



DULUTH AIRPORT AUTHORITY

**Duluth International Airport & Sky Harbor Airport
Solicitation 22-4405**

**Vending Concession Request for Proposals
Issued: April 7, 2025
Proposals Due: April 28, 2025, 3:00 pm local time**

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**Duluth Airport Authority
Request For Proposals (RFP)
Duluth International Airport & Sky Harbor Airport
Vending Concession**

I. SOLICITATION OF PROPOSALS

The Duluth Airport Authority (hereinafter “Authority”) is soliciting proposals from all interested and qualified parties (hereinafter “Proposer(s)”) to operate, manage, and maintain a non-exclusive Vending Concession at the Duluth International Airport located at 4701 Grinden Drive Duluth, MN 55811 and the Sky Harbor Airport located at 5000 Minnesota Ave Duluth, MN 55802 (hereinafter jointly referred to as “Airport”). The operation and management by the successful Proposer(s) shall include providing quality products, strong customer service and shall be competently managed by a local manager. The vending will be located in the public and secured areas of the Terminal at Duluth International Airport and the public areas of the Sky Harbor Airport Terminal.

The following schedule will be used throughout this process:

A. April 7, 2025

Request for Proposals published.

B. April 21, 2025, 11:00 am local time

A non-mandatory pre-proposal meeting is scheduled for Monday April 21, 2025, at 11:00 am local time at the Duluth International Airport in the third-floor conference room. Parking will be validated for those that attend.

C. April 22, 2025, 10:00 am local time

All requests for clarification must be emailed to City of Duluth Purchasing Department at purchasing@duluthmn.gov. Any questions submitted after this date will not be answered.

D. April 25, 2025, 3:00 pm local time

All questions submitted on time will be answered in writing and will be posted to the City of Duluth Purchasing website at <http://www.duluthmn.gov/purchasing/bids-request-for-proposals> along with the original RFP.

E. April 28, 2025, 3:00 pm local time

Proposals are due at 3:00 pm local time at the Duluth Airport Authority Administration Office located on the third floor of the Duluth International Airport at 4701 Grinden Drive Duluth, MN 55811.

F. May 2, 2025

Announcement of selected respondent.

G. May 20, 2025, 8:00 am local time

Concession Agreement between Authority and successful Proposer to be presented for approval at Duluth Airport Authority Board Meeting.

H. June 1, 2025

New Vending Concession Agreement start date.

II. INSTRUCTIONS AND PROPOSAL FORMAT

Three (3) original and a copy on a USB Flash Drive of the proposal must be submitted in a sealed envelope/package clearly marked as shown below:

PROPOSAL VENDING - DO NOT OPEN
Duluth Airport Authority
Third Floor Administrative Offices
4701 Grinden Drive
Duluth, MN 55811

Each proposal should be typewritten in a standard 8 ½" x 11" page format not to exceed fifteen (15) pages; single sided, excluding graphics, exhibits and/or other attachments. Proposals must be submitted in such a manner as to make them complete and free of ambiguity, without alterations or erasures. The pages shall be numbered and sections organized in the following order:

A. Executive Summary:

Include an Executive Summary of the important features of the proposal identifying the Proposer and stating other general information that the Proposer desires to include regarding the Proposer's business organization and contact information.

B. Minimum Requirements:

Any individual, partnership, joint venture, limited liability company or corporation submitting a proposal must have successfully managed three (3) or more similar operations for not less than two (2) years each.

C. References:

Provide a minimum of three (3) business references from similar operations.

D. Background:

Proposers must be able to provide proof of the skill, experience and financial resources necessary to manage a vending operation.

E. Required Documents:

1. No Legal Action:

Provide statement showing Proposer has no pending, active or previous legal action that could, in Authority's own judgement prevent the Proposer from fulfilling the terms of an agreement.

2. Form A: Non-Collusion Affidavit

3. Form B: Insurance

4. Form C: Equipment, Products and Pricing

F. Additional data, exhibits, renderings, and explanations may be included should Proposer deem them important to the evaluation of its proposal by the Authority.

G. It is the intention of the Authority to accept proposals in the manner described in this document, and after review and coordinating discussions with the successful Proposer, to recommend to the Authority Board to award an Agreement to the Proposer(s) that best serves the requirements set forth in this document.

H. The selection of the proposal(s) will be by electronic Notice of Award, specifically indicating selection. Unsuccessful proposers will also be notified electronically of the award.

I. At any time after the receipt of proposals, the Authority may give oral or written notice to any Proposer to furnish additional information, either in writing and/or in a verbal presentation, to representatives of the Authority relating to its qualifications to perform the obligations imposed by the project including, but not limited to, information which may be required to supplement that which is required herein to be submitted with the proposal.

Additional requested information shall be furnished within the time frame specified by the Authority. The Authority reserves the right to consider such additional information obtained from Proposer. The giving of the aforesaid notice to Proposer shall not be construed as an acceptance of said Proposer's proposal.

- J. The Authority may obtain and consider additional information obtained from sources other than Proposer in its evaluation and selection process.
- K. Proposals may be withdrawn until the proposal due date and time specified in Section 1, at which time the proposal shall be deemed irrevocable by Proposer.
- L. It is the intent of the Authority to fully evaluate all conforming proposals received by the deadline and to select or reject any or all proposal(s) at its sole discretion. If a proposal does not comply with the conditions specified herein, it may be rejected without further consideration. These restrictions are not intended to impede proposal preparation; rather, they will provide uniformity in the responses to this RFP.

III. SCOPE

A. Term:

The Authority desires to enter into a three (3) year vending concession agreement commencing on June 1, 2025, with two (2) additional one (1) year option terms to be mutually agreed upon. The Authority desires to enter into an agreement with the successful Proposer that offers the most comprehensive offerings for the tenants and visitors to the Airports. Proposer shall outline an implementation and operational program on how it intends to prepare for and operate the concession if awarded the contract.

B. Premises and Authority Provided Equipment:

The concession footprint included in this RFP is identified on Exhibit A and Exhibit B (hereinafter "Premises"). The successful Proposer(s) will have the right to offer vending products as approved by the Authority on the Premises. The Premises will be provided to Proposers "as is where is". Any modifications to the Premises will be at the sole cost of the successful Proposer(s) and will require the prior written approval of the Authority's Executive Director (hereinafter "Executive Director"). All equipment required to operate the concession will be the sole responsibility and cost of the Proposer and the Proposer will have sole responsibility for the maintenance and upkeep of the equipment.

C. Operations/Management Plan:

Each Proposer must submit complete responses addressing all the following information with regard to how the operations will be managed and operated:

- a. **Implementation Plan:** Proposer shall outline an implementation and operational plan on how it intends to prepare for and operate the concession if awarded the contract. Successful Proposer will be responsible for applying for and obtaining any and all licenses required to commence operations on the proposed schedule.
- b. **Mode of Operation:** Provide a comprehensive description of the planned operation and use of the Premises with emphasis on the type and means of product and services to be provided.
- c. **Stocking Plan:** Provide a stocking plan to include the frequency. Proposer will be escorted to secure airport areas by an airport official and products will be inspected prior to entry into secured areas.
- d. **Equipment & Product Plan:** Provide an outline of what food and beverages will be provided as well as what equipment will be used. It is the desire of the Authority to provide both Coke and Pepsi products. For food and snacks, it is the desire of the Authority to provide as broad a product offering as possible while eliminating

the risk of spoilage. Proposer shall provide a cut sheet and picture of the equipment to be used with specifications and equipment requirements such as water and electricity. The Authority is open to Proposer providing suggestions of items to sell that aren't currently offered. It is the desire of the Authority to offer some non-food items at the Sky Harbor Airport location such as, sunscreen, bug spray, ChapStick, wet wipes, etc. Full list of non-food items to be offered at Sky Harbor to be negotiated with successful Proposer.

- e. **Refunds:** A description of the proposed refund process in the event that the equipment does not operate properly.

D. Disclaimer:

The Proposer affirms that its proposal will in no way be conditioned upon any predetermined level of aviation activity or visitor activity at the Airport, past, present or future. In this regard, Proposer has not relied on any representations of the Authority, its officers, employees, agents, or consultants, either orally or in writing, as to the level of business potential at the Airport or of any factors that might bear on such business potential. Proposer's submission shall be based solely on the Proposer's own knowledge of the food and beverage operation and its own estimate of the market potential at the Airport for such an operation.

E. Concession:

Proposer shall remit to the Authority a concession fee of twenty percent (20%) of Gross Revenues. Gross revenue shall be defined as all revenue received from purchases less refunds. The term "Gross Revenues" as used herein shall mean the revenues or sales price of all food, beverages, and merchandise sold or dispensed by the Concessionaire on the Airport excluding all sales taxes collected by Concessionaire from its customers.

A report showing sales by day by machine must be provided to the Authority on the tenth (10th) day following the month of activity.

IV. CERTIFICATIONS AND STATEMENTS

- A.** Proposer, for itself, its personal representatives, successors in interest, and assigns, as a material part of the consideration for the award of a contract, covenants and agrees:

Proposer shall comply with all Federal, State of Minnesota, St. Louis County, City of Duluth, and all other applicable codes, laws, rules, regulations, standards, and ordinances, including but not limited to Occupational Safety and Health Administration (OSHA), the Federal Aviation Administration (FAA), the Transportation Security Administration (TSA), and all Authority rules, regulations, and orders governing the performance of work. Successful Proposer shall comply with the Mandatory Federal Aviation Civil Rights Provisions contained in Exhibit C.

