NEW MEXICO 87102  
PHONE 505.247.0294 FAX 505.242.4645

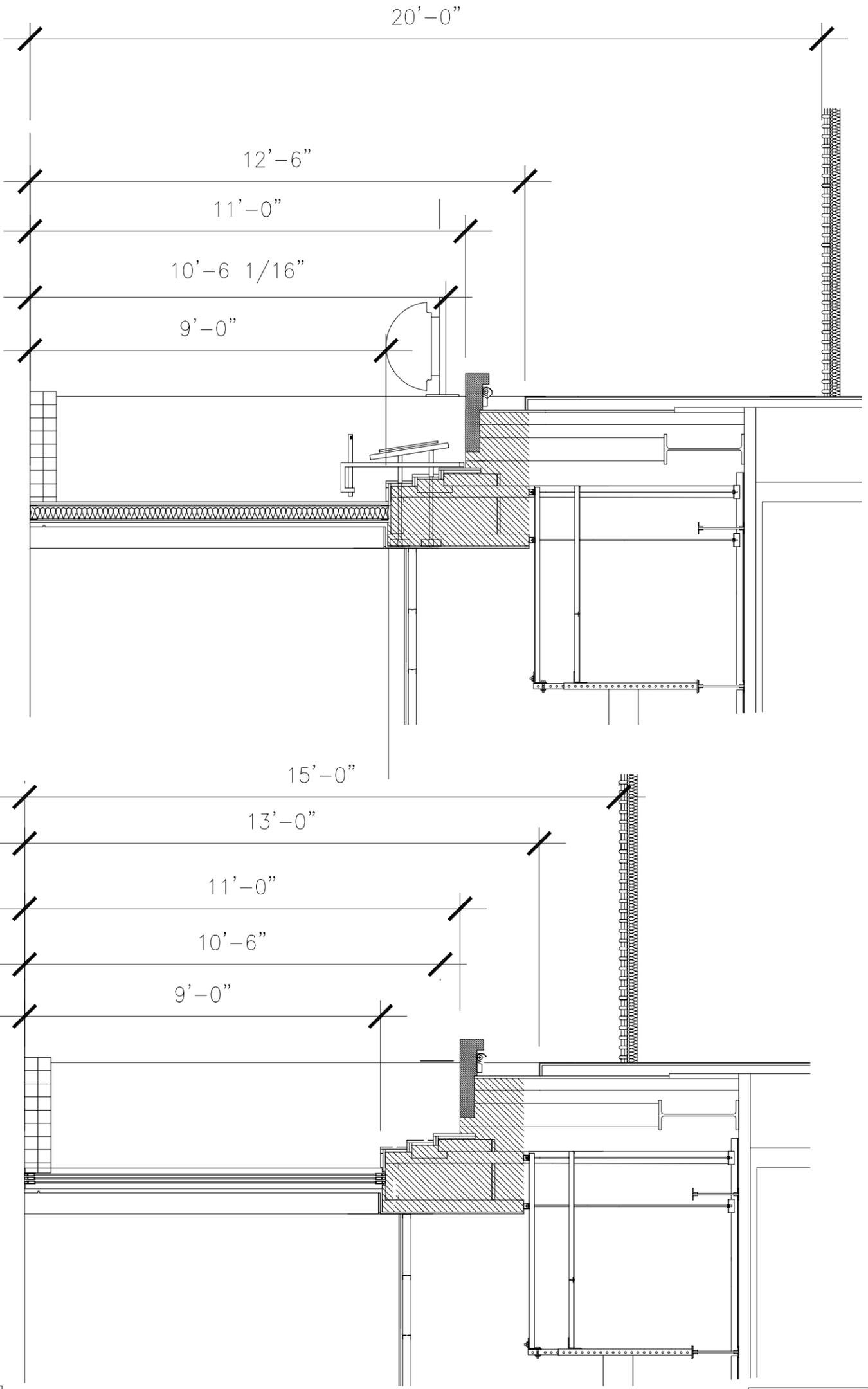
CITY OF ALBUQUERQUE  
PUBLIC WORKS DEPARTMENT  
ENGINEERING DEVELOPMENT GROUP  
TITLE: ALBUQUERQUE INTERNATIONAL AIRPORT

Design Review Committee City Engineer Approval

City Project No.	Zone Map No.	Drawing No.	Sheet
	M-16		Of

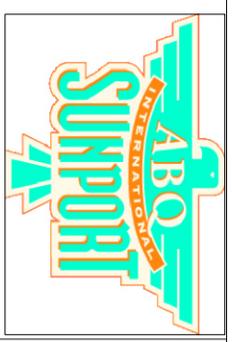
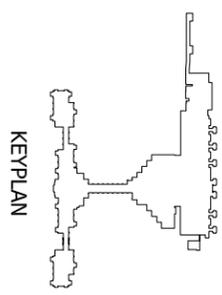
ENGINEER'S STAMP & SIGNATURE		SURVEY INFORMATION		BENCH MARKS		AS BUILT INFORMATION	
No. Date		Field Notes				Contractor	
By		No.	By			Work Staked By	
Date		Date				Date	
REVISIONS						Inspector's Acceptance By	
DESIGN						Date	
Designed By:						Field Verification By	
Date:						Date	
Drawn By:						Drawings Corrected By	
Date:						Date	
Checked By:						MICRO-FILM INFORMATION	
Date:						Recorded By	
						Date	
						No.	

CONCOURSE STOREFRONT OPTIONS



**42" RAILING OPTION**  
**TYPICAL WALL SECTION (42" RAILING)**  
 SCALE: 3/4" = 1'-0"

**OPEN OPTION**  
**TYPICAL WALL SECTION (42" RAILING)**  
 SCALE: 3/4" = 1'-0"  
 (SAME TYPICAL NOTES AS SECTION C, U.N.O.)



**ASCG**  
**INCORPORATED**  
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 PHONE 505.247.0294 • FAX 505.242.4445

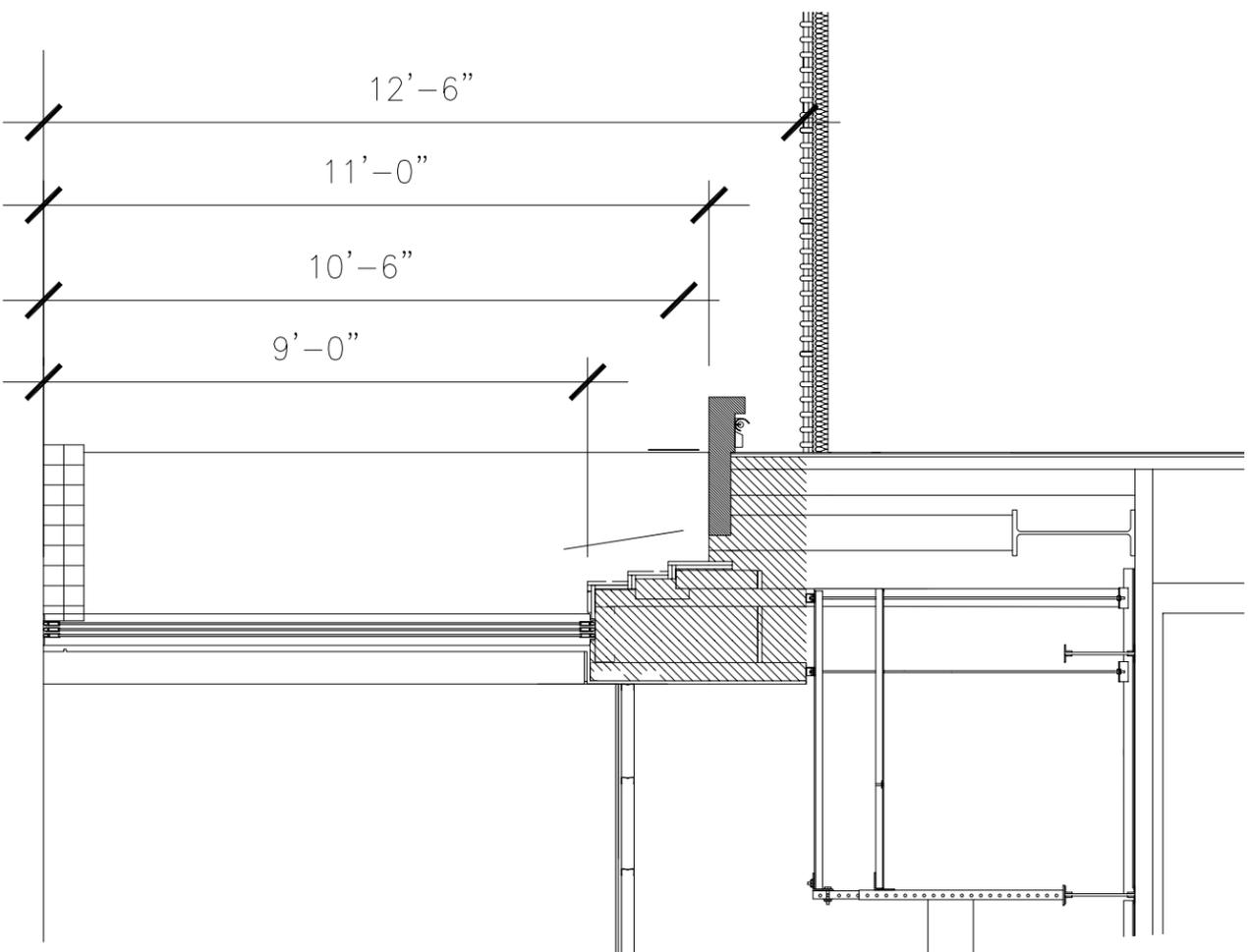
CITY OF ALBUQUERQUE  
 PUBLIC WORKS DEPARTMENT  
 ENGINEERING DEVELOPMENT GROUP  
 ALBUQUERQUE INTERNATIONAL AIRPORT

**SECTIONS**

Design Review Committee	City Engineer Approval	City Project No.	Zone Map No.	Drawing No.	Sheet
		M-16	AS.2		Of
Last Design Update					

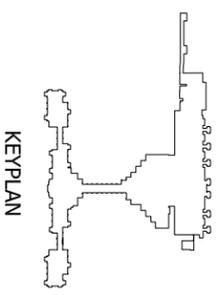
ENGINEER'S STAMP & SIGNATURE	SURVEY INFORMATION			BENCH MARKS	AS BUILT INFORMATION
	Field Notes				Contractor
	No.	By	Date		Work Started By
					Date
					Inspector's Acceptance By
					Date
					Field Verification By
					Date
					Drawings Corrected By
					Date
					MICRO-FILM INFORMATION
					Recorded By
					Date
					No.

No.	Date	Remarks	By
		REVISIONS	
		DESIGN	
Designed By:		Date:	
Drawn By:		Date:	
Checked By:		Date:	



**FULL HEIGHT FRAMED PARTITION OPTION**  
**TYPICAL WALL SECTION (FULL HEIGHT WALL)**  
 SCALE: 3/4" = 1'-0"

**CONCOURSE STOREFRONT OPTIONS**



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CITY OF ALBUQUERQUE  
 PUBLIC WORKS DEPARTMENT  
 ENGINEERING DEVELOPMENT GROUP  
 ALBUQUERQUE INTERNATIONAL AIRPORT

**SECTIONS**

City Project No.	Zone Map No.	Drawing No.	Sheet	Of
	M-16	AS.3		
Design Review Committee	City Engineer Approval	Last Design Update		

ENGINEER'S STAMP & SIGNATURE		SURVEY INFORMATION		BENCH MARKS		AS BUILT INFORMATION	
		Field Notes				Contractor	
No.	By	Date				Work Staked By	Date
						Inspector's Acceptance By	Date
						Field Verification By	Date
						Drawings Corrected By	Date
						MICRO-FILM INFORMATION	
						Recorded By	Date
						No.	

No.	Date	Remarks	By
		REVISIONS	
		DESIGN	
Designed By:		Date:	
Drawn By:		Date:	
Checked By:		Date:	

## **PART 4**

### **EVALUATION OF OFFERS**

**4.1 Selection Process.** The Mayor of the City of Albuquerque shall name, for the purpose of evaluating the proposals, an Ad Hoc Evaluation Committee ("Committee"). On the basis of the Evaluation Factors established in Section 4.2.1 below, the Committee shall submit to the Mayor a list of qualified firms in the order in which they are recommended. Proposal documentation requirements set forth in this RFP are designed to provide guidance to the Offeror concerning the type of documentation that will be used by the Committee. Offerors may be asked to respond to requests by the Purchasing Office on behalf of the Committee for oral presentations, or other information deemed necessary to assist in the evaluation process. However, Offerors are advised that the Committee, at its option, may recommend award of contract on the basis of the written Proposals only, and may not require oral presentations.

**4.2 Evaluation Criteria.** The following general criteria, not listed in order or significance, will be used by the Committee to make a Recommendation of Award to the Mayor. The Proposal factors will be rated on a scale of **0 - 1000** with numeric relationships as stated below:

#### **4.2.1 Evaluation Factors.**

##### **0 – 200 Points – Qualifications and Experience.**

- Number of years and type of experience of Offeror's business entity as it relates to the Food and Beverage Concession concepts set forth in this RFP
- Review of Offeror's existing food and beverage concessions with regard to concepts being proposed, the character of its operations as documented by photographs, its menus, its revues, or other materials submitted by Offeror with this Proposal
- Financing capability, including personal resources. The City may, at its option, investigate and verify evidence of financing capability, including bank references and credit checks
- Sales volume of Offeror's existing food and beverage concessions
- Professional references as they relate to Offeror's capabilities to design, develop, and operate food and beverage concessions
- Organization of Proposal and adherence to RFP instructions

##### **0 – 175 Points – Food and Beverage Concession Designs and Concepts.**

- Quality, creativity, and innovation of Offeror's proposed designs and concepts for each Concession Location within its selected Food and Beverage Concession Package, including any franchise requirements as appropriate

- Quality, creativity, and innovation of Offeror's proposed designs relating to the architecture, culture, and character of the region
- Architectural renderings and drawings for each Concession Location within its selected Food and Beverage Concession Package to evaluate the overall design and theme

**0 – 175 Points – Management and Operating Plan.**

- Organizational chart and its relationship to the Offeror's business structure
- Resumes of key management personnel including resumes of on-site managers
- Qualifications, responsibilities, and the decision-making authority of its various levels of personnel
- Quality Control Program (must provide actual copy of program)
- Customer service philosophy
- Personnel Policies and Training Program (must provide actual copies of the policies and program)
- Staffing
- Hours of Operation
- Five (5) year forecast of gross revenues for each Concession Location within the Food Beverage Concession Package selected by Offeror
- Transition Plan describing Offeror's method for operating during construction

**0 – 150 Points – Concept and Merchandising Plan.**

- Concepts for each Concession Location within Offeror's selected Concession Package
- Quality of food and beverage selections for each Concession Location
- Branded and non-branded food and beverage selections
- Pricing strategy to meet City's Street Pricing requirement

**0 – 150 Points – Local Participation.**

- Level of opportunity provided to Local Businesses, as defined in Part 5, Proposal Form 7 of this RFP

**0 – 150 Points – Proposed Compensation to the City.**

- Minimum Initial Capital Investment: Up to 75 Points
- Initial Minimum Monthly Guarantee: Up to 75 Points

*Note: For the purposes of awarding points for this evaluation factor only, Offeror's proposed compensation to the City shall be evaluated using a percentage of points methodology. See the following example:*

Using this methodology, the Proposal offering the highest level of compensation to the City receives the maximum points allowed. All other

Proposals receive a percentage of the points available based on their cost relationship to the highest. This is determined by applying the following formula:

$$\frac{\text{Offer Being Evaluated}}{\text{Highest Proposed Offer}} \times \text{maximum points available} = \text{awarded points}$$

Example: The highest proposed offer for the Initial Capital Investment is \$2,500,000. The offer being evaluated is \$1,750,000. The total points available for Initial Capital Investment = 75 points.

$$\frac{\$1,750,000}{\$2,500,000} = 0.70 \times 75 = 52.50 \text{ points}$$

*The highest offer receives 75 points and the 2nd highest offer receives 52.50 points.*

**4.2.2** Although Disadvantaged Business Enterprise (“DBE”) participation is not included in the Evaluation of Offers, Part 5, Proposal Form 8 of this RFP, must be completed and signed by Offeror or Offeror’s Proposal will be disqualified.

**4.2.3 Local Preference.** A preference for local and state businesses is available under the City of Albuquerque Public Purchases Ordinance, for this procurement. The “Local Preference Certification Form,” Part 5, Form 1 of this RFP must be completed and signed by Offeror in order to be considered for a five percent (5%) total score enhancement. If a completed Local Preference Certification Form, or a current and correct Resident Business Preference Number (“Number”) is not received with the Offeror’s response, a preference will not be applied for that offer. The Form or the Number will not be accepted after the deadline for receipt of proposals. For those Offerors qualifying for the preference, a 1.05 multiplier will be applied to the total raw score. Only one preference will apply for this procurement. Local Preference supersedes all other preferences.

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## **PART 5 REQUIRED PROPOSAL FORMS**

### **Offeror's Checklist (1 page)**

**Proposal Form 1 – Local Preference Certification Instructions & Form (2 pages)**

**Proposal Form 2 – Business Information Statement (4 pages)**

**Proposal Form 3 – Qualifications and Experience Statement (2 pages)**

**Proposal Form 4 – Financial Information Statement (4 pages)**

**Proposal Form 5 – Food and Beverage Concession Master Plan (3 pages)**

**Proposal Form 6 – Investment and Compensation Offer (7pages)**

**Proposal Form 7 – Local Participation Form (4 pages)**

**Proposal Form 8 – Disadvantaged Business Enterprises Participation Form (5 pages)**

**Proposal Form 9 – Offeror's Disclosure Form (2 pages)**

**NOTE: All forms in this Part 5 *must* be completed in full and submitted with each Proposal, one (1) original and nine (9) copies.**

## OFFEROR'S CHECKLIST

**Checklist of Items to be Completed and Submitted with Proposal.** The following forms and questionnaires are to be completed in full, fully executed, signed, and included as part of the Proposal you submit:

- 1. Proposal**
  - One (1) Original and nine (9) copies of your Proposal.
- 2. Forms**
  - Local Preference Certification Form (see Part 5, Proposal Form 1 of this RFP).
  - Business Information Statement (see Part 5, Proposal Form 2, of this RFP).
  - Qualifications and Experience Statement (see Part 5, Proposal Form 3 of this RFP),
  - Financial Information Statement (see Part 5, Proposal Form 4 of this RFP).
  - Food and Beverage Concession Master Plan (see Part 5, Proposal Form 5 of this RFP).
  - Investment and Compensation Offer (see Part 5, Proposal Form 6 of this RFP).
  - Local Participation Form (see Part 5, Proposal Form 7 of this RFP).
  - Disadvantaged Business Enterprises Participation Form (see Part 5, Proposal Form 8 of this RFP).
  - Offeror's Disclosure Form (see Part 5, Proposal Form 9 of this RFP).
- 3. Name of Proposed Surety for Concession Agreement Security Deposit**
  - State name of surety if bond is to be provided for the Security Deposit Part 6, Section 18 of this RFP or identify financial institution providing Letter of Credit.
- 4. Insurance Requirements for Concession Agreement**
  - Provide evidence of ability to comply with insurance requirements described in Part 6, Section 19 of this RFP (such as insurance binder or certificates of insurance).
- 5. Addenda Sheets (if applicable)**
  - Acknowledge, sign and respond to all Addenda issued for this RFP.
- 6. Proposal Bond**
  - Proposal Bond in the amount of Twenty-Five Thousand Dollars and 00/100 (\$25,000.00) in substantially the same format as provided in Part 7 of this RFP.

**INSTRUCTIONS FOR  
LOCAL PREFERENCE CERTIFICATION FORM**

1. **ALL INFORMATION MUST BE PROVIDED.** A 5% local preference is available for this procurement. To qualify for this preference, an Offeror **MUST** complete and submit this Form with its offer. If an offer is received without the Form attached, completed, signed and certified, or if the Form is received without the required information, the preference will not be applied. The form or a corrected form will not be accepted after the deadline for receipt of bids or proposals.
2. **LOCAL PREFERENCE PRECEDENCE OVER STATE PREFERENCE.** The local preference takes precedence over the State Resident Business Preference and only one of the two preferences will be applied to any one offer. If it is determined that the local preference applies to one or more Offerors in any solicitation, the State Resident Business Preference will not be applied to any offers.
3. **PHYSICAL LOCATION MUST BE STATED.** To qualify for the local preference, a business must have a location in the Albuquerque Metropolitan Area (Abq. Metro Area). The business location inserted on the form must be a physical location, street address or such. Do not use a post office box or other postal address.
4. **ADDITIONAL REQUIREMENT.** To qualify for this preference, the principal Offeror (i.e. the business, not the individual signing the form) if it is a corporation, must be a New Mexico corporation with its articles of incorporation filed with the New Mexico Public Regulation Commission.
5. **DEFINITIONS.** The following definitions apply to this preference:
  - The Abq. Metro Area includes all locations within the City of Albuquerque and Bernalillo County, and within any municipality (i.e. incorporated city, town or village) contiguous to the City of Albuquerque and Bernalillo County.
  - A resident of the Abq. Metro Area is a person who occupies a dwelling in the Area and who manifests an intent to maintain that dwelling on a permanent basis.
  - A principal Offeror is a single Offeror, a business which is the prime contractor or one of the prime contractors and not a subcontractor, or a partner or joint venturer submitting an offer in conjunction with other businesses.
6. **ADDITIONAL DOCUMENTATION.** If requested, a business will be required to provide, within 10 working days of the request, documentation to substantiate the information provided on the form.

9/24/02

**Local Preference Certification Form**

**RFP NO:** 2007-010-SB

**Business Name:** \_\_\_\_\_

**Business Location (in Abq. Metro Area):** \_\_\_\_\_  
\_\_\_\_\_

**Business Type: SELECT ONE**

- Corporation or LLC–Indicate state of corporation/formation ☞ \_\_\_\_\_
- Partnership – Indicate “general” or “limited” ☞ \_\_\_\_\_
- Sole Proprietorship (Single Owner with employees)
- Individual (Single Owner/No employees) ☞ \_\_\_\_\_
- Other – Indicate status ☞ \_\_\_\_\_

**Additional Information:** (PROVIDE IF BUSINESS IS A CORPORATION)

Date of incorporation in the State of New Mexico ☞ \_\_\_\_\_

**Certification:**

I hereby certify that the business set out above is the principal Offeror submitting this offer or is one of the principal Offerors jointly submitting this offer (e.g. as a partnership, joint venture). I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and, if requested by the City, will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

**Signature of Authorized Individual:** \_\_\_\_\_ ☞

**Printed Name:** \_\_\_\_\_

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

**Date:** \_\_\_\_\_

**YOUR MUST RETURN THIS FORM WITH YOUR OFFER**

**BUSINESS INFORMATION STATEMENT**

**1. GENERAL INFORMATION.** The Offeror hereby certifies that all statements and all answers to questions herein are true and correct to the best of its knowledge and belief. Statements must be complete, accurate and in the form requested. City reserves the right to confirm and request clarification of all information provided. Incomplete disclosures may deem Offeror's Proposal to be non-responsive by City, and the Proposal may be rejected and returned.

Additional sheets may be attached if required. If additional sheets are required, annotate all responses in coordination with the outline established herein, clearly showing the paragraph and subparagraph to which the attachment pertains.

**A.** Name, address and telephone number of Offeror exactly as it should appear in the proposed Food and Beverage Concession Lease and Agreement.

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_

**Telephone No:** (\_\_\_\_) \_\_\_\_\_ **FAX No:** (\_\_\_\_) \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**B.** Information of Offeror, if different from above, for purposes of Notice(s) or other communication relating to the Proposal and the proposed Food and Beverage Concession Lease and Agreement. (If Offeror is other than a designee or authorized person, provide the name of an individual who can answer for Offeror).

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_

**Telephone No:** (\_\_\_\_) \_\_\_\_\_ **FAX No:** (\_\_\_\_) \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**2. BUSINESS STRUCTURE.** Offeror intends to operate the Food and Beverage Concession as a:

\_\_\_\_\_ Corporation    \_\_\_\_\_Partnership    \_\_\_\_\_Sole Proprietorship  
\_\_\_\_\_Joint Venture    \_\_\_\_\_Ltd. Liability Company (LLC)  
Other\_\_\_\_\_

**A. CORPORATE OR LLC STATEMENT (COPIES REQUIRED, PLEASE ATTACH TO FORM)** If a corporation, LLC or corporation/LLC-in-formation, answer the following:

- 1) Date of Incorporation or Formation: \_\_\_\_\_
- 2) State of Incorporation or Formation: \_\_\_\_\_
- 3) Is the corporation or LLC authorized to do business in New Mexico?  
 Yes - As of what date? \_\_\_\_\_  
 No
- 4) Furnish the following information on the principal officers of the corporation or LLC, and include their resumes.

NAME	TITLE	ADDRESS
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**B. PARTNERSHIP STATEMENT** If a partnership, answer the following:

- 1) Date of Organization \_\_\_\_\_
- 2) General Partnership \_\_\_\_\_
- 3) Limited Partnership \_\_\_\_\_
- 4) Other: \_\_\_\_\_
- 5) Has the partnership done business in New Mexico?  
 Yes – When? \_\_\_\_\_  
 No

- 6) Furnish the following information of each general partner and include their resumes.

NAME	TITLE	ADDRESS
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**C. JOINT VENTURE STATEMENT** If a joint venture, answer the following:

- 1) Date of Organization: \_\_\_\_\_
- 2) Has the joint venture done business in New Mexico?
- Yes – When? \_\_\_\_\_
  - No
- 3) Detail structure of joint venture (% of each joint venturer).
- 4) Furnish the following information for each joint venturer, identifying the key joint venturer, and include their resumes.

NAME	TITLE	ADDRESS
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- 5) Where (which state) was joint venture formed?
- \_\_\_\_\_
- \_\_\_\_\_

- 6) Is the joint venture currently authorized to do business in New Mexico?
- \_\_\_\_\_ Yes                  \_\_\_\_\_ No

**D. SOLE PROPRIETORSHIP** If sole proprietorship, answer the following:

- 1) Proprietor's Full Name: \_\_\_\_\_
- 2) Address: \_\_\_\_\_
- 3) Company Name: \_\_\_\_\_
- 4) Company Address: \_\_\_\_\_
- 5) How long in business under this company name? \_\_\_\_\_

**E. OTHER BUSINESS REFERENCES.** Provide a representative listing of other business entities, including contact person and telephone number, with a description of each of these entity's business activities, with which the Offeror, or any of its owners, officers, directors or management employees are affiliated in a decision-making or managerial capacity. Such representative listing must include all business entities that do business in the state of New Mexico.

**CERTIFICATION:** I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**(CORPORATE SEAL)**

Dated: \_\_\_\_\_, 2007

**QUALIFICATIONS AND EXPERIENCE STATEMENT**

**1. GENERAL INFORMATION.** The Offeror hereby certifies that all statements and all answers to questions herein are true and correct to the best of its knowledge and belief. Statements must be complete, accurate and in the form requested. City reserves the right to confirm and request clarification of all information provided. Incomplete disclosures may deem Offeror's Proposal to be non-responsive by City, and the Proposal may be rejected and returned.

Additional sheets may be attached if required. If additional sheets are required, annotate all responses in coordination with the outline established herein, clearly showing the paragraph and subparagraph to which the attachment pertains.

**A.** Name, address and telephone number of Offeror exactly as it should appear in the proposed Food and Beverage Concession Lease and Agreement.

**Offeror Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_

**Telephone No.** (\_\_\_\_) \_\_\_\_\_ **FAX No.** (\_\_\_\_) \_\_\_\_\_

**E-Mail Address:** \_\_\_\_\_

**B.** Is the Offeror currently engaged in a food and beverage concession business?

- yes How long \_\_\_\_\_
- no

Provide history of experience Offeror has in the development and operation of a food and beverage concession (attach answer to this Form).

**C.** Are the principal owner(s) and/or manager(s) of the Offeror currently engaged in a food and beverage concession business?

- yes
- no

Provide history of experience of principal owner(s) and/or manager(s) in the operation and management of a food and beverage concession (attach answer to this Form).

