

FRESNO YOSEMITE INTERNATIONAL AIRPORT

EXCLUSIVE AIRPORT ADVERTISING CONCESSION AGREEMENT

BETWEEN

CITY OF FRESNO

AND

CLEAR CHANNEL OUTDOOR, INC. DBA CLEAR CHANNEL AIRPORTS,

a Delaware Corporation

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This EXCLUSIVE AIRPORT ADVERTISING CONCESSION AGREEMENT ("Concession Agreement" or "Agreement") is dated as of _____, 2015, by and between the City of Fresno, Department of Airports ("City"), a municipal corporation of the State of California, and Clear Channel Outdoor, Inc., d/b/a Clear Channel Airports, a Delaware Corporation ("Concessionaire").

RECITALS

WHEREAS, City owns, controls, operates and maintains a municipal airport known as Fresno Yosemite International Airport, in the City and County of Fresno, California ("Airport"), with the power to grant rights and privileges with respect thereto; and

WHEREAS, City has requested proposals from interested parties for the operation of Exclusive Airport Advertising Concessions at the Airport; and

WHEREAS, Concessionaire has submitted a proposal as an offer to enter into a written agreement with City to conduct such an Exclusive Airport Advertising Concession at the Airport; and

WHEREAS, the City has selected Concessionaire's Proposal, and the parties desire to enter into an Agreement for the operation by Concessionaire of the commercial advertising concession in and about the passenger terminal facilities at the Airport;

WHEREAS, City deems it advantageous to the operation of Airport to accept Concessionaire's proposal consistent portions thereof are incorporated, upon the terms and conditions herein.

WHEREAS, Concessionaire's Exclusive Airport Advertising Concession Proposal executed by Concessionaire on March 10, 2015 and submitted to (received by) City on March 10, 2015. Such proposal is incorporated herein and made a part hereof by reference.

NOW, THEREFORE, for and in consideration of the privileges, premises, mutual covenants and agreements herein contained, City and Concessionaire agree, for themselves, their successors and assigns, as follows:

ARTICLE I - DEFINITIONS

The following terms and phrases shall have the following meanings for purposes of this Agreement:

- A. Agreement. Means this Airport Advertising Concession Agreement between Concessionaire and City.
- B. Agreement Year. Means a period during the Term beginning on August 1st and ending 12 months thereafter.
- C. Airport. Means the Fresno Yosemite International Airport, as it currently exists or as it may exist in the future throughout the Term of this Agreement.

- D. Annual Concession Fee. Means the concession fee as described and defined in this Agreement, including the Minimum Annual Guarantee and/or the Percentage Fee.
- E. Authorized Concessionaire Representative. Means the person at the time designated to act on behalf of the Concessionaire by a written statement furnished to the Director signed by an officer of the Concessionaire.
- F. City. Means the City of Fresno, California.
- G. Common Area. Means that portion of the Concession Facility as depicted on Exhibit "A" attached hereto and designated in accordance with this Agreement for the common use by the Concessionaires.
- H. Concessionaire. Means a Company that enters into and operates the Airport Advertising Concession pursuant to a Concession Agreement.
- I. Concessionaire Property. Means Concessionaire's vehicles, equipment, trade fixtures, and personal property that are not part of the Concession Facility or owned by City and do not constitute replacement, repair, or substitution for the Concession Facility.
- J. Concession Facility. Means the Airport Terminal and all locations depicted in Exhibit A.
- K. DBE. Means Disadvantaged Business Enterprise as defined by the FAA.
- L. Department. Means City's Department of Airports.
- M. Digital Advertising. Means options of full-motion video and animation advertisements displayed on LCD screens, video walls, or webpages, upon contract with Concessionaire. These locations at the time of contract include, Flight Information Display Screens (FIDS); LCD screens at the gate areas; video wall in the terminal lobby and WiFi advertising over the Airports free WiFi system.
- N. Digital Advertising Rights. Means the Airport shall maintain the rights to three (3) minutes of the hour for Airport content and Public Service Announcements (PSA).
- O. Director. Means the Director of City's Department of Airports or his/her designated representative.
- P. Effective Date. Means the date on which both 1) this Agreement is duly signed by both parties; and 2) any City Council action/resolution approving this Agreement is effective.
- Q. FAA. Means the Federal Aviation Administration.
- R. Fiscal Year. Means the City's fiscal year beginning August 1 and ending July 31 each year.