- B. Indemnity:**

The successful Proposer shall indemnify, save, hold harmless, and defend the Authority and the City, their officials, agents and employees, successors and assigns, individually or collectively, (1) from and against any fines in any way related to or based upon the violation of any federal, state, municipal or Authority laws, statutes, resolutions, or regulations, now in effect or hereafter promulgated, by Proposer, its officials, agents or employees, or successors or assigns, and (2) from and against any and all claims including a claim for contribution or indemnity, demands, causes of action, loss, damage, injury, liability, and costs and expenses of whatsoever kind or nature (including, but not

limited to, reasonable attorneys' fees, disbursements, court costs, and expert fees) based upon injury to persons, including death, or damage to property; all arising out of, resulting from, in conjunction with or incident to (1) any act or omission of Proposer, its officials, agents or employees, successors or assigns, (2) Proposer's operation of its business and/or performance of its obligations under this Agreement, or (3) the use and/or occupancy of the vending concession area or of the Airport. On ten (10) days' written notice from the Authority the Proposer shall appear and defend all claims and lawsuits against the Authority and/or the City growing out of any such injury or damage. The provisions of this paragraph shall survive the expiration, termination, or early cancellation of this Agreement.

- C. In submitting a proposal, Proposer declares that the only person or party interested in the proposal as principal are those named in the proposal and that the proposal is made without collusion with any other parties, firms, or corporations. Reasonable grounds for believing that any Proposer has a business or financial interest in more than one proposal in response to this request will cause rejection of all proposals in which such Proposer has interest. If Authority believes, in its sole discretion, that collusion exists among Proposers, none of the participants in such collusion will be considered.
- D. Authority is soliciting competitive proposals pursuant to a determination that such a process best serves the interests of the Authority. Authority reserves the right to accept or reject any or all proposals; to waive any formality of the proposal form; to modify or amend, with the consent of Proposer, any proposal prior to acceptance; to negotiate with the selected Proposer; to waive irregularities and nonconformities; and to make an award not based solely on the proposal most lucrative to Authority; all as Authority in its sole judgment may deem to be in the Authority's best interest. If selected Proposer refuses to enter into an Agreement with Authority, Authority reserves the right to accept the proposal of any other qualified Proposer without re-advertising.
- E. **Tenessen Warning:**
Persons who supply data about themselves in response to this RFP are entitled to know the following information under the Minnesota Government Data Practices Act:
 - a. the information requested will be used to evaluate the Proposer's qualifications;
 - b. the Proposer is not legally required to supply this information;
 - c. failure to supply information may result in a determination by Authority that the proposal is non-responsive; and
 - d. the public may be authorized to access information that is not classified by law as private, confidential, or non-public data.
- F. This document shall in no manner be construed as a commitment on the part of Authority to award a contract, to pay any cost incurred in the preparation of proposals to this request, or to procure or contract for any services.
- G. Nothing indicated verbally by Authority, its officers, employees, agents or consultants, will contradict or override anything in this document. If a Proposer feels they have been told anything that is inconsistent with the information contained in this document, it will not be considered valid unless and until confirmation is received in writing from Authority. Should there be any doubt as to the meaning or content of these proposal documents, Proposer shall at once notify Authority in writing.

- H. Corrections, changes or clarifications, if required, will be made in written addenda to all parties who attended any pre-proposal meeting (as applicable), requested to receive an RFP from the Authority, and/or otherwise officially declared (in writing) their intention to submit a proposal, as appropriate. The Authority will not be responsible for any other instructions, interpretations, or explanations. Any written addenda to the proposal documents issued by Authority prior to the proposal acceptance deadline will be considered a part of these documents.
- I. The submission of a proposal shall be considered evidence that Proposer has: (1) investigated all conditions related to the requested service herein described; (2) ascertained that the Premises and all conditions are as specified; and (3) has reviewed all RFP documents. No claim for adjustment of the provisions of the RFP or any subsequent Agreement to be awarded shall be honored on the grounds that Proposers were not fully informed of existing conditions.
- J. Proposer shall maintain compliance with all regulatory measures (i.e. Airport Rules and Regulations, City of Duluth, State of Minnesota, and Federal programs, laws etc.).

V. EVALUATION CRITERIA

Proposals will be evaluated based upon criteria formulated around the most important features of the service, of which quality, capabilities, service offerings, customer experience, and references may be overriding factors in the issuance of a contract or award. The proposal evaluation criteria should be viewed as standards which measure how well a Proposer’s approach meets the desired requirements and needs of the users. A selection committee will review the Proposals and make a recommendation to the Authority on the best overall proposal. The selection committee will consider the following factors and their coinciding weight:

BUSINESS QUALIFICATIONS AND PRICING	50%	Proposer’s successful experience providing food and beverage programs at similar venues and proposed pricing.
PRODUCTS AND EQUIPMENT PROPOSED	50%	Proposer’s proposed plan of products to offer, equipment planned to use in operation, and operations/stocking plan.

VI. FORMS AND EXHIBITS

- Form A: Non-Collusion Affidavit
- Form B: Insurance
- Form C: Signature Page
- Form D: Equipment, Products and Pricing
- Exhibit A: Duluth International Airport Concession Area
- Exhibit B: Sky Harbor Airport Concession Area
- Exhibit C: Federal Mandatory Provisions
- Exhibit D: Sample Vending Concession Agreement

FORM A: NON-COLLUSION AFFIDAVIT

Duluth Airport Authority
Duluth International airport
Sky Harbor Airport
Request For Proposals –Vending Concession
Duluth, Minnesota

NON-COLLUSION AFFIDAVIT

State of _____

County of _____

The undersigned Proposer or agent, being duly sworn, on oath says that he/she has not, nor has any other member, representative, or agent of the firm, company, corporation, or partnership represented by him/her, entered into any combination, collusion or agreement with any person relative to the price to be proposed by anyone at such letting, nor to prevent any person from submitting a proposal, and that this proposal is made without reference to any other proposal and without any agreement, understanding or combination with any other person in reference to such proposals in any way or manner what so ever.

Signed and sworn before me this ___ day of _____, 2025

Signature: _____

Printed Name: _____

Title: _____

Company/Organization Name: _____

Notary Public: _____

My Commission Expires: _____

FORM B: CERTIFICATE OF INSURANCE

INSURANCE

Concessionaire shall, at its expense, maintain insurance in full force and effect during the term of this Agreement in such amounts as to meet the minimum limits of liability specified below.

1. Workers' compensation insurance in accordance with the laws of the State of Minnesota;

2. Commercial General and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance. Such insurance shall be in a company approved by the Duluth Airport Authority; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability. Umbrella coverage with a "form following" provision may be utilized to meet the required minimum amount stated above. Such insurance shall indemnify Concessionaire and Duluth Airport Authority from all liability described in the Indemnification paragraphs above;

3. Concessionaire to provide Certificate of Insurance evidencing all coverages required above. Such Certificate shall contain an unconditional requirement that the insurer must notify the Authority without fail not less than 30-days prior to any cancellation, or 10 days prior to any non-renewal of the policy or coverages evidenced by said certificate, and shall further provide that failure to give such notice to Authority will render any such change or changes in said policy or coverages ineffective as against the City. The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms – 1) ISO Additional Insured Endorsement (CG 2010 pre-2004); and 2) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the Duluth City Attorney's Office.

**Proof of Insurance Must be Provided Prior to any Contract Execution*

Complete the following insurance company information:

Firm Name: _____

Address: _____

Agent: _____

Phone No: _____

Email: _____

PROPOSER OR AGENT

For _____
FIRM OR CORPORATION

FORM C: SIGNATURE PAGE

Each individual executing this proposal on behalf of a corporation or business represents and warrants that he/she has been authorized to do so by the Board of Directors or other concerned parties who have an interest in the business.

Each individual executing this proposal certifies with their signature below that the information contained in the proposal is true and accurate to the best of their knowledge and acknowledges that the Duluth Airport Authority reserves the right to reject any proposal found to contain fraudulent information.

No proposal shall be accepted which has not been signed in the appropriate space(s) below.

The Authority is soliciting competitive proposals pursuant to a determination that such a process best serves the interests of the Authority. The Authority reserves the right to accept or reject any or all proposals; to waive any formality of the proposal form; to negotiate with the selected Proposer; to modify or amend, with the consent of Proposer, any proposal prior to acceptance; to waive irregularities and nonconformities, and to make an award not based solely on the proposal most lucrative to the Authority, all as the Authority in its sole judgment may deem to be in the Authority's best interest. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final proposals. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing Proposers. If successful Proposer refuses to enter into the Agreement, the right is reserved to accept the proposal of any other qualified Proposer without re-advertising.

I affirm that I have read and understand all the provisions set forth in this RFP invitation. I, the undersigned, guarantee our proposal meets or exceeds specifications contained in the RFP document. Our firm will comply with all provisions and conditions as specified. All requested information has been submitted as requested.