**Proposal Form 3 – Page 2 of 2**

**D.** Provide a listing of up to two (2) current food and beverage concessions operated by the Offeror including the following information for *each* concession (attach answer to this Form):

- 1) Name and location of each concession.
- 2) Lease and agreement dates – commencement and expiration dates.
- 3) Description of each concession Master Plan.
- 4) Photographs showing the actual concession locations.
- 5) For each concession that Offeror is operating under a management contract, provide name and telephone number of owner.

**E.** Give name, location, and date of all food and beverage concession agreements, if any, for which Offeror has been placed in default, terminated, or suspended within the past five (5) years for any reason, either voluntarily or involuntarily, prior to the expiration of the contractual term. List any judgments pending, or any pending lawsuits or unresolved disputes for the termination of food and beverage concessions operated by Offeror within the past five (5) years (attach answer, if necessary, to this Form).

If none, indicate not applicable "N/A " here: \_\_\_\_\_

**CERTIFICATION:** I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**(CORPORATE SEAL)**

Dated: \_\_\_\_\_, 2007

**FINANCIAL INFORMATION STATEMENT**

**1. GENERAL INFORMATION.** The Offeror hereby certifies that all statements and all answers to questions herein are true and correct to the best of its knowledge and belief. Statements must be complete, accurate and in the form requested. City reserves the right to confirm and request clarification of all information provided. Incomplete disclosures may deem Offeror's Proposal to be non-responsive by City, and the Proposal may be rejected and returned.

Additional sheets may be attached if required. If additional sheets are required, annotate all responses in coordination with the outline established herein, clearly showing the paragraph and subparagraph to which the attachment pertains.

**A.** Name, address and telephone number of Offeror exactly as it should appear in the proposed Food and Beverage Concession Lease and Agreement.

**Offeror Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_

**Telephone No. (\_\_\_\_) \_\_\_\_\_ FAX No. (\_\_\_\_) \_\_\_\_\_**

**E-Mail Address:** \_\_\_\_\_

**2. FINANCIAL INFORMATION.** Provide financial statements of your organization, as follows:

**A.** If a publicly held corporation (attach information to this Form):

- 1) Consolidated financial statements as submitted to the Securities and Exchange Commission (SEC) on Form 10K for your last three (3) fiscal years.
- 2) The most recent Form 10Q since the last Form 10K was submitted.
- 3) Any form 8Ks in your last fiscal year.

**B.** If a privately held organization (attach information to this Form):

- 1) Provide complete income tax returns or financial statements, for the three (3) most current years, including notes thereto, certified by corporate official as to accuracy, or income tax return of owners for qualifying years.
- 2) List credits (business and personal) detailing names, addresses, phone numbers, account numbers, current balances and contact persons.
- 3) Disclosure of long-term receivables and payables, including current status. Provide details and documents including contact person(s).
- 4) List bank accounts, detailing bank name, address, account numbers, current balance by account, contact person(s), and phone numbers.
- 5) Real estate declared as assets (provide legal description).

**3. FINANCING.** All Offerors must specify how they are going to finance the venture, including debt financing, equity financing, or other forms of financing. Depending on the type of financing, the company will need to provide the following:

**A. Bank Financing** -- A letter of commitment from a bank for the amount of anticipated financing required to complete the initial capital investment for the development of the Food and Beverage Concession to which this proposal applies (attach to this Form).

**B. Internal Resources of the Company** -- Recent balance sheet of the Offeror demonstrating sufficient liquid assets in excess of current liabilities. Indicate assets that are intended to be used for the initial capital investment for the development of the Food and Beverage Concession to which this proposal applies (attach to this Form).

**C. Personal Resources** -- Details of personal assets available and supporting documentation of those resources. For example, if real property is to be sold to finance development and operations under this proposal, then provide evidence of the current value of the asset(s) to be sold, and details of any liens and/or mortgages currently held on the property (attach to this Form).

**D.** Cash Infusion or Loan from Shareholder or Corporate Parent (attach to this Form).

- 1) Written statement from the shareholder or corporate parent of the amount to be funded and the terms of that funding.
- 2) Supporting documentation (i.e. balance sheet) of resources of the shareholder or corporate parent.

**4. ANNUAL GROSS SALES.** Provide certified annual statements of gross revenues for the last five consecutive years for each food and beverage concession managed and operated by Offeror.

**5. BANKRUPTCY.** Provide a statement advising whether Offeror or any of its principals, officers, or directors have been parties to any bankruptcy proceedings in the past seven (7) years.

**6. SURETY INFORMATION**

**A.** Have you ever had a bond or surety cancelled or forfeited?

- Yes. If yes, state name of bonding company, date, amount of bond and reason for such cancellation or forfeiture (attach to this Form).
- No

**B.** Provide information, including name of surety/bonding company that indicates your ability to qualify for, obtain, and submit the Proposal Bond, and the name of the surety/bonding company (or bank for letter of credit) you will use to provide the Security Deposit that must be submitted to City if you are awarded this Food and Beverage Concession Lease and Agreement.

**C.** List the insurance companies you will use to meet the insurance requirements of the proposed Food and Beverage Concession Lease and Agreement (Part 6, Section 19 of this RFP) and provide certificates of insurance or insurance binders (attach to this Form).

**7. CONFIDENTIALITY OF RECORDS.** Offeror should indicate by page number the identification of any portions of their Proposal, which they deem confidential, or which contains proprietary information or trade secrets, copyrights, patents or patents pending. Offeror should provide justification of why materials, upon request, should not be disclosed by City under the Inspection of Public Records Act §14-2-1 NMSA 1978. City may otherwise use or disclose the data submitted by Offeror. The Offeror's opinion of proprietary information is not necessarily binding upon City (attach to this Form).

**CERTIFICATION:** I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

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

**(CORPORATE SEAL)**

Dated: \_\_\_\_\_, 2007

**FOOD AND BEVERAGE CONCESSION MASTER PLAN**

**1. GENERAL INFORMATION.** The Offeror hereby certifies that all statements and all answers to questions herein are true and correct to the best of its knowledge and belief. Statements must be complete, accurate and in the form requested. City reserves the right to confirm and request clarification of all information provided. Incomplete disclosures may deem Offeror's Proposal to be non-responsive by City, and the Proposal may be rejected and returned.

Additional sheets may be attached if required. If additional sheets are required, annotate all responses in coordination with the outline established herein, clearly showing the paragraph and subparagraph to which the attachment pertains.

**A.** Name, address and telephone number of Offeror exactly as it should appear in the proposed Food and Beverage Concession Lease and Agreement.

**Offeror Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_

**Telephone No.** (\_\_\_\_) \_\_\_\_\_ **FAX No.** (\_\_\_\_) \_\_\_\_\_

**E-Mail Address:** \_\_\_\_\_

**2. FOOD AND BEVERAGE CONCESSION PACKAGE SELECTION.** Please select (X) the specific Food and Beverage Concession Package to which this Proposal applies.

**NOTE: No more than one (1) Food and Beverage Concession Package can be selected for this Proposal. Separate Proposals must be submitted for each additional Food and Beverage Concession Package for which Offeror wishes to propose.**

\_\_\_\_\_ **Package A Specialty Coffee and Bakery**

\_\_\_\_\_ **Package B Full Service Casual Dining Restaurant & Bar Concepts and Branded Quick-Serve Concept**

\_\_\_\_\_ **Package C Various Quick-Serve Concepts and Smokers Bar & Grill**

\_\_\_\_\_ **Package D Branded Franchise Quick-Serve Sandwich & Bar**

**3. FOOD AND BEVERAGE CONCESSION MASTER PLAN.**

**A. Design and Development Plans for Concession Locations:** Provide a detailed Food and Beverage Concession Package design and development plan, in conjunction with the Design Criteria and Construction Manual, included as **Attachment D** to Part 3, Section 3.8.a) of this RFP, for each Concession Location within the selected Concession Package identified in this Proposal. Plans and renderings submitted with the Proposal should be eight and one-half inches (8½") by eleven inches (11") or eleven inches (11") by seventeen inches (17") folded to eight and one-half inches (8½") by eleven inches (11"). Offerors may submit one (1) additional set of thirty-six inches (36") by twenty-four inches (24") plans and/or renderings in a separate package in accordance with Part 2, Section 2.1.5.a) of this RFP.

If a franchise is proposed for any Concession Location within the Concession Package, for each such franchise describe all design concepts, signs, and features required under the franchise agreement.

**B. Transition Plan:** Detail on separate sheet(s), Offeror's proposed transition plan and time schedule to implement the offered Food and Beverage Concession in accordance with Part 2, Section 2.1.5.b) of this RFP.

**C. Management and Operating Plan:** Detail on separate sheet(s), Offeror's proposed management structure, style and method of operation based on the following: personnel training, customer service philosophy, affirmative action program, and quality control. Attach resumes of the principal owners and managers of Offeror, the individual who will be the primary contact to City for the Agreement and concession matters, and the individuals who will be primarily responsible for the day-to-day operations of the Food and Beverage Concession, in accordance with Part 2, Section 2.1.5.c) of this RFP.

**D. Forecasts of Gross Revenues:** Please provide a five (5) year forecast of gross revenues for each Location within the Food and Beverage Concession Package selected by Offeror in accordance with Part 2, Section 2.1.5.d) of this RFP.

**E. Sublessee(s):** If Offeror intends to enter into a sublease arrangement with a third party, please provide a copy of the proposed sublease with your Proposal in accordance with Part 2, Section 2.1.5.e) of this RFP.

**F. Proposed Menu and Prices:** Provide a menu listing all proposed food and beverage items with initial prices for each Location within the selected Food and Beverage Concession Package in accordance with Part 2, Section 2.1.5.f) of this RFP.

**4. CONDITIONS OF PROPOSAL SUBMITTAL.** Submittal of this Proposal constitutes a firm offer to City and may be accepted by City at any time prior to midnight on the ninetieth (90<sup>th</sup>) day after the date specified in this RFP for receipt of offers.

**5. CONDITIONS OF AWARD OF AGREEMENT.** City, with Offeror's approval, may extend its consideration after the aforementioned date. City may, at its option, accept this proposal as received. In such event, City will so notify Offeror by Notice of Award and with the advance written notice transmit to Offeror the required Food and Beverage Concession Lease and Agreement. Offeror agrees to execute the Agreement and deliver the duly executed Food and Beverage Concession Lease and Agreement to City within fourteen (14) days from receipt of such Agreement from City.

**6. REQUIRED CONCESSION LEASE AND AGREEMENT.** By submitting this Proposal Form, Offeror agrees to enter into the required Food and Beverage Concession Lease and Agreement included in Part 6 of this RFP.

**7. CONFLICT IN LANGUAGE.** If any language or information contained in this Proposal Form conflicts with the proposed Food and Beverage Concession Lease and Agreement included in Part 6 of this RFP, then the language of the Food and Beverage Concession Lease and Agreement shall govern.

**CERTIFICATION:** I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

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

(CORPORATE SEAL)

Dated: \_\_\_\_\_, 2007

**INVESTMENT AND COMPENSATION OFFER**

**1. GENERAL INFORMATION.** The Offeror hereby certifies that all statements herein are true and correct to the best of its knowledge and belief. Statements must be complete, accurate and in the form requested. City reserves the right to confirm and request clarification of all information provided. Incomplete disclosures may deem Offeror's Proposal to be non-responsive by City, and the Proposal may be rejected and returned.

Additional sheets may be attached if required. If additional sheets are required, annotate all responses in coordination with the outline established herein, clearly showing the paragraph and subparagraph to which the attachment pertains.

**A.** Name, address and telephone number of Offeror exactly as it should appear in the proposed Food and Beverage Concession Lease and Agreement.

**Offeror Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_

**Telephone No. (\_\_\_\_) \_\_\_\_\_ FAX No. (\_\_\_\_) \_\_\_\_\_**

**E-Mail Address:** \_\_\_\_\_

**2. ESSENTIAL ELEMENTS OF OFFEROR'S INVESTMENT AND COMPENSATION PROPOSAL.** There are three (3) essential elements that **must** be included in Offeror's Investment and Compensation proposal for this RFP. As detailed below, the elements are as follows:

**A. PROPOSED MINIMUM INITIAL CAPITAL INVESTMENT.** City has set a Minimum Initial Capital Investment threshold for each Food and Beverage Concession Package as indicated below. The Minimum Initial Capital Investment is to be used specifically for costs associated with the design, construction, and furnishings for all Concession Locations within each Concession Package. Based on Offeror's evaluation of the development costs for their selected Concession Package, Offeror **may propose a Minimum Initial Capital Investment greater than** the minimum threshold set by City. Please state below the Minimum Initial Capital Investment you propose to expend, in accordance with Part 2, Section 2.1.6.a) of this RFP, in the development of the Concession Package you have selected.

No more than fifteen percent (15%) of Offeror's proposed Minimum Initial Capital Investment shall be for architectural, engineering, construction management and oversight, financing, loan acquisition or lender's fees, intra-company charges and all other "soft" costs. No less than eighty-five percent (85%) of the proposed Minimum Initial Capital Investment shall be for labor and materials.

Based on the terms, provisions, and conditions of this RFP, the undersigned hereby agrees to make a Minimum Initial Capital Investment in the amount indicated below. Offeror agrees that if the actual Minimum Initial Capital Investment made in the design, construction, and furnishings for their selected Concession Package is less than the amount shown below, the remaining amount will be paid to City.

**NOTE:** The Food and Beverage Concession Package to which your Minimum Initial Capital Investment offer applies **must** be the specific Concession Package you selected on Proposal Form 5 of this RFP, or this Proposal may be rejected.

**B. PROPOSED INITIAL MINIMUM MONTHLY GUARANTEE.** As consideration for the privilege of designing, developing, and operating a Food and Beverage Concession, Offeror shall pay to City each month, for the full Term of the Agreement, the greater of a Minimum Monthly Guarantee or a Percentage of Gross Revenues Fee. An Initial Minimum Monthly Guarantee has been established for each Concession Package; however, Offeror **may propose an Initial Minimum Monthly Guarantee greater than** the threshold set by City.

**NOTE:** The Food and Beverage Concession Package to which your Initial Minimum Monthly Guarantee offer applies **must** be the specific Concession Package you selected on Proposal Form 5 of this RFP, or this Proposal may be rejected.

**C. PERCENTAGE OF GROSS REVENUES FEE.** For each Food and Beverage Concession Package, City has set a Percentage of Gross Revenues Fee applicable to Gross Revenues derived from the sale of all products, goods, and services offered at all Concession Locations within the selected Concession Package. Offeror shall pay to City each month, for the full Term of the Agreement, the greater of a Percentage of Gross Revenues Fee or a Minimum Monthly Guarantee. **Offeror may not propose a Percentage of Gross Revenues Fee greater than the threshold set by City, and City shall not consider any increase in the Percentage of Gross Revenues Fee if proposed by Offeror.**

**NOTE:** The Food and Beverage Concession Package to which your Percentage of Gross Revenues Fee applies **must** be the specific Concession Package you selected on Proposal Form 5 of this RFP, or this Proposal may be rejected.

## \_\_\_\_Package A - Specialty Coffee and Bakery

**A. Minimum Initial Capital Investment.** In accordance with Part 6, subsection 8.2 of this RFP, a Minimum Initial Capital Investment of **One Million Thirty-nine Thousand One Hundred Fifty and 00/100 dollars (\$1,039,150.00)**, or an amount proposed by Offeror, **whichever is greater**, will be required for the design, construction, and furnishing of all Concession Locations within this Concession Package.

**ENTER AMOUNT HERE:**

Proposed Minimum Initial Capital Investment:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_.00)  
(amount expressed in words) (amount in numbers)

(This amount shall be no less than the One Million Thirty-nine Thousand One Hundred Fifty and 00/100 dollars [\$1,039,150.00] Minimum Initial Capital Investment as required by City.)

**B. Initial Minimum Monthly Guarantee.** In accordance with Part 6, subsection 16.1 of this RFP, a Minimum Monthly Guarantee will be required for the full Term of the Concession Agreement. Offeror shall pay City an Initial Minimum Monthly Guarantee of **Nineteen Thousand One Hundred Seventy-nine and 00/100 Dollars (\$19,179.00)** per month, or the Initial Minimum Monthly Guarantee amount proposed by Offeror, **whichever is greater**.

**ENTER AMOUNT HERE:**

Proposed Initial Minimum Monthly Guarantee:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_.00)  
(amount expressed in words) (amount in numbers)

(This amount shall be no less than the Nineteen Thousand One Hundred Seventy-nine and 00/100 dollars [\$19,179.00] Initial Minimum Monthly Guarantee as required by City.)

**C. Percentage of Gross Revenues Fee.** In accordance with Part 6, subsection 16.2 of this RFP, Offeror shall pay to City a Percentage of Gross Revenues Fee as per the schedule shown below based on the Gross Revenues derived from the sale of all products, goods, and services by category offered at all Concession Locations within this Concession Package.

**Eleven Percent (11%) of Gross Revenues derived from the sale of food and non-alcoholic beverages.**

**\_\_\_\_\_ Package B - Full-Service Casual Dining Restaurant & Bar Concepts and Branded Quick-Serve Concept**

**A. Minimum Initial Capital Investment.** In accordance with Part 6, subsection 8.2 of this RFP, a Minimum Initial Capital Investment of **Two Million Seven Hundred Seventy-eight Thousand Two Hundred and 00/100 dollars (\$2,778,200.00)**, or an amount proposed by Offeror, **whichever is greater**, will be required for the design, construction, and furnishing of all Concession Locations within this Concession Package.

**ENTER AMOUNT HERE:**

Proposed Minimum Initial Capital Investment:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_.00)  
(amount expressed in words) (amount in numbers)

(This amount shall be no less than the Two Million Seven Hundred Seventy-eight Thousand Two Hundred and 00/100 dollars [\$2,778,200.00] Minimum Initial Capital Investment as required by City.)

**B. Initial Minimum Monthly Guarantee.** In accordance with Part 6, subsection 16.1 of this RFP, a Minimum Monthly Guarantee will be required for the full Term of the Concession Agreement. Offeror shall pay City an Initial Minimum Monthly Guarantee of **Fifty-two Thousand Six Hundred Twelve and 00/100 Dollars (\$52,612.00)** per month, or the Initial Minimum Monthly Guarantee amount proposed by Offeror, **whichever is greater**.

**ENTER AMOUNT HERE:**

Proposed Initial Minimum Monthly Guarantee:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_.00)  
(amount expressed in words) (amount in numbers)

(This amount shall be no less than the Fifty-two Thousand Six Hundred Twelve and 00/100 dollars [\$52,612.00] Initial Minimum Monthly Guarantee as required by City.)

**C. Percentage of Gross Revenues Fee.** In accordance with Part 6, subsection 16.2 of this RFP, Offeror shall pay City a Percentage of Gross Revenues Fee as per the schedule shown below based on the Gross Revenues derived from the sale of all products, goods, and services by category offered at all Concession Locations within this Concession Package.

**Eleven Percent (11%) of Gross Revenues derived from the sale of food and non-alcoholic beverages.**

**Seventeen Percent (17%) of Gross Revenues derived from the sale of alcoholic beverages.**

## \_\_\_ Package C - Various Quick-Serve Concepts and Smokers Bar & Grill

**A. Minimum Initial Capital Investment.** In accordance with Part 6, subsection 8.2 of this RFP, a Minimum Initial Capital Investment of **Two Million Three Hundred Fifty-nine Thousand Four Hundred and 00/100 dollars (\$2,359,400.00)**, or an amount proposed by Offeror, **whichever is greater**, will be required for the design, construction, and furnishing of all Concession Locations within this Concession Package.

**ENTER AMOUNT HERE:**

Proposed Minimum Initial Capital Investment:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_.00)  
(amount expressed in words) (amount in numbers)

(This amount shall be no less than the Two Million Three Hundred Fifty-nine Thousand Four Hundred and 00/100 dollars [\$2,359,400.00] Minimum Initial Capital Investment as required by City.)

**B. Initial Minimum Monthly Guarantee.** In accordance with Part 6, subsection 16.1 of this RFP, a Minimum Monthly Guarantee will be required for the full Term of the Concession Agreement. Offeror shall pay City an Initial Minimum Monthly Guarantee of **Forty-seven Thousand One Hundred Eighty-eight and 00/100 Dollars (\$47,188.00)** per month, or the Initial Minimum Monthly Guarantee amount proposed by Offeror, **whichever is greater**.

**ENTER AMOUNT HERE:**

Proposed Initial Minimum Monthly Guarantee:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_.00)  
(amount expressed in words) (amount in numbers)

(This amount shall be no less than the Forty-seven Thousand One Hundred Eighty-eight and 00/100 dollars [\$47,188.00] Initial Minimum Monthly Guarantee as required by City.)

**C. Percentage of Gross Revenues Fee.** In accordance with Part 6, subsection 16.2 of this RFP, Offeror shall pay City a Percentage of Gross Revenues Fee as per the schedule shown below based on the Gross Revenues derived from the sale of all products, goods, and services by category offered at all Concession Locations within this Concession Package.

**Eleven Percent (11%) of Gross Revenues derived from the sale of food and non-alcoholic beverages.**

**Fifteen Percent (15%) of Gross Revenues derived from the sale of all items sold at the Branded Ice Cream shop.**

**Seventeen Percent (17%) of Gross Revenues derived from the sale of alcoholic beverages.**

**Package D - Branded Franchise  
Quick-Serve Sandwich & Bar**

**A. Minimum Initial Capital Investment.** In accordance with Part 6, subsection 8.2 of this RFP, a Minimum Initial Capital Investment of **Five Hundred One Thousand Two Hundred Fifty and 00/100 dollars (\$501,250.00)**, or an amount proposed by Offeror, **whichever is greater**, will be required for the design, construction, and furnishing of all Concession Locations within this Concession Package.

**ENTER AMOUNT HERE:**

Proposed Minimum Initial Capital Investment:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_.00)  
(amount expressed in words) (amount in numbers)

(This amount shall be no less than the Five Hundred One Thousand Two Hundred Fifty and 00/100 dollars [\$501,250.00] Minimum Initial Capital Investment as required by City.)

**B. Initial Minimum Monthly Guarantee.** In accordance with Part 6, subsection 16.1 of this RFP, a Minimum Monthly Guarantee will be required for the full Term of the Concession Agreement. Offeror shall pay City an Initial Minimum Monthly Guarantee of **Thirteen Thousand Four Hundred and 00/100 Dollars (\$13,400.00)** per month, or the Initial Minimum Monthly Guarantee amount proposed by Offeror, **whichever is greater**.

**ENTER AMOUNT HERE:**

Proposed Initial Minimum Monthly Guarantee:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_.00)  
(amount expressed in words) (amount in numbers)

(This amount shall be no less than the Thirteen Thousand Four Hundred and 00/100 dollars [\$13,400.00] Initial Minimum Monthly Guarantee as required by City.)

**C. Percentage of Gross Revenues Fee.** In accordance with Part 6, subsection 16.2 of this RFP, Offeror shall pay City a Percentage of Gross Revenues Fee as per the schedule shown below based on the Gross Revenues derived from the sale of all products, goods, and services by category offered at all Concession Locations within this Concession Package.

**Eleven Percent (11%) of Gross Revenues derived from the sale of food and non-alcoholic beverages.**

**Seventeen Percent (17%) of Gross Revenues derived from the sale of alcoholic beverages.**

NOTE: If the Term of the Agreement is extended in accordance with Part 6, subsection 15.1 of this RFP, the Percentage of Gross Revenues Fee established for the Term will apply during the extension period.

**CERTIFICATION:** I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**(CORPORATE SEAL)**

Dated: \_\_\_\_\_, 2007

**LOCAL PARTICIPATION FORM**

**A. SUBMIT** this form with your proposal.

**B. INSTRUCTIONS:**

1. This form shall be submitted by Offeror who elects to have one or more local businesses participate in the development and operation of a Food and Beverage Concession as it pertains to this RFP.
2. All addresses provided must be complete street addresses and current phone numbers. Post Office box numbers shall not be considered.
3. Submit supplemental pages if the number of entries provided under each item of information is insufficient.

**C. LOCAL BUSINESS** means an entity that:

1. Currently operates a business that is authorized by the State of New Mexico, and is in good standing with the governing authorities of the State of New Mexico; and
2. Fifty-one percent (51%) or more of the ownership is by people who are domiciled and who reside in New Mexico. In the instance of ownership by business entities other than individuals (corporations, partnerships, joint venturers) each such business entity shall be owned in excess of fifty-one percent (51%) by people who are domiciled and reside in New Mexico.

**D. THE ALBUQUERQUE METROPOLITAN AREA** means the following New Mexico Counties: Bernalillo, Sandoval, Santa Fe and Valencia **for purposes of this form only.**

**E. LOCAL PARTICIPANT** is a Local Business that owns and operates a business entity pursuant to Section C or D above.

**F. *FOR EACH LOCAL PARTICIPANT, PROVIDE THE FOLLOWING INFORMATION CONTAINED IN SECTIONS 1 THROUGH 8 OF THIS FORM (use additional sheets as necessary):***

1. Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_  
Telephone No. (\_\_\_\_) \_\_\_\_\_ FAX No. (\_\_\_\_) \_\_\_\_\_  
Email Address: \_\_\_\_\_

**Proposal Form 7 – Page 2 of 4**

**2.** Describe the business relationship between the Offeror and the Local Participant:

\_\_\_\_\_ Partnership                      \_\_\_\_\_ Joint Venturer  
\_\_\_\_\_ Sublessee                        \_\_\_\_\_ Limited Liability Company (LLC)  
Other \_\_\_\_\_

Date of formation of the business relationship with Local Participant: \_\_\_\_\_

NOTE: Attach to this Local Participation Form, the agreement, sublease or other documentation (actual or proposed) that is the basis for the business relationship between Offeror and the Local Participant.

**3.** Area of direct responsibility for the design, development, and operation of a Food and Beverage Concession for the Local Participant if your Proposal is accepted:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4.** The type of business experience that will be provided by the Local Participant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**5.** Names, addresses, and current phone numbers of all businesses operated by the Local Participant in the Albuquerque Metropolitan Area:

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone No. (\_\_\_\_) \_\_\_\_\_ FAX No.(\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone No. (\_\_\_\_) \_\_\_\_\_ FAX No.(\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_

6. Names, residential addresses, and current phone numbers of each owner of the Local Participant that is domiciled and resides in the Albuquerque Metropolitan Area. Please indicate percent of ownership:

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone No. (\_\_\_\_) \_\_\_\_\_ FAX No.(\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_ Percentage Ownership \_\_\_\_\_

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone No. (\_\_\_\_) \_\_\_\_\_ FAX No.(\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_ Percentage Ownership \_\_\_\_\_

7. Names, addresses, and current phone numbers of all business entities other than individuals listed above with an ownership interest in the Local Participant. Please indicate percent of ownership:

Business Entities w/ Ownership Interest: \_\_\_\_\_

Owner's Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone No. (\_\_\_\_) \_\_\_\_\_ FAX No.(\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_ Percentage Ownership \_\_\_\_\_

**Proposal Form 7 – Page 4 of 4**

- 8.** Names, addresses, and current phone numbers of all owners domiciled and residing in the Albuquerque Metropolitan Area for each of the business entities listed in the preceding paragraph. Please indicate percent of ownership:

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone No. (\_\_\_\_) \_\_\_\_\_ FAX No.(\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_ Percentage Ownership \_\_\_\_\_

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone No. (\_\_\_\_) \_\_\_\_\_ FAX No.(\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_ Percentage Ownership \_\_\_\_\_

**CERTIFICATION:** I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**(CORPORATE SEAL)**

Dated: \_\_\_\_\_, 2007

## DISADVANTAGED BUSINESS ENTERPRISES PARTICIPATION FORM

A. **SUBMIT** this form with your proposal.

B. **INSTRUCTIONS:**

1. This form **must** be completed, signed and submitted by **all** Offerors with their Proposal to Design, Develop, and Operate Food and Beverage Concessions at Albuquerque International Sunport. Offerors must make good faith efforts to meet the Disadvantaged Business Enterprises (DBE) participation goal established for this RFP. The Offeror can meet this requirement in one of three ways: **First**, if the Offeror is itself a certified DBE; **second**, documenting commitments for participation by certified DBE firms; or **third**, documenting good faith efforts.
2. In the event the Offeror qualifies as a DBE as defined below, please provide DBE Certificate or Control Number (DBE Part I below).
3. All addresses provided must be complete street addresses. Post Office box numbers shall not be considered. All phone numbers provided must be current.
4. Submit supplemental pages if the number of entries provided under each item of information is insufficient.