- S. Fresh or Refresh Investment. Means Concessionaire shall submit to the City on August 1st of each of these Years of the Term, a schedule of improvements and refurbishments to be completed by Concessionaire in the Assigned Premises for the subsequent Year. Such refurbishment may include any reasonable direct costs paid by Concessionaire for work performed and materials furnished including sell-in costs such as market studies, scout trip(s) and sales blitz trip(s) provided, however, that Concessionaire shall not include: (1) cost of equipment and materials with a useful life of less than three (3) years; (2) payments for architectural, engineering, professional and consulting services which exceed fifteen percent (15%) of the required annual Fresh Investment or Refresh Investment, as appropriate; (3) interest and other financing charges; (4) any amounts paid directly or indirectly by parties other than Concessionaire; or (5) Concessionaire's own overhead expenses; except that Concession may include reasonable cost of paying its own employees to perform design, graphics, architectural, engineering, professional or consulting services, subject to the fifteen percent (15%) limit set for in (2), above.
- T. Gross Receipts. Means which the Concession Fees are to be based, shall include all income resulting from the rights and privileges granted by this Agreement in any manner whether by Concessionaire, its clients or advertisers or parties operating through Concessionaire, its sub-lessee's or concessionaires, from whatever source derived and whether for cash, credit or other things of value (subject to such exclusions, and only to such exclusions, as are specifically set forth below.)
1. The term Gross Receipts shall include the aggregate amount of all sales made and services performed for which a charge is made or credit allowed, of every kind, name and nature, regardless of when or whether paid or not, together with the aggregate amount of all property, goods, wares, merchandise, services or other things of value taken in exchange or trade, as if the sale had been made for cash, or at the fair and reasonable value thereof, whichever is greater. It shall include all monies or things of value paid or payable to Concessionaire for advertising displays or related services supplied to its clients or customers at Airport or otherwise by virtue of the business done pursuant to the rights and privileges granted by this Agreement, without regard to the manner in which or place at which the order for the advertising was received.

Notwithstanding the above, it is agreed that the following items, and only the following items, may be excluded from Gross Receipts:

1. Commission allowed recognized advertising agents or other nonaffiliated third parties, but limited to fifteen percent (15%) of advertising billings; no such deduction or allowance shall be applied to amounts due for telephone utility billings or for any amount other than the advertising display.
2. Reimbursement of telephone utility billings or other expenses paid by Concessionaire on behalf of an advertiser. It is understood that Concessionaire is not engaged in the business of constructing custom made displays or renting equipment and supplies. On occasions, however, it may be necessary or advisable to construct custom made

displays, rent equipment and supplies or incur labor or other expenses to promote sales, expedite construction and delivery or insure proper display. The term "Gross Receipts" as herein used shall not be construed to include any sums received by Concessionaire as reimbursement for such out-of-pocket expenses incurred on behalf of an advertiser.

3. The amount of sales that have been uncollectible due to the protection of the Advertiser under bankruptcy or insolvency laws, or that remain uncollectible after due diligence in collection efforts including the use of professional debt collection firms, provided that Airport has received written notification of such uncollectible amount from the court of jurisdiction or collection agency, as applicable, and provided that in no case will the aggregate of such exclusions per year exceed Two and One-half Percent (2.5%) of the amount of Gross Receipts before deducting the amount of this exclusion.
4. Amount of any sales taxes collected from the advertiser or purchaser which is separately stated at time of sale on Concessionaire's invoice, but not including any income, property, or possessory interest taxes.
5. Amount of any adjustments to Gross Receipts authorized elsewhere in this Agreement.

It is understood and agreed that the intent of the parties hereto is that the term "Gross Receipts" shall be all inclusive, except for those items specifically excluded above.