 Business or Corporation Name

BY: _____

TITLE: _____

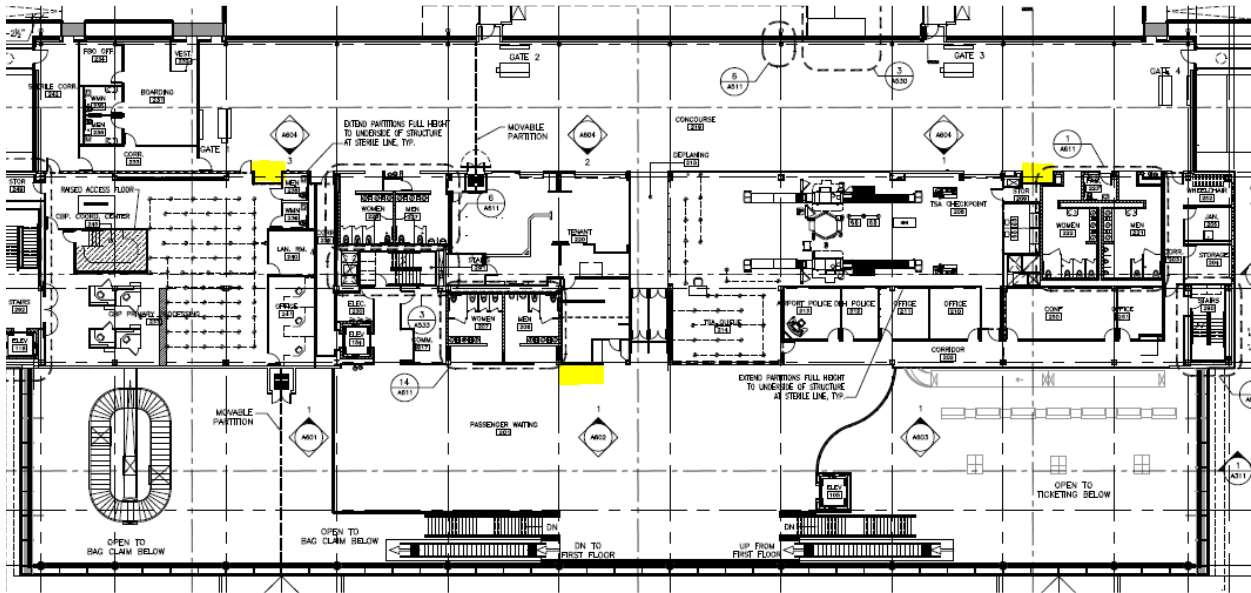
DATE: _____

FORM D: EQUIPMENT, PRODUCTS AND PRICING LIST
**To be provided by Proposer*

EXHIBIT A

DULUTH INTERNATIONAL AIRPORT CONCESSION AREA 4701 Grinden Drive Duluth, MN 55811 (Vending locations highlighted in yellow)

FIRST FLOOR



SECOND FLOOR

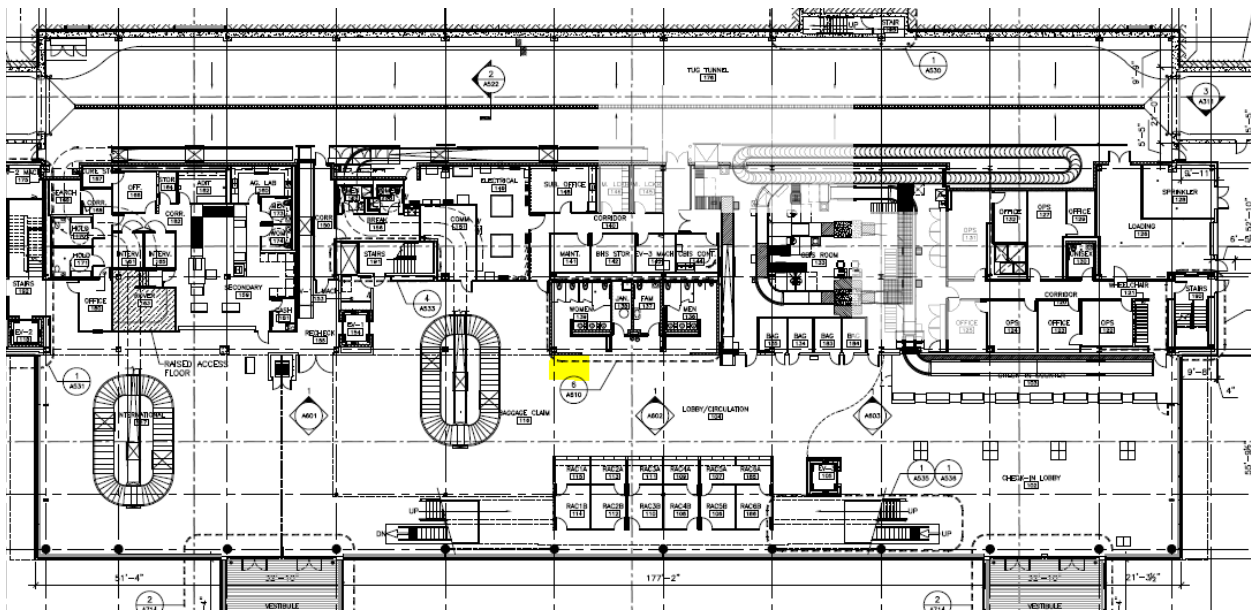


EXHIBIT B

SKY HARBOR AIRPORT CONCESSION AREA
5000 Minnesota Ave Duluth, MN 55802
(Vending locations highlighted in yellow)

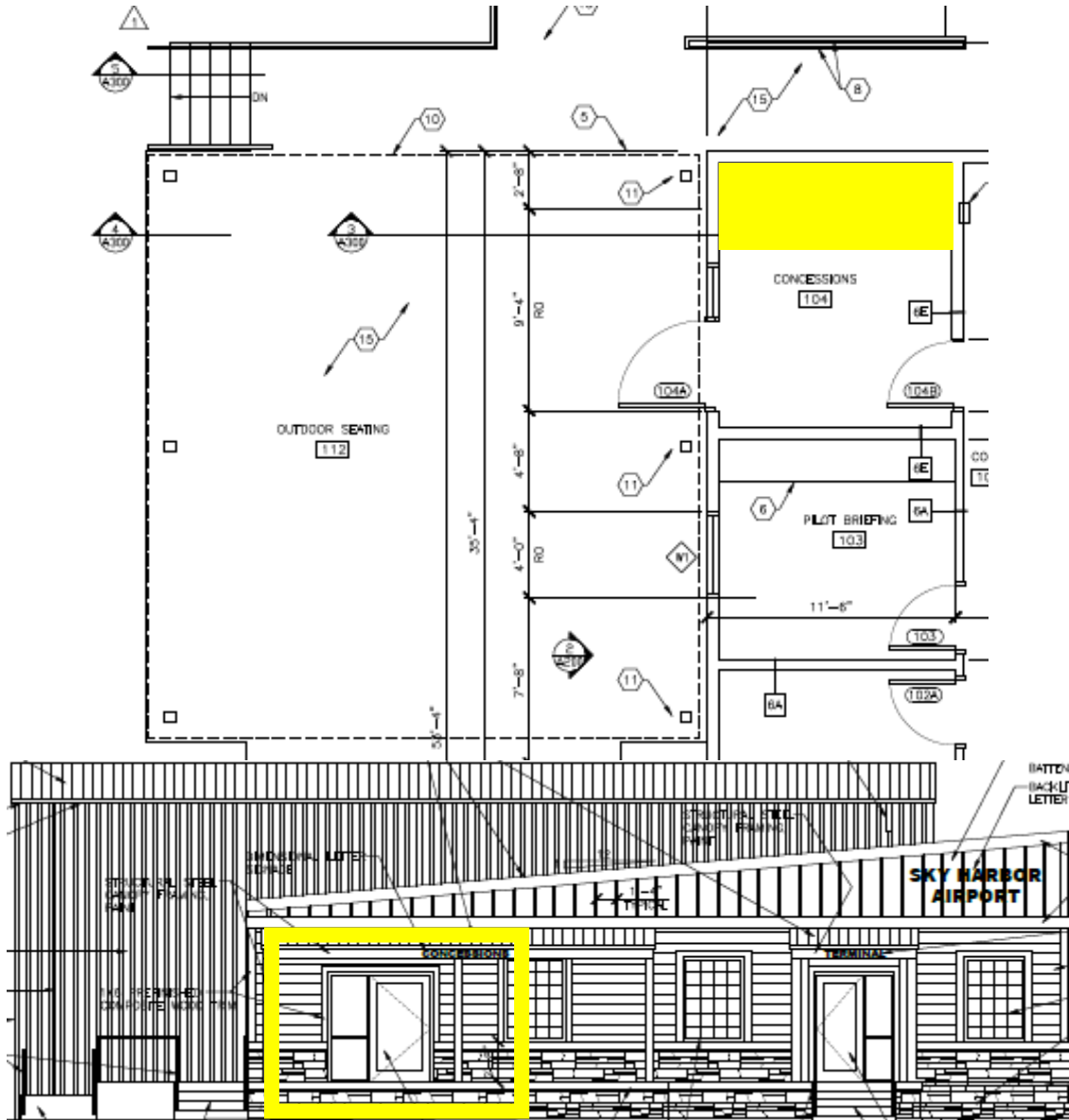


Exhibit C
Federal Mandatory Clauses

Title VI Solicitation Notice:

The Duluth Airport Authority (Authority), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the Proposer to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. The Authority encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

EXHIBIT D
SAMPLE CONCESSION AGREEMENT

**Not final, separate agreements will be created for each individual airport, Duluth International and Sky Harbor.*

VENDING
CONCESSION AGREEMENT
DULUTH INTERNATIONAL AIRPORT

THIS CONCESSION AGREEMENT between the DULUTH AIRPORT AUTHORITY, a governmental authority organized and existing under the Laws of Minnesota, 1969, Chapter 577, hereinafter called "Authority", and "x", a company under the laws of the State of Minnesota, hereinafter referred to as "Concessionaire",

THE PARTIES ACKNOWLEDGE THE FOLLOWING:

1. The Authority is a public body created pursuant to Minnesota Laws 1969, Chapter 577 and responsible for the operation of the Duluth International Airport located in and adjacent to the City of Duluth, Minnesota; and
2. The Concessionaire desires to offer food and beverage vending services in the terminal at the Airport and the Authority agrees to allow the Concessionaire to conduct such business under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree for themselves and their successors and assigns as follows:

SECTION 1
DEFINITIONS

The following terms, as used in this Concession Agreement, shall have the meanings as ascribed to them hereunder.

- A. Airport: shall mean the Duluth International Airport located in and adjacent to the City of Duluth, County of St. Louis, and the State of Minnesota.
- B. City: shall mean the City of Duluth, Minnesota.
- C. Consent or Approval of Authority and of the Executive Director: where this Agreement calls for the consent or approval of the Authority, the same shall be in the form of a resolution approved by the Authority as provided by law; where the consent or approval of the Executive Director is required, the same shall be evidenced by a written document signed by the Executive Director or authorized designee.
- D. Concession Service Area (CSA): shall mean those portions of the Terminal upon which Concessionaire will operate its vending services hereunder, as further described in Section 5 of this Agreement and shown on Exhibit A attached hereto and incorporated herein.
- E. CSA Improvements: shall mean, collectively, all improvements constructed on and within the CSA by Concessionaire, including such items as decorations, wiring, lighting, piping, finished ceilings, ventilation duct work, and other related improvements.
- F. Executive Director: shall mean the Executive Director of the Authority or designee.

- G. Terminal: shall mean the main passenger terminal building at the Airport located at 4701 Grinden Drive, Duluth MN, 55811.
- H. Unit: shall mean a single vending machine, operated by Concessionaire.

SECTION 2 CONCESSION

The Authority does hereby grant to the Concessionaire and Concessionaire hereby accepts from the Authority the nonexclusive right to operate a vending concession within the Terminal at the Airport for the purpose of offering food, snacks, beverages and other goods and related products to the traveling public under the covenants, conditions and provisions and in the places set forth in this Agreement.

SECTION 3 TERM

- A. Base Term: The term of this Agreement shall be for three (3) years beginning June 1, 2025 through May 31, 2028 unless sooner or later terminated as herein provided.
- B. Option Term: The parties reserve the right to exercise one (1) additional two (2) year Option Term beyond the Base Term provided that the Executive Director and Concessionaire mutually agree to exercise the Option Term a minimum of ninety (90) days prior to the expiration of the Base Term. The Option Term shall be under the same terms and conditions as set forth herein.
- C. Holding Over: It is further agreed that in the event that the Base Term expires and the Option Term is not exercised, or at the expiration of the Option Term if exercised, at the sole discretion and upon written consent of the Executive Director, this Agreement shall continue in effect on a month-to-month basis under the terms and conditions set forth in this Agreement. The consent of the Executive Director to continue operating on a month-to-month basis may be withdrawn upon thirty (30) days' written notice to Concessionaire.

SECTION 4 NONEXCLUSIVITY

This concession shall not be construed to be an exclusive concession, and the Authority shall have the right to negotiate and execute substantially similar arrangements with any other individual, firm or corporation for engaging in similar activities within the Terminal. The Authority shall not, however, during the term of this Agreement, grant to any other individual, firm or corporation, a similar concession to the public upon terms or conditions materially more favorable than those herein granted Concessionaire.

SECTION 5 CONCESSION SERVICE AREA

Concessionaire is hereby granted use of the Concession Service Area, consisting of 106 square feet, more or less, within the Terminal, such space to be used solely for the purposes set forth in Section 2 herein. The areas to be used by Concessionaire are shown on Exhibit A and are allocated generally as follows:

(Approximate Square Footage)

Landside Vending Area
(First Floor of Terminal- Vending 4)

28

Landside Vending Area (Second Floor of Terminal- Vending 3)	28
West End Airside Vending Area (Second Floor of Terminal- Vending 1)	23
East End Airside Vending Area (Second Floor of Terminal- Vending 2)	27

The square footage of each area stated herein is approximate. The terms and conditions under which additional space may be made available to Concessionaire shall be negotiated by the Executive Director and Concessionaire hereto if additional space is available and requested by Concessionaire. In the event additional space is made available to Concessionaire, a revised Exhibit A shall be attached to this Agreement.

SECTION 6 RIGHTS OF INGRESS AND EGRESS

Subject to any applicable rules, regulations, or Authority policies governing the use of the Airport and Terminal, Authority grants to Concessionaire the non-exclusive right to use, in common with others, the areas designated by Authority to be public or to be used in common, including, but not limited to, the walkways, streets, roadways, waiting rooms, hallways, restrooms and other passenger areas at the Airport and the Terminal, herein after referred to as "Public Areas", for Concessionaire's employees, agents, contractors, suppliers and invitees for the use for which the Public Areas were designed. Concessionaire's right under this section includes the right of ingress to and egress from the CSA for Concessionaire and its employees, patrons, guests, invitees, suppliers of materials and services, along with equipment, and other property related to Concessionaire's business within the Terminal under this Agreement. The rights of ingress and egress granted by this section may be exercised without charge, provided that Authority may charge Concessionaire for employee, agent, contractor, supplier and invitee parking privileges.

SECTION 7 CONCESSION PAYMENT AND STATEMENTS

In consideration of the rights and privileges conferred by this Agreement, Concessionaire agrees to pay Authority the following amounts:

- A. Concession Fee: Concessionaire shall pay as a Concession Fee to the Authority twenty percent (20%) of Concessionaire's Gross Revenues arising out of the operations hereunder, hereinafter referred to as "Concession Fee". The Concession Fee shall be due and payable to Authority on a monthly basis. Concessionaire shall furnish a detailed statement of Gross Revenues in a form acceptable to the Executive Director on or before the tenth (10th) day of each month following the month to which such Gross Revenues relate. Payment shall be due and payable within five (5) days thereafter.

The term "Gross Revenues", for the purposes of this Agreement, shall include all monies paid or payable to the Operator for sales made at the Airport pursuant to this Agreement; provided, however, that any sales taxes or similar taxes imposed by law which are separately stated and paid by the consumer or customer and which are directly payable to the taxing authority by Operator shall be excluded therefrom.

- B. Late Payment or Statement: If Concessionaire is delinquent for thirty (30) days or longer in paying any amounts owed to the Authority under this Agreement, Concessionaire shall pay to the Authority a late payment charge assessed on the delinquent amount at the Authority's then-prevailing rate on delinquent accounts (the rate at the date of execution of the Agreement is one and one-half percent (1½%) per month). The late payment charge shall accrue from the date the delinquent amount was due until paid.

The remedies provided by this Section are in addition to all other remedies the Authority may have for a breach of this Agreement by Concessionaire, and nothing in this Section shall be deemed to be a waiver by the Authority or prevent the Authority from asserting any other remedy.

SECTION 8 UTILITIES

The Authority agrees to provide such heat, electricity, internet infrastructure and telephone infrastructure as are reasonably necessary for Concessionaire's operations at no additional cost to Concessionaire.

SECTION 9 OTHER PAYMENTS AND FEES

- A. Fee for Employee Background Checks and Security Badges: Concessionaire agrees to pay for all costs of required fingerprint-based criminal history record checks and other Airport badging-related expenses conducted if badging is deemed necessary on Concessionaire's employees, agents, contractors, suppliers, and invitees.
- B. Fee for Failure to Maintain: In the event that Concessionaire fails to keep the CSA in a neat, clean, orderly and sanitary condition as is required by this Agreement and the Executive Director has issued a written notice of such deficiency and provided a reasonable cure period as determined solely by the Executive Director, Authority may itself clean or cause to be cleaned those portions of the CSA not so kept, and Concessionaire agrees to reimburse Authority for the direct and indirect costs incurred by Authority for the performance of said work plus a fifteen percent (15%) administrative fee, due and payable upon the receipt of an invoice therefor.
- C. Fee for Repair and Replacement: Concessionaire shall promptly repair or replace any property of the Authority destroyed or damaged by its operations hereunder. If Concessionaire fails to promptly repair or replace such property following written notice by the Executive Director of such deficiency and a reasonable cure period as determined solely by the Executive Director, Authority may repair or replace it and Concessionaire agrees to reimburse for the direct and indirect costs incurred by Authority for such repair or replacement plus a fifteen (15%) percent administrative fee, due and payable upon the receipt of an invoice therefor.
- D. Fee for Unpaid Licenses, Fees, Taxes, and Assessments: Concessionaire hereby agrees to pay all licenses, fees, taxes including real estate taxes and assessments of any kind whatsoever which arise because of, or in the course of any operations covered by this Agreement during the term hereof. Should Concessionaire fail to pay such amounts following written notice of such deficiency and a reasonable cure period as determined solely by the Executive Director, the Authority may pay the same on behalf of Concessionaire, and Concessionaire agrees to reimburse Authority for said amounts paid plus a fifteen percent (15%) administrative fee due and payable upon the receipt of an invoice therefor.