C. **DISADVANTAGED BUSINESS ENTERPRISES (DBE)** means a for-profit small business concern that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one (51%) of the stock is owned by one or more such individuals; and whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it and has been duly certified in the state in which they do business.

D. **GOOD FAITH EFFORTS** means efforts to achieve a DBE goal or other requirement of the DBE program, which, by their scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the program requirements. Evidence of good faith efforts include the names, addresses and current telephone numbers of DBEs that were considered, and evidence as to why agreements could not be reached for DBEs to participate in the program.

E. **THE ALBUQUERQUE METROPOLITAN AREA** means the following New Mexico Counties: Bernalillo, Sandoval, Santa Fe and Valencia **for purposes of this form only**.

F. **A DBE PARTICIPANT** is a business that has a direct area of responsibility in the design, development, and operation of a Food and Beverage Concession.

**PART I – OFFEROR IS ITSELF A DBE**

If Offeror is a DBE, please provide your DBE Certificate/Control No.: \_\_\_\_\_.

**PART II – OFFEROR OBTAINED DBE PARTICIPATION**

***FOR EACH DBE PARTICIPANT, PROVIDE THE FOLLOWING INFORMATION CONTAINED IN SECTIONS 1 THROUGH 7 OF THIS FORM (use additional sheets as necessary):***

1. DBE Participant Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_  
Telephone No. (\_\_\_\_) \_\_\_\_\_ FAX No. (\_\_\_\_) \_\_\_\_\_  
Email Address: \_\_\_\_\_ DBE Certificate/Control Number: \_\_\_\_\_

2. Describe the business relationship between the Offeror and the DBE Participant:  
\_\_\_\_\_ Partnership \_\_\_\_\_ Joint Venturer  
\_\_\_\_\_ Sublessee \_\_\_\_\_ Limited Liability Company (LLC)  
Other \_\_\_\_\_

Date of formation of the business relationship with DBE Participant: \_\_\_\_\_

NOTE: Attach to this DBE Form, the agreement, sublease or other documentation (actual or proposed) that is the basis for the business relationship between Offeror and the DBE Participant.

3. Area of direct responsibility of the DBE Participant for the design, development, and operation of the Food and Beverage Concession if your Proposal is accepted: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. The type of business experience that will be provided by the DBE Participant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Names, street addresses, and current phone numbers of all businesses operated by the DBE Participant in the Albuquerque Metropolitan Area:

DBE Participant's Business Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone No. (\_\_\_\_\_) \_\_\_\_\_ FAX No. (\_\_\_\_\_) \_\_\_\_\_

Email Address: \_\_\_\_\_

6. Names, residential addresses, and current phone numbers of each owner of the DBE Participant that is domiciled and resides in the Albuquerque Metropolitan Area. Please indicate percent of ownership:

Owner's Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone No. (\_\_\_\_\_) \_\_\_\_\_ FAX No. (\_\_\_\_\_) \_\_\_\_\_

7. Names, addresses, and current phone numbers of all business entities other than individuals listed above with an ownership interest in the DBE Participant. Please indicate percent of ownership:

Business Entities w/Ownership Interest: \_\_\_\_\_

Owner's Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Email Address: \_\_\_\_\_ Percentage Ownership: \_\_\_\_\_

**PART III – OFFEROR’S GOOD FAITH EFFORTS TO OBTAIN DBE PARTICIPATION**

**FOR EACH DBE CONTACTED BUT WHO WAS UNAVAILABLE TO PARTICIPATE, PROVIDE THE FOLLOWING INFORMATION (use additional sheets as necessary):**

Name of DBE entity: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone No.: (\_\_\_\_) \_\_\_\_\_ FAX No.: (\_\_\_\_) \_\_\_\_\_

Type of Business Operated: \_\_\_\_\_

Contact: \_\_\_\_\_ DBE Certificate/Control No.: \_\_\_\_\_

Reason this entity was unavailable to participate: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name of DBE entity: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone No.: (\_\_\_\_) \_\_\_\_\_ FAX No.: (\_\_\_\_) \_\_\_\_\_

Type of Business Operated: \_\_\_\_\_

Contact: \_\_\_\_\_ DBE Certificate/Control No.: \_\_\_\_\_

Reason this entity was unavailable to participate: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name of DBE entity: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone No.: (\_\_\_\_) \_\_\_\_\_ FAX No.: (\_\_\_\_) \_\_\_\_\_

Type of Business Operated: \_\_\_\_\_

Contact: \_\_\_\_\_ DBE Certificate/Control No.: \_\_\_\_\_

Reason this entity was unavailable to participate: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATION:** I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**(CORPORATE SEAL)**

Dated: \_\_\_\_\_, 2007

### OFFEROR'S DISCLOSURE FORM

**GENERAL INFORMATION.** The Offeror hereby certifies that all statements and all answers to questions herein are true and correct to the best of its knowledge and belief. Statements must be complete, accurate and in the form requested. City reserves the right to confirm and request clarification of all information provided. Incomplete disclosures may deem Offeror's Proposal to be non-responsive by City, and the Proposal may be rejected and returned.

**Offeror Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_

**Telephone No. (\_\_\_\_) \_\_\_\_\_ FAX No. (\_\_\_\_) \_\_\_\_\_**

**E-Mail Address:** \_\_\_\_\_

Disclose the name of each officer, director, principal, and owner of each proposing entity and/or shareholder who owns or controls five percent (5%) or more of the business entity. This page may be photocopied if additional space is required. The individuals listed below are disclosed as having the noted relationship with the business entity/Offeror listed above. Show appropriate letter in the box to the left.

<b>KEY: A=Officer</b>	<b>E=Controller of 5% or more of stock</b>
<b>B=Director</b>	<b>F=Spouse</b>
<b>C=Principal</b>	<b>G=Child under the age of 18</b>
<b>D=Owner</b>	

- |    |                          |       |     |                          |       |
|----|--------------------------|-------|-----|--------------------------|-------|
| 1. | <input type="checkbox"/> | _____ | 7.  | <input type="checkbox"/> | _____ |
| 2. | <input type="checkbox"/> | _____ | 8.  | <input type="checkbox"/> | _____ |
| 3. | <input type="checkbox"/> | _____ | 9.  | <input type="checkbox"/> | _____ |
| 4. | <input type="checkbox"/> | _____ | 10. | <input type="checkbox"/> | _____ |
| 5. | <input type="checkbox"/> | _____ | 11. | <input type="checkbox"/> | _____ |
| 6. | <input type="checkbox"/> | _____ | 12. | <input type="checkbox"/> | _____ |

**CERTIFICATION:** I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the City will provide, within ten (10) days of notice, the necessary documents to substantiate the information provided on this form.

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

**(CORPORATE SEAL)**

Dated: \_\_\_\_\_, 2007

**PART 6  
PROPOSED CONCESSION LEASE AND AGREEMENT**

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**Table of Contents**

Section 1. Recitals ..... 5

Section 2. Definitions ..... 5

Section 3. Incorporation of RFP and Proposal..... 13

Section 4. Premises ..... 13

    4.1 Concession Locations ..... 13

    4.2 Support Space ..... 15

    4.3 Acceptance of Premises ..... 15

    4.4 Temporary Premises ..... 15

Section 5. Use of Premises ..... 15

    5.1 Limitations on Use of Premises ..... 15

    5.2 Warranties of Concessionaire ..... 16

Section 6. City's Right to Contract ..... 17

Section 7. Sale or Distribution by Others..... 18

Section 8. Construction of Capital Improvements ..... 19

    8.1 Construction Bonds and Insurance..... 20

    8.2 Minimum Initial Capital Investment..... 21

    8.3 Coordination of Construction ..... 21

    8.4 Certificate of Occupancy ..... 21

    8.5 Delay in Completion ..... 22

    8.6 Failure to Complete Capital Improvements ..... 22

    8.7 Mid-Term Capital Investment ..... 22

    8.8 Removal of Unapproved Improvements..... 23

    8.9 Ownership of Capital Improvements ..... 23

    8.10 Concessionaire's Contractors ..... 23

Section 9. Operating Performance Standards ..... 24

    9.1 Customer Service ..... 24

    9.2 Concessionaire's Employees ..... 25

    9.3 Hours of Operation..... 25

    9.4 Staffing Requirements ..... 25

    9.5 Menus and Menu Boards..... 25

    9.6 Merchandising..... 26

    9.7 Point-of-Sale ..... 26

    9.8 Service Guidelines ..... 26

    9.9 Maintenance of Premises ..... 26

    9.10 City's Right to Construct..... 27

    9.11 Violations and Fines..... 27

Section 10. Food and Beverage Menus..... 28

	10.1	Additional Menu Items .....	28
	10.2	Sales of Alcoholic Beverages .....	28
Section 11.		Food and Beverage Pricing Policy .....	29
	11.1	Comparable Locations.....	29
	11.2	Price Increases.....	30
	11.3	Price Verification .....	30
	11.4	Discounts for Airport Employees .....	30
Section 12.		Employee Parking .....	30
Section 13.		Airport Security .....	30
	13.1	Airport Identification ("ID")/Access Cards .....	31
	13.2	Vehicle Ramp Permits .....	32
	13.3	Obligation of Concessionaire .....	32
	13.4	Right of City.....	33
Section 14.		Assignment and Subletting.....	33
Section 15.		Term .....	34
	15.1	Option to Extend Term .....	34
	15.2	Holding Over.....	34
Section 16.		Rents and Fees .....	35
	16.1	Minimum Monthly Guarantee.....	35
	16.2	Percentage of Gross Revenues Fee .....	35
	16.3	Support Space Rent.....	36
	16.4	Refuse Fee .....	37
	16.5	Employee Parking Fees .....	37
	16.6	Airport Identification ("ID") Access Card Fees .....	37
	16.7	Liquor License Fee.....	37
	16.8	Miscellaneous Fees .....	37
	16.9	Place of Payment .....	38
	16.10	Late Payment Fees .....	38
Section 17.		Records and Reporting Requirements .....	38
	17.1	Accounting Records .....	38
	17.2	Monthly Reporting of Gross Revenues .....	39
	17.3	Statistical Information.....	39
	17.4	Annual Reporting .....	39
	17.5	Auditing by City.....	40
	17.6	Failure to Record.....	40
Section 18.		Security Deposit.....	41
Section 19.		Insurance .....	42
	19.1	Approval of Insurance.....	42
	19.2	Commercial General Liability .....	42
	19.3	Automobile Liability .....	43
	19.4	Increased Limits.....	43
	19.5	All Risk Property Coverage .....	43
	19.6	Additional Insured .....	44

	19.7	Workers' Compensation Insurance .....	44
	19.8	Failure to Maintain Insurance .....	44
	19.9	Contents Insurance .....	44
Section 20.		Termination of Agreement .....	45
	20.1	Termination by City: 15-Day Cure Period .....	45
	20.2	Termination by City: 30-Day Cure Period .....	45
	20.3	Other Termination by City .....	45
	20.4	City's Non-Waiver .....	46
	20.5	Termination by Concessionaire: 30-Day Cure Period .....	46
	20.6	Other Termination by Concessionaire .....	46
	20.7	Concessionaire's Non-Waiver .....	47
Section 21.		Damage or Destruction of Premises .....	47
	21.1	Minor Damage .....	47
	21.2	Extensive Damage .....	48
	21.3	Alternative Space .....	49
	21.4	Limits of City's Obligations Defined .....	49
Section 22.		Financial Responsibility .....	49
	22.1	Taxes, Licenses, Debts .....	49
	22.2	Liens .....	50
	22.3	Leasehold Mortgages Not Permitted .....	50
Section 23.		Access .....	50
Section 24.		Quiet Enjoyment .....	50
Section 25.		City's Right to Enter .....	50
Section 26.		Depreciation and Investment Credit for Federal Income Tax Purposes .....	51
Section 27.		Disadvantaged Business Enterprise ("DBE") Program .....	51
Section 28.		Surrender of Premises .....	51
Section 29.		General Conditions .....	52
	29.1	Rules and Regulations .....	52
	29.2	Hazardous Substances .....	52
	29.3	Indemnification Agreement .....	54
	29.4	Applicable Law .....	56
	29.5	Non-liability of Agents and Employees .....	56
	29.6	Limitation of City's Liability .....	56
	29.7	No Partnership or Agency .....	56
	29.8	Forum Selection .....	56
	29.9	Compliance with Law .....	56
	29.10	Subordination .....	57
	29.11	Discrimination Prohibited .....	57
	29.12	No Exclusive Rights .....	58
	29.13	Agreement Subject to Avigation Priority .....	58
	29.14	Construction Inconvenience .....	59
	29.15	Partial Taking .....	60
	29.16	Total Taking .....	61

	29.17 Ethics .....	61
	29.18 Approvals, Consents, and Notices .....	62
	29.19 Waiver of Anticipated Profits .....	62
	29.20 Contract Interpretation .....	63
	29.21 Approval Rights of City .....	64
	29.22 Required Modifications to Agreement .....	65
	29.23 Force Majeure .....	65
	29.24 Non-Waiver .....	65
	29.25 Administration of Agreement .....	65
	29.26 Approval of Agreement .....	65
	29.27 Savings .....	65
Exhibit A	Airport .....	
Exhibit B	Request for Proposals ("RFP") .....	
Exhibit C	Proposal .....	
Exhibit D	Concession Locations.....	
Exhibit E	Support Space .....	
Exhibit F	Standards of Operations Manual.....	
Exhibit G	Design Criteria and Construction Manual .....	
Exhibit H	Plans and Specifications.....	
Exhibit I	Menu .....	
Exhibit J	Liquor License Lease and Agreement .....	
Exhibit K	Sublease(s) .....	
Exhibit L	Monthly Statement of Gross Revenues Form.....	
Exhibit M	Letter of Credit and Performance Bond Formats.....	
Exhibit N	Certificate of Insurance Format .....	

## Albuquerque International Sunport Food and Beverage Concession Lease and Agreement

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This **Food and Beverage Concession Lease and Agreement** ("Agreement") is made and entered into by and between the **City of Albuquerque**, a New Mexico municipal corporation ("City") and           **Name of Company**          , a           **Structure of Organization**          , organized and existing under the laws of the state of            ("Concessionaire").

In consideration of the rights, privileges, and mutual obligations contained in this Agreement, City and Concessionaire agree as follows:

### **Section 1. Recitals.**

**1.1** City owns and operates through its Aviation Department the Albuquerque International Sunport ("Airport") as shown in **Exhibit A**, located in the County of Bernalillo, State of New Mexico; and

**1.2** Concessionaire is licensed or otherwise authorized to conduct the business activities described in this Agreement by all governmental agencies having jurisdiction over Concessionaire; and

**1.3** City issued a Request for Proposals, Solicitation Number: 2007-010-SB, "Design, Develop, and Operate Food and Beverage Concessions at Albuquerque International Sunport ("RFP")," dated \_\_\_\_\_, 2007; and

**1.4** Concessionaire submitted its proposal, dated \_\_\_\_\_, 2007, in response to the RFP ("Proposal"); and

**1.5** Concessionaire was selected by City via EC No. \_\_\_\_\_ dated \_\_\_\_\_ 2007, to enter into this Agreement to design, develop, and operate a food and beverage concession at the Airport; and

**1.6** City and Concessionaire have the right and power to enter into this Agreement.

**Section 2. Definitions.** In addition to terms defined elsewhere in this Agreement, the following words and phrases are defined as follows; such definitions to be applicable equally to singular and plural nouns and verbs of any tense:

**2.1 “Airport Architectural Design Review Committee” (“AADRC”)** means the committee that has the authority and responsibility to review and approve, on behalf of the Aviation Department, the plans and specifications submitted by Concessionaire for the Capital Improvements related to its Initial Capital Investment, its Mid-Term Capital Investment, and all additional Capital Investments.

**2.2 “Airport Identification (“ID”)/Access Card”** means the access card issued by the Aviation Department for persons employed at the Airport requiring access to the Secured Areas and Sterile Areas of the Airport pursuant to Section 13 below.

**2.3 “Airport Security Plan”** means a security program developed by the Aviation Department and approved by the FAA, as may be amended, modified or revised from time to time, to ensure the safety and security of the Airport, including the Terminal Building, as well as all users of the Airport.

**2.4 “Alcoholic Beverage”** means any beverage containing alcohol, in any amount, no matter how insignificant, including, but not limited to beer, wine, liquor, and liqueurs.

**2.5 “Aviation Department”** means the City of Albuquerque Aviation Department.

**2.6 “Base Building Work”** means the sub-floor, structural elements, demising walls at the exterior of a Concession Location, as well as utilities infrastructure and other base building improvements, structures and fixtures that City constructs or installs within a Concession Location, to create a shell condition for each Concession Location.

**2.7 “Calendar Year”** means each twelve (12) month period from January 1 through December 31, except for the first (1<sup>st</sup>) Calendar Year of this Agreement, which shall begin on the Commencement Date of this Agreement and shall end on December 31 of that Calendar Year.

**2.8 “Capital Improvements”** means the improvements, structures, fixtures, and trade fixtures installed by Concessionaire, or Concessionaire’s Sublessee, in the Premises, including, without limitation, floors, ceilings, demising walls and store facades; storefront signage; panel boxes and utility connections; wire and conduit infrastructure; decorations; furniture; equipment; shelves; counters; cash wraps; lighting; and interior design and construction work necessary in general to accommodate Concessionaire’s operations.

**2.9 “Catering Services by Concessionaire”** means the delivery, storage, preparation or packaging of food or beverages at or within the Premises for consumption at locations other than the Concessionaire’s Concession Locations regardless of the point of sale for such food or beverage.

**2.10 “Commencement Date”** means the date that Concessionaire is obligated to commence payment of its Minimum Monthly Guarantee, and such date shall be the earlier of, a) the first day of the month following the end of Concessionaire’s Transition Period, or b) July 1, 2008.

**2.11 “Concession Location”** means each of the concession areas located within the Premises as described in **Exhibit D**, and as further identified by a unique identifier number assigned to each Concession Location by the Aviation Department.

**2.12 “Concession Program”** means the new Food and Beverage Concession Program consisting of fifteen (15) Concession Locations as described in RFP Solicitation Number 2007-010-SB “Design, Develop, and Operate Food and Beverage Concessions at Albuquerque International Sunport.”

**2.13 “Construction Commencement Date”** means the date on which Concessionaire is permitted to begin construction of its approved Initial Capital Improvements within a particular Concession Location in accordance with the terms and provisions of this Agreement.

**2.14 “Construction Period”** means the period of time beginning on the Construction Commencement Date and ending on the earlier of, a) the date of completion of Concessionaire’s Initial Capital Improvements for a specific Concession Location or b) that date which is ninety (90) days from the Construction Commencement Date.

**2.15 “Construction Schedule”** means the timetable developed and submitted by Concessionaire, and approved by the AADRC, for the construction and installation of the Capital Improvements related to its Initial Capital Investment, Mid-Term Capital Investment, and all additional Capital Investments.

**2.16 “Depreciation Schedule”** means a schedule reflecting the monthly depreciation of the Eligible Costs for Concessionaire’s Capital Improvements related to the Initial Capital Investment or Mid-Term Capital Investment made by Concessionaire or its Sublessee in or to the Premises, which schedule is subject to approval by City and shall reflect depreciation on a straight-line basis of such Capital Improvements over the portion of the Term remaining at the time City provides such approval. Any schedule submitted for this purpose shall not be deemed a “Depreciation Schedule” until City has approved it.

**2.17 “Design Criteria and Construction Manual”** means the manual developed by City, attached hereto and incorporated herein as **Exhibit G**, as may be amended, modified, or supplemented from time to time, that specifies the required standards for aesthetic qualities, designs, materials requirements, and the construction approval process, for Concessionaire’s Capital Improvements to its Concession Locations.

**2.18 "Director"** means City's Director of Aviation, or such other person designated by Director, with complete authority to exercise the rights and obligations of City under this Agreement.

**2.19 "Disadvantaged Business Enterprise" ("DBE")** means a business entity, whether a sole proprietorship, partnership, corporation or other entity, of which at least fifty-one percent (51%) of the ownership thereof is owned and controlled by a "socially and economically disadvantaged individual" as such term is defined in the Airport and Airways Improvement Act of 1982, as amended, and the regulations promulgated pursuant thereto in 49 C.F.R. Part 23, Subpart F, as amended. To qualify as a DBE, a business entity must meet the experience and economic guidelines set forth in 49 C.F.R. Part 23, Subpart F, as amended, and must be certified by the State of New Mexico as a DBE.

**2.20 "Effective Date"** means the date this Agreement is signed by City's Chief Administrative Officer and such date that City and Concessionaire's rights, privileges, and obligations pursuant to this Agreement commence.

**2.21 "Eligible Costs"** means a) all construction costs, b) architectural and engineering fees, construction management fees, and the cost to obtain applicable permits, all of which shall not exceed fifteen percent (15%) of the contracted construction costs, c) the cost of equipment and trade fixtures, and d) the cost of furnishings. The following costs shall not be included as Eligible Costs: 1) costs in excess of one hundred twenty-five percent (125%) of the estimated cost provided by Concessionaire for the Capital Improvements related to its Initial Capital Investment or Mid-Term Capital Investment approved in writing by the AADRC, 2) intra-company overhead, 3) financing costs including loan origination fees, interest, or points, 4) legal fees, or 5) any non-construction-related costs in connection with such Initial Capital Investment or Mid-Term Capital Investment. In order for any cost or expenditure to qualify as an Eligible Cost, Concessionaire must submit to City written evidence of the payment thereof, pursuant to subsection 8.2.1 below.

**2.22 "Environmental Health Department"** means the City of Albuquerque Environmental Health Department or such other governmental agencies having jurisdiction to inspect Concessionaire's Premises to ensure compliance with local, state, and federal laws and regulations.

**2.23 "Environmental Laws"** shall be interpreted in the broadest sense to include any and all federal, state, local statutes, ordinances, regulations, rules or guidelines now or hereafter in effect, as the same may be amended from time to time, which govern Hazardous Substances or relate to the protection of human health, safety or the environment, and include but are not limited to: the Solid Waste Disposal Act, 42 U.S.C. 3251, et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act/Pesticide Act, 7 U.S.C. Section 13 et seq.; the Safe Drinking Water Act, 44 U.S.C. Section 300(f) et seq.; the Oil Pollution Control Act of 1990, 33 U.S.C. Section 2761 et

seq.; Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Section 9601 et seq., and as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. Law No. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C., Section 2601 et seq.; the Clean Air Act, 42 U.S.C. 7401 et seq.; the Clean Water Act, 33 U.S.C., Section 1251, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 et seq.; the Resources Conservation and Recovery Act, 42 U.S.C., Section 6901 et seq.; and those substances defined as hazardous waste or as hazardous substances under the laws of New Mexico and/or the United States or in regulations promulgated pursuant to such laws.

**2.24 “FAA”** means the United States Federal Aviation Administration, and any successor agency, office or department thereto.

**2.25 “First Class Manner”** means the manner of operation of business within the Premises for which the standards for cleanliness and customer service meet or exceed the requirements of the Standards of Operations Manual attached hereto as **Exhibit F**, and which meet the standards of upscale malls and similar high quality airport and non-airport food and beverage facilities.

**2.26 “Governmental Authority”** means each federal, state and municipal government, authority and agency and its respective agencies, departments, and authorities, including without limitation, City, Bernalillo County, the State of New Mexico, the United States Department of Transportation, the FAA and the TSA.

**2.27 “Gross Revenues”** means the total amount of money paid or payable, whether in cash, credit, or otherwise, for sales made or services rendered at or from a Concession Location. A sale shall be treated as consummated, and a service shall be deemed rendered, at the time of determination of the amount due for each transaction, and the entire amount of such sale shall be included in Gross Revenues and deemed received. No deduction shall be allowed for uncollected or uncollectible credit accounts or checks returned for insufficient funds.

In addition to the Gross Revenues described above, Gross Revenues shall also include, but not be limited to, the following:

- a) The Gross Revenues of each of Concessionaire’s sublessees for the purpose of calculating Concessionaire’s total Percentage of Gross Revenues Fee pursuant to subsection 16.2 below;
- b) Proceeds resulting from customers’ use of merchandise certificates and/or airline vouchers;
- c) Electronic or telephone orders received or filled by Concessionaire at the Airport;
- d) Deposits not refunded to customers;
- e) Sales of Catering Services;
- f) Sales through vending machines or other devices located within Concession Locations, if applicable; and

- g) All insurance proceeds received due to loss of Gross Revenues under any business interruption insurance coverage maintained by Concessionaire.

Gross Revenues shall not include:

- a) Federal, state, municipal or other government excise taxes (except Federal manufacturer's excise taxes), use, sales, privileges or retailer's occupation taxes now or hereafter imposed and required to be collected by Concessionaire directly from patrons or customers or as part of the price of any goods, wares, merchandise, services or displays and required to be paid over in turn by Concessionaire to any governmental agency;
- b) Receipts from the sale or trade-in value of any equipment used on the Airport and owned by Concessionaire;
- c) The value of any merchandise, supplies or equipment exchanged or transferred from or to other locations of business of Concessionaire where such exchanges or transfers are not made for the purpose of avoiding a sale by Concessionaire which otherwise would be made from or at the Airport;
- d) Receipts in the form of refunds for the value of merchandise, supplies or equipment returned to shippers, suppliers, or manufacturers;
- e) Receipts with respect to any sale where the subject of such sale, or some part thereof, is thereafter returned by purchaser, and accepted by Concessionaire, to the extent that any refund is actually granted or an adjustment is actually made, either in the form of cash or credit;
- f) Receipts from the sale of uniforms or clothing to Concessionaire's employees where such uniforms or clothing are required to be worn by such employees as a condition of their employment;
- g) Gratuities for services performed by employees of Concessionaire that are paid by such Concessionaire or its customers to such employees, except to the extent such Concessionaire may be entitled to receive a portion of such gratuities;
- h) Discounts, if separately stated, given by Concessionaire on sales of merchandise or services to Aviation Department employees and other persons employed at the Airport who are in possession of a valid Airport Identification (ID)/Access card issued by City;
- i) Rents and fees paid to Concessionaire by its sublessees for the privilege of occupying any portion of the Premises;
- j) Shipping and delivery charges, if provided, at the cost of such shipping or delivery, and such services are merely an accommodation to customers;
- k) Revenues generated from any non-Airport related business activities of Concessionaire; and
- l) Except with respect to insurance proceeds received due to loss of Gross Revenues under any business interruption insurance coverage as provided above and/or insurance proceeds that may be payable to City under such coverage, receipts from all other insurance proceeds received by Concessionaire as a result of a loss or casualty.

**2.28 "Hazardous Substances"** shall be interpreted in the broadest sense to include any and all substances, materials, wastes, pollutants, oils or governmental regulated substances or contaminants as defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, including but not limited to asbestos and asbestos containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste, or any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, distributed, disposed, or released. Hazardous Substances shall also mean any hazardous materials, hazardous wastes, toxic substances, or regulated substances under any Environmental Laws.

**2.29 "Initial Capital Improvements"** means the Capital Improvements, as approved by the AARDC pursuant to Section 8 below, that Concessionaire is obligated to make to each Concession Location in order that Concessionaire's initial food and beverage operations can commence.

**2.30 "Mid-Term Capital Investment"** means the investment required by Concessionaire, pursuant to subsection 8.7 below, to renovate and remodel each of its Concession Locations to ensure that such Concession Locations remain in a first-class condition throughout the term of this Agreement.

**2.31 "Minimum Initial Capital Investment"** means the amount of capital investment offered by Concessionaire in its Proposal to be used specifically for those costs associated with the design, construction, equipment, and furnishings for all Concession Locations within its Concession Package, pursuant to the provisions of subsection 8.2 below.

**2.32 "Minimum Monthly Guarantee"** means the monthly guarantee offered by Concessionaire in its Proposal, which is payable to City for the privilege of designing, developing, and operating a food and beverage concession at the Airport, and subject to the provisions of subsection 16.1 below.