- U. Minimum Annual Guarantee (MAG). Means the minimum concession fee amount as described and defined in this Agreement; sometimes referred to as the MAG.
- V. Past Due Interest. Means interest accruing at the lesser of (a) the maximum rate allowable by law, or (b) eighteen percent (18%) per annum based on a three hundred sixty-five (365) day year, commencing on the tenth (10th) business day after the date such amount is due and owing and continuing until such amount is paid to the City.
- W. Percentage Fee. Means the part of the Annual Concession Fee based on a percentage of Gross Revenues as set forth in this Agreement.
- X. Security Deposit. Means the deposit as defined and described in this Agreement.
- Y. Term. Means the term of this Agreement, being August 1, 2015 through July 31, 2022.
- Z. Terminal Building. Means the passenger terminal building at the Airport and any additional buildings that may be constructed, serving the airlines, together with the adjacent curbs and roadways, as now exist or as may hereafter be reconstructed, modified, changed or developed.
- AA. Termination Date. Means July 31, 2022, the date that this Agreement expires.

BB. TSA. Means the Transportation Security Administration.

ARTICLE II - CONCESSIONAIRE'S RIGHTS, PRIVILEGES AND OBLIGATIONS

Section 2.01: Representations and Covenants by the Concessionaire's Parent Company (the Company)

The Company hereby makes the following representations and covenants:

The Company is a Corporation in good standing in the State of Delaware, is duly qualified in good standing to do business in/under the laws of the State of California, is not in violation of any provision of its governing documents (e.g., articles of incorporation, by-laws, partnership agreement, etc.), has full power to own its properties and conduct its business, has full legal right, power and authority to enter into this Agreement and to consummate all transactions contemplated hereby and by proper action has duly authorized the execution and delivery of this Agreement.

Section 2.02: Concessionaire's Rights, Privileges and Obligations

A. Rights and Privileges Granted.

Subject to such terms, covenants, conditions, reservations, limitations, and restrictions as are herein provided, City hereby grants to Concessionaire the sole and exclusive right and privilege to use and employ certain space and facilities in and about the passenger terminal building, government agency building, and terminal area at the Fresno Yosemite International Airport for the installation and maintenance of advertising displays. The terms "Advertisement", "Advertising Display(s)", and "Display Unit(s)" shall include signs, displays, models, specialty displays, digital advertising, direct telephone line hotel and transportation advertising, outdoor advertising displays, electronic advertising displays, Airport-owned LED or similar signs if used for advertising purposes, and any other usual or customary means of displaying advertising media to persons using or visiting airport premises. For the purpose hereof, a "Display Unit" shall be deemed to mean and include any display attached to, suspended against a part of, or supported by a wall, counter or partition; and any self-contained unit utilizing floor or ground space. Notwithstanding any language to the contrary herein, City reserves the right to authorize other lessees of airport premises to install signs on the portion of the airport premises leased to them for the purpose of advertising services offered by such lessees at the airport, provided that any such lessee is not engaged in the advertising concession business.

B. Allocation of Space for Advertising Displays.

Concessionaire shall be allocated and provided with wall and other space within and about the premises and buildings at Fresno Air Terminal as approved and authorized from time to time during the term of this agreement by the Director of Aviation (hereinafter called "Director") or other authorized representative of City, which space shall be used solely for the installation and maintenance by Concessionaire of Advertising Displays. The location, number, type and style of Advertising Displays to be installed by Concessionaire at the outset of this Agreement shall be as depicted and described in

Exhibit "A", attached hereto and made a part hereof; before adding to, deleting, or changing the number, type, and/or style of Advertising Displays from that shown in said initial Exhibit "A", Concessionaire shall submit a revised Exhibit "A" showing the proposed changes for Director's approval.

In addition, Airport will provide Concessionaire storage space identified by Airport as available for such purpose, without additional charge to Concessionaire.

C. FYI-TV Network.

City hereby grants to Concessionaire the sole and exclusive right and privilege to install and operate FYI-TV multi-screen gate/holdroom entertainment network with customized local content, the terms and conditions of which are set forth in Exhibit "B", attached hereto and made a part hereof.

D. Prohibited Uses/Activities.

Concessionaire is expressly prohibited from installing and operating, under the authority of this Concession Agreement, any vending machines for sale of food, beverages, cigarettes, sundries or merchandise or any machine intended for entertainment, or any other machine or device, of any type or description whatsoever, other than the advertising displays and devices provided for herein.