**SECTION 10
CONCESSIONAIRES RESPONSIBILITY**

Concessionaire shall, at its sole risk and expense, provide and install the Units in such number as to maximize revenues in each designated CSA location. Each Unit shall be new or like new, in good operating condition, free from known mechanical defects and in clean and attractive condition.

**SECTION 11
CONSTRUCTION AND CSA IMPROVEMENTS**

- A. Approval of Executive Director: In the event that Concessionaire wishes to make any CSA Improvements within the CSA, Concessionaire shall submit a written request to the Executive Director together with design development or construction drawings showing all details of said CSA Improvement. No CSA Improvement shall be made in the CSA without the prior written approval of the Executive Director and then only in conformance with the approved plans and this Section.
- B. Regulations and Standards: All work performed on behalf of Concessionaire shall conform to all applicable regulations, building design standards, building codes and health standards, as well as the following requirements:
1. All construction shall meet the requirement of Type I (fire resistant) construction as set forth in the Minnesota State Building Code (current edition) and the building standards for the Airport.
 2. Complete contract drawings and specifications on all work, including alterations, additions or replacements, must be submitted for and receive approval of the Executive Director. Concessionaire will be responsible for delivering to the Authority at no cost "as built" drawings and an electronic version of same or any reasonable substitute as agreed to in writing by the Executive Director within sixty (60) days of completion of any CSA Improvement.
 3. All work must be done by qualified and licensed contractors authorized to do business at the Airport in the time and manner approved by and coordinated with the Executive Director. Concessionaire shall comply with the indemnity and insurance and bond requirements below. Work must be performed such that it shall not have a material impact on the operations of the Airport or negatively impact any tenants operating at the Airport as determined in the sole discretion of the Executive Director.
 4. An authorized representative of Concessionaire shall be available at all reasonable times at the site to coordinate the work of the CSA Improvements.
- C. Construction Bonds and Insurance:
1. Bonds. During the term of this Agreement when any CSA Improvements are constructed, installed or renovated, Concessionaire shall require the contractor and any subcontractor to furnish a payment bond, approved as to form and substance by the City Attorney, written by a company or companies authorized to write such bonds in the State of Minnesota and who are acceptable to the

Executive Director. The amount of such bond(s) shall be not less than the cost of such construction, installation or renovation including all persons doing work or furnishing skills, tools, machinery, materials, insurance premiums, equipment or supplies incident to such construction, installation or renovation, such bond or bonds to be conditioned for payment of claims as required and in full compliance with Minnesota Statutes Section 574.26. Further, during the term of this Agreement, for any construction, installation or renovation of CSA Improvements, and before the commencement of work thereon, Concessionaire shall furnish to Authority performance bonds, written by similarly qualified companies, covering all work to be performed thereunder guaranteeing the performance of all such work. In the alternative, if the value of labor and materials to be furnished for any such improvement shall not exceed Fifteen Thousand Dollars (\$15,000), Concessionaire may furnish to Authority written proof thereof and may, at its option, deposit a sum equal to the value of the labor and materials with an escrow agent approved by the Executive Director or may deposit said sum directly with Authority. Authority shall have the right, but not the obligation, to draw upon said sum to pay all bills unpaid by Concessionaire for said labor and materials supplied for said CSA Improvement. Upon completion of the CSA Improvement project and the furnishing by Concessionaire to Authority of lien waivers by all contractors, laborers and materialmen involved in said CSA Improvement, Authority will release of any funds remaining in escrow or held by it to Concessionaire.

2. Contractor's Public Liability and Property Insurance: Before commencing any CSA Improvement, work or equipment installation in the CSA, Concessionaire shall require all contractors and subcontractors to procure and maintain insurance during the term of such contracts, protecting the Authority, the City, and the Concessionaire as follows:
 - a. Workers' Compensation Coverage in statutory amounts with "all states" endorsement.
 - b. Contractor's Comprehensive Liability and Property Damage Insurance with limits no less than \$1,500,000 combined single limit per occurrence, including but not limited to, bodily injury and property damage, airport premises and products/completed operations liability, contractual liability, independent contractors liability.
 - c. Contractor's Automobile Liability and Property Damage Insurance, including automobile and non-ownership and hired cars with limits no less than \$1,500,000 each occurrence including owned and/or leased automobile liability and non-owned and hired automobile liability.
 - d. Owner's Protective Public Liability and Protective Property Damage Insurance.
3. Insurance Requirements:
 - a. Authority and City shall be named as additional insureds on each of the policies above except the Workers' Compensation policy.
 - b. All insurance policies required above shall be primary and shall not require contribution from any coverage maintained by Authority and/or City.
 - c. Insurance, as above provided, shall be kept intact and in force throughout the term of the CSA Improvement. Such insurance shall be subject to the approval of the City Attorney and copies furnished to the Authority prior to the commencement of construction.

- D. Subsequent Improvements: Any changes in, additions to or deletions from existing or later constructed CSA Improvement shall be subject to the prior written approval of the Executive Director, and the Executive Director may impose such conditions as he/she shall deem necessary to protect the Authority, the City, and the integrity of all operations at the Terminal, including, but not limited to, bonding and insurance requirements.

SECTION 12 CONCESSIONAIRE'S OPERATING STANDARDS

A. Service Standards:

1. Hours of Operation: Concessionaire shall have vending machines and products available at all times, unless otherwise agreed upon in advance in writing with the Executive Director.
2. Products Vended: Concessionaire will offer for sale only products submitted as part of the RFP response or alternate products as may be approved in advance in writing by the Executive Director. Concessionaire shall ensure that all products will conform in all respects to applicable laws relating to the standards or specifications of those products. All products intended for human consumption will be fresh and suitable for human consumption in all respects. Any changes to the products being provided must be approved in advance in writing by the Executive Director.
3. Food Quality and Display: Concessionaire shall provide good quality and fresh food and beverages. Prices will be displayed in such a manner as to be easily visible and understood by potential customers.
4. Customer Service: Concessionaire shall meet regularly with Authority staff to discuss any adjustments in operations that may need to be made to maximize efficiency and good public relations. Concessionaire shall provide timely response to service calls for maintenance on the Units.
5. Units: Each Unit is required to accept payment via credit/debit card and cash.
6. Security Requirements: Concessionaire shall abide by, and require its agents, contractors, and employees to abide by, and be subject to all rules and regulations which are now, or may from time to time, be promulgated by the Authority or the Executive Director concerning the management, operation, or use of the Airport, and specifically to abide by all provisions of the Airport Security Plan on file in the office of the Executive Director. Concessionaire must comply with all security requirements of the Authority, Department of Homeland Security, the Federal Aviation Administration and any other governing agency. Concessionaire further agrees to provide Airport Identification badges as may be required by the Executive Director at its sole cost for all of its employees, agents, contractors, suppliers and invitees serving at the Airport, and shall require said agents, contractors and employees to have and display such badges in their possession at all times while on the Airport.

B. Deliveries:

1. Hours: All deliveries shall be scheduled during non-peak aircraft arrival and departure times. The Executive Director may issue schedules of acceptable delivery times,

which, upon reasonable notice to Concessionaire, Executive Director may adjust from time to time, and from which Concessionaire shall not deviate without Executive Director's prior written consent.

2. Deliveries: Concessionaire shall make all deliveries to the loading dock area of the Terminal. No deliveries are authorized to be made from any other location. All vehicles using the Terminal loading dock area must be prominently marked on both sides with the company name or logo.
 3. Transportation: Concessionaire shall ensure that inventory, merchandise, supplies, trash, refuse and recyclable materials being transported within the Terminal are handled with care in a manner that ensures that items do not spill or leak. Inventory, merchandise and supplies transported from the non-secured or landside of the Terminal to the secured side of the Terminal may be inspected prior to being transported airside. In transporting inventory, merchandise, supplies, trash, refuse and recyclable materials associated with Concessionaire's operations within the Terminal, Concessionaire shall use only those delivery and receiving routes established by the Executive Director and shall use appropriate carts, vehicles, or other conveyances. If delivery and receiving routes are carpeted, delivery carts must be equipped with wheels suitable for operating on carpets without causing damage to them.
- C. Product Pricing: Concessionaire shall charge fair, reasonable and not unjustly discriminatory prices for all food and beverage and other related products. Prior to setting initial prices and/or adjusting published prices, Concessionaire agrees to consult with the Executive Director prior to implementing price changes. Prices will be displayed in such a manner as to be easily visible and understood by potential customers.
- D. Green/LEED Initiative: Concessionaire agrees to exercise care to keep energy usage to a minimum and to comply with established energy conservation practices, regulations, and policies and to endeavor to conserve the use of energy. The Authority may temporarily prohibit, limit, or make inaccessible vending services to meet energy conservation goals or for any other reason related to LEED certification.
- E. Record Handling and Audit:
1. Concessionaire will maintain, in accordance with generally accepted accounting principles for six (6) years after each year during which the Agreement is in effect, all records, documents and books of account recording all transactions of the business conducted by Concessionaire at the Airport, which records, documents and books of account shall be maintained at a location agreed upon by the parties within the City and held accessible to the Authority and its representatives at any time upon reasonable demand by the Executive Director.
 2. Concessionaire shall be required to maintain a method of accounting of the Concession which shall correctly and accurately reflect the gross receipts received by Concessionaire from the operation of the Concession. Such method shall include the keeping of the following documents:
 1. Regular books of accounting.
 2. State and Federal income tax returns and sales tax returns and checks and other documents proving payment of sums shown.
 3. Any other accounting records that the Executive Director, in his/her sole discretion, deems necessary for proper report of receipts.