**2.33 "Point of Sale Data"** means sales data reflecting the amount of each sales transaction, items sold per transaction, time and date of the transaction and the sales category applicable to each item sold.

**2.34 "Premises"** means those areas assigned to Concessionaire pursuant to Section 4 below, including its Concession Locations and Support Space.

**2.35 "Rules and Regulations"** means those rules, procedures, and regulations promulgated by City for the orderly use of the Airport, as may be amended,

modified or supplemented from time to time, including without limitation, the Airport Security Plan.

**2.36 "Secured Area"** means the area at the Airport located within the perimeter security fence including the airfield and the Security Identification Display Area.

**2.37 "Shell Condition"** means smooth concrete floors, demising studs and walls, and utility conduits, lines and pipes of typical commercial capacity and size located at the division lines of each Concession Location or in reasonable proximity thereto, as may be applicable to each Concession Location.

**2.38 "Standards of Operations Manual"** means the manual developed by City, attached hereto and incorporated herein as **Exhibit F**, as may be amended, modified, or supplemented from time to time, that specifies the required standards for Concessionaire's food and beverage operations.

**2.39 "Sterile Area"** means all portions of the Terminal Building beyond the passenger security checkpoint, including the non-public areas, which may only be accessed by individuals that have been issued an Airport Identification (ID)/Access card.

**2.40 "Sublease"** means a lease executed by Concessionaire and a Sublessee, which has been approved by City pursuant to Section 14 below, by which Concessionaire subleases to such Sublessee one (1) or more of its Concession Locations and/or a portion of its Support Space.

**2.41 "Sublessee"** means any person or entity that is party to a Sublease with Concessionaire and has the right thereunder to occupy one (1) or more of Concessionaire's Concession Locations and/or a portion of its Support Space for food and beverage operations as provided under such Sublease. Any reference to a Sublessee in this Agreement shall be made only when, or if, applicable.

**2.42 "Support Space"** means the space within the Terminal Building and other areas at the Airport leased to Concessionaire, as shown in **Exhibit E** attached hereto and incorporated herein, for use by Concessionaire for storage and for food preparation and as further described in subsection 4.2 below.

**2.43 "Term"** means a period of ten (10) years commencing on the earlier of, a) the first day of the next calendar month following completion of the Construction Period for the final Concession Location of the new Concession Program, or b) July 1, 2008, unless sooner terminated in accordance with the terms and provisions of this Agreement.

**2.44 "Terminal Building"** means the interconnected facilities at the Airport, existing or under construction as of the date of this Agreement, known individually as Concourse A, Concourse B, and Concourse E, along with all user movement areas,

public areas and baggage claim areas therein and interconnecting the facilities, as shown in **Exhibit A**, and all future expansions thereto.

**2.45 “Transition Period”** means the period of time beginning on the Effective Date of this Agreement and continuing through the last day of the Construction Period for Concessionaire’s final Concession Location, during which time Concessionaire must expend its Minimum Initial Capital Investment, must complete all of its Initial Capital Improvements, and must begin payment of its Percentage of Gross Revenues Fee.

**2.46 “Transition Period Concession Program”** means a modified Concession Program developed by Concessionaire and approved by City, and as may be further modified, to provided a limited menu of food and beverage items to the traveling public during the Transition Period.

**2.47 “TSA”** means the United States Transportation Security Administration, and any successor agency, office or department thereto.

**Section 3. Incorporation of RFP and Proposal.** The City’s Request for Proposals Solicitation Number: 2007-010-SB, “Design, Develop, and Operate Food and Beverage Concessions at Albuquerque International Sunport (“RFP”) and Concessionaire’s proposal dated \_\_\_\_\_, 2007 in response to the RFP (“Proposal”), are attached hereto and incorporated herein by reference as **Exhibit B** and **Exhibit C**, respectively. Concessionaire shall be obligated to meet all terms and conditions described in the RFP and the Proposal and any written clarification thereto accepted by City; provided, however, that a) in the event that an express provision of this Agreement is in conflict with any provision of the RFP and/or the Proposal, this Agreement shall govern and control unless City deems that the provision in the RFP and/or the Proposal offers a higher level of service than indicated in the conflicting provision of this Agreement; and b) the form of draft sublease included with the Proposal is specifically excluded from the provisions of this Section 3.

**Section 4. Premises.** City, for and in consideration of the rents and fees reserved in this Agreement and each of the covenants, conditions, and agreements set forth in this Agreement to be kept and performed by Concessionaire, hereby leases to Concessionaire for its exclusive use, and Concessionaire leases from City, upon the conditions, covenants, and agreements set forth in this Agreement, all of which Concessionaire accepts, the Concession Locations depicted in **Exhibit D** and the Support Space depicted in **Exhibit E** (collectively “Premises”), both of which are attached hereto and incorporated herein.

**4.1 Concession Locations.** Concessionaire’s Concession Locations are those locations as shown on **Exhibit D**, and as described below:

***(Only those Concession Packages and Concession Locations awarded to Concessionaire will be incorporated into this Agreement)***

**-Package A – Specialty Coffee and Bakery Concept (4 Locations)**

Location 1 – Terminal Building Level 3 Pre-Security  
Approximate square footage: 2,416 sq. ft.

Location 7 – Terminal Building Level 3 Concourse A Post-Security  
Approximate square footage: 1,209 sq. ft.

Location 9 – Terminal Building Level 1 Bag-Claim Pre-Security Kiosk  
Approximate square footage: 105 sq. ft.

Location 11 – Consolidated Rental Car Facility  
Approximate square footage: 732 sq. ft.

**-Package B – Full Service Casual Dining Restaurant & Bar Concepts and Branded Quick-Service Concept (3 locations)**

Location 2 – Terminal Building Level 3 Pre-Security  
Approximate square footage: 14,210 sq. ft.

Location 4 – Terminal Building Level 3 Post-Security  
Approximate square footage: 4,968 sq. ft.

Location 12 – Terminal Building Level 3 Post-Security  
Approximate square footage: 773 sq. ft.

**-Package C – Various Quick-Serve Concepts and Smokers Bar & Grill (7 Locations)**

Location 3 – Terminal Building Level 3 Post-Security  
Approximate square footage: 5,930 sq. ft.

Location 5 – Terminal Building Level 3 Concourse B Post-Security  
Approximate square footage: 1,159 sq. ft.

Location 8 – Terminal Building Level 3 Concourse B Post-Security  
Approximate square footage: 1,411 sq. ft.

Location 10 – Terminal Building Level 2 Pre-Security  
Approximate square footage: 1,203 sq. ft.

**-Package D – Branded Franchise Quick-Serve Sandwich & Bar Concept (1 Location)**

Location 6 – Terminal Building Level 3 Concourse A Post-Security  
Approximate square footage: 2,005 sq. ft.

Concessionaire acknowledges that the square foot measurements of each Concession Location as set forth above and as shown in **Exhibit D**, are approximate only, and further agrees that it shall have no right to use, possess, or occupy such Concession

Location for any purpose until the Construction Commencement Date for each Concession Location.

**4.2 Support Space.** Upon request by Concessionaire, City shall lease to Concessionaire, as part of its Premises, \_\_\_\_\_ (\_\_\_\_\_) square feet of Support Space as shown in **Exhibit E**, to be used in connection with its concession operations. Concessionaire shall be responsible for the cost of any utility installations that are in addition to those currently provided in the Support Space by City, and for payment of all utilities consumed within the Support Space, if applicable.

**4.3 Acceptance of Premises.** Concessionaire's acceptance of each Concession Location on the Construction Commencement Date for each Concession Location, shall be conclusive evidence that Concessionaire has accepted such Concession Location in an "as is, where is, and with all faults" condition and that such Concession Location was in good and satisfactory condition for the use intended at the time such possession was taken. In addition, Concessionaire hereby agrees that its Support Space, if applicable, shall be accepted in an "as is, where is, and with all faults" condition.

**4.4 Temporary Premises.** To the extent that City identifies certain areas in the Terminal Building for use by Concessionaire as Temporary Premises for the provision of food and beverages during the Transition Period, Concessionaire shall, when requested by City, provide such Transition Period Concession Program through the use of carts and kiosks provided by Concessionaire. Concessionaire's use of such Temporary Premises shall be approved by Director, and be subject to relocation from time to time at the verbal or written direction of Director. Concessionaire shall remove such temporary facilities upon completion of its Initial Capital Improvements or upon receipt of written notice from Director to remove such temporary facilities, whichever first occurs.

**Section 5. Use of Premises.** City hereby grants to Concessionaire the right, privilege, and obligation to use and occupy the Premises for the sole purpose of conducting food and beverage retail sales to users of the Airport pursuant to the terms and conditions contained in this Agreement, and in accordance with the provisions of the Standards of Operations Manual attached hereto and incorporated herein as **Exhibit F**. Concessionaire is responsible for obtaining all licenses and permits necessary for the sale of food and beverages in each Concession Location, including, without limitation, alcoholic beverage licenses and permits, if applicable.

**5.1 Limitations on Use of Premises.** Concessionaire covenants and agrees that its use of the Premises shall strictly conform to the provisions of Section 5 above, and that Concessionaire's limitations regarding use of the Premises shall include, but not be limited to, the following:

a) Sales of Other Items. Concessionaire shall not sell, distribute, or otherwise furnish any goods, wares, merchandise, or services to users of the Airport, other than those specific food and beverage items approved by City, and all such sales shall be retail sales only, pursuant to the terms and conditions of this Agreement. Concessionaire shall not be entitled to sell, distribute, or otherwise furnish any goods, wares, merchandise, or services which City has approved for sale at the retail merchandise stores within Terminal Building, other than prepackaged bottled beverages, or items specifically approved in writing by City.

b) Serving Sizes. Sales of food and beverage items approved by City shall be limited to individual serving sizes only.

c) Catering. Use of the Premises for Catering is prohibited except for the catering of events at the Airport and in the Terminal Building approved by Director.

d) In-Flight Catering. In-flight catering for airlines, or for companies providing food or beverage to airlines, is prohibited.

e) Vending Machines. Vending machine sales of whatever nature, including sales of food and beverage items, at the Premises is strictly prohibited without the prior written approval of City.

f) Alcoholic Beverages. Alcoholic Beverage sales, if applicable, shall be limited to sale by the drink only. No package Alcoholic Beverage sales by the bottle are allowed provided, however, that beer and wine may be sold in individual serving bottles for immediate consumption at the Premises only. Concessionaire shall conduct all Alcoholic Beverage sales at its Concession Locations, if applicable, under the authority of, and in strict compliance with, City's Government liquor license.

**5.2 Warranties of Concessionaire.** Concessionaire hereby warrants and acknowledges that:

a) City has made no representations or assurances concerning the suitability of the Premises for Concessionaire's use or for any other use, and that except as expressly provided in this Agreement, City shall have no obligation whatsoever to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Premises or any improvements, fixtures, trade fixtures, furnishings, or equipment constructed, installed, or used on or in the Premises. Concessionaire further acknowledges that its rights and privileges pursuant to this Agreement shall not include any rights or privileges to additional Premises at the Airport or within the Terminal Building, unless and until, Concessionaire shall be awarded such additional Premises as a result of submitting its bid or proposal in response to future requests for bids or requests for proposals issued by City.

b) Concessionaire has made its own investigation of all costs of doing business under this Agreement, including the costs of constructing improvements to the Premises, and the costs of furnishings, fixtures, trade fixtures, signs, inventory, and equipment needed to operate from the Premises; that it has done its own projections of the volume of business it expects to generate in operating its Concession Locations; that it is relying on its own business judgment concerning its prospects for operating its Concession Locations under this Agreement on a profitable basis, and that City has not made any representations or assurances with respect to such matters.

c) Concessionaire has not relied upon the accuracy of any statistics or projections relating to the Airport and its operations, which have been provided to Concessionaire by City or anyone on its behalf and City, and shall not hold City responsible for any inaccuracies in such statistics or their interpretation.

d) City shall not be liable for any loss of business or damages sustained by Concessionaire as a result of any change in the operation or configuration of, or any change in any procedure governing the use of the Airport by any Governmental Agency.

e) City, its employees, its contractors and subcontractors, and furnishers of utilities and other services, shall have the right from time to time, at their own cost and expense, to enter upon the Premises at all reasonable times and upon reasonable notice for the purpose of (i) constructing, installing or maintaining existing and future lines, pipes, mains, wires, conduits, utilities, systems and equipment over, in, under or through the Premises; provided, however, that in each case in the exercise of any such rights, City shall not unreasonably interfere with the use and occupancy of the Premises by Concessionaire or its Sublessees to the extent reasonably practicable under the circumstances, (ii) to inspect any part thereof, and to require Concessionaire to make such repairs, replacements or alterations thereto related to the safety, protection or preservation of the Premises as may, in the opinion of City, be deemed necessary or advisable, (iii) to exercise all other rights reserved by City pursuant to the provisions of this Agreement. Concessionaire acknowledges and agrees that during any real or threatened emergency time is of the essence and no notice by City shall be required prior to entering the Premises.

f) Concessionaire's right to operate a Food and Beverage Concession at the Airport is a non-exclusive right.

**Section 6. City's Right to Contract.** Concessionaire acknowledges and agrees that City shall be entitled, at its sole option, to contract with other food and beverage concessionaires, other than those concessionaires that have been awarded agreements pursuant to the RFP, to operate Concession Locations at the Airport and in the Terminal Building in the event that: a) agreements awarded pursuant to the RFP for such Concession Locations are terminated; b) such Concession Locations are abandoned by

Concessionaire or other concessionaires that executed agreements pursuant to the RFP; c) agreements awarded pursuant to the RFP for such Concession Locations are not executed for any reason, or d) City solicits competitive proposals or bids for additional concession locations and Concessionaire is not awarded an agreement for such additional concession locations.

Upon the expiration or earlier termination of this Agreement, or upon the abandonment by Concessionaire of one or more of its Concession Locations, City shall have the right to award a food and beverage concession agreement to a party other than Concessionaire to operate one or more of Concessionaire's Concession Locations. Concessionaire and its Sublessees shall cooperate fully with City and any successor concessionaire to ensure an effective and efficient transition of food and beverage concession operations within the Concession Location to such successor concessionaire. Concessionaire acknowledges its responsibility to help to ensure continued concession operations in a First Class Manner during any transition to a successor concessionaire and shall take no action that would impair the ability of any successor concessionaire to obtain, in a timely manner, licenses and permits required to commence and maintain such concession operations. In support of City's right as stated above, Concessionaire shall: a) surrender all permits and licenses to operate at such Concession Location to the successor concessionaire, to the extent permitted by Applicable Law, and b) not oppose applications for any such permits or licenses by City or by successor concessionaire. Concessionaire acknowledges and agrees that Concessionaire or its Sublessees shall have no claim or right to any loss of sales or revenues as a result of the award by City of any such successor food and beverage concession agreement.

**Section 7. Sale or Distribution by Others.** Concessionaire acknowledges and agrees that other concessionaires and tenants, including City, shall have the right to sell or distribute food and beverages at the Airport and in the Terminal Building, including the same type of food and beverages sold by Concessionaire. Such other concessionaires and tenants shall have the following rights concerning the sale or distribution of food or beverages:

a) Exclusive Use Premises. Tenants shall be entitled to sell or distribute food and beverages, including by means of vending machines, within their exclusive use premises, which are not accessible to the general public. Such exclusive use premises shall include, but not be limited to, employee lounges, employee offices, and employee operations areas.

b) In-Flight Catering. Airlines shall be entitled to provide in-flight catering for their air passengers, using their own staff or by contract with others. Airlines shall be entitled to distribute meals or snacks for in-flight consumption in the loading bridge, the entrance to the loading bridge, or on board the aircraft.

c) Holdroom Distribution. Airlines shall be entitled to distribute, but not to sell, food and beverages to their ticketed passengers in the passenger seating holdrooms of the concourses in the Terminal Building.

d) Retail Merchandise Stores. Retail merchandise stores, shall be entitled to sell a variety of prepackaged food and beverage items, including but not limited to, candy, nuts, gum, popcorn, chips, crackers, beverage mixes, bottled water, bottled sodas, and bottled juices.

e) Sale or Distribution by City. City shall be entitled to sell or distribute food and beverages, including by means of vending machines, to City employees in all areas of the Airport and Terminal Building not open to the general public, including, but not limited to, employee offices, employee break rooms, reception areas, maintenance shops and other work areas, and conference rooms.

f) Catering of Events. City, tenants, and contract users of Aviation Department meeting rooms and banquet rooms at the Airport and in the Terminal Building, shall be entitled to have specific events catered by concessionaires other than those concessionaires awarded agreements under the RFP, provided that such concessionaire shall receive prior approval by City for such service.

**Section 8. Construction of Capital Improvements.** All Capital Improvements constructed and installed by Concessionaire related to its Initial Capital Investment, its Mid-Term Capital Investment, or any other such Capital Investment in each Concession Location, shall be at Concessionaire's sole cost and expense. All Capital Improvements constructed or installed by Concessionaire shall be free and clear of all liens, encumbrances and security interests and shall be in strict compliance with the provisions of this Section 8 and the Design Criteria and Construction Manual attached hereto and incorporated herein as **Exhibit G**.

Pursuant to the provisions of City's Design Criteria and Construction Manual, prior to Concessionaire commencing construction of any Capital Improvements at its Concession Locations, Concessionaire shall submit to the Airport Architectural Design Review Committee ("AADRC") for approval, complete plans and specifications for all Capital Improvements Concessionaire intends to make to each Concession Location. Approval by the AADRC shall include approval of all facets of construction and installation of Concessionaire's Capital Improvements, including Concessionaire's project elements related to design, architecture, engineering, mechanical, electrical, and communications/data systems. First-class standards of design and construction are required, and the AADRC shall be entitled to reject inferior designs submitted.

Any review or approval by the AADRC of Concessionaire's plans and specifications, or any inspection by an AADRC representative of the work or materials, shall not be deemed to constitute a waiver or release by City of any obligation or responsibility of

Concessionaire under this Agreement, or an assumption of any risk or liability by City with respect thereto, and Concessionaire shall make no claim against City on account of such review, approval, or inspection. AADRC reviews, approvals, and inspections shall not constitute assumption by City of any responsibility for the adequacy of the design or construction; such responsibility shall remain totally with Concessionaire and Concessionaire's architects, engineers, and contractors. Concessionaire shall cause all Capital Improvements authorized under this Agreement to be constructed only by a contractor properly licensed by the State of New Mexico to construct such Capital Improvements.

**8.1 Construction Bonds and Insurance.** AADRC's approval of Concessionaire's final plans and specifications and time schedule for its Initial Capital Investment, its Mid-Term Capital Investment, or any other such Capital Investment pursuant to the provisions of Section 8 above, shall constitute Concessionaire's notice to proceed with the construction of its Capital Improvements, provided that all the following requirements have been satisfied:

**8.1.1** Concessionaire's construction contractor has duly executed a Labor and Materials Payment Bond with a surety authorized to do so in the State of New Mexico, in an amount equal to the value of its contract for construction of the Initial Capital Improvements. Such Labor and Materials Bond shall insure City against loss by reason of any lien or liens that may be filed against the Initial Capital Improvements or Airport property. Concessionaire shall provide City with a true copy of such executed bond, upon request by Director.

Concessionaire shall be solely responsible for payment and pay promptly, when due, all persons supplying labor and materials to its contractor for all elements of construction of its Initial Capital Improvements. Concessionaire shall permit no lien, including mechanic's liens, or claim to be filed or prosecuted against City on account of any such construction or materials furnished. Concessionaire may contest the correctness or validity of any such lien or claim, but Concessionaire shall indemnify, defend, and hold harmless City, its elected representatives, officers, agents, and employees, and the Initial Capital Improvements from any and all claims and liability for payment of any such lien, and related attorneys' fees; and

**8.1.2** Concessionaire has delivered to Director a Performance Bond executed by Concessionaire's construction contractor and a surety acceptable to City, and in a form acceptable to City, securing contractor's performance of its obligations relating to the construction of the Initial Capital Improvements. Such Performance Bond shall be in an amount equal to the value of contractor's construction contract and shall name City as obligee thereunder. In the alternative, Concessionaire may submit to Director in lieu of a Performance Bond, a cash deposit in an amount equal to the total value of Concessionaire's construction contract, subject to the approval of City; and

**8.1.3** Concessionaire has delivered to Director for approval, and Director has approved, Concessionaire's construction contractor's certificates of insurance for coverage evidencing a) "all risk" type builders' risk insurance coverage and workers' compensation insurance coverage and b) compliance with the applicable insurance provisions of Section 19 below; and

**8.2 Minimum Initial Capital Investment.** Concessionaire shall completely construct and install all Initial Capital Improvements in each of its Concession Locations pursuant to plans and specifications approved in writing by the AADRC, to be attached hereto and incorporated herein as **Exhibit H**, in an amount of not less than \_\_\_\_\_/100 Dollars (\$\_\_\_\_\_). Concessionaire shall complete its Initial Capital Improvements within each Concession Location within ninety (90) days following the Construction Commencement Date for such Concession Location.

**8.2.1 Certification of Construction Expenditures.** In order to confirm and certify that Concessionaire's Minimum Initial Capital Investment has met or exceeded the amount stated in subsection 8.2 above, Concessionaire shall provide to City, within ninety (90) days following completion of construction, certified receipts and lien releases in detail acceptable to City, for all Initial Capital Improvements constructed and installed at its Concession Locations. In the event that such certified receipts indicate that Eligible Costs, as defined in subsection 2.21 above, related to Concessionaire's Minimum Initial Capital Investment are less than required under the terms and provisions of this Agreement, Concessionaire shall pay to City one hundred ten percent (110%) of the difference between the amount required to be spent and the Eligible Costs actually incurred by Concessionaire and its Sublessee. If City disputes the amount of Eligible Costs claimed by Concessionaire and its Sublessee, City may utilize its own audit and accounting staff or, at its option and expense, hire a certified public accountant to audit such Eligible Costs. If it is determined that the Eligible Costs actually incurred by Concessionaire and its Sublessee are less than the minimum amount required hereunder, then Concessionaire shall pay to City within thirty (30) days of such determination, in addition to the other amounts due hereunder, the cost of conducting such audit.

**8.3 Coordination of Construction.** Concessionaire and its contractors shall fully coordinate with the Aviation Department in the construction, installation or remodeling of all Capital Improvements at each Concession Location, and shall notify Director at least forty-eight (48) hours prior to commencement of such construction, installation, remodeling, or delivery of material for such construction, installation, or remodeling. Further, Concessionaire and its contractors shall construct, install, or remodel said Capital Improvements without interfering with other users of the Airport.

**8.4 Certificate of Occupancy.** Within ten (10) days after the completion of construction of its Capital Improvements, if applicable, Concessionaire shall submit a copy of the City of Albuquerque Certificate of Occupancy to Director. Within ten (10)

days after receipt of the Certificate of Occupancy, Director may schedule an inspection of such Capital Improvements to be accompanied by Concessionaire for purposes of confirming compliance with its final plans and any subsequent modifications to the final plans.

**8.5 Delay in Completion.** Concessionaire agrees that it will take all necessary action available to ensure the timely completion of the construction, installation, or remodeling of all Capital Improvements related to its Initial Capital Investment, its Mid-Term Capital Investment, or any other such Capital Investment in each Concession Location within the Construction Schedule submitted by Concessionaire and approved by the AADRC. Fines payable by Concessionaire to City for failure to complete the construction, installation, or remodeling of its Capital Improvements as required under this Agreement, are described in the Design Criteria and Construction Manual.

**8.6 Failure to Complete Capital Improvements.** In the event Concessionaire fails to substantially complete the construction, installation, or remodeling of its Capital Improvements related to its Initial Capital Investment or its Mid-Term Capital Investment in each Concession Location within the Construction Schedule submitted by Concessionaire and approved by the AADRC, and in an amount equal to at least ninety percent (90%) of such required investment, such failure shall be deemed a default under the terms of this Agreement. In the event of such default, City shall be entitled to terminate this Agreement pursuant to subsection 20.2 below, and at City's sole option, take ownership of Concessionaire's Capital Improvements, subject to any indebtedness thereon.

**8.7 Mid-Term Capital Investment.** In order to ensure that Concessionaire's Concession Locations remain in a first-class condition throughout the Term, Concessionaire shall make a Mid-Term Capital Investment in an amount not less than **Sixty and 00/100 Dollars (\$60.00)** per square foot for each Concession Location. The required Mid-Term Capital Investment shall be used for renovation and remodeling of Concessionaire's Capital Improvements, and shall not be used for ordinary maintenance expenses such as cleaning, relamping, or minor repairs. Such renovation and remodeling shall be completed free and clear of all liens, encumbrances and security interests and shall be in strict compliance with the provisions of this Section 8 and the Design Criteria and Construction Manual.

No later than September 1 of the fifth (5<sup>th</sup>) full Calendar Year, Concessionaire shall submit to the Airport Architectural Design Review Committee ("AADRC") for approval, complete plans and specifications detailing all elements of renovation and remodeling associated with its required Mid-Term Capital Investment. Following approval by the AADRC, Concessionaire shall complete such renovations and remodeling within the ninety (90) day period commencing January 1 and continuing through March 31 of the sixth (6<sup>th</sup>) full Calendar Year. Pursuant to the provision of subsection 8.2.1 above, in

order to confirm and certify that Concessionaire has met or exceeded its Mid-Term Capital Investment requirement, within ninety (90) days following completion of the renovation and remodeling of each of its Concession Locations, Concessionaire shall provide to City certified receipts and lien releases in detail acceptable to City, for all Eligible Costs related to its Mid-Term Capital Investment.

**8.8 Removal of Unapproved Capital Improvements.** Capital Improvements made to the Premises without the written approval of the AADRC, as required under this Section 8 and the Design Criteria and Construction Manual, or portions of the Capital Improvements that are not constructed or installed as indicated and specified on approved plans, will be considered to be unapproved Capital Improvements constructed in violation of the provisions of this Agreement. Unapproved Capital Improvements shall be removed by Concessionaire, at Concessionaire's sole expense, within fifteen (15) calendar days after Concessionaire's receipt of written notice of non-compliance from Director.

**8.9 Ownership of Capital Improvements.** All Capital Improvements constructed and installed pursuant to the provisions of this Section 8 and the Design Criteria and Construction Manual, shall be, and shall remain, the property of Concessionaire until expiration or earlier termination of this Agreement. Concessionaire shall not, however, remove any of the Capital Improvements from the Premises, nor waste, destroy, demolish or alter, any of the Capital Improvements on the Premises except as permitted by this Agreement, or as otherwise approved in writing by Director. All Capital Improvements on the Premises at the expiration or earlier termination of this Agreement, shall, without compensation to Concessionaire, become the property of City free and clear of any and all rights to possession and all claims to or against them created by Concessionaire, provided, however, that Concessionaire shall have the right to remove any and all fixtures, trade fixtures, or similar Capital Improvements constructed or installed on the Premises pursuant to Section 28 below.

**8.10 Concessionaire's Contractors.** During any period of construction, installation, or remodeling of its Capital Improvements, Concessionaire hereby agrees that any contract for such construction, installation or remodeling, or for the purchase of material to be used and labor to be performed, shall be in writing and shall contain provisions to protect City from legal liability against all claims of laborers, subcontractors or materialmen against the Premises. Concessionaire further agrees that it shall give City immediate notice of the placing of any lien or encumbrance against the Premises or the Terminal Building and agrees to extinguish all such liens or encumbrances immediately.

In addition to the requirements stated above, Concessionaire shall include in all contracts entered into for the construction, installation, or remodeling of its Capital Improvements, a provision requiring its contractors and subcontractors to indemnify, hold harmless, defend and insure Airport, City, and their directors, officers, and

employees, from and against the risk of third party legal liability for death, injury or damage to persons or property, direct or consequential, arising or alleged to arise out of, or in connection with, the performance of any or all of such construction, installation, or remodeling, whether the claims and demands made are just or unjust, unless same are caused by the negligence or willful act of the indemnified parties.

Concessionaire further agrees to include in all contracts entered into for the construction, installation, or remodeling of its Capital Improvements a reasonable and lawful provision for the payment of actual or liquidated damages in the event that the contractor fails to complete such construction, installation, or remodeling within the schedule approved by the AADRC.