E. Annual Fresh or Refresh Investment.

Concessionaire shall expend a minimum of one percent (1%) of total Gross Revenues, commencing in the second year of the Term of this Agreement and occurring annually, for Fresh or Refresh Investment of the Assigned Premises. Concessionaire shall submit to the City on April 1 of each of these Years of the Term, a schedule of improvements and refurbishments to be completed by Concessionaire in the Assigned Premises for the subsequent Year. Such refurbishment may include any reasonable direct costs paid by Concessionaire for work performed and materials furnished including sell-in costs such as market studies, scout trip(s) and sales blitz trip(s) provided, however, that Concessionaire shall not include: (1) cost of equipment and materials with a useful life of less than three (3) years; (2) payments for architectural, engineering, professional and consulting services which exceed fifteen percent (15%) of the required annual Fresh Investment or Refresh Investment, as appropriate; (3) interest and other financing charges; (4) any amounts paid directly or indirectly by parties other than Concessionaire; or (5) Concessionaire's own overhead expenses; except that Concession may include reasonable cost of paying its own employees to perform design, graphics, architectural, engineering, professional or consulting services, subject to the fifteen percent (15%) limit set for in (2), above.

In addition to the required Fresh or Refresh Investment, Concessionaire shall refurbish the Assigned Premises promptly upon the observation of any damage or deterioration of the original materials/workmanship or as reasonably required by the Director. Failure to complete any required refurbishment within the time specified by the director shall be in default under this Agreement, and in addition to all other remedies available under this Agreement, Concessionaire shall pay, as Liquidated Damages, One Hundred and No/100 (\$100.00) per day until such required refurbishment is completed. Concessionaire agrees and acknowledges that the failure to refresh is detrimental to the image of the

Facilities and results in lost percentage rent, the exact loss and injury is extremely difficult to fix. Therefore, the parties agree that the above-described amount represents a fair and reasonable estimate of the monetary losses and damages incurred by the City. Liquidated Damages shall not accrue if such delay is caused by acts or omission of the City or the Airport.

Section 2.03: Ownership, Type and Location of Advertising Displays

With specific reference to the ownership, type and location of Advertising Displays to be installed by Concessionaire at Airport, it is mutually agreed as follows:

- A. All Advertising Displays installed pursuant to the provisions hereof by Concessionaire on City's premises shall, at all times throughout the life of this Agreement, be and remain the sole and exclusive property of Concessionaire. Any and all Display Units provided by City shall remain the property of City, but may be utilized by Concessionaire in the conduct of the Advertising Concession business at Airport as if installed by Concessionaire, and Concessionaire will be responsible for marketing, maintaining, cleaning, and repairing such units.

If prior to the effective date of this Agreement City receives notification from Concessionaire that Concessionaire from the outset of this Agreement will not utilize any or all of the Display Units provided by City, City will be responsible for the removal of those Display Units and repairing the premises to their original condition, solely at City's expense.

- B. The number, type, style, size and location of all Advertising Displays shall be agreed upon by both parties, and shall be subject to the prior written approval of the Director before installation. The approval of the Director shall not be unreasonably withheld or restricted. All display units must comply with all applicable building and safety codes and regulations, including all aspects of the Federal Americans with Disabilities Act and Title XXIV of the California Code of Regulations.
- C. Concessionaire shall submit sketches, renderings or photographs of all types of contemplated advertising displays for Director's prior written approval before any advertising display shall be placed in any location allocated for such purpose, and such approval shall not be unreasonably withheld.
- D. Director may, upon thirty (30) days written notice, revoke or change the location of any spaces allocated for advertisements, when such space is needed for purposes directly related to the furnishing of air transportation services, or when the space originally provided interferes with the efficient functioning of the airport. In the event any change, relocation shall be required by Director, which is contrary to the terms of any contract between Concessionaire and any advertiser whose number, type, size and location of displays had theretofore been approved by the Director, a proportionate adjustment to the Minimum Annual Guarantee amount, based on the percentage of annual revenue lost as a result of the change compared to the total annual revenue that would have been received without any change, will be granted to Concessionaire.

Notwithstanding the above provision, it is understood that the City will carry out, at City's expense, certain remodeling projects within the Airport Passenger Terminal Building during the term of this Agreement, and that as a result of said remodeling projects some

advertising displays might have to be relocated, either temporarily or permanently. The intent of the parties hereto is that in effecting such relocation, the new location will to the maximum possible extent comply with the contract between the advertiser and Concessionaire in regards to the number, type, size, and location of displays.