3. Concessionaire will allow the examination and audit by the Authority and/or the Legislative or State Auditor or their representatives, of any records, documents or books of account of Concessionaire pertaining to its operations at the Airport. Concessionaire must provide the records requested within five (5) days upon receipt of notice. If as a result of such inspection and upon audit, deficiency in payments made to the Authority hereunder of more than five percent (5%) is disclosed, the cost of audit shall be borne by the Concessionaire due and payable upon demand. Otherwise, the cost of inspection and audit shall be borne by the Authority.

SECTION 13 MAINTENANCE AND REPAIRS WITHIN CSA

- A. Maintenance: Concessionaire shall at all times and at its sole expense keep the CSA and all improvements in the CSA, including Units, furnishings, fixtures, and equipment, whether installed by Concessionaire or by the Authority, in a safe, neat, clean and orderly condition and appearance. Without limiting the generality of the foregoing, the Executive Director shall be the sole judge of the quality of maintenance.
- B. Repairs: The Authority shall keep the structural components of the CSA (including the walls and roof) and the mechanical systems serving the CSA (*i.e.*, HVAC, plumbing, electrical and natural gas systems), in good repair, subject to Concessionaire's maintenance obligations set forth above. Authority shall not be required to make any repairs to the CSA, mechanical systems or Authority-owned equipment or fixtures or any other elements of the CSA unless and until Concessionaire has notified the Authority in writing of the need for such repairs. Authority shall have a reasonable period of time following receipt of such notice to commence and complete said repairs. Notwithstanding the foregoing, Concessionaire shall repair all damage to the CSA and all improvements on the CSA, including furnishings, fixtures, and equipment, caused by the negligence or willful acts or omissions of Concessionaire, its employees, agents, servants, contractors, or suppliers. All repairs to the CSA done by or on behalf of Concessionaire shall be of first-class quality in both materials and workmanship, shall be equal to or better than the original in materials and workmanship, shall be in conformance with Section 11 of this Agreement, and, except in emergencies requiring immediate response, shall have the prior written approval of the Executive Director. All repairs shall conform to the applicable rules and regulations and building codes prescribed from time to time by federal, state, or local authority having jurisdiction over the CSA. The Executive Director shall be the sole judge of the quality of the repairs. Concessionaire expressly waives any and all claims for damages of any kind, including but not limited to loss of profits as a result of the interruption of Concessionaire's business, resulting from the need for repairs to the CSA, the mechanical systems or Authority-owned equipment or fixtures, whether such repairs are undertaken by the Authority or Concessionaire.

SECTION 14 CONCESSIONAIRE'S SIGNAGE

No advertising signs shall be used or displayed by Concessionaire other than those approved in advance in writing by the Executive Director.

SECTION 15 INDEMNITY

- A. Defense and Indemnity: To the fullest extent permitted by law, the Concessionaire agrees that it shall defend, indemnify, and hold harmless the Authority, its officers, employees, and agents, from and against any and all costs or expenses, claims or liabilities, including but not limited to, reasonable attorney's fees and expenses, whether asserted by Concessionaire or any third party. Said obligations to defend, indemnify, and hold harmless shall include, but not be limited to, the obligation to defend, indemnify, and hold harmless the Authority in all matters where claims of liability against the Authority arise out of, relate to, are attributable to, are passive or derivative of, or vicarious to the negligent, intentional, or wrongful acts or omissions of the Concessionaire, including but not limited to the failure to supervise, breach of warranty, the failure to warn, the failure to prevent such act or omission by Concessionaire, its employees, or its agents, and any other source of liability. Said obligations to defend, indemnify, and hold harmless shall be triggered upon the assertion of a claim for damages against Authority. On ten days' written notice from the Authority, the Concessionaire shall appear and defend all lawsuits against the Authority growing out of such injuries or damages. Concessionaire shall not be required to indemnify Authority for amounts found by a fact finder to have arisen out of the intentional, willful, or wanton acts or omission of the Authority. This Section, in its entirety, shall survive the termination of this Agreement if any amount of work has been performed by Concessionaire. Nothing in this provision shall affect the limitations of liability of the Authority as set forth in Minnesota Statutes Chapter 466.

The Concessionaire understands this provision may affect its rights and may shift liability and specifically agrees to the same

- B. Environmental Liability: In addition to the general indemnity stated above, and as part of it, it is specifically agreed between the parties that Concessionaire shall be responsible in all respects for the use of or generation of or release or threatened release of any petroleum based substance or product, or any volatile organic compound, or any substance classified as a pollutant, contaminant, toxic substance, solid waste or a "hazardous waste" by either the Environmental Protection Agency of the Government of the United States or the Minnesota Pollution Control Agency by Concessionaire, its employees, agents, contractors or suppliers, successors or assigns. Concessionaire shall specifically be responsible for the disposition of all such waste or substances and for the environmental response activities and costs, monitoring, or cleanup of any environmental condition deemed by those agencies or either of them to require environmental response, monitoring or cleanup activities of any kind which arises directly or indirectly out of the use of or generation of such substances by Concessionaire, its employees, agents, contractors or suppliers, successors or assigns in its operations at the Airport; and Concessionaire specifically agrees that the obligations of Paragraph A above shall apply specifically to any costs or obligations of Authority arising out of any such disposition, cleanup, or environmental response.
- C. Survival: The provisions of this Section 15 shall survive the expiration, termination and early cancellation of this agreement.

SECTION 16 INSURANCE

- A. Insurance Requirements: Concessionaire shall, at its expense, maintain insurance in full force and effect during the term of this Agreement in such amounts as to meet the minimum limits

of liability specified below.

1. Workers' compensation insurance in accordance with the laws of the State of Minnesota;
 2. Commercial General and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance. Such insurance shall be in a company approved by the Duluth Airport Authority; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability. Umbrella coverage with a "form following" provision may be utilized to meet the required minimum amount stated above. Such insurance shall indemnify Concessionaire and Duluth Airport Authority from all liability described in the Indemnification paragraphs above;
 3. Concessionaire to provide Certificate of Insurance evidencing all coverages required above. Such Certificate shall contain an unconditional requirement that the insurer must notify the Authority without fail not less than 30-days prior to any cancellation, or 10 days prior to any non-renewal of the policy or coverages evidenced by said certificate, and shall further provide that failure to give such notice to Authority will render any such change or changes in said policy or coverages ineffective as against the City. The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms – 1) ISO Additional Insured Endorsement (CG 2010 pre-2004); and 2) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the Duluth City Attorney's Office.
- B. Requirements for All Insurance: All insurance required in this Section shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota and with companies or underwriters satisfactory to the City Attorney.
- C. Additional Insureds: The Authority and City shall be named as additional insureds on each of the policies above except the Workers' Compensation policy.
- D. Insurance Primary: All insurance policies required above shall be primary and shall not require contribution from any coverage maintained by the Authority and/or the City.
- E. Insurance Certificate: Certificates showing that Concessionaire is carrying the above-described insurance in the specified amounts shall be furnished to the Executive Director prior to the execution of this Agreement, and a certificate showing continued maintenance of such insurance shall be filed with the Executive Director during the term of this Agreement. Failure of Concessionaire to provide the required certificates of insurance does not invalidate or eliminate any of the insurance requirements contained herein or relieve Concessionaire from any responsibility to carry the required types and amounts of insurance.
- F. Disclaimer: The Authority does not represent or guarantee that these types or limits of coverage are adequate to protect the Concessionaire's interests and liabilities. It shall be the obligation and responsibility of the Concessionaire to insure, as it deems prudent, its own personal property, against damage. The Authority does not have insurance coverage for Concessionaire's property and the Authority expressly disclaims any and all liability for any and all losses, damage and/or claims to vehicles and/or personal possessions of

Concessionaire.