**Section 9. Operating Performance Standards.** In order to ensure exceptional customer service at each Concession Location, as well as the highest quality of food and beverages at competitive prices, City has established operating performance standards, which shall be specifically observed and obeyed by Concessionaire, its employees, and its Sublessees. All food and beverage operations shall be in strict compliance with the provisions of this Section 9 and the Standards of Operations Manual attached hereto and incorporated herein as **Exhibit F**.

City may amend its operating performance standards from time to time and shall provide copies thereof to Concessionaire, who shall then distribute such amended standards to its employees and Sublessees. Concessionaire and its Sublessees shall implement and comply with all amended requirements within fifteen (15) days following receipt of such amendment provided, however, that Concessionaire shall immediately implement and comply with, and shall cause its Sublessees to immediately implement and comply with, any amendments promulgated for safety or security reasons.

Concessionaire acknowledges the goal of City to provide the highest level of service to its customers and the traveling public, and in support of this goal, Concessionaire agrees to allow City to monitor, test, or inspect its Concession Locations at any time through the use of City personnel, a shopping service, or by any other reasonable means that do not adversely interfere with the operation of its Concession Locations. Following such inspection, City shall have the right to make reasonable objections to the quality of items sold, the character of services rendered to the public, the prices charged, and the appearance and condition of the Concession Locations.

Although discussed in greater detail in the Standards of Operations Manual, the following is provided as a summary of the key operational requirements of Concessionaire:

**9.1 Customer Service.** The success of Concessionaire's food and beverage operations is primarily the result of exceptional service provided to its customers including the traveling public. Customers should be greeted warmly when entering a

Concession Location, food and beverage orders should be taken quickly, service should be provided promptly and in a friendly and courteous manner, and payments should be processed efficiently and without delay.

**9.2 Concessionaire's Employees.** In order to achieve exceptional customer service, Concessionaire shall recruit and train only the most qualified individuals for its management organization and service staff team, and shall employ only those individuals possessing the highest degree of quality and character. All employees should be polite, positive, and constructive in their interactions with customers and with each other; they should have a thorough understanding of the products and menu items being sold; they should take pride in their appearance; they should employ sanitary practices at all times; and they should be capable of directing travelers to various locations at the Airport.

**9.3 Hours of Operation.** Concession Locations shall be operated seven (7) days a week, 365 days a year, unless otherwise approved by City, and in a manner otherwise consistent with the requirements prescribed by City in accordance with the actual aviation and business operations at the Airport.

Generally, a post-security Concession Location shall be open and be ready to serve the public at least one and one-half (1½) hours before the first scheduled flight departure of the day from the concourse where it is located to one-half (1/2) hour after the last actual departure of the day from such concourse, and a pre-security Concession Location shall be open from 5:00 a.m. until 11:00 p.m.

Specific requests for exceptions to these hours including exceptions for holidays, operating considerations, or other reasons must be submitted to City at least thirty (30) days before the proposed change, and City shall provide its approval or disapproval of the request, in part or in total, within ten (10) days after receipt of such request. Fines, as provided in the Standards of Operations Manual, may be imposed upon Concessionaire for the failure of a Concession Location to operate during the hours prescribed herein.

**9.4 Staffing Requirements.** Concessionaire shall have at all times during the hours of operation for each of its Concession Locations, an experienced manager or supervisor on duty, qualified and empowered to operate the Concession Location. The manager on duty shall ensure that there are sufficient additional employees during such hours of operation to conveniently and efficiently serve the public. All employees, when feasible, should be cross-trained in order to change roles to meet the needs of customers at any point in time.

**9.5 Menus and Menu Boards.** Menus and menu boards are an important aspect in the delivery of exceptional customer service and careful consideration shall be given to the design of, and the information contained within, such menus and menu

boards. The information must be clear and concise; it must accurately describe the food items or beverages being offered; and it must contain only current prices.

**9.6 Merchandising.** Concessionaire shall develop and implement creative and effective merchandising methods within each of its Concession Locations. Innovative methods may include prominent food and beverage displays, appealing menu boards and tabletop menus, tempting pictures of food, full food display cases, promotional displays, and attractive packaging.

**9.7 Point-of-Sale.** In order to provide an accurate record of concessions transactions and to provide a high level of service to customers, all cash registers or other point of sale terminals used in each Concession Location must have a reasonable number of segregated category addresses to allow for analysis of sales trends and sales by types of products, an input device consisting of a keyboard, scanner or both, and a customer fee display of sufficient size and legibility to be readily observed by the customer during the processing of a transaction.

In addition, each cash register or other point of sale terminal must have the capability a) to record transactions by sequential control number to the audit tape or computer files; b) to print a transaction history to tape or file by hour (time of day), day, month and year; c) to print a customer receipt showing the amount due, amount tendered and the change due to the customer together with the time and date, as well as the printed customer service number; and d) unless otherwise approved by City prior to opening a Concession Location, the capability to accept at least three (3) major credit cards and, wherever commercially reasonable, to provide a so-called "swipe and go" credit card service to customers.

**9.8 Service Guidelines.** In order to maximize the use of each Concession Location and to provide the highest level of customer service, Concessionaire shall implement a comprehensive service requirements plan that fulfills the customer's needs and meets their high expectations. This plan shall include elements such as arrangement of furniture within the Concession Location; appropriate times for clearing tables and performing intermittent cleaning; proper table settings; food product standards; food preparation standards; deliveries and stocking of food and other items; appropriate cleaning practices; and all other considerations that allow Concessionaire to utilize each Concession Location to its maximum efficiency.

**9.9 Maintenance of Premises.** Throughout the Term, at its sole cost and expense, Concessionaire and its Sublessee shall keep and maintain each Concession Location, and each Support Space area, in a clean, orderly, safe, and sanitary condition, and shall make all repairs, renewals, and replacements of its Capital Improvements as and when necessary. City shall have the right to inspect the Premises, and to require Concessionaire to make such repairs, renewals, or replacements thereto to ensure the safety, protection, or preservation of the Premises as may, in the opinion of City, be

deemed necessary or advisable. This requirement shall pertain to all Capital Improvements constructed or installed within each Concession Location or Support Space area, including all furniture, fixtures, and equipment. Concessionaire shall ensure that all such repairs, renewals, and replacements shall be of a quality equal to or better than the original Capital Improvement, both in materials and workmanship, and shall pay promptly the cost and expense of all such repairs, renewals, and replacements.

In addition to the provisions of this subsection stated above, for each of its Concession Locations and Support Space areas, Concessionaire shall be responsible for: a) the maintenance and repair of all utility service lines, connections and valves, including, without limitation, service lines for the supply of water, electric power, natural gas, and telephone/data transmission lines; b) maintenance and repair of grease interceptors as well as monthly inspections and cleaning of such grease interceptors; c) the maintenance of all fire protection and safety equipment and all other equipment of every kind and nature required by any Governmental Authority; and d) monthly inspections and service by a qualified and licensed exterminator for each of its Concession Locations and Support Space areas for elimination of insects, vermin, rodents and other pests.

**9.10 City’s Right to Construct.** From time to time during the Term, City, its employees, its contractors and subcontractors, and furnishers of utilities and other services, shall have the right to enter upon the Premises at all reasonable times and upon reasonable notice for the purpose of constructing and installing future lines, pipes, mains, wires, conduits, utilities, systems and equipment over, in, under or through the Premises; provided, however, that in each case in the exercise of any such rights, City shall not unreasonably interfere with the use and occupancy of the Premises by Concessionaire or its Sublessees to extent reasonably practicable under the circumstances.

**9.11 Violations and Fines.** Failure to comply with any of the provisions, guidelines, or regulations identified in the Standards of Operations Manual or failure to comply with any of the terms or conditions outlined in this Agreement, may result in the imposition of fines including, but not limited to, those fines as shown in the table below and in the Standards of Operations Manual, as may be amended from time to time.

<b>Violation</b>	<b>Fine</b>
Delay in completion of Concessionaire’s Capital Improvements related to its Initial Capital Investment and Mid-Term Capital Investment [subsection 8.5].	\$1,000.00 per day that the violation exists.
Concessionaire’s failure to abide by its hours of operation, as approved by City, for each Concession Location [subsection 9.3].	\$500.00 per day that the violation exists.
Deficiencies in Product Quality, Customer Service, Cleanliness, Hospitality and Employee Courtesy, or Maintenance. [subsections 9.4, 9.8, and 9.9].	\$250.00 for the first violation during any Calendar Year and \$500.00 for each additional violation during such Calendar Year.

Concessionaire's failure to provide for each of its grease interceptors: a) a monthly inspection report, b) monthly cleaning, or c) an immediate response to a malfunctioning grease interceptor [subsection 9.9].	\$500.00 for the first violation during any Calendar Year and \$1,000.00 for each additional violation during such Calendar Year.
Concessionaire's failure to perform in strict compliance with its approved menu for each Concession Location [Section 10].	\$500.00 per day that the violation exists.
Concessionaire's failure to adhere to City's Street Pricing Policy for the items listed on its approved menu for each Concession Location [subsection 11.3].	\$500.00 per day that the violation exists.
Concessionaire's failure to cause the recommencement of full food and beverage operations within a vacated Concession Location within the time period required [subsection 20.3.1].	\$1,000.00 per day that the violation exists.

**Section 10. Food and Beverage Menus.** Prior to execution of this Agreement, Concessionaire shall provide to City for approval, a proposed menu of food and beverage items to be sold at each of its Concession Locations. Each proposed menu shall specifically adhere to the concept described in Concessionaire's Proposal for that Concession Location, and each proposed menu shall contain substantially the same food and beverage items listed on the menu submitted with Concessionaire's Proposal. Following approval of each Concession Location menu, such menu shall be attached hereto and incorporated into this Agreement as **Exhibit I**. Concessionaire and its Sublessees shall offer for sale at each of its Concession Locations, only those food and beverage items approved by City for sale at such Concession Location. Prices for each approved food and beverage item shall be established pursuant to Section 11 below. Fines, as provided for in the Standards of Operations Manual, may be imposed upon Concessionaire for its failure to abide in strict compliance with the approved menu for each Concession Location.

**10.1 Additional Menu Items.** In the event Concessionaire or its Sublessees desires to add additional food and beverage items to the menu of any Concession Location, it must submit to City for approval, a written request to do so at least thirty (30) days prior to the anticipated date for offering such items, provided, however, that City shall be under no obligation to approve any additional food and beverage items, which are not consistent with the character and intent of the concept for such Concession Location. Prices for each approved additional food and beverage item shall be established pursuant to Section 11 below.

**10.2 Sales of Alcoholic Beverages.** City has designated specific Concession Locations for the authorized sale of Alcoholic Beverages at the Terminal Building. If one (1) or more of such Concession Locations are awarded to Concessionaire pursuant to the terms of this Agreement, then subsequent to the execution of this Agreement, Concessionaire or its Sublessee shall also execute a Liquor License Lease and Agreement in substantially the same form as that which is attached hereto and incorporated herein as **Exhibit J**. Concessionaire or its Sublessee shall make application

to the Alcohol and Gaming Division of the Regulation and Licensing Department ("AGD") of the State of New Mexico for the issuance of a liquor license under the City's Governmental Liquor License No. \_\_\_\_\_.

If, for any reason whatsoever, Concessionaire cannot qualify for a liquor license pursuant to the rules and regulations of the AGD, or if subsequent to the issuance of a liquor license such license is terminated or revoked, then City shall have the right to terminate both the Liquor License Lease and Agreement and this Agreement, and to enter into an agreement with another concessionaire for the right to operate the Concession Locations of Concessionaire designated for the sale of Alcoholic Beverages.

In the event Concessionaire executes a Sublease for the operation of a Concession Location that is designated for the sale of Alcoholic Beverages, and Sublessee cannot, for any reason whatsoever, qualify for a liquor license, or if subsequent to the issuance of a liquor license such license is terminated or revoked, then City shall have the right to terminate Sublessee's Liquor License Lease and Agreement and to either withhold initial approval of the Sublease, or to require Concessionaire to terminate such prior approved Sublease. Concessionaire may then apply for the liquor license required for that Concession Location and operate such location itself, or, with City's approval enter into another sublease and that sublessee shall then apply for the liquor license.

**Section 11. Food and Beverage Pricing Policy.** In order to ensure that Concessionaire's prices for the food and beverage items offered for sale at each of its Concession Locations are comparable to prices for similar food and beverage items offered for sale in the Albuquerque Metropolitan Area, City has instituted a street pricing policy. Concessionaire and its Sublessees shall not be allowed to charge more than street prices plus ten percent (10%), as determined in accordance with the provisions of subsection 11.1 below.

**11.1 Comparable Locations.** To determine initial street prices for the food and beverage items at each of its Concession Locations, Concessionaire shall select three (3) Albuquerque Metropolitan Area restaurants offering items of similar type, quality, and serving size, to be used as comparable locations for price comparisons. Concessionaire must submit for approval by City, its list of proposed comparable locations and the published menus from each location. The price of each item listed on Concessionaire's menu shall not exceed the average of the prices for that item shown on the published menus from the three (3) approved comparable locations, plus ten percent (10%). If City and Concessionaire determine that there are no comparable locations for price comparison purposes for certain items on its menu, Concessionaire shall submit a reasonable price for each such item for final approval by City.

For each Concession Location, including Concessionaire's franchise locations, which essentially duplicates the concept and menu of an existing restaurant in the

Albuquerque Metropolitan Area, the price of each item listed on the menu for such Concession Location shall not exceed the published price for each menu item of the existing restaurant, plus ten percent (10%).

**11.2 Price Increases.** In the event Concessionaire or its Sublessees desires to increase its menu price for any food or beverage item at its Concession Locations, it shall submit to City for approval, a written request for such price increase at least thirty (30) days prior to the anticipated date of increase. Justification for all such requests shall be based upon the published price for such food and beverage item contained in the menus of the three (3) previously approved comparable locations. Concessionaire shall include with its written request, the then current published menus from each location. Concessionaire shall not submit, and City shall not be obligated to consider, more than one (1) price increase request during any Calendar Year during the Term.

**11.3 Price Verification.** To ensure that Concessionaire and its Sublessees are in compliance with City's street pricing policy, City shall have the right to periodically check the prices of all food and beverage items offered for sale at each Concession Location. The prices of items, selected at random from any Concession Location, will be compared to prices of similar items identified in the menus of Concessionaire's approved comparable locations. If City determines that the prices of such food and beverage items offered for sale by Concessionaire or its Sublessees exceed the prices of similar items identified in the then current menus of the comparable locations by more than ten percent (10%), Concessionaire, or its Sublessee shall immediately reduce the price for those items, and City shall have the right to impose fines, as provided for in the Standards of Operations Manual, upon Concessionaire for its failure to abide in strict compliance with City's street pricing policy.

**11.4 Discounts for Airport Employees.** Concessionaire, and its Sublessees are encouraged, but not required, to offer discounted prices to Aviation Department employees, and to employees of other business entities operating at the Airport, who have current Airport ID/Access cards. The exact type and amount of such discount may vary by Concession Location, but the discount offered at any particular Concession Location must be approved by City prior to such discount being offered. In addition, no discount, once in place, may be changed, modified or discontinued with less than thirty (30) days prior written notice to City.

**Section 12. Employee Parking.** Concessionaire, its employees, and its Sublessees shall be granted the non-exclusive right to park their personal vehicles in specific employee surface parking areas as designated by City, subject to the same terms and conditions of use as are applicable to employees of other concessionaires and tenants at the Airport. Concessionaire shall defend and hold City harmless from and against

any and all claims and demands arising from the use of such parking areas by Concessionaire, its employees, and its Sublessees.

**Section 13. Airport Security.** During the Term, Concessionaire and its employees, its Sublessees, and its contractors and subcontractors shall strictly comply with the Airport Security Plan and all other Airport security regulations, as from time to time may be adopted or required by the TSA or other Governmental Authorities. If a breach of the Airport Security Plan or such other Airport security regulation occurs as a result of the acts or omissions of Concessionaire, its employees, its Sublessees, or its contractors or subcontractors in any manner or form at any time during the Term, Concessionaire shall immediately remedy such breach or assist the Airport, TSA, or other Governmental Authority in remedying such breach, regardless of the circumstances.

**13.1 Airport Identification (“ID”)/Access Cards.** As a requirement for the execution of this Agreement by Concessionaire, and in order to perform the duties and obligations pursuant to the terms of this Agreement, Concessionaire, its employees, and its Sublessees shall be required to obtain Airport ID/Access cards. City shall sponsor the issuance of an Airport ID/Access card for Concessionaire or Concessionaire’s on-site managers, who shall then be responsible for sponsoring all subsequent employees of Concessionaire, Concessionaire’s Sublessees, Sublessees’ employees, and if applicable, Concessionaire’s contractors or subcontractors. Individuals who have been convicted of certain categories of crimes during the past ten (10) years will not be issued an Airport ID/Access card until disposition of the charges has been resolved to Director’s satisfaction. Concessionaire, its employees, its Sublessees, and its contractors or subcontractors, if applicable, may not begin any work of any nature until the required Airport ID/Access card has been issued. All persons who are issued an Airport ID/Access card must display it at all times while on the Premises at the Airport.

All persons applying for an Airport ID/Access card must pass an FBI fingerprint-based Criminal History Records Check (“CHRC”), and all persons must attend a required security training class sponsored by City before such Airport ID/Access card will be issued. In conjunction with Concessionaire’s right and privilege to use and occupy the Premises, unescorted access may be authorized for Concessionaire, its employees, and its Sublessees via cardreader-controlled doors and gates to the Airport’s Security Identification Display Area (“SIDA”), the Sterile Areas of the Terminal Building, and all Secured Areas of the Airport provided, however, that no more than twenty-five percent (25%) of Concessionaire’s employees or its Sublessees’ employees are eligible to obtain unescorted access to the SIDA. An individual restricted from unescorted access in the SIDA may be escorted by a person whose Airport ID/Access card authorizes such access, as long as the escorted individual is under complete and constant control of the person authorized to provide such escort.

Concessionaire shall implement and maintain, and shall cause its Sublessees and contractors and subcontractors, if applicable, to implement and maintain, at a

minimum, the following security measures with regard to access control to and from the Secure Areas:

**13.1.1** During all hours, access points to Secure Areas of the Airport shall be secured and locked.

**13.1.2** Concessionaire's personnel shall challenge any person in the SIDA not properly displaying an Airport ID/Access card.

**13.1.3** Concessionaire shall restrict the activities of its personnel who are authorized to be in the SIDA or Sterile Area to that portion of those areas in which Concessionaire is authorized to operate.

**13.1.4.** Concessionaire is responsible for ensuring that all of its personnel attend Airport Security training, that they comply with all airport security rules and regulations outlined in the training, and, because security requirements and access control procedures change, that Concessionaire's personnel are made aware of, and comply with, all changes to airport security rules and regulations of which the Concessionaire is made aware.

**13.1.5** Concessionaire shall not allow any unauthorized person under its control to enter the SIDA or Sterile Area unless that person is properly escorted at all times.

**13.1.6** Concessionaire shall participate in the Airport's Security Program and comply with applicable security procedures including, but not limited to, the wearing of Airport ID/Access cards by Concessionaire's personnel.

**13.1.7** Concessionaire shall immediately notify the Aviation Police of any suspicious activity observed in the SIDA or Sterile Area of the Airport.

**13.1.8** Any unresolved questions concerning Airport security shall be directed to the Aviation Department's Associate Director of Operations or Airport Security Coordinator.

**13.1.9** Concessionaire further agrees to reimburse City for any and all penalties or fines levied against City by the Federal Aviation Administration, Transportation Security Administration, or successor agency due to Concessionaire's failure to abide by the security measures described herein.

**13.2 Vehicle Ramp Permits.** In addition to City's Airport ID/Access card requirements pursuant to subsection 13.1 above, City also reserves the right to require that Concessionaire's vehicles or the vehicles of its Sublessees be issued a Vehicle Ramp Permit prior to operating within the SIDA. As a part of the application process for a

Vehicle Ramp Permit all vehicles must be inspected and approved, and all vehicles must have on file with City, proper certificates of insurance.

**13.3 Obligation of Concessionaire.** All Airport ID/Access cards and Vehicle Ramp Permits issued to Concessionaire, its employees, its Sublessees, or any of its respective contractors or subcontractors are the property of City. Concessionaire shall be obligated to return to City, all Airport ID/Access cards and Vehicle Ramp Permits, or a portion thereof, in the event of: a) the expiration or earlier termination of this Agreement; or b) the termination of employment or resignation of Concessionaire's employee, its Sublessees, or any of its respective contractors or subcontractors; or c) the discontinuance of use of those vehicles for which Vehicle Ramp Permits were issued. Concessionaire, as well as the authorized holder of an Airport ID/Access card or Vehicle Ramp Permit, shall be fully responsible and obligated for the replacement cost of all lost, stolen, or non-returned Airport ID/Access cards or Vehicle Ramp Permits.

**13.4 Right of City.** City reserves the right to confiscate or suspend an Airport ID/Access card and/or Vehicle Ramp Permit of any person allegedly involved in any of the criminal acts enumerated under 49 C.F.R. Part 1542, or for a violation of the Airport Security Plan or other Airport security regulations, as from time to time may be adopted or amended. In addition, City, the TSA, or other Governmental Authorities as may be authorized, shall have the right to search any person, including Concessionaire, its employees, its Sublessees, and its contractors or subcontractors, who have been issued an Airport ID/ Access card, or to search any vehicle for which a Vehicle Ramp Permit has been issued.

**Section 14. Assignment and Subletting.** Concessionaire shall not assign, sublet, or otherwise transfer, in whole or in part, any of the rights and privileges granted pursuant to this Agreement, without the prior written approval of City. As a requirement of the RFP, for each Concession Location Concessionaire is required to sublease, or otherwise intends to sublease, Concessionaire submitted with its Proposal, a) evidence that Concessionaire's proposed Sublessee has the qualifications and experience necessary to manage and operate a Concession Location, b) full disclosure of all financial consideration between Concessionaire and its proposed Sublessee, and c) a sample sublease agreement, in its final form, which at a minimum, provides as essential elements:

1) terms and conditions which are identical to the terms and conditions contained in this Agreement, including but not limited to: a) clauses pertaining to use of the Premises, b) Capital Investment requirements, c) references to requirements pursuant to the Standards of Operations Manual, d) approvals and limitations of menus, e) approvals and limitations of menu pricing, f) references to the sale of Alcoholic Beverages at designated Concession Locations, g) payment of rents and fees, h) detailed reporting requirements, and i) insurance requirements.

2) a provision stipulating that the term of the sublease agreement shall not extend beyond the expiration date of this Agreement.

3) rents and fees which are in accordance with the provisions of this Agreement.

4) terms of Concessionaire's cost recovery fee that it is entitled to charge Sublessee for the recovery of its proportional share of Concessionaire's operating costs relating to security procedures, refuse removal, utilities, custodial services, maintenance, and capital cost recovery for Sublessee's Capital Improvements, if any, which are provided by Concessionaire as required in this Agreement.

5) the provision to incorporate this Agreement, as an exhibit, into the sublease agreement.

No later than thirty (30) days following execution of this Agreement by Concessionaire, City shall provide Concessionaire with required changes to the sample sublease agreement. Concessionaire shall, within thirty (30) days thereafter, revise the sublease agreement pursuant to the required changes and return it to City for final approval; which approval shall not be unreasonably withheld. Following execution of the approved sublease agreement by Concessionaire and its Sublessee, it shall be attached hereto and incorporated into this Agreement as **Exhibit K**. Until receipt of final written approval of its sublease agreement, Concessionaire shall not authorize its Sublessee to apply for an Airport ID/Access card, or commence construction or development of any portion of a Concession Location.

**Section 15. Term.** The term of this Agreement ("Term") shall be for a period of ten (10) years, commencing on the earlier of, a) the first day of the next calendar month following completion of the Construction Period for the final Concession Location of the new Concession Program, or b) July 1, 2008, unless sooner terminated in accordance with the terms and provisions of this Agreement.

**15.1 Option to Extend Term.** City shall have the right, at its sole option, to extend the Term for two (2) additional one (1) year periods ("Option Periods"), provided that Concessionaire is in compliance with all of the terms and conditions set forth in this Agreement, and is current in the payment of all rents and fees at the start of each Option Period. City shall notify Concessionaire in writing of its intent to exercise its option to extend at least six (6) months prior to the end of the initial Term and six (6) months prior to the end of the first Option Period, if applicable, and each such Option Period shall be incorporated as a written amendment to this Agreement.

**15.2 Holding Over.** Holding over by Concessionaire following expiration of this Agreement, with or without the consent of City, shall not operate to extend or renew this Agreement. Any such holding over shall be construed as a month-to-month

tenancy, subject to all terms and conditions, and all rents and fees in effect at the time of such expiration.

**Section 16. Rents and Fees.** As consideration for the privilege of designing, developing, and operating a food and beverage concession at the Airport, Concessionaire shall pay to City, in addition to other rents and fees, the greater of a Minimum Monthly Guarantee or a Percentage of Gross Revenues Fee, and all such rents and fees shall be paid in the manner prescribed in this Section 16.

**16.1 Minimum Monthly Guarantee.** Beginning on its Commencement Date, as defined in subsection 2.10 above, Concessionaire shall be required to pay to City, a Minimum Monthly Guarantee in the amount of \_\_\_\_\_ **and 00/100 Dollars (\$0.00)**, or such other amount as may be required pursuant to the provisions of subsection 16.1.1 below. The applicable Minimum Monthly Guarantee will be paid, in advance and without invoice, on the first day of each calendar month throughout the Term. If the Commencement Date or the expiration or earlier termination of this Agreement occurs on a date other than the first or last day of a calendar month, the Minimum Monthly Guarantee for the partial first or last calendar month shall be prorated.

**16.1.1 Adjustment of the Minimum Monthly Guarantee.** At the end of the first full Calendar Year, and every year thereafter throughout the Term, the Minimum Monthly Guarantee shall be adjusted for the next Calendar Year to a sum of money representing one-twelfth (1/12) of eighty-five percent (85%) of the Percentage of Gross Revenues Fee payable for the immediately preceding Calendar Year calculated in accordance with subsection 16.2 below; provided, however, that in no event shall the Minimum Monthly Guarantee for any month be less than the Minimum Monthly Guarantee for the month in which the Commencement Date was established.

If at any time during the Term, the square footage of any of Concessionaire's Concession Locations is increased or reduced pursuant to subsection 29.14 below, or reduced pursuant to subsection 29.15 below, and such increase or reduction results in a change greater than fifteen percent (15%) in the total square footage of all of Concessionaire's Concession Locations, then the Minimum Monthly Guarantee will be increased or reduced in proportion to the amount of such area percentage increase or reduction.

**16.2 Percentage of Gross Revenues Fee.** During its Transition Period, as defined in subsection 2.45 above, and continuing throughout the Term, Concessionaire shall be required to pay a Percentage of Gross Revenues Fee derived from the sales of all products, goods, and services at its Concession Locations. Following completion of its Initial Capital Improvements for each Concession Location, and as each Concession Location opens to the public; Concessionaire shall be obligated to commence payment of a Percentage of Gross Revenues Fee from such Concession Location pursuant to the

table below. In addition, during its Transition Period, Concessionaire shall be required to pay a Percentage of Gross Revenues Fee for all sales originating from its temporary premises, if applicable.

<b>Food and Beverage Category</b>	<b>Percentage of Gross Revenues</b>
Food and Non-Alcoholic Beverages	11%
Ice Cream	15%
Alcoholic Beverages	17%

If the Term is extended in accordance with subsection 15.1 above, the Percentage of Gross Revenues Fee established for the Term will apply during any Option Period.

Immediately upon Concessionaire's receipt of revenue from its sales at each Concession Location and temporary premises, if applicable, the percentages of such revenue belonging to City shall immediately vest in and become the property of City. Concessionaire shall be responsible as trustee for the monies until the sums are delivered to City.

**16.2.1 Payment of Percentage of Gross Revenues Fee.** Within fifteen (15) days following the close of each calendar month during its Transition Period and throughout the Term, Concessionaire shall pay to City monthly, its Percentage of Gross Revenues Fee, and such fee shall be paid in the manner prescribed below:

a) Transition Period. During its Transition Period, Concessionaire shall only pay to City a Percentage of Gross Revenues Fee, and such Fee shall be calculated per the table provided in subsection 16.2 above.

b) Commencement of Term. Beginning on its Commencement Date and continuing throughout the Term, Concessionaire shall pay to City a sum of money that represents the difference between its Minimum Monthly Guarantee and the Percentage of Gross Revenues Fee due City for the previous month.