The cost of any such change or relocation, if paid by Concessionaire, shall be deductible from the Minimum Annual Guarantee or Percentage Concession Fee amount due to City as defined in Article VII of this agreement. Furthermore, any credit or reduction in charges given to an Advertiser for a period when an Advertiser's display was out of service, shall not be Gross Receipts, and a proportionate reduction to the Minimum Annual Guarantee amount shall be made, based on the percentage of annual revenue lost as a result of the change compared to the total annual revenue that would have been received without any change.

- E. Director may, add to the location of any spaces allocated for advertisements, either at the request of the Concessionaire or upon the necessity of additional advertising space within the passenger air terminal. At the time of addition of new space, Director and Concessionaire shall enter into a side letter indicating the location of the new advertising location. Such side letter shall not require City Council approval.
- F. Concessionaire shall endeavor to keep all display units filled with revenue-producing advertising. Toward this end, Concessionaire will aggressively solicit national sales and will solicit local sales through aggressive sales contacts in the Fresno area.

However, despite Concessionaire's best efforts, it is recognized that from time to time certain Display Units may be unsold for short periods of time. In such events Concessionaire shall promptly provide "filler" exhibits of an educational, charitable or promotional nature. Such "filler" material may be displayed free of space charge, subject to the approval of the Director.

Concessionaire shall also have the right, subject to the approval of the Director, to fill vacant display Units with promotional exhibits under trade agreement contracts, provided that the City receives its full share of revenue which would normally have been received from a 100% cash sale of any such display; except that fillers donated by local (i.e. located with the San Joaquin Valley) businesses and approved by both Concessionaire and Director shall not be subject to this revenue share requirement.

- G. City shall provide Concessionaire with periodic reports of passenger traffic and such other information as may be useful to Concessionaire in its sale of advertising space and as may reasonably be available to City without undue expense. City shall provide Concessionaire with contact information (i.e. name, address or telephone number) regarding any inquiries for advertising space directed to Airport within three (3) working days of receiving such inquiry.
- H. It is understood by both parties that any advertising agreement or contract made by Concessionaire which extends beyond the term of this Agreement shall be null and void at the termination of this contract, or solely transferrable to the City at City's option. The City reserves the right and power to decline or reject any such advertising agreement extending beyond the term of this agreement and the City shall have no liability thereunder.

Section 2.04: City's Covenant Regarding More Favorable Terms

During the Term, or during any period of holding over by Concessionaire pursuant to the provisions hereof, City shall neither enter into any Concession Agreement with any other of the Concessionaires, nor amend, change, supplement, or otherwise modify, in writing or otherwise, any such agreement in any manner whatsoever, so as to result in any such agreement's containing any terms, conditions, agreements, or provisions which shall be more favorable to such Concessionaire than those herein set forth, including the modification of the term of any such agreement so as to have it end other than concurrently with the Termination Date hereof.

Concessionaire agrees that, in the event any of the Concessionaires discontinue(s) operations at the Airport, the City reserves to itself the right to enter an interim concession agreement with or without a solicitation and/or first refusal by the remaining Concessionaires.

ARTICLE III – TERM

Section 3.01: Term

This Agreement shall begin on August 1, 2015 and will terminate on July 31, 2022.

Section 3.02: Options to Extend Term

City hereby specifically reserves to itself, and Concessionaire hereby grants to City the option to extend the term of this Agreement for up to three (3) additional and consecutive one (1) year renewal terms, upon the terms and conditions herein, exercisable solely at the discretion of the City.

- A. City must provide written notice to Contractor of City's intention to exercise City's option at least ninety (90) days prior to the then scheduled expiration of this Agreement.
- B. These option(s) are null and void if the exercise of such is or becomes inconsistent with constitutional, legal and /or local law requirements.
- C. In no event shall this Agreement remain in force beyond July 31, 2025, unless the agreement is put in holdover status, as defined in Section 14.04 of this Agreement.