SECTION 17
LAWS, ORDINANCES, RULES AND NON-DISCRIMINATION

- A. Laws, Ordinances and Rules: The Concessionaire shall observe and comply with all the laws, ordinances, rules and regulations, policies and orders of the United States of America, State of Minnesota, St. Louis County, and the City of Duluth, and their respective agencies now in effect or hereinafter promulgated which are applicable to its business at the Airport including all laws relating to unlawful discrimination, and further agrees to observe and comply with all Airport rules and regulations in existence at the execution of this agreement and which may, from time to time, be promulgated by the Authority governing conduct on and operations at the Airport and the use of its facilities, as administered by the Executive Director. Further, Concessionaire agrees to fulfill its responsibilities pursuant to the Airport Security Plan approved by the Federal Aviation Administration and any amendments thereto.
- B. Non-discrimination: Operator shall comply with the Mandatory Federal Aviation Civil Rights Provisions contained in Section 29 and Exhibit B.

SECTION 18
SURRENDER OF POSSESSION

Upon the termination of this Agreement, Concessionaire's authority to use the CSA and any other rights and facilities herein granted shall cease and Concessionaire shall, upon expiration or termination, promptly and in good condition, normal wear and tear excepted, surrender the same to the Authority. In the event that Concessionaire has in any way changed, altered or modified the CSA demised herein, and if required by the Executive Director, Concessionaire covenants to return the same to the condition they were in at the time of the occupancy under this Agreement, normal wear and tear excepted, or, in the alternative, to pay the Authority for the cost of returning them to said condition. Upon termination, any improvements which have become part of the realty shall become the property of the Authority, and the same shall be immediately returned to the ownership and control of the Authority. Any improvements not part of the realty shall be removed therefrom within ten (10) days after the termination of this Agreement or the same shall be deemed to have been abandoned to the Authority and the right of the Concessionaire to possession thereof shall cease. In the event the Authority desires to dispose of any abandoned improvements or equipment not part of the realty, Concessionaire shall pay for said disposal immediately upon receipt of an invoice therefor.

SECTION 19
AUTHORITY'S RIGHTS UPON DEFAULT

- A. Rights Upon Default: If at any time Concessionaire shall be in default, as defined in this Section, with regard to the requirements of this Agreement, it shall be lawful for the Authority, and the Authority may at any time thereafter:
1. Immediately, or at any time thereafter without further notice to Concessionaire, re-enter into or upon the CSA under this Agreement or any part thereof and take possession of the same fully and absolutely without such re-entry representing a forfeiture of the Concession Fee, or any fees and charges to be paid and of the covenants, terms and conditions to be performed by Concessionaire for the full term of this Agreement, and in the event of such re-entry, the Authority may proceed with

the collection of Concession Fee, fees, and charges to be paid under this Agreement or to recover properly measured damages. Authority may at its election terminate this Agreement upon written notice in the manner hereinafter provided and re-enter upon said CSA, and the Concessionaire covenants in case of such termination to indemnify the Authority against all loss of fees, and charges which the Authority has suffered or paid by reason of such termination, during the remainder of the term of this Agreement.

2. The Authority shall further have all other rights and remedies at law or in equity including injunctive relief, or summary proceedings for unlawful detainer, and any or all legal remedies, actions and proceedings shall be deemed cumulative.

B. Default Defined: "Default" shall be defined when any of the following circumstances exist:

1. If the Concessionaire has failed to pay the Concession Fee, or any other licenses, fees, charges, taxes or assessments when due hereunder and such failure to pay shall continue for fifteen (15) days after written notice to Concessionaire in the manner hereinafter provided.
2. Failure to provide and/or maintain the insurance coverages required herein.
3. If the Concessionaire fails in the observance or performance of any of the other terms, covenants and conditions of this Agreement and such failure shall continue for fifteen (15) days after Authority has given Concessionaire written notice, or the Concessionaire shall have failed to commence the corrective action of such failure within fifteen (15) days after such notice and to diligently prosecute the same where the same cannot be completed within fifteen (15) days.
4. If a petition to reorganize the Concessionaire or for its arrangement of its unsecured debts shall be filed.
5. If the Concessionaire shall be adjudicated bankrupt.
6. If a receiver or trustee of the Concessionaire's property shall be appointed by any court.
7. If the Concessionaire shall make a general assignment for the benefit of creditors.
8. If all of the interest of the Concessionaire in its property shall be taken by garnishment, attachment, execution or other process of law.
9. If the CSA shall be deserted or vacated.

C. Attorneys' Fees and Costs: In the event Authority shall prevail in any action or suit or proceeding brought by Authority to collect fees or taxes due or to become due hereunder or any portion thereof, or to take possession of the CSA, or to enforce compliance with this Agreement or for failure of Concessionaire to observe any of the covenants of this Agreement, Concessionaire agrees to pay Authority such sums as a court may adjudge reasonable as attorneys' fees and costs to be allowed in such action, suit or proceeding.

D. Non-Waiver: No waiver or default by Authority of any of the terms, covenants or conditions hereof to be performed, kept and observed by Concessionaire shall be construed to be or act

as a waiver of any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Concessionaire.

SECTION 20 CONCESSIONAIRE'S TERMINATION RIGHTS

Concessionaire shall have the right upon written notice to the Authority to terminate this Agreement upon the happening of one or more of the following events, if said event or events are then continuing:

- A. The issuance by any court of competent jurisdiction of an injunction, order or decree: (1) preventing or restraining the use by Concessionaire of all or any substantial part of the CSA used and occupied by Concessionaire hereunder, or (2) preventing or restraining the use of all or a part of the Airport for normal airport purposes which may be used by Concessionaire and which is necessary for its operations on the Airport, or (3) preventing Concessionaire from its Concessions operation and which injunction, order or decree remains in force for a period of at least ninety (90) days.
- B. If all or a material part of the CSA used and occupied by Concessionaire hereunder is damaged or destroyed or all or a part of the Airport or Airport facilities which are necessary to the operation of Concessionaire's business are damaged or destroyed or the use thereof disrupted for causes beyond Concessionaire's control.

SECTION 21 ASSIGNMENTS

Concessionaire shall not assign or transfer this Agreement, in whole or in part, in any manner, nor any interest therein, nor permit the foregoing Agreement to become transferred by operation of law or otherwise, nor do or suffer any acts to be done whereby the same may be or become assigned in whole or in part, unless the written consent of Authority shall first be obtained in each and every case of subletting, assignment or transfer. It is expressly agreed by the parties that a change in ownership of the controlling share of stock in Concessionaire, if any, shall be deemed to be an assignment hereunder. It is expressly agreed by the Concessionaire that in the event permission be granted by the Authority as herein provided, the assignee shall be required to assume and agree to perform the covenants of this Agreement and that notwithstanding any such assignment, the Concessionaire shall be and remain liable for the payments of all Concession Fee, fees and charges and other payments due hereunder and the performance of all covenants and conditions for the full term of this Agreement.

SECTION 22 SUBORDINATION

This Agreement shall be subordinate to the provisions of any existing or future Agreement between the Authority and the United States of America or the State of Minnesota relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal or State funds for the development of the Airport, or to any security requirements of State or Federal Government, including temporary security procedures or instructions.

**SECTION 23
MODIFICATION**

Any of the terms of this Agreement may be changed upon the mutual consent of the Authority and the Concessionaire, but to be valid any such changes must be in writing, dated, and must be executed with the same formalities as this Agreement. In the event that any provision of this Agreement is determined to violate any local, state, or federal rule or regulation or is deemed to cause a violation of any rate covenants, the Agreement shall be modified upon consultation with Concessionaire to cause such violation to be compliant with such provision and an amendment will be executed on a timely basis to incorporate the required changes.

**SECTION 24
NOTICES**

Any notice provided for in this Agreement or otherwise to the Authority shall be sufficient if sent by regular U.S. mail, postage prepaid, addressed to:

Duluth Airport Authority
Executive Director
Duluth International Airport
4701 Grinden Drive
Duluth, Minnesota 55811.

Any notice to the Concessionaire hereunder shall be to:

XXXXXXXX
XXXXXXXX
XXXXXXXX
XXXXXXXX
XXXXXXXX

**SECTION 25
APPLICABLE LAW**

This Agreement, together with all of its sections, terms and provision, is made in the State of Minnesota and shall be construed and interpreted according to the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota. However, litigation in the federal courts involving the parties shall be in the appropriate federal court within the State of Minnesota. The parties to this Agreement waive any objections to the jurisdiction of these courts, whether based on convenience or otherwise.

**SECTION 26
SEVERABILITY**

In the event any provision of this Agreement shall be deemed invalid or unenforceable, the remaining provisions shall continue in force and effect and shall be binding upon the parties to this Agreement.

**SECTION 27
NONWAIVER OF LIABILITY**

Nothing in this Agreement constitutes a waiver by the Authority or the City of any statutory or common law defenses, immunities, or limits on liability. The liability of the Authority and the City shall be governed by the provisions of the Minnesota Municipal Liability Tort Act,

**SECTION 28
GOVERNMENT DATA PRACTICES ACT**

Concessionaire shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as may be amended from time to time (the "Act"), as it applies to all data provided by the Authority under this Agreement and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Concessionaire under this Agreement. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by Concessionaire. If Concessionaire receives a request to release the data referred to in this clause, Concessionaire must immediately notify the Authority and consult with the Authority as to how Concessionaire should respond to the request. Concessionaire shall hold the Authority, its officers, agents, servants and employees harmless from any claims arising out of, resulting from or in any manner attributable to any violation of any provision of the Act, including legal fees and disbursements.