**16.2.2 Monthly Reporting of Gross Revenues.** Concessionaire shall submit to City, using the form attached hereto as **Exhibit L** ("Monthly Statement of Gross Revenues Form"), information concerning its Gross Revenues for the preceding month upon which payment of its Percentage of Gross Revenues Fee required in subsection 16.2 above, is computed. Concessionaire shall submit a separate Monthly Statement of Gross Revenues Form for each Concession Location for the purpose of tracking its productivity. **Concessionaire must submit such monthly statements with payment of its Percentage of Gross Revenues Fee**, and the statements shall be signed by a responsible accounting officer of Concessionaire.

**16.3 Support Space Rent.** During its Transition Period and throughout the Term, Concessionaire shall pay to City on the first day of each calendar month, without

invoice, Support Space Rent in the amount of \_\_\_\_\_ and 00/100 (\$\_\_\_\_\_) per month. Such amount shall be based upon \_\_\_\_\_ (\_\_\_\_\_) square feet of Support Space, as depicted in **Exhibit E**, at the rate of Thirteen and 00/100 Dollars (\$13.00) per square foot per year.

If the Commencement Date, or the expiration or earlier termination of this Agreement occurs on a date other than the first or last day of a calendar month, respectively, Support Space Rent for the partial first or last calendar month shall be prorated.

**16.4 Refuse Fee.** During its Transition Period and throughout the Term, Concessionaire shall pay to City on the first day of each calendar month, without invoice, a Refuse Fee in the amount of **Two Hundred Twenty-five and 00/100 (\$225.00)** per month for use of City's refuse disposal containers. City shall have the right to adjust the Refuse Fee at the end of each Calendar Year.

**16.5 Employee Parking Fees.** Within thirty (30) days following receipt of invoice, Concessionaire shall pay to City, all monthly fees associated with use of employee surface parking areas pursuant to Section 12 above, for Concessionaire, its employees, and its Sublessees.

**16.6 Airport Identification ("ID")/Access Card Fees.** Within thirty (30) days following receipt of invoice, Concessionaire shall pay to City, all monthly fees associated with the Airport ID/Access cards issued to Concessionaire, its employees, and its Sublessees.

**16.7 Liquor License Fees.** If Concessionaire is required to obtain a liquor license for one (1) or more of its Concession Locations pursuant to subsection 10.2 above, Concessionaire shall be obligated to pay, when invoiced, all annual fees required by the City of Albuquerque for Concessionaire's lease of City's Governmental Liquor License No.\_\_\_\_\_, and all annual renewal fees required by the Alcohol and Gaming Division of the Regulation and Licensing Department of the State of New Mexico.

**16.8 Miscellaneous Fees.** Within thirty (30) days following receipt of invoice, Concessionaire shall pay to City, all miscellaneous fees incurred by Concessionaire, for one (1) or more of the following events, or such other events as determined by City:

**16.8.1** If City has paid any sum or sums, or has incurred any obligation or expense, for which Concessionaire has agreed to pay or reimburse City, or for which Concessionaire is otherwise responsible;

**16.8.2** If City is required or elects to pay any sum or sums, or incurs any obligation or expense, because of the failure, neglect or refusal of Concessionaire to perform or fulfill any of the terms, conditions or covenants required of it hereunder;

**16.8.3** Pursuant to any separate agreement between City and Concessionaire not contained herein;

**16.8.4** If City has imposed a fine or penalty on Concessionaire for violation of any terms or conditions of this Agreement, or any provisions, rules, or regulations pursuant to the Standards of Operations Manual;

**16.8.5** Such other fees for services rendered, such as, but not limited to, utilities, trash removal, delivery access fees, and similar fees.

Concessionaire's obligations pursuant to this subsection 16.8 shall include all interest, cost, damages, and penalties in conjunction with such miscellaneous fees.

**16.9 Place of Payment.** Concessionaire shall deliver payments of rents and fees to the office of City's Director of Aviation or at such other place as may be designated by City from time to time. Payment shall be made to the order of the "City of Albuquerque."

**16.10 Late Payment Fees.** If rents and fees required by this Agreement are not received by City on or before the date specified in this Agreement, Concessionaire shall pay an interest fee to City of one and one-half percent (1½%) per month (eighteen percent [18%] annually) for each month or partial month that any payment due is not paid. In addition, Concessionaire shall pay an administrative fee to City of **Fifty and 00/100 Dollars (\$50.00)** if it becomes necessary for City to send Concessionaire a late payment notice.

## **Section 17. Records and Reporting Requirements.**

**17.1 Accounting Records.** Concessionaire shall be responsible for maintaining adequate accounting records, in accordance with generally accepted accounting principles and the requirements of this Agreement for: (a) all transactions relevant to this Agreement, (b) all Gross Revenues, and (b) all exclusions from Gross Revenues claimed by Concessionaire. City shall have the right to inspect, examine, copy and audit such books and records, including, but not limited to a) Concessionaire's federal, state, and local tax returns and New Mexico Gross Receipts tax return records as filed with the State of New Mexico, b) operating/financial statements, c) a complete general ledger, d) monthly sales journals detailing each transaction for the month, e) reconciliation between the financial records and monthly Statements of Gross Revenues submitted to City, f) bank statements applicable to the operation of each Concession Location, g) annual audited financial statements and related reports on internal controls (including management representation letters), h) electronic media documenting accounting records, and i) other sales-related documents. Such books and records shall include separately maintained original records, which shall include daily and/or weekly transaction reports, and such other records, if any, which would normally be examined

by an independent certified public accountant in performing an examination of Concessionaire's Gross Revenues in accordance with Generally Accepted Auditing Standards.

**17.2 Monthly Reporting of Gross Revenues.** Within fifteen (15) days following the close of each calendar month during its Transition Period, and throughout the Term, Concessionaire shall submit to City, pursuant to subsection 16.2.2 above, information concerning its monthly Gross Revenues for each Concession Location. Concessionaire must submit payment of its Percentage of Gross Revenues Fee with its Monthly Statement of Gross Revenues Forms. As a further condition of this reporting requirement, Concessionaire shall submit to City, its Monthly Statement of Gross Revenues Forms, whether or not a Percentage of Gross Revenues Fee may be due.

City shall have the right to modify the Monthly Statement of Gross Revenues Form, and to require Concessionaire to submit other information pertaining to its Gross Revenues, and Concessionaire agrees to use such forms and provide such additional information as required.

**17.3 Statistical Information.** City has the right at any time to request that Concessionaire make available to City, Point of Sale Data for a one (1) month period occurring within the most recent three (3) months prior to the date of the request. Such request may include, without limitation, product category totals for daily or weekly sales, average transaction values, average number of items sold per transaction per Concession Location, and the total number of transactions per Concession Location. Unless otherwise approved in writing by City, such data shall be provided to City within twenty (20) days of such request.

**17.4 Annual Reporting.** Not later than ninety (90) days following the end of each full Calendar Year, January 1 through December 31, Concessionaire shall furnish to City, at Concessionaire's sole expense, a certified audited Statement of Gross Revenues ("Statement") for that Calendar Year, prepared by an independent Certified Public Accountant ("CPA") in accordance with Generally Accepted Auditing Standards. Such Statement shall contain CPA's professional unqualified opinion on the reliability of the financial information presented.

Concessionaire's Statement must be itemized for each month of the Calendar Year, and detail Concessionaire's a) monthly gross revenues as previously reported to City, b) monthly gross revenues as audited by Concessionaire's CPA, c) monthly percentage of rents or fees due, and d) schedule of the payments made to City by Concessionaire. If such Statement shows an underpayment of the required percentage of gross revenues fee due to City, then Concessionaire shall submit payment for such underpayment to City with the audited Statement.

Following City's receipt of Concessionaire's Statement, City's Auditor shall perform an independent reconciliation of Concessionaire's monthly reports against the Statement. If such reconciliation reveals an overpayment or underpayment by Concessionaire of the required percentage of gross revenues fee, then City's Auditor shall notify Concessionaire, in writing, of such overpayment or underpayment and issue the appropriate credit or invoice to Concessionaire. If a credit is issued, it shall be taken in the month immediately following such notification.

**17.5 Auditing by City.** City shall have the right at any time within three (3) years after receipt of Concessionaire's annual statement or monthly statements to have the books and records of Concessionaire audited during reasonable hours by a certified public accountant including but not limited to the Department's Auditor, City's Office of Internal Audit, or its successor agency, or a private certified public accountant; and, in the event that such audit shows Concessionaire's Gross Revenues as reported by said certified statement to be more than one percent (1%) in error, detrimental to City, Concessionaire shall reimburse City for the expense to City of such audit; otherwise, City shall bear the entire cost of such audit. Any additional percentage of gross revenues fees, and charges found due by such audit shall be paid to City within thirty (30) days of the audit and shall bear interest at the late payment interest rate, refer to subsection 16.10 above, from the date such payment was due until paid; and if Concessionaire has overpaid such fees, Concessionaire shall deduct such excess from the fees next falling due, if any, or be paid such excess by City if no fees are owed. Concessionaire shall not be entitled to charge City any interest on such overpayments.

Concessionaire shall maintain records of its Gross Revenues for a period of at least three (3) years following the end of each calendar year and such records shall be available to City for audit or review on request during usual office hours. Concessionaire shall allow City's representatives to photocopy any records the representatives determine to be necessary to conduct and support their audit. Concessionaire shall provide City's representatives with retrievals of computer based records or transactions the representatives determine to be necessary to conduct the audit. Concessionaire shall not charge City for reasonable use of Concessionaire's photocopy machine while conducting the audit, nor for any cost of retrieving, downloading to diskette and/or printing any records or transactions stored in magnetic, optical, microform or other media.

Concessionaire shall maintain such records at its corporate office and provide them to City, in Albuquerque, New Mexico, upon fifteen (15) days written request. Should Concessionaire not wish to make its books and records available at the Aviation Department offices, then Concessionaire shall pay reasonable travel and accommodation expenses for the Aviation Department staff or its duly authorized representatives to travel to Concessionaire's corporate offices to conduct the audit. City's rights under this Agreement to inspect and audit the books and records of

Concessionaire shall survive the expiration of the Term or earlier termination of this Agreement.

**17.6 Failure to Record.** In the event Concessionaire fails to create and/or preserve part or all of the Gross Revenue records required in this Agreement, Concessionaire shall pay City the percentage of gross revenues fees on an estimated amount of Gross Revenues for the time period for which such records were not created or preserved, plus eighteen percent (18%) thereon. The estimate of Gross Revenues shall be made by City and shall be based on historical sales of Concessionaire at the Airport. Failure of Concessionaire to create and/or preserve such records shall be a material breach of this Agreement by Concessionaire.

**Section 18. Security Deposit.** Prior to the execution of this Agreement, Concessionaire shall deposit at the office of Director an Irrevocable Letter of Credit ("LOC") issued exclusively to City, or a Performance Bond ("Bond") in a form substantially the same as **Exhibit M** attached hereto and incorporated herein, in an amount equal to three (3) months Minimum Monthly Guarantee, \_\_\_\_\_ **and 00/100 (\$\_\_\_\_\_ .00)** as established in subsection 16.1 above. The LOC or Bond will be held by City as security for the full and faithful performance of all the terms, covenants, and conditions to be performed by Concessionaire under this Agreement. The LOC shall be made to the order of the City of Albuquerque. The Bond shall be made payable on demand to the City of Albuquerque. The amount of the security deposit shall increase in the event the Minimum Monthly Guarantee increases. Such increase shall occur at the end of each Calendar Year beginning after the Commencement Date of this Agreement. There shall be no decrease in the security deposit, regardless of the change in the Minimum Monthly Guarantee.

The LOC or Bond shall expressly permit partial payment and shall be issued exclusively to City of Albuquerque. LOCs or Bonds shall allow presentment of claims under the LOC or Bond by City by mail and shall not restrict such presentment to in-person appearances at a particular place. If a Bond is provided, such Bond shall be issued with City of Albuquerque as obligee by a surety licensed to conduct business in the State of New Mexico and which has sufficient bonding capacity for the amount of the Bond and is named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in the Federal Register by the U.S. Treasury Department or its successor agency.

Document(s) evidencing the security deposit shall provide that it shall remain in full force and effect for a period of sixty (60) days following expiration or earlier termination of this Agreement, and shall allow City to make a partial draw on such security deposit. In the event of a partial draw, Concessionaire shall immediately reinstate the security deposit to the full amount required in this Section. Documents establishing the continuation or replacement of a LOC or Bond shall be received by the Aviation

Department no less than thirty (30) days prior to the expiration of the existing LOC or Bond. If payments required by Concessionaire under the terms of this Agreement are not made in accordance with the payment provisions set forth in Section 16 above, City shall have the right to forfeit, take, and use as much of such security deposit as may be necessary to make such payment in full and to exercise any other legal remedies to which it may be entitled.

The LOC or Bond shall be released by City within sixty (60) days following expiration or earlier termination of this Agreement, provided Concessionaire has fully performed.

City shall have the option of accepting cash security deposits. City shall not be required to place cash security deposits in interest-bearing accounts; however, should City elect to do so, City shall be entitled to all interest earned from such account as compensation for handling such account. City shall not be required to keep cash security deposits in separate accounts.

**Section 19. Insurance.** Concessionaire shall, procure and maintain in full force and effect during its Transition Period and throughout the Term, the insurance required in subsection 8.1.3 above, and this Section 19. Policies of insurance shall be procured for all insurance required under this Agreement and coverage limits of such policies of insurance shall not be reduced or replaced in part or in whole by self-insurance, including self-insurance retention amounts. Concessionaire shall not violate the terms or conditions of insurance policies required to be furnished, and shall promptly notify City of any claim of loss exceeding the amount of the deductible under such insurance policies, and certify that proper notice has been given the appropriate insurance carrier.

Concessionaire shall furnish City with such certificates of insurance as required in this Section, by sending certificates to the Director of Aviation, Albuquerque International Sunport, P.O. Box 9948, Albuquerque, New Mexico 87119.

Policies of insurance shall be written by companies authorized to write such insurance in New Mexico. All insurance certificates shall provide that thirty (30) days written notice be given to the Director of Aviation before a policy is canceled, materially changed, or not renewed. The form of certificates of insurance shall be substantially the same as **Exhibit N** attached hereto. Documents establishing the continuation or replacement of insurance shall be received by the Aviation Department no less than thirty (30) days prior to the continuation or replacement of the insurance coverage.

**19.1 Approval of Insurance.** Although this Agreement may have been fully executed by all parties, Concessionaire shall not occupy the Premises pursuant to this Agreement until the required insurance has been obtained and proper certificates of insurance delivered to Director. Neither approval nor failure to disapprove certificates of insurance by City shall relieve Concessionaire of full responsibility to maintain the required insurance in full force and effect.

**19.2 Commercial General Liability.** Concessionaire shall procure and maintain policies of insurance for commercial general liability, as further described below. All such policies of insurance shall have liability limits in amounts not less than **One Million and 00/100 Dollars (\$1,000,000.00)** per occurrence and **One Million and 00/100 Dollars (\$1,000,000.00)** in aggregate that insures against claims, damages, losses or liabilities arising from bodily injury, death, or property damage, including any such claims, damages, losses or liabilities arising from or relating to Concessionaire's operations or the presence of Concessionaire and its officers, employees, agents, representatives, or subcontractors at the Airport. The aggregate deductible amount under the insurance policy or policies providing the commercial general liability coverage shall not exceed Two Hundred Fifty Thousand and 00/100 (\$250,000.00) per occurrence. Contractual liability coverage shall specifically insure the Indemnification provision of this Agreement. If applicable, the insurance policies shall contain "products" and "completed operations" coverage and shall not be written on a "claims made" form. The insurance policies shall include coverage for all use of, activities on, and operations at, the Airport. City reserves the right to review and modify the limits stated above at one (1) year intervals to give effect to the changing risk management environment and inflationary trends.

**19.3 Automobile Liability.** Concessionaire shall procure and maintain policies of insurance for automobile liability for all vehicles, of any type, used in or about the Airport, as further described below. All such policies of insurance shall have liability limits in amounts not less than **One Million and 00/100 Dollars (\$1,000,000.00)**\* single limit liability that insures against claims, damages, losses or liabilities arising from bodily injury, death or property damage, including any such claims, damages, losses or liabilities arising from or relating to Concessionaire's operations or the presence of Concessionaire and its officers, employees, agents, representatives, or subcontractors at the Airport. The aggregate deductible amount under the insurance policy or policies providing the automobile liability coverage shall not exceed Two Hundred Fifty Thousand and 00/100 (\$250,000.00) per occurrence. Contractual liability coverage shall specifically insure the Indemnification provision of this Agreement. The insurance policies shall include coverage for the use of all owned, non-owned, hired automobiles, vehicles, and other equipment, both on and off work for all use of, activities on, or operations at, the Airport. City reserves the right to review and modify the limits stated above at one (1) year intervals to give effect to the changing risk management environment and inflationary trends.

**\* Should Concessionaire require access to the Secured Area of the Airport, the limit of liability would increase to Five Million and 00/100 Dollars (\$5,000,000.00).**

**19.4 Increased Limits.** If, during the Term, the legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (Sections 41-4-1 through 41-4-27, NMSA 1978) to an amount greater than that required

for commercial general liability or automobile liability above, City shall be entitled to require Concessionaire to increase the limits of such insurance to an amount equal to such increased Tort Claim Act maximum limits of liability.

**19.5 All Risk Property Coverage.** Concessionaire shall procure and maintain policies of insurance that provide all risk property coverage with respect to Concessionaire's Capital Improvements and its refurbishments in an amount not less than one hundred percent (100%) of the full insurable replacement value of such Capital Improvements and refurbishments.

**19.6 Additional Insured.** City of Albuquerque shall be named as an additional insured on each insurance policy required in subsections 19.2, 19.3, and 19.5 above. Insofar as the above-described insurance provides protection against liability for damages to third parties for personal injury, death, and property damage, City shall be included as an additional insured; provided such liability insurance coverage shall also extend to damage, destruction and injury to City-owned or City-leased property and City personnel caused by or resulting from work, acts, operations or omissions of Concessionaire, its officers, agents, employees and independent contractors. City shall have no liability for any premiums charged for such coverage, and inclusion of City as an additional insured is not intended to and shall not make City a partner or joint venturer with Concessionaire in its operations at the Airport.

**19.7 Workers' Compensation Insurance.** Concessionaire shall comply with the provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. Concessionaire shall procure and maintain during the Term, and shall cause each Concession Operator to procure and maintain during the Term, complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Such insurance shall include coverage permitted under Section 52-1-10, NMSA 1978, for safety devices. In addition, Concessionaire shall procure and maintain Employer's Liability Coverage in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence.

With respect to Workers' Compensation Insurance, if Concessionaire or its Concession Operator elects to be self-insured, Concessionaire or its Concession Operator shall comply with the applicable requirements of law. Concessionaire and its Concession Operator hereby covenant and agree that City, its officers, or employees shall not be liable or responsible for any claims or actions occasioned by Concessionaire's or Concession Operator's failure to comply with the provisions of this subsection and that the Indemnification provision of this Agreement shall apply to this subsection. It is expressly agreed that the employees of Concessionaire and Concession Operator are not City employees for any purpose.

**19.8 Failure to Maintain Insurance.** In the event Concessionaire shall at any time fail to have in effect the insurance required under the provisions of this

Agreement, City shall be entitled to terminate this Agreement in accordance with Section 20 below.

**19.9 Contents Insurance.** Concessionaire shall procure and maintain insurance policies that provide coverage for losses of Concessionaire' owned property. City shall not be required to provide such insurance coverage or be responsible for payment of Concessionaire's cost for such insurance.

## **Section 20. Termination of Agreement.**

**20.1 Termination by City: 15-Day Cure Period.** This Section shall govern Concessionaire's failure to comply with the following provisions (hereafter, "Events of Default"):

- 20.1.1** pay rents and fees pursuant to Section 16 above; or
- 20.1.2** maintain records and provide reports pursuant to Section 17 above; or
- 20.1.3** provide and maintain a security deposit pursuant to Section 18 above; or
- 20.1.4** provide and maintain insurance pursuant to Section 19 above.

In the event Concessionaire fails to comply with any or all of the aforementioned Sections for a period of fifteen (15) days following receipt by Concessionaire of City's written notice of an Event of Default, City shall be entitled to terminate this Agreement, provided that no Notice of Termination shall be effective if Concessionaire has fully cured all Events of Default identified in the fifteen (15) day notice prior to Concessionaire's receipt of the Notice of Termination. Termination of this Agreement will take effect immediately upon Concessionaire's receipt of Notice of Termination unless stated otherwise in the Notice of Termination.

**20.2 Termination by City: 30-Day Cure Period.** Except for Events of Default which are governed by subsection 20.1 above, if Concessionaire fails to comply with any covenant or agreement herein required for a period of thirty (30) days following receipt by Concessionaire of City's written Notice of Non-Compliance, City shall be entitled to terminate this Agreement provided that no Notice of Termination shall be effective if Concessionaire has fully cured all events of Non-Compliance identified in the thirty (30) day notice prior to Concessionaire's receipt of the Notice of Termination. Termination of this Agreement shall take effect immediately upon Concessionaire's receipt of the Notice of Termination unless stated otherwise in the Notice of Termination.

In the event this Agreement is terminated pursuant to subsection 20.1 above, or this subsection 20.2, Concessionaire shall remain liable to City for damages in an amount equal to the payment obligation for outstanding rents and fees required pursuant to Section 16 above.

**20.3 Other Termination by City.** City may terminate this Agreement by providing Concessionaire with a written Notice of Termination upon or after the occurrence of either of the events listed in subsections 20.3.1 and 20.3.2 below. Termination of this Agreement shall take effect immediately upon Concessionaire's receipt of the Notice of Termination unless stated otherwise in the Notice of Termination.

**20.3.1** The abandonment of any Concession Location by Concessionaire or its Sublessee, and the failure of Concessionaire to recommence food and beverage operations at such vacant Concession Location within forty-eight (48) hours following such abandonment regardless of the cause of the vacancy;

**20.3.2** The lawful assumption by the United States Government or any Governmental Authority for the operation, control, or use of the Airport and facilities, or any substantial part or parts thereof, in such a manner as to substantially restrict Concessionaire's food and beverage operations for a period of at least ninety (90) days.

**20.4 City's Non-Waiver.** City's performance of all or any part of this Agreement for or during any period or periods following a default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by Concessionaire, shall not be deemed a waiver of any rights on the part of City to terminate this Agreement for failure by Concessionaire to perform, keep or observe any of the terms, covenants or conditions hereof to be performed, kept and observed by Concessionaire and shall not be construed to be or act as a waiver by City of any subsequent default of any of the terms, covenants, and conditions herein contained to be performed, kept, and observed by Concessionaire.

**20.5 Termination by Concessionaire: 30-Day Cure Period.** If City fails to comply with any covenant or agreement herein required for a period of thirty (30) days following receipt by City of Concessionaire's written Notice of Non-Compliance, Concessionaire shall be entitled to terminate this Agreement. Termination of this Agreement shall take effect immediately upon City's receipt of the Notice of Termination unless stated otherwise in the Notice of Termination, provided, however, that if prior to City's receipt of the Notice of Termination, City has fully cured all events of Non-Compliance identified in the thirty (30) day notice, then this Agreement shall remain in full force and effect and the Notice of Termination shall be null and void.

**20.6 Other Termination by Concessionaire.** Concessionaire may terminate this Agreement by providing City with a written Notice of Termination upon or after the

occurrence of any of the events listed in subsections 20.6.1, 20.6.2, 20.6.3, and 20.6.4 below. Termination of this Agreement shall take effect sixty (60) days following City's receipt of the Notice of Termination unless stated otherwise in the Notice of Termination.

**20.6.1** The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport or any part thereof for Airport purposes, that remain in force for a period of at least ninety (90) days;

**20.6.2** The inability of Concessionaire to use, for a period in excess of ninety (90) days, the Airport or facilities, or any of its Concession Locations, rights, licenses, services or privileges granted to Concessionaire hereunder, because of fire, explosion, earthquake, other casualty, or acts of God or the public enemy, provided that same is not caused by negligence or willful acts or failure to act on the part of Concessionaire;

**20.6.3** The lawful assumption by the United States Government or any Governmental Authority for the operation, control, or use of the Airport and facilities, or any substantial part or parts thereof, in such a manner as to substantially restrict Concessionaire's food and beverage operations for a period of at least ninety (90) days;

**20.6.4** Permanent abandonment of Airport for all scheduled airline service.

**20.7 Concessionaire's Non-Waiver.** Concessionaire's performance of all or any part of this Agreement for or during any period or periods following a default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by City, shall not be deemed a waiver of any rights on the part of Concessionaire to terminate this Agreement for failure by City to perform, keep or observe any of the terms, covenants or conditions herein contained and shall not be construed to be or act as a waiver by Concessionaire of any subsequent default of any of the terms, covenants, and conditions herein contained to be performed, kept, and observed by City.

**Section 21. Damage or Destruction of Premises.** If, for any reason the Premises are damaged to such an extent that they are untenable in whole or in substantial part, then City and Concessionaire shall have the following rights under this Section 21.

**21.1 Minor Damage.** If the repairs and restorations necessary to restore the Premises to its condition prior to the occurrence of the damage can, in the judgment of City, be completed within ninety (90) days from such occurrence, City shall so notify Concessionaire in writing, consult with Concessionaire, and shall proceed promptly with

such repairs and restorations at City's sole cost and expense, provided that Concessionaire shall be responsible for, and bear the cost of, replacing its trade fixtures and equipment, and rebuilding its Capital Improvements. In such event, Concessionaire shall receive a pro rata abatement of the rents and fees due under Section 16 above, based solely on the reduction of usable square feet in the Premises. This abatement, if applicable, shall be allowed only for the period from the date of the occurrence of such damage to the date upon which repairs and restorations are completed. Thereafter, the rents and fees due under Section 16 above, shall be calculated without regard to the period such rents and fees were reduced.

Notwithstanding the above provisions, if the damage is caused by the intentional or negligent act or omission of Concessionaire, its officers, employees, Sublessees, contractors, or subcontractors, Concessionaire shall be responsible for such repairs and restorations, and there shall be no abatement of rents and fees payable by Concessionaire to City. If Concessionaire fails to make the necessary repairs and restorations in a timely manner as determined by City, then City may, at its option, cause such repairs and restorations to be completed and Concessionaire shall reimburse City for the costs and expenses incurred in such repairs and restorations, plus an administrative fee equal to fifteen percent (15%) of such costs and expenses. Concessionaire shall apply all insurance proceeds paid on account of such damage or destruction under the policies of insurance required in Section 19 above to the repair and restoration of the Premises. To the extent that the insurance proceeds are not sufficient to pay the entire cost of such repairs and restorations, Concessionaire shall pay the amount of any such deficiency from other sources as necessary. In the event the cause of the damage or destruction is by risk, which is or was uninsurable, then Concessionaire shall have the same responsibility to provide the funds necessary to pay the cost of the repairs and restorations.

**21.2 Extensive Damage.** If the repairs and restorations would, in the judgment of City, exceed one hundred twenty (120) days to complete, City, at its option, to be evidenced by notice in writing to Concessionaire, may:

**21.2.1** seek Concessionaire's consent and cooperation, and proceed promptly with repairs and restorations at City's sole cost and expense, in which event abatement of rents and fees shall be allowed, as described in subsection 21.1 above, or

**21.2.2** terminate the letting of the Premises, in which event the rents and fees due under Section 16 above shall be eliminated beginning from the date of the occurrence of the damage. City shall not be deemed in default under this Agreement in the event it elects to terminate the letting of the damaged or destroyed Premises.