ARTICLE IV - UTILITIES

During the life of this agreement, at no cost to Concessionaire, City shall provide electrical power for the operation of any and all advertising displays installed by Concessionaire at the Airport. City shall endeavor to provide electrical power in a consistent and uninterrupted manner, but City shall not be liable to Concessionaire for any damages or losses of any nature whatsoever which may directly or indirectly result from the interruption, fluctuation and/or loss of such power.

NOTE: It is recognized that Concessionaire may have to grant credit or temporary reduction in charges to advertisers if for any reason said advertiser's displays should be

out of service or lack visibility because of electrical power outages. For purposes of this Agreement, in as much as Concessionaire would not be collecting the funds representing the credit or reduced charges, such amounts would not be Gross Receipts and Concessionaire would therefore not pay Concession Fees thereon, however said amounts are to be clearly identified and shown separately on all reports and statements required to be submitted by concessionaire.

Concessionaire shall make its own arrangements for any and all of its telephone requirements and shall be solely responsible for any and all costs associated therewith. Concessionaire agrees that any and all telephone installation and/or service charges associated with any and all units installed at the Airport shall be paid before their delinquency and that City shall be protected and held harmless therefrom by Concessionaire.

Concessionaire shall have the right to use available electrical outlets as exist in the public areas of the Passenger Terminal and General Aviation Terminal Buildings at the Airport at the time of execution of this agreement and/or as may exist in the future. City will provide electrical outlets for all display locations approved prior to commencement of this Agreement. Thereafter, in the event no electrical outlet is available at a location at which Concessionaire wishes to place a display unit, City may, but will not be required to, install an outlet at said location; and should City opt to install such outlet, such installation will be at City's cost and expense.

ARTICLE V - RENTAL, CONCESSION FEES AND OTHER CHARGES

Section 5.01: Minimum Annual Guarantee Rent vs: Percentage Concession Fees

For the rights and privileges herein granted, Concessionaire agrees to pay to City in monthly installments, as hereinafter provided, the greater of a Minimum Annual Guarantee (MAG) amount of One Hundred Twenty Seven Thousand Five Hundred dollars (\$127,500) OR the total dollars produced by multiplying Concessionaire's Gross Receipts by the following percentages (such percentages of Gross Receipts are also herein referred to as "Concession Fees"):

For All Gross Receipts:

<u>Previous Calendar Year's Enplaned And Deplaned Passengers</u>	<u>Percentage</u>
To 1,500,000	47%
Over 1,500,000	50%
FYI-TV Network	15%

The MAG for years two (2) through ten (10) shall be the greater of (a) the MAG for the prior Agreement Year or (b) eighty five (85%) of the Concession Fees due for the previous Agreement Year, but shall never be less than Agreement Year One's MAG.

Section 5.02: Monthly Statement and Payment of Fees and Charges

Beginning with the first month of this Agreement, and then continuing monthly thereafter throughout the life hereof, Concessionaire shall provide City with a monthly "Revenue Statement", prepared in such detail and breakdown as may reasonably be required by City, which shall be certified by Concessionaire's chief financial officer. Such monthly statement shall

be prepared (for the preceding calendar month) and submitted by Concessionaire with sufficient timeliness so as to be received by City not later than the tenth (10th) calendar day following the end of the month for which the statement is being submitted. All such monthly statements shall be accompanied by Concessionaire's payment in full, of any and all Concession Fees due to be paid to City for the month to which the statement pertains (all Checks to be made payable to "City of Fresno"). All monthly statements shall be submitted on the Gross Revenues Statement Form shown in Exhibit "E", attached hereto and incorporated herein.

Any Concession Fee payment received by City later than the tenth (10th) calendar day following the end of the month for which the statement and fee payment is being submitted shall be deemed to have not been paid when due. As a minimum, all monthly statements submitted by Concessionaire to City shall include the following:

1. The total number of advertising display orders taken during the month including names of advertisers, dates and duration of orders, and rates charged; a copy of Concessionaire's contract with the Advertiser for new orders is to be included with the Monthly Revenue Statement or provided under separate cover.
2. The total amount of advertising fees and charges associated with the total billing accruing during the month.
3. The amount of City's share of the total "Gross Receipts" as computed in accordance with Section 5.01 of this Article V.
4. Total amount of fees due to be paid to City by Concessionaire for the month to which the statement pertains.
5. A monthly reporting summary of open and closed accounts