**SECTION 29
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)
COMPLIANCE**

- A. The Authority has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The Concessionaire is required to participate in the Authority's ACDBE program.
- B. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, Title 49 CFR Part 23. The Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by Title 49 CFR Part 23.
- C. The Concessionaire agrees to include the statement set forth in paragraph B in any subsequent concession agreement or contract covered by Title 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.
- D. The Concessionaire agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the Concessionaire.
- E. The Authority has available several remedies to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:

- a. Breach of contract action, pursuant to the terms of this contract;
 - b. Breach of contract action, pursuant to applicable State Statutes.
- F. The federal government has available several enforcement mechanisms that it may apply to firms participating in the ACDBE problem, including, but not limited to, the following:
- a. Suspension or debarment proceedings pursuant to 49 CFR part 23;
 - b. Enforcement action pursuant to 49 CFR part 31; and
 - c. Prosecution pursuant to 18 USC 1001.
- G. The Authority will comply with all regulations set forth in 49 CFR Part 23 and will monitor concessionaires at the Airport for compliance with the ACDBE program.
- H. The Authority will submit to the Federal Aviation Administration's Regional Civil Rights Office, an annual ACDBE participation report showing the commitments and attainments. The Authority will take measures to ensure nondiscriminatory participation of ACDBEs in concession, and other covered activities.

**SECTION 30
ENTIRE AGREEMENT**

This Agreement, including Exhibit A, constitutes the entire agreement between the parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereto. There are no representations, warranties, or stipulations either oral or written not herein contained.

**SECTION 31
COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (.pdf), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above shown.

DULUTH AIRPORT AUTHORITY

XXXXXXXXXXXXXXXXXX

By _____
President

By _____

Its _____

By _____
Secretary

By _____

Its _____

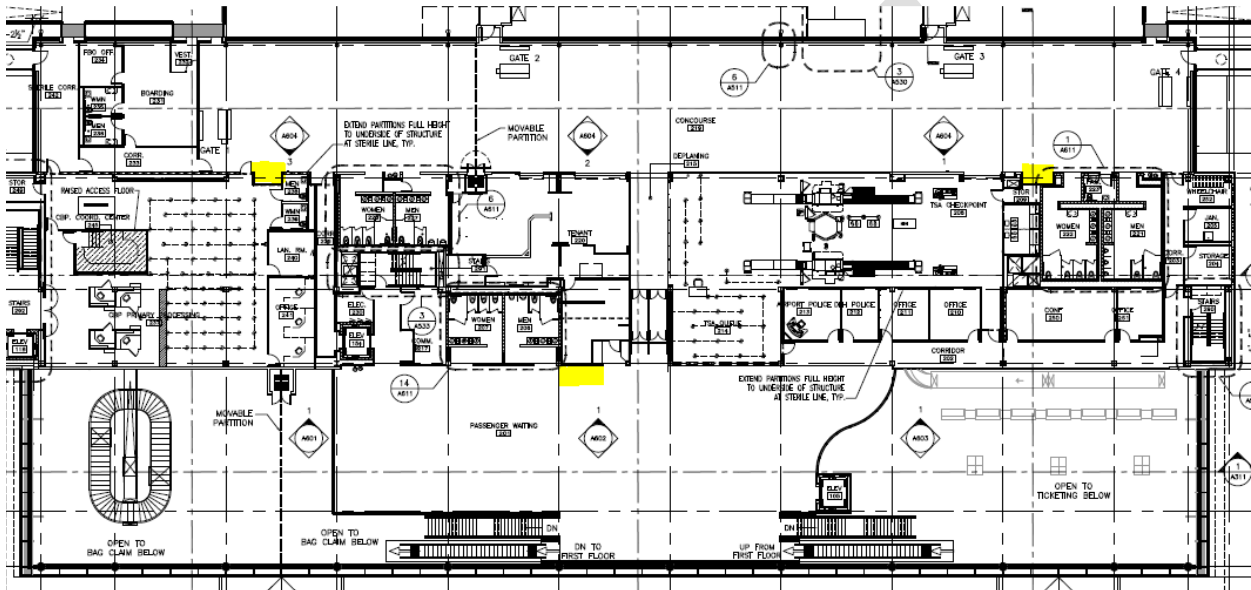
Exhibit A

DULUTH INTERNATIONAL AIRPORT CONCESSION AREA

4701 Grinden Drive Duluth, MN 55811

(Vending locations highlighted in yellow)

FIRST FLOOR



SECOND FLOOR

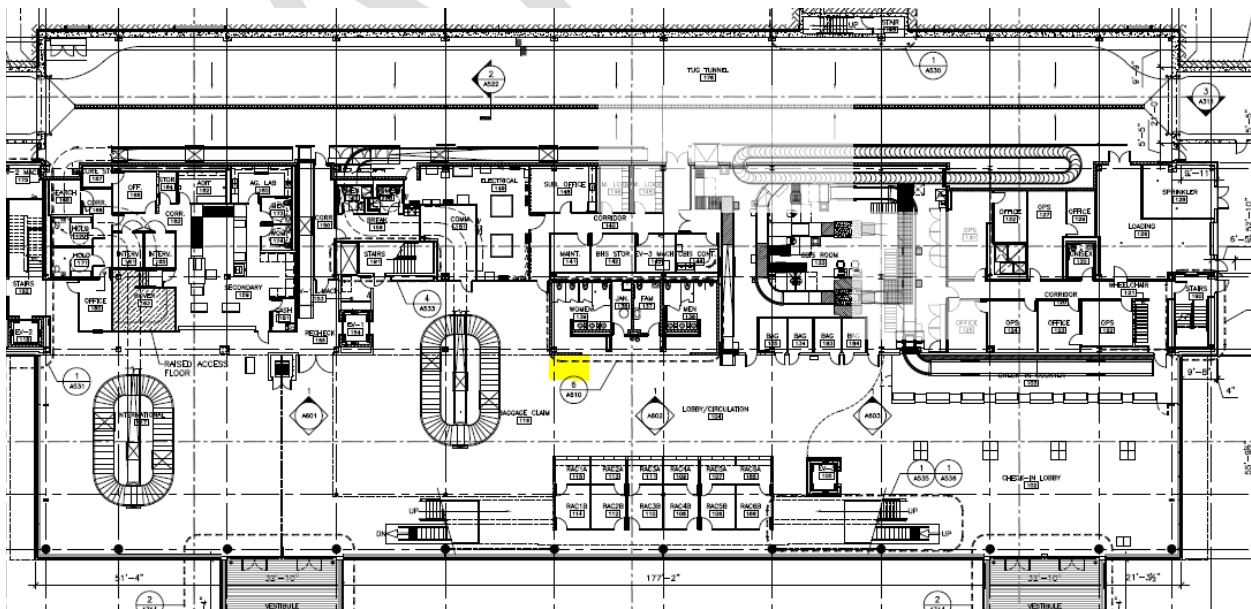


Exhibit B

Federal Mandatory Clauses

GENERAL CIVIL RIGHTS PROVISIONS

In all its activities within the scope of its airport program, the Concessionaire agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

If the Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the Concessionaire.

The above provision obligates the Concessionaire for the period during which the property is owned, used or possessed by the Concessionaire and the airport remains obligated to the Federal Aviation Administration.

Title VI Solicitation Notice:

The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

The Sponsor must include this contract clause in:

- 1) Every contract or agreement (unless the Sponsor has determined, and the FAA concurs, that the contract or agreement is not subject to the Nondiscrimination Acts and Authorities); and
- 2) Service contracts with utility companies that are not already subject to substantively identical nondiscrimination requirements.
- 3) Other types of contracts with utility companies involving property covered by A6.4.2, A6.4.3, or A6.4.4.

Compliance with Nondiscrimination Requirements:

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

1. **Compliance with Regulations:** The Concessionaire (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Concessionaire, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Concessionaire will not participate directly or indirectly in the discrimination prohibited by the

Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Concessionaire for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Concessionaire of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Concessionaire will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Concessionaire will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Concessionaire's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Concessionaire under the contract until the Concessionaire complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Concessionaire will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Concessionaire will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Concessionaire may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

This applies to agreements such as leases where a physical portion of the airport is transferred for use—for example a fuel farm, apron space, or a parking facility—and will be included as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Sponsor with other parties for all transfers of real property acquired or improved under the Airport Improvement Program.

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE AIRPORT IMPROVEMENT PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Sponsor pursuant to the provisions of the Airport Improvement Program grant assurances:

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the Authority will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the Authority will have the right to enter or re-enter the lands and facilities thereon, and the above-described lands and facilities will there upon revert to and vest in and become the absolute property of the Authority and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

This applies to agreements such as leases of concession space in a terminal and any future deeds, leases, licenses, permits, or similar instruments entered into by the Sponsor with other parties for the construction or use of, or access to, space on, over, or under real property acquired or improved under the Airport Improvement Program.

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into By Authority pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.)

- will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, the Authority will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the Authority will there upon revert to and vest in and become the absolute property of the Authority and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

Title VI List of Pertinent Nondiscrimination Acts and Authorities

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high

and adverse human health or environmental effects on minority and low-income populations);

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

SAMPLE