**21.2.3** in the event the Premises are destroyed or so damaged to be rendered untenable as a result of the intentional or negligent act or omission of

Concessionaire, its officers, employees, Sublessees, contractors, or subcontractors, Concessionaire shall be responsible for such repairs and restorations, and there shall be no abatement of rents and fees payable by Concessionaire to City. If Concessionaire fails to make the necessary repairs and restorations in a timely manner as determined by City, then City may proceed with all necessary repairs and restorations, and Concessionaire shall reimburse City for the costs and expenses incurred in such repairs and restorations, plus an administrative fee equal to fifteen percent (15%) of such costs and expenses. Concessionaire shall apply all insurance proceeds paid on account of such damage or destruction under the policies of insurance required in Section 19 above to the repair and restoration of the Premises. To the extent that the insurance proceeds are not sufficient to pay the entire cost of such repairs and restorations, Concessionaire shall pay the amount of any such deficiency from other sources as necessary. In the event the cause of the damage or destruction is by risk, which is or was uninsurable, then Concessionaire shall have the same responsibility to provide the funds necessary to pay the cost of the repairs and restorations.

**21.3 Alternative Space.** In the event repairs and restorations are required pursuant to subsections 21.1 or 21.2 above, City shall use reasonable efforts to provide Concessionaire with alternative space, if necessary, during such repair and restoration of the Premises. City shall advise Concessionaire as soon as may be practicable regarding City's intention with respect to any necessary repairs and restorations.

In the event City provides alternative space to Concessionaire, City shall be responsible for those costs directly associated with moving Concessionaire to the alternative space and back to restored Premises, except in the event that such repairs and restorations are required as a result of the intentional or negligent act or omission of Concessionaire, its officers, employees, Sublessees, contractors, or subcontractors, in which case Concessionaire shall bear the entire cost of moving. If City provides Concessionaire an alternative space containing less square footage than the original space, then the rents and fees due under Section 16 above shall be reduced pro rata to the reduction of square footage of the alternative space. All reductions of rents and fees shall be allowed only for the period of time from the date of the occurrence of such damage to the date repairs and restorations are completed. Thereafter, the rents and fees due under Section 16 above, shall be calculated without regard to the period such rent was reduced.

**21.4 Limits of City's Obligations Defined.** In the application of the provisions of subsection 21.1 and 21.2 above, City shall not be obligated to repair or restore the Premises to a condition greater than the condition existing immediately prior to the damage or destruction of the Premises.

## **Section 22. Financial Responsibility.**

**22.1 Taxes, Licenses, Debts.** Concessionaire shall promptly pay all taxes and other exactions assessed or assessable and pay all license fees and permit fees applicable to Concessionaire's operation, and acquire and keep current all licenses, municipal, state or federal, required as the result of Concessionaire's operations at the Airport pursuant to this Agreement, and shall not allow any of said taxes, excises or fees to become delinquent. Concessionaire shall pay promptly when due all bills, debts and obligations incurred in connection with its operations or activities at the Airport and shall not permit them to become delinquent. City shall not be responsible for the payment of any taxes, licenses, or debts arising from or in connection to Concessionaire's operations.

**22.2 Liens.** Concessionaire shall not permit any mortgage, judgment, or lien, including mechanic's or materialman's liens, to become attached to or be foreclosed upon the Premises or Airport real property by reasons of work, labor performed, or materials or equipment furnished to Concessionaire.

**22.3 Leasehold Mortgages Not Permitted.** Concessionaire shall have no right to convey, pledge or encumber, by deed of trust, mortgage or similar instrument, its leasehold interest in and to the Premises or any Capital Improvements constructed or placed on the Premises by Concessionaire, or to assign this Agreement as collateral security for any indebtedness of Concessionaire.

**Section 23. Access.** Subject to the provisions of this Agreement, and such rules, regulations, and restrictions as City or other Governmental Authorities may impose with respect to Concessionaire's Premises, City grants to Concessionaire, its officers, employees, Sublessees, contractors, and subcontractors the right and privilege of ingress and egress to its Premises and to public areas and public facilities of the Terminal Building.

The ingress and egress provided for in this Section shall not be used, enjoyed, or extended to any person engaging in any activity or performing any act or furnishing any service for or on behalf of Concessionaire who is not specifically authorized to engage in such activity or perform such act or furnish such service under the provisions hereof unless expressly authorized in writing by City in advance.

**Section 24. Quiet Enjoyment.** Upon payment of rents and fees, and performance of the covenants and agreements by Concessionaire, and subject to the terms and conditions of this Agreement, Concessionaire shall peaceably have and enjoy its Premises and all of the rights, privileges and appurtenances granted herein.

**Section 25. City's Right to Enter.** City, its officers, employees, contractors, and subcontractors shall have the right, but not the obligation, at such times as may be

reasonable under the circumstances, except during any time of real or threatened emergency, and with as little interruption of Concessionaire's operations as is reasonably practicable, to enter upon the Premises, accompanied by an authorized representative of Concessionaire, for the following purposes:

**25.1** To inspect such Premises to determine whether Concessionaire is in compliance with the terms and conditions of this Agreement, including inspection for safety, fire protection, or security purposes.

**25.2** To tour and show the Premises to prospective concessionaires and government officials, including but not limited to airport officials and elected officials.

**25.3** To enter the Premises to take inventories of Concessionaire's Capital Improvements.

**Section 26. Depreciation and Investment Credit for Federal Income Tax Purposes.** In order to preserve the tax exempt status of City's Airport Bonds, it is a condition of this Agreement that Concessionaire, its successors and assigns in interest under this Agreement hereby agrees that for federal income tax purposes, it shall not claim depreciation or any investment credit for the areas of the Airport furnished by City, and shall make and file an irrevocable election not to claim depreciation or an investment credit, with respect to such areas. When requested, Concessionaire agrees to send a copy of its election to the office of the Director.

**Section 27. Disadvantage Business Enterprise ("DBE") Program.** This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, and to comply with such requirements the Aviation Department has established an Airport Concession Disadvantaged Business Enterprise ("ACDBE") Program, approved by the FAA, in accordance with 49 CFR Part 23. To comply with the Aviation Department ACDBE Program, Concessionaire agrees as follows:

a) that it shall not discriminate against any business owner because of the owner's race, color, national origin, or sex in the connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23;

b) that it shall assist the Aviation Department in reaching its overall DBE participation goal by subleasing, whenever possible, a portion of its Concession Locations to Small Business Enterprises (SBE)/ Woman Business Enterprises (WBE)/and Certified DBE's; and

c) that it shall include the following statements in any subleases or contracts covered by 49 CFR Part 23, that it enters into and shall cause those businesses to similarly include the statements in further agreements:

"This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in the connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23."

**Section 28. Surrender of Premises.** Upon the expiration or earlier termination of this Agreement, Concessionaire shall yield and peaceably deliver to City possession of its Premises, including all Capital Improvements except its fixtures, trade fixtures, or similar Capital Improvements, to the extent that City has elected to retain title thereto. Concessionaire shall deliver its Premises to City, broom clean and in a condition at least as good as that, which existed on its Commencement Date, except for instances of obsolescence and ordinary wear and tear. In the event that the Premises are not in the condition required by the provisions of this Section 28 on the date of surrender, City shall have the right to draw against Concessionaire's Letter of Credit, Performance Bond, or cash security deposit for the funds necessary to restore the Premises and the Capital Improvements surrendered to City to such condition. For all Capital Improvements for which City has not elected to retain title, Concessionaire shall cause the immediate removal of such Capital Improvements from the Premises, and Concessionaire shall repair any damage caused by such removal at its sole cost and expense. If Concessionaire fails to cause such Capital Improvements to be removed from the Premises, City shall have the right to draw against Concessionaire's Letter of Credit, Performance Bond, or cash security deposit for the funds necessary to dispose of such Capital Improvements and to repair any damage to the Premises resulting from such disposition, plus an administrative fee equal to fifteen percent (15%) of the cost of such disposition and restoration.

## **Section 29. General Conditions.**

**29.1 Rules and Regulations.** During the Term, Concessionaire shall observe and obey all rules and regulations promulgated from time to time by City governing conduct on and operations at the Airport. Concessionaire shall not violate, nor knowingly permit its officers, employees, agents, or invitees to violate any such rules and regulations.

## **29.2 Hazardous Substances.**

**29.2.1 Concessionaire's Compliance with Environmental Laws.** Concessionaire shall at all times in all respects comply with all environmental laws, and any amendments thereto affecting Concessionaire's activities on the Airport, including, but not limited to, all federal, state and local laws, ordinances and regulations relating to Hazardous Substances as defined in subsection 2.28 above.

**29.2.2 Indemnification by Concessionaire.** Concessionaire shall not cause or permit any Hazardous Substances, to be brought upon, kept or used in or about the Premises by Concessionaire, its employees, Sublessees, contractors, or subcontractors without the prior written consent of City; which consent shall not be unreasonably withheld or delayed if Concessionaire can demonstrate to City's reasonable satisfaction that such Hazardous Substances are necessary or useful to Concessionaire's activities, and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Substances so brought upon, used or kept in or about the Premises. In addition, Concessionaire shall provide City with copies of all records related to any Hazardous Substances, when such records are required to be maintained by any Applicable Laws

In the event Concessionaire breaches the obligations stated in the preceding paragraph, or if the presence or release of Hazardous Substances on or about the Premises caused or permitted by Concessionaire results in contamination of the Premises, or if contamination of the Premises by Hazardous Substances otherwise occurs for which Concessionaire is legally liable to City for damages resulting from such contamination, then Concessionaire shall indemnify, defend and hold City harmless from any claims, judgments, damages, penalties, fines, costs, liabilities or losses (including but not limited to, diminution in value of the Premises and sums paid in settlement of claims, reasonable attorney's fees, consultant fees and expert fees) which arise during or after Concessionaire's Transition Period and the Term as a result of such contamination. This indemnification of City by Concessionaire includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Substances present in the air, soil, ground water on or under the Premises. Without limiting the foregoing, if the presence of any Hazardous Substance on or about the Premises caused or permitted by Concessionaire results in any contamination of the Premises, Concessionaire shall promptly take all corrective actions at its sole expense as are necessary to clean up the Premises to the extent required by a Governmental Authority having jurisdiction. Concessionaire shall, in consultation with City, determine the schedule, technique, method, and design of the corrective action, subject to Governmental Authority requirements and approval; and Concessionaire may contest and appeal any Governmental Authority decision or directive.

Upon the expiration or earlier termination of this Agreement, Concessionaire shall, at Concessionaire's sole cost and expense, remove or permanently clean all Hazardous Substances that Concessionaire, its employees, Sublessees, contractors, or subcontractors caused to be situated on, at, in, or under any Airport premises. This shall be done in compliance with all Applicable Laws and shall include the performance of any necessary clean-up or remedial action. In the event an order is issued by a Governmental Authority of competent jurisdiction that mandates Concessionaire's remedial action, City shall immediately notify Concessionaire and provide it the opportunity to negotiate with the acting Governmental Authority and enter the Premises to conduct investigatory, monitoring, or cleanup work. In the event Concessionaire is responsible for any remediation or cleanup work on or about the Premises after termination of this Agreement, Concessionaire shall have the right to enter the Premises for performance of such obligation.

The indemnification required by this subsection shall not apply to any Hazardous Substance existing on, under or about the Premises prior to occupancy by Concessionaire. However, City and Concessionaire recognize that there has been no environmental assessment establishing the presence or absence of any Hazardous Substance on, under, or about the Premises as of the Effective Date of this Agreement. City and Concessionaire agree that, as of the Effective Date of this Agreement, they are not aware of the existence of any Hazardous Substance on, under or about the Premises.

**29.2.3 Environmental Notices.** Concessionaire shall immediately notify City in writing of any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed, or threatened pursuant to any Environmental Laws. Concessionaire shall also supply to City as promptly as possible, and in any event within two (2) business days after receipt, copies of all reports, complaints, notices, or warnings or asserted violations relating in any way to the Premises or Concessionaire's use thereof. City and Concessionaire each shall promptly provide the other with a copy of a) any claim or demand for corrective action that any Environmental Agency issues and b) any other claim giving rise to either party's indemnification obligations under subsection 29.2.2 above, or subsection 29.3 below.

**29.2.4 City's Right of Entry.** During the Term, Director, or those authorized by Director, shall have the right to enter upon Concessionaire's Premises to test and determine the extent of any contamination of the Premises. Request for entry for this purpose shall be provided in writing to Concessionaire with advance notice, at reasonable times, and shall not unreasonably interfere with Concessionaire's use of the Premises.

**29.2.5 National Pollutant Discharge Elimination System.** Concessionaire shall comply with all federal and state regulations governing the National Pollutant Discharge Elimination System ("NPDES") and applicable sections of

Airport's Storm Water Pollution Prevention Plan, including all future amendments of said regulations and procedures as may be adopted by federal, state or local agencies.

**29.3 Indemnification Agreement.** Concessionaire covenants that it, its employees, Sublessees, contractors, and subcontractors will use due care and diligence in all of its or their activities at the Airport. Concessionaire agrees to and recognizes the broad nature of this indemnification provision pursuant to subsection 29.2.2 above, and 29.3.1 below ("Indemnification Agreement"), and voluntarily makes this covenant and expressly acknowledges the receipt of adequate consideration by City in support of this Indemnification Agreement.

**29.3.1 General Indemnification.** Concessionaire agrees to defend, indemnify and hold harmless City, its officers and employees from and against all suits, actions, claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses (including but not limited to consultants' fees, reasonable fees of attorneys, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, brought against City because of any injury, including death at any time resulting from bodily injury, damages for care and loss of services, or damage received or sustained by any person, persons or property arising out of or resulting from any negligent act, error, or omission of Concessionaire, its officers, agents, or invitees arising out of the activities of Concessionaire or Concessionaire's performance, purported performance, or non-performance of this Agreement or Concessionaire's activities at the Premises and Airport, except when such negligent acts, errors, or omissions are a result of City's negligence.

**29.3.2 Scope of Indemnification.** With respect to any claims, actions, suits, damages or judgments caused by or resulting from acts, omissions or activities of Concessionaire, its employees, Sublessees, contractors, and subcontractors, Concessionaire shall

**29.3.2.1** investigate or cause the investigation of accidents involving such injuries;

**29.3.2.2** negotiate or cause to be negotiated settlement of all claims made as may be deemed expedient by Concessionaire, and defend, or cause to be defended, suits for damages, even if groundless, false or fraudulent, brought on account of such injuries or damages against City;

**29.3.2.3** pay and satisfy judgments finally establishing the liability of City in all actions defended by Concessionaire pursuant to this subsection 29.3; and

**29.3.2.4** pay, or cause to be paid: a) all costs taxed against City in any legal proceeding defended or caused to be defended by Concessionaire as

aforesaid; b) any interest accruing up to the date of payment by Concessionaire; c) all premiums charged upon appeal bonds required in such proceedings; and d) all expenses incurred by City for investigation, negotiation, and defense, including but not limited to expert witnesses' and attorneys' fees incurred, should Concessionaire fail to provide the defense and indemnification required herein.

**29.3.3 Miscellaneous.** City shall, promptly upon receipt of a notice of claim, deliver to Concessionaire every demand, notice, summons, or other process received in any claim or legal proceeding contemplated therein. In the event City fails to give Concessionaire notice of any such demand, notice, summons, or other process received by City and such failure to give notice results in prejudice to Concessionaire in the defense of any action or legal proceeding contemplated herein, such failure or delay shall release Concessionaire of its liability as set forth in this paragraph insofar as only the particular claim or legal proceeding is concerned, and only to the extent of such prejudice. Nothing in this subsection shall be deemed a change or modification in any manner whatsoever of the method or condition of preserving, asserting, or enforcing any claim or legal liability against City. This subsection shall not be construed as a waiver of City's immunity. The provisions of this subsection shall not be construed to prohibit Concessionaire from seeking contribution or indemnity from any third party that may have caused or contributed to the event for which Concessionaire indemnified City.

**29.3.4 Term of Indemnification.** Concessionaire's obligations and liabilities under this subsection 29.3 shall survive the expiration or earlier termination of this Agreement.

**29.4 Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the ordinances, laws, and rules and regulations of the City of Albuquerque.

**29.5 Non-liability of Agents and Employees.** City shall not in any event be liable for any acts or omissions of Concessionaire, its employees, Sublessees, contractors, or subcontractors, or for any condition resulting from the activities of Concessionaire, its employees, Sublessees, contractors, or subcontractors, either to Concessionaire or to any other person.

**29.6 Limitation of City's Liability.** Neither City, its officers, employees, or agents shall have a) any personal liability with respect to any of the provisions of this Agreement, or b) any liability for any consequential damages resulting from a default by City hereunder, or c) from the exercise by City of any of its remedies hereunder upon the occurrence of an Event of Default. Concessionaire further agrees not to initiate or participate in any involuntary bankruptcy, reorganization, receivership, or insolvency proceeding against City.

**29.7 No Partnership or Agency.** Nothing contained in this Agreement is intended or shall be construed in any respect to create or establish any relationship other than that of owner and Concessionaire, and nothing herein shall be construed to establish any partnership, joint venture or association between or among City and Concessionaire, or any agency by or in favor of the other, or to make Concessionaire the general representative or agent of City for any purpose whatsoever.

**29.8 Forum Selection.** Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in the New Mexico Second Judicial District Court located in Bernalillo County, New Mexico or in the United States District Court located in Albuquerque, New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of either or both of said courts. The provisions of this subsection shall survive the expiration or earlier termination of this Agreement.

**29.9 Compliance with Law.** Concessionaire shall comply with all applicable laws, ordinances, rules, regulations and procedures of Federal, State, and local governments related to this Agreement and Concessionaire's use of the Premises and the Airport, including, but not limited to Aviation Department rules.

**29.10 Subordination.**

**29.10.1 Subordination to Agreements with the U.S. Government.** This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or to the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as amended, or in accordance with successive airport development acts. City covenants that it has no existing agreements with the United States in conflict with the express provisions hereof.

**29.10.2 Other Subordination.** The Premises and Airport are, and this Agreement is, subject to and subordinate to the terms of all deeds from the United States of America to City, including but not limited to that certain deed from the United States of America to City dated December 15, 1962, and filed for record on December 19, 1962, in Volume 672 of Records, Folio 469, with the records of the County Clerk of the County of Bernalillo, New Mexico, wherein City agreed to hold title to certain property upon certain terms and which also provides that the United States may regain title should City not cure any default within sixty (60) days of notice thereof.

**29.10.3 Airport Bond Ordinances.** This Agreement is subject to and subordinate to any and all City Ordinances pertaining to Airport Bonds.

**29.11 Discrimination Prohibited.**

**29.11.1 General.** In the use and occupation of the Premises by Concessionaire, Concessionaire shall not discriminate against any person or class of persons by reason of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap in violation of any federal, state or local law.

**29.11.2 Civil/Human Rights Laws.** In the operation and use of the Premises, Concessionaire shall not on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Parts 21, 23 and 26, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, the New Mexico Human Rights Act, and the Albuquerque Human Rights Ordinance. Concessionaire agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap. Such action shall include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. Concessionaire agrees to post in conspicuous places available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination clause.

**29.11.3 Covenants of Concessionaire.** Concessionaire, for itself, its successors in interest, and assigns, as a part of the consideration of this Agreement, does hereby covenant and agree that: a) no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said Premises, b) that in the construction of any Capital Improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, c) that Concessionaire shall use the Premises in compliance with all other requirements imposed by, or pursuant to, the New Mexico Human Rights Act, the Albuquerque Human Rights Ordinance, and 49 CFR Parts 21, 23 and 26, and as said regulations may be amended; and Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR Part 152 Subpart E, Nondiscrimination Airport in Aid Program, to ensure that no person shall on the grounds of race, color, religion, national origin or ancestry, sex, age, or physical or mental handicap be excluded from participating in any employment activities covered in 14 CFR Part 152 Subpart E, or such employment activities covered in the New Mexico

Human Rights Act, or the Albuquerque Human Rights Ordinance. Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Concessionaire assures that it will require that any covered sub-organization similarly will undertake affirmative action programs and that the sub-organization will require assurance from the sub-organization, as required by 14 CFR Part 152 Subpart E, to the same effect.

**29.12 No Exclusive Rights.** Nothing herein contained shall be deemed to grant to Concessionaire any exclusive right or privilege within the meaning of FAA Advisory Circular 150/5190-5 for the conduct of any activity on the Airport, except that, subject to the terms and provisions herein, Concessionaire shall have the right to use the Premises under the provisions of this Agreement.

**29.13 Agreement Subject to Avigation Priority.** Concessionaire's right to use the Premises for the purposes as set forth in this Agreement shall be secondary to and subordinate to the operation of the Airport. Concessionaire acknowledges that due to the location of the Premises at the Airport, there may be an impact to the use of the Premises as a result of the noise, vibrations, odors, vapors, fumes, smoke, dust, particulates and other interference caused by Airport operations. Concessionaire hereby waives any and all rights or remedies against City arising out of any noise, vibrations, odors, vapors, fumes, smoke, dust, particulates and other interference that is caused by the operation of the Airport. City specifically reserves for itself, and for the public, a right of flight for the passage of aircraft in and through the airspace above the surface of the Premises together with the right to cause in said airspace such noise, vibrations, odors, vapors, fumes, smoke, dust, particulates and other interference as may be inherent in the present and future operation of aircraft.

Concessionaire further acknowledges that its use of the Premises, in relation to the Avigation Priority as referenced in this subsection, is reserved upon and subject to certain conditions and restrictions including Concessionaire's limitations: a) to cause electrical, electronic or other interference with radio, radar, microwave or other similar means of communications between the Airport and any aircraft; b) to adversely affect or impair the ability of operators of aircraft to distinguish between regularly installed air navigation lights and visual aids and other lights serving the Airport; or c) to cause glare in the eyes of operators of aircraft approaching or departing the Airport, or to impair visibility in the vicinity of the Airport, or to otherwise endanger the approaching, landing upon, taking off from, maneuvering about or operating of aircraft on, above and about the Airport; provided, however, that, notwithstanding any contrary provision contained above, Concessionaire shall be permitted to construct and maintain such Capital Improvements and to utilize all lighting, finishes and building materials as shall have been submitted to and approved by City.

**29.14 Construction Inconvenience.** Concessionaire acknowledges and agrees that from time to time during the Term, City shall have the right to initiate and carry forward programs of construction, reconstruction, expansion, relocation, maintenance, and repair of the various buildings, infrastructure and facilities on the Airport ("Construction"), including but not limited to terminal facilities, roadways, parking areas for aircraft and ground vehicles, runways, and taxiway areas. Concessionaire agrees that it shall not hold City, including its officers, agents, employees and representatives, liable for damages of any nature whatsoever to Concessionaire due to Construction. In the event Construction results in a total denial of access to the Premises by Concessionaire, Concessionaire shall be entitled to an abatement of the rents during the time access is denied. The amount of abatement for each calendar day shall be the pro rata share of rent for one day to the Minimum Monthly Guarantee.

If, in its sole discretion, City elects to delete or reduce any of Concessionaire's Concession Locations or Support Space due to Airport Construction resulting from operational necessity, security, or safety considerations, Concessionaire shall be given no less than thirty (30) days prior written notice unless circumstances occur that are beyond the control of City including, but not limited to, a direct or indirect requirement of the TSA or other Governmental Authority. City will attempt to provide reasonably comparable space for relocation at the Airport or within the Terminal Building, but City has no obligation to make any such comparable space available. City agrees to reimburse Concessionaire for the reasonable and proper moving costs of movable furniture, equipment, appliances, carpeting, decorations, special finishing work, signs, trade fixtures and other items, as well as the undepreciated value of the Capital Improvements related to its Initial Capital Investment and Mid-Term Capital Investment that are not replaced or relocated, based upon the Depreciation Schedule therefor. For purposes of this Section, "reasonable and proper moving costs" shall mean the moving of furniture, equipment, appliances, carpeting, decorations, special finishing work, signs, trade fixtures and other items into the new comparable space, moving and reinstalling telephone lines and computer equipment and connections, and reasonable expenses associated with reinstalling electrical connections and other utilities, if any. If a modification to the Terminal Building renders a Concession Location no longer commercially viable for Concessionaire or its Sublessee, as determined by City based on information to be provided by Concessionaire, then City will reimburse Concessionaire for the remaining undepreciated portion of the affected Capital Improvements related to its Initial Capital Investment and Mid-Term Capital investment, as the case may be, based upon the Depreciation Schedule therefor. If City exercises its right to delete or reduce space from the Premises, the portion of the Premises to be reduced shall cease to be leased to Concessionaire and shall no longer be subject to the terms and provisions of this Agreement. In addition, if City requires deletion or reduction of the Premises, City shall not be liable to Concessionaire or its Sublessees for any damages, including, without limitation, damages for any inconvenience or loss of business as a result of the deletion or reduction of any Premises, except for the reimbursement of the

undepreciated cost of said Capital Improvements, and the provisions of this subsection 29.14.

**29.15 Partial Taking.** In the event a partial taking by any Governmental Authority occurs during the Term, then this Agreement shall terminate as to the portion of the Premises so taken but shall continue in full force and effect as to the remainder of the Premises. In the event of a partial taking, City shall, promptly after City's receipt of the net proceeds paid as a result of such partial taking, make all such net proceeds available to Concessionaire in a manner reasonably acceptable to City, for the repair and restoration of its Capital Improvements. Concessionaire shall repair and restore all Capital Improvements affected by such partial taking so that Concession Locations reasonably appropriate for the continued use and occupancy by Concessionaire thereof are completed. During the period of repair and restoration, Concessionaire's Minimum Monthly Guarantee shall be abated proportionately to the extent and during the time in which portions of the Concession Locations are rendered untenable. Upon the completion of such repair and restoration, Concessionaire's Minimum Monthly Guarantee for the remainder of the Term shall be proportionately adjusted so as to reflect the loss of the area of the Concession Locations so taken.

**29.16 Total Taking.** In the event a total taking by any Governmental Authority occurs during the Term, then this Agreement shall cease and terminate on the date that title vests in the Governmental Authority pursuant to such total taking. All proceeds paid as a result of such total taking shall be the sole property of City. Concessionaire shall pay all rent and fees and other expenses through the date of such termination and shall promptly vacate the Premises immediately prior to the date on which title vests in such Governmental Authority pursuant to such total taking.

### **29.17 Ethics.**

**29.17.1 Conflict of Interest.** Upon execution of this Agreement, or within five (5) days after the acquisition of any interest described in this Agreement during the Term, Concessionaire shall disclose in writing to City whether any City Councilor, Albuquerque Airport Advisory Board member, officer or employee of City has or hereafter acquires any direct, indirect, legal, or beneficial interest in Concessionaire or in any contract, lease, or agreement between City and Concessionaire, or in any franchise, concession, right, or privilege of any nature granted by City to Concessionaire in this Agreement or otherwise.

**29.17.2 Fair Dealing.** Concessionaire covenants and warrants that the only entity interested in this Agreement is named in this Agreement and that no other person or firm has any interest in this Agreement, and this Agreement is entered into by such Concessionaire without collusion on the part of such Concessionaire with any person or firm, without fraud and in good faith. Concessionaire also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the Term, will be, offered or given by such Concessionaire, or any agent or

representative of such Concessionaire, to any officer or employee of City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

**29.17.3 Board of Ethics and Campaign Practices.** Concessionaire agrees to provide the Board with any records or information pertaining in any manner to this Agreement, or both, whenever such records or information are within Concessionaire's custody, are germane to an investigation authorized by the Board, and are requested by the Board. Concessionaire further agrees to appear as a witness before the Board as required by the Board in hearings concerning ethics or campaign practices charges heard by the Board. Concessionaire agrees to require that all subcontractors employed by Concessionaire for services performed for this Agreement shall agree to comply with the provisions of this subsection. Concessionaire and its subcontractors shall not be compensated under this Agreement for its time or any costs incurred in complying with this subsection.

**29.17.4 Harassment.** Concessionaire shall not harass or annoy City Councilors of the City of Albuquerque or officers or employees of City with requests for modifications resulting in more favorable treatment under this Agreement than the treatment accorded other concessionaire.

**29.18 Approvals, Consents, and Notices.** All approvals, consents, and notices required by this Agreement shall be in writing and shall be given by registered or certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid, return receipt requested, or by personal delivery, or by facsimile transmission to the "FAX" number given below, provided that the completed transmission is electronically verified. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

<b>City:</b>	Director of Aviation Albuquerque International Sunport
<b>Certified Mail:</b>	PO Box 9948 Albuquerque, New Mexico 87119-1048
<b>Personal Delivery:</b>	2200 Sunport Blvd. SE, 3rd Floor Albuquerque, NM 87106
<b>Telephone:</b>	(505) 244-7700
<b>FAX Transmission:</b>	(505) 842-4278

**Concessionaire:**  
**Concessionaire Official:**  
**Title:**

**Certified Mail and  
Personal Delivery:**

**Telephone:**

**FAX:**

If approval, consent, or notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

The effective date of such approval, consent, or notice shall be the date of the receipt as shown by the U.S. Postal Service Return Receipt, or the date personal delivery is certified, or the date of electronic verification of the facsimile transmission, unless provided otherwise in this Agreement.

**29.19 Waiver of Anticipated Profits.** Concessionaire hereby waives any claim against City and its officers, employees, representatives, contractors, subcontractors, successors and assigns for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part hereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying the exercise of any rights under this Agreement.

**29.20 Contract Interpretation.**

**29.20.1 Severability.** In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either City or Concessionaire in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

**29.20.2 Waiver.** No provision of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor shall any custom or practice which may evolve between the parties in the administration of the terms of this Agreement be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

**29.20.3 Gender, Singular/Plural.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

**29.20.4 Captions and Section Headings.** The captions, section headings, and table of contents contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

**29.20.5 Entire Agreement.** This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings and agreements have been merged into this Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**29.20.6 Relationship of Contract Documents.** All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be binding as if required by all.

**29.20.7 Exhibits, Certificates, Documents Incorporated, and Attachments.** All exhibits, certificates, documents, attachments, riders, and addenda referred to in this Agreement, including but not limited to the attached exhibits, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

**29.20.8 Successors and Assigns.** All covenants, stipulations and agreements in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

**29.20.9 Governmental Rights and Powers.** Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing or waiving any rights of ownership enjoyed by City in the Airport; except as specifically provided in this Agreement; or impairing, exercising or defining governmental rights and the police powers of City.

**29.20.10 Cross References.** References in the text of this Agreement to articles, sections or exhibits pertain to articles, sections or exhibits of this Agreement unless otherwise specified.

**29.20.11 Relation to Other Concessionaires.** This Agreement is separate and distinct from, and shall be construed separately from, any other agreement between City and any other concessionaire at the Airport. The fact that such other agreement contains provisions, which differ from those contained in this Agreement shall have no bearing on the construction of this Agreement.

**29.20.12 Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**29.21 Approval Rights of City.** Whenever any provision of this Agreement requires the consent or approval of City or provides to City the right to make a determination or judgment, City shall have the absolute and unconditional right to withhold its consent or approval, in its sole discretion, and to make such determination or judgment in its sole discretion on the basis of such factors and considerations as it shall deem relevant, including, without limitation, self interest, except for those circumstances, if any, where this Agreement expressly provides that such consent or approval will not be unreasonably withheld or City will make such determination or judgment reasonably.

**29.22 Required Modifications to Agreement.** In the event that a Governmental Authority requires modifications or changes to this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Concessionaire shall make or agree to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required and any expenses resulting from such amendments, modifications, revisions, supplements or deletions shall be paid to Concessionaire by City.

**29.23 Force Majeure.** Except as expressly provided in this Agreement, neither City nor Concessionaire shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of rentals, fees and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of a public enemy, acts of terrorism or threatened acts of terrorism, weather conditions and the results of acts of nature, riots, rebellion, sabotage, or other causes similar to those enumerated for which it is not responsible or which are not within its control.

**29.24 Non-Waiver.** The failure of City to insist upon prompt and strict performance of any of the terms, conditions or undertakings of this Agreement, or to exercise any right herein conferred, in any one or more instances, shall not be construed as a waiver of the same or any other term, condition, undertaking, right or option.

**29.25 Administration of Agreement.** The Chief Administrative Officer of the City of Albuquerque or his authorized representative shall administer this Agreement for the City of Albuquerque.

**29.26 Approval of Agreement.** This Agreement shall not become effective or binding until signed by the Chief Administrative Officer of the City of Albuquerque.

**29.27 Savings.** City and Concessionaire acknowledge that they have thoroughly read this Agreement, including all Exhibits hereto, and have sought and received whatever competent advice and counsel that was necessary for them to form a full and complete understanding of all rights and obligations herein. City and Concessionaire further acknowledge that this Agreement is the result of extensive negotiations between them and that this Agreement shall not be construed against either party by reason of that party's preparation of all or part of this Agreement.

**IN WITNESS WHEREOF,** City has caused this Agreement to be executed by its Chief Administrative Officer, and Concessionaire has caused the same to be executed by its appropriate and authorized officers.

**CITY OF ALBUQUERQUE:**

By: \_\_\_\_\_  
**Bruce J. Perlman, Ph.D.**  
**Chief Administrative Officer**

Date: \_\_\_\_\_

**Recommended:**

By: \_\_\_\_\_  
**John D. "Mike" Rice**  
**Director of Aviation**

Date: \_\_\_\_\_

**Concessionaire:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

City of Albuquerque Business Registration No.: \_\_\_\_\_  
NM State Taxation and Revenue Taxpayer I.D. No.: \_\_\_\_\_  
Federal Taxpayer ID Number: \_\_\_\_\_

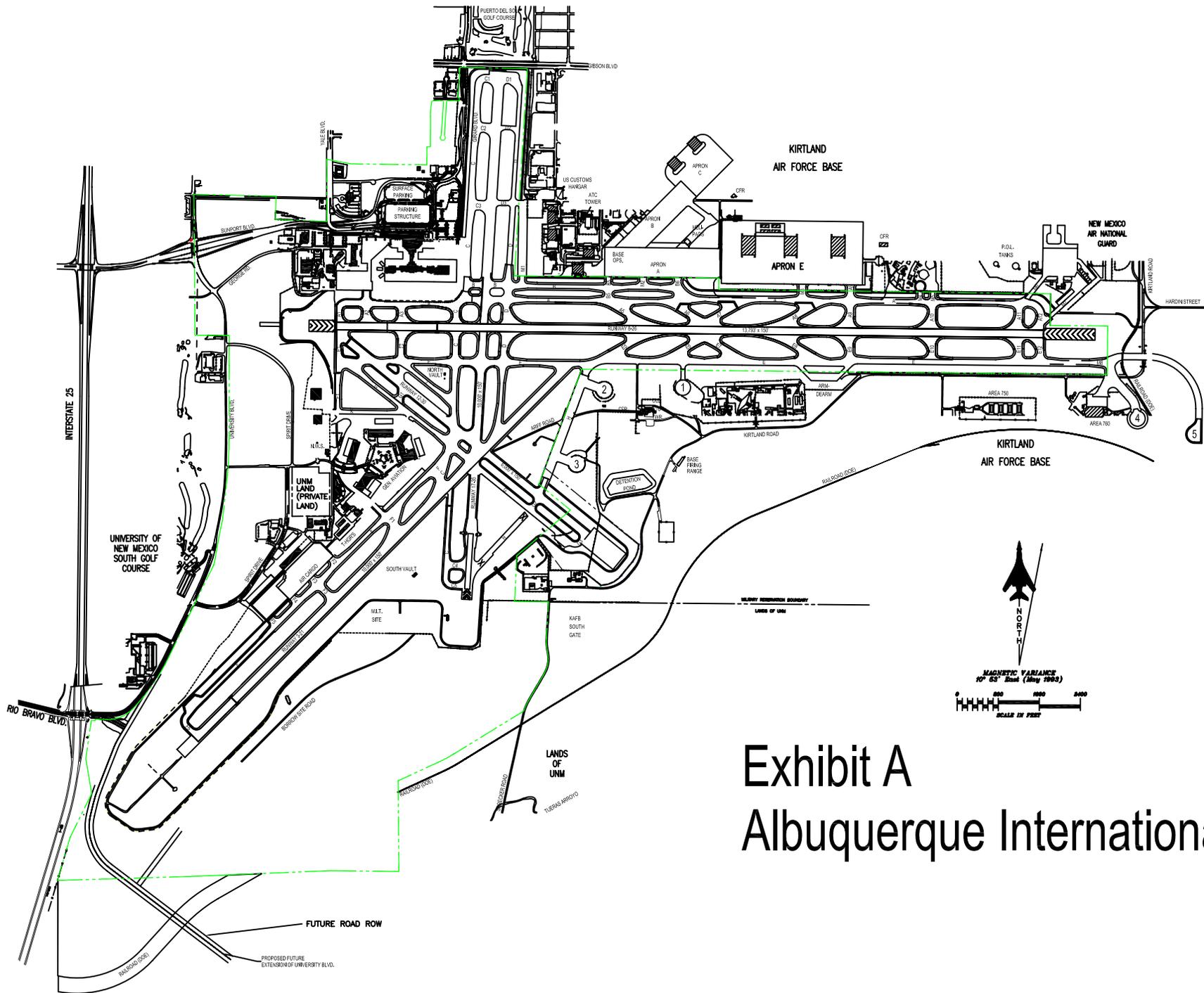


Exhibit A  
 Albuquerque International Sunport

**EXHIBIT B**  
**REQUEST FOR PROPOSALS (“RFP”)**  
**WILL BE INCORPORATED AFTER AWARD OF**  
**CONCESSION LEASE AND AGREEMENT**

**EXHIBIT C**  
**PROPOSAL**  
**WILL BE INCORPORATED AFTER AWARD OF**  
**CONCESSION LEASE AND AGREEMENT**

**EXHIBIT D**  
**CONCESSION LOCATIONS**  
**INCORPORATED AS ATTACHMENT B,**  
**PART 3 OF THIS RFP**

**EXHIBIT E**  
**SUPPORT SPACE**  
**WILL BE INCORPORATED AFTER AWARD OF**  
**CONCESSION LEASE AND AGREEMENT**

**EXHIBIT F**  
**STANDARDS OF OPERATIONS MANUAL**  
**INCORPORATED AS ATTACHMENT C,**  
**PART 3 OF THIS RFP**

**EXHIBIT G**  
**DESIGN CRITERIA AND CONSTRUCTION MANUAL**  
**INCORPORATED AS ATTACHMENT D,**  
**PART 3 OF THIS RFP**

**EXHIBIT H**  
**PLANS AND SPECIFICATIONS**  
**WILL BE INCORPORATED AFTER AWARD OF**  
**CONCESSION LEASE AND AGREEMENT**

**EXHIBIT I**  
**MENU**  
**WILL BE INCORPORATED AFTER AWARD OF**  
**CONCESSION LEASE AND AGREEMENT**

**EXHIBIT J  
PROPOSED LIQUOR LICENSE LEASE AND AGREEMENT**

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**Table of Contents**

Section 1. Recitals and Definitions..... 2  
Section 2. Liquor License Requirement ..... 2  
Section 3. Term..... 3  
Section 4. Use of Liquor License ..... 3  
Section 5. Original Application and Renewal of the Liquor License..... 3  
Section 6. Payment of Liquor License Fees..... 3  
Section 7. Termination ..... 3  
    7.1 Notice, Cure Period, and Effective Date of Termination ..... 4  
Section 8. Attorney's Fees ..... 4  
Section 9. Covenants Concerning Liquor License ..... 4  
Section 10. Effect of Lease ..... 5  
Section 11. Approvals, Consents, and Notices ..... 5  
Section 12. Non-Waiver ..... 6  
Section 13. Non-liability of Agents and Employees..... 6  
Section 14. Administration of Lease ..... 6  
Section 15. Approval of Lease..... 6  
Section 16. Savings ..... 6  
Exhibit A Designated Concession Location(s) ..... 8



sell alcoholic beverages. In order for Lessee to comply with the terms of its Food and Beverage Concession Lease and Agreement, Lessee is required to make application to the Alcohol and Gaming Division of the Regulation and Licensing Department ("AGD") of the State of New Mexico to be designated as City's agent lessee for City's Governmental Liquor License No. \_\_\_\_\_,

If, for any reason, whatsoever, Lessee is not approved as City's agent lessee, then City shall have the right to either extend the time required for Lessee to obtain approval pursuant to the rules and regulations of the AGD, or immediately terminate this Liquor License Lease and Agreement.

**Section 3. Application for Liquor License and Payment of Fees.** City agrees to assist Lessee in preparing the original application required by the AGD to designate Lessee as agent lessee of City's Liquor License, and Lessee agrees to pay to the AGD all fees associated with the application.

**Section 4. Annual Liquor License Renewal and Payment of Fees.** Lessee agrees to assist City in preparing all supporting documents required by the AGD for the annual renewal of the Liquor License, and to pay to the AGD the required annual renewal fees, as well as all federal, state and local taxes associated with its use of the Liquor License. In addition, Lessee agrees to pay to City, whether invoiced or not, an annual fee for the lease of the Liquor License, as well as all other fees, expenses, or taxes, if any, associated with such lease.

**Section 5. Use of Liquor License.** Upon the issuance of the Liquor License, and execution of this Lease by the City's Chief Administrative Officer, Lessee shall be entitled to use the Liquor License for only those concession locations, which are authorized to sell alcoholic beverages pursuant to the Food and Beverage Concession Lease and Agreement.

Lessee and its servers shall comply with all age and other qualifications required by state law, and shall annually complete all training required pursuant to the Alcohol Server Act.

**Section 6. Covenants Concerning Liquor License.** During the Term, Lessee covenants and agrees that it will operate the Liquor License continuously and without interruption; that it will maintain the Liquor License in good standing with all appropriate and duly constituted legal authorities; that it will observe and abide by all federal, state and local laws and ordinances and regulations pertaining to the sale of alcoholic beverages in the State of New Mexico, as the same shall be applicable

hereto and that it will do no act that will cause a cancellation or revocation of said Liquor License, while in possession of same. Should the Liquor License be canceled by reason of some violation or default on the part of Lessee in complying with these laws, ordinances and regulations, Lessee shall be liable to City for all damages which City incurs as a result, including, but not limited to, the cost of replacing the Liquor License with a comparable license, lost income, and attorney's fees. Further, Lessee agrees to timely renew the federal, state, and, local licenses as required and prescribed by law and pay the fees in conjunction therewith, notifying the Director of the Aviation Department ("Director") of completions of same.

**Section 7. Term.** The term of this Lease ("Term") shall commence on the date this Lease is signed by City's Chief Administrative Officer and shall be coterminous with its Food and Beverage Concession Lease and Agreement, unless sooner terminated in accordance with the terms and provisions of this Lease or the terms and provisions of the Food and Beverage Concession Lease and Agreement.

**Section 8. Insurance.** In addition to the insurance required in Section 19 of the Food and Beverage Concession Lease and Agreement, Lessee shall also be required to procure and maintain in full force and effect throughout the Term, a liquor liability insurance policy with liability limits in amounts not less than One Million and 00/100 Dollars (\$1,000,000.00) combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. City shall be named as additional insured and the coverage afforded shall be primary with respect to operations covered.

**Section 9. Termination.** City shall have the right to terminate this Lease upon the occurrence any of the following events:

- a) Lessee is not approved as City's agent lessee of the Liquor License pursuant to Section 2 above;
- b) Lessee's Liquor License is terminated or revoked by the State of New Mexico;
- c) If the resident agent of Lessee ceases to be licensed by the State of New Mexico to serve alcoholic beverages under the Liquor License pursuant to Section 6 above;
- d) Failure to maintain insurance pursuant to Section 8 above;

e) Expiration or earlier termination of the Food and Beverage Concession Lease and Agreement.

**9.1 Notice, Cure Period, and Effective Date of Termination.**

a) In the event the Liquor License is terminated by the State of New Mexico, the party to this Lease that receives notice of such termination from the State of New Mexico shall immediately notify the other party of such notice. This Lease shall then be terminated as of the effective date of termination of the Liquor License by the State of New Mexico. No time shall be allowed to cure this default.

b) In the event the resident agent's right to serve alcoholic beverages under the Liquor License is terminated by the State of New Mexico, the party to this Lease that receives notice of such termination from the State of New Mexico shall immediately notify the other party of such notice. This Lease shall then be terminated as of the effective date of termination by the State of New Mexico. No time shall be allowed to cure this default.

c) This Lease shall terminate upon expiration or earlier termination of the Agreement. Any notice of termination given pursuant to the terms of the Agreement shall be deemed notice of termination for this Lease. The effective date of termination of this Lease shall be the same date as stated in the notice of termination of the Agreement.

**Section 10. Assignment.** Lessee shall not assign, mortgage, encumber, or otherwise transfer, in whole or in part, any of the rights and privileges granted pursuant to this Lease, without the written approval of City.

**Section 11. Approvals, Consents, and Notices.** All approvals, consents, and notices required by this Agreement shall be in writing and shall be given by registered or certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid, return receipt requested, or by personal delivery, or by facsimile transmission to the "FAX" number given below, provided that the completed transmission is electronically verified. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

**City:** Director of Aviation  
Albuquerque International Sunport  
**Certified Mail:** PO Box 9948  
Albuquerque, New Mexico 87119-1048  
**Personal Delivery:** 2200 Sunport Blvd. SE, 3rd Floor  
Albuquerque, NM 87106  
**Telephone:** (505) 244-7700  
**FAX Transmission:** (505) 842-4278

**Lessee:**  
**Lessee Official:**  
**Title:**  
**Certified Mail and  
Personal Delivery:**

**Telephone:**  
**FAX:**

If approval, consent, or notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

The effective date of such approval, consent, or notice shall be the date of the receipt as shown by the U.S. Postal Service Return Receipt, or the date personal delivery is certified, or the date of electronic verification of the facsimile transmission, unless provided otherwise in this Agreement.

**Section 12. Non-Waiver.** The failure of City to insist upon prompt and strict performance of any of the terms, conditions or undertakings of this Lease, or to exercise any right herein conferred, in any one or more instances, shall not be construed as a waiver of the same or any other term, condition, undertaking, right or option.

**Section 13. Non-liability of Agents and Employees.** City shall not in any event be liable for any acts or omissions of Lessee, its employees, contractors, or subcontractors, or for any condition resulting from the activities of Lessee, its employees, contractors, or subcontractors, either to Lessee or to any other person.

**Section 14. Attorney's Fees.** In any action brought by City for the enforcement of this Liquor License Lease and Agreement, City shall be entitled to recover

interest, court costs and attorney's fees should City prevail in part or in whole in prosecuting City's claims against Lessee or in defending against any complaint filed against City by Lessee.

**Section 15. Effect of Lease.** Except as expressly revised or conditioned herein, Lessee agrees that all of the terms and conditions stated in the Food and Beverage Concession Lease and Agreement are incorporated into this Lease as if set forth in full.

**Section 16. Administration of Lease.** The Chief Administrative Officer of the City of Albuquerque or his authorized representative shall administer this Lease for the City of Albuquerque.

**Section 17. Approval of Lease.** This Lease shall not become effective or binding until signed by the Chief Administrative Officer of the City of Albuquerque.

**Section 18. Savings.** City and Lessee acknowledge that they have thoroughly read this Liquor License Lease and Agreement, and the Food and Beverage Concession Lease and Agreement, including all exhibits, and have sought and received whatever competent advice and counsel that was necessary for them to form a full and complete understanding of all rights and obligations herein. City and Lessee further acknowledge that this Lease is the result of extensive negotiations between them and that this Lease shall not be construed against either party by reason of that party's preparation of all or part of this Lease.

{INTENTIONALLY LEFT BLANK}

**IN WITNESS WHEREOF**, City has caused this Lease to be executed by its Chief Administrative Officer, and Lessee has caused the same to be executed by its appropriate and authorized officers.

**CITY OF ALBUQUERQUE:**

By: \_\_\_\_\_  
**Bruce J. Perlman, Ph.D.**  
**Chief Administrative Officer**

Date: \_\_\_\_\_

**Recommended:**

By: \_\_\_\_\_  
**John D. "Mike" Rice**  
**Director of Aviation**

Date: \_\_\_\_\_

**Lessee:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

City of Albuquerque Business Registration No.: \_\_\_\_\_

NM State Taxation and Revenue Taxpayer I.D. No.: \_\_\_\_\_

Federal Taxpayer ID Number: \_\_\_\_\_

**EXHIBIT K  
SUBLEASE(S)**

**WILL BE INCORPORATED AFTER AWARD OF  
CONCESSION LEASE AND AGREEMENT**

**EXHIBIT L  
MONTHLY STATEMENT OF GROSS REVENUES FORM  
WILL BE INCORPORATED AFTER AWARD OF  
CONCESSION LEASE AND AGREEMENT**

**Irrevocable Letter Of Credit**

*(sample format)*

Letter of Credit No. \_\_\_\_\_

Date: \_\_\_\_\_

Amount: \$ \_\_\_\_\_

City of Albuquerque  
Aviation Department  
Albuquerque International Sunport  
P. O. Box 9948  
Albuquerque, NM 87119-1048

We hereby establish an Irrevocable Letter of Credit in your favor in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the account of \_\_\_\_\_ (name of Operator) available by your draft at sight when accompanied by:

A certificate signed by the Director of Aviation of the City of Albuquerque to the effect that \_\_\_\_\_ (name of Operator) has failed to perform the terms, covenants and conditions to be performed as required by the \_\_\_\_\_ (exact title of the agreement) Agreement dated \_\_\_\_\_.

**This Letter of Credit shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of the Agreement.**

Drafts under this credit must bear upon their face the words:

Drawn under \_\_\_\_\_ Bank  
Letter of Credit No. \_\_\_\_\_ Dated \_\_\_\_\_.

We hereby agree with drawers, endorsers and bona fide holders of drafts negotiated under and in compliance with the terms of this credit that the same will be duly honored upon presentation to Drawee if drawn and negotiated on or before \_\_\_\_\_.

This credit is subject to the "Uniform Customs and Practice for Documentary Credits" as established by the International Chamber of Commerce, and such revisions thereof as are in effect as of the date of issuance.

\_\_\_\_\_  
[name of bank]

By: \_\_\_\_\_  
Authorized Signature

**Performance Bond**

*(sample format)*

**Bond No.** \_\_\_\_\_

**Know All Men By These Present**, that we \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto the **City of Albuquerque**, New Mexico, in the penal sum of \_\_\_\_\_ **Dollars (\$\_\_\_\_\_)**, lawful money of the United States, to the payment of which well and truly to be made we bind ourselves and our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

**Whereas**, the above bonded Principal has signed a \_\_\_\_\_ Agreement with the City of Albuquerque, dated \_\_\_\_\_.

**Now, Therefore**, the condition of this obligation is such that, if the above bonded Principal shall faithfully perform each and every provision of the Agreement, then this obligation shall be void; otherwise, to remain in full force and effect.

This Performance Bond is to remain in force and to be binding upon Surety for a period of \_\_\_\_\_ year(s) from the date hereof, but may be continued from year to year by delivery of Continuation Certificate signed by Attorney-in-Fact and under seal of said Surety. City of Albuquerque is allowed to make a partial draw on this Bond, pursuant to Section \_\_\_ of the above-referenced Agreement. Further, this Performance Bond shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of the above-referenced Agreement. The Surety shall have the right to terminate their liability upon giving the City of Albuquerque thirty (30) days notice by registered mail of its intention to so terminate, but said Surety shall remain liable for all sums due under the provision of this Bond up to and including the effective date of such termination and liability.

In Witness Whereof, the Principal and Surety have hereunto set their Bonds and seals this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Attest: \_\_\_\_\_ Principal  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_ Surety  
By: \_\_\_\_\_  
Title: \_\_\_\_\_



**City of Albuquerque  
Aviation Department  
PO Box 9948  
Albuquerque, NM 87119-1048  
Phone (505) 244-7716  
FAX (505) 244-7793**

**Requirements for Certificates and Policies of Insurance -- This sheet should be provided to your insurance agent for purposes of preparing Certificates of Insurance.**

**Pursuant to Section 19. Insurance of the Concession Lease and Agreement (please refer to this Section for further information concerning the insurance requirements):**

Concessionaire shall furnish City with "original" Certificates of Insurance and shall mail or hand-deliver said certificates to the Aviation Department, at the above address. Please also send a copy by FAX to (505) 244-7793.

Certificate holder shall read:

**City of Albuquerque  
Director of Aviation  
Albuquerque International Sunport  
PO Box 9948  
Albuquerque, NM 87119-1048**

**Cancellation Provision:** All certificates of insurance shall provide thirty (30) days written notice be given to the Director of Aviation before a policy is canceled, materially changed, or not renewed.

**19.2 Commercial General Liability Limit:** \$1,000,000

**19.3 Automobile Liability Limit:** \$1,000,000 or \$5,000,000 for access to Secured Area

**19.5 All Risk Property Coverage:** 100% of the full insurable replacement value of Capital Improvements and refurbishments.

**19.7 Workers' Compensation:** NM Statutory Limits and \$1,000,000

**NOTE: All certificates of insurance shall include the City of Albuquerque as additional insured except for Workers Compensation and Employers' Liability.**

# CERTIFICATE OF INSURANCE

PRODUCER	THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
	<b>COMPANIES AFFORDING COVERAGE</b>
	COMPANY LETTER <b>A</b>
	COMPANY LETTER <b>B</b>
INSURED	COMPANY LETTER <b>C</b>
	COMPANY LETTER <b>D</b>
	COMPANY LETTER <b>E</b>

**COVERAGES** THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	<b>GENERAL LIABILITY*</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR. <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROTECT. <input type="checkbox"/> <b>SELF-INSURANCE RETENTION</b>				GENERAL AGGREGATE	\$
					PRODUCTS- COMP/OP AGG.	\$
					PERSONAL & ADV. INJURY	\$
					EACH OCCURRENCE	\$
					FIRE DAMAGE (Any one fire)	\$
					MED. EXPENSE (Any one person)	\$
					SELF INSURANCE AMOUNT	\$
	<b>AUTOMOBILE LIABILITY *</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> <b>SELF-INSURANCE RETENTION</b>				COMBINED SINGLE LIMIT	\$
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per Accident)	\$
					PROPERTY DAMAGE	\$
						\$
						\$
					SELF INSURANCE AMOUNT	\$
	<b>EXCESS LIABILITY *</b> <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE	\$
					AGGREGATE	\$
	WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY				<input checked="" type="checkbox"/> STATUTORY LIMITS	
					EACH ACCIDENT	
					DISEASE-POLICY LIMIT	
					DISEASE-EACH EMPLOYEE	
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS  
 \* CITY OF ALBUQUERQUE IS ADDED AS AN ADDITIONAL INSURED

CERTIFICATE HOLDER  CITY OF ALBUQUERQUE DIRECTOR OF AVIATION ALBUQUERQUE INTERNATIONAL SUNPORT P.O. BOX 9948 ALBUQUERQUE, NEW MEXICO 87119-1048	MODIFICATION/CANCELLATION: SHOULD ANY OF THE ABOVE IDENTIFIED POLICY (POLICIES) OF INSURANCE BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL THIRTY (30) DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.
	AUTHORIZED REPRESENTATIVE

**PART 7  
PROPOSAL BOND**

**Proposal Bond**  
*(sample format)*

**Know All Men By These Present:**

**That** \_\_\_\_\_, as Principal, hereinafter called the Principal, and \_\_\_\_\_, a \_\_\_\_\_, duly organized and existing under and by virtue of the laws of the State of \_\_\_\_\_ and authorized to do business in the State of New Mexico, as Surety, hereinafter called the Surety, are held and firmly bound unto the **City of Albuquerque**, New Mexico, as Obligee, hereinafter called City, in the sum of **Twenty-five Thousand and 00/100 Dollars (\$25,000.00)**, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

**Whereas**, the Principal has submitted the accompanying Proposal to Design, Develop, and Operate Food and Beverage Concessions at Albuquerque International Sunport dated \_\_\_\_\_, in response to Request for Proposal (RFP) No. RFP2007-010-SB, which Proposal is by reference made a part hereof and is hereinafter referred to as the Proposal.

**Now, Therefore**, the condition of this obligation is such that, if City shall accept the Proposal of the Principal and the Principal shall enter into the Concession Lease and Agreement with City in accordance with the terms of such Proposal, and give such bond or bonds as may be specified in the Concession Lease and Agreement with good and sufficient surety for the faithful performance of such Concession Lease and Agreement, then this obligation shall be null and void, or must otherwise remain in full force and effect.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Principal: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Surety: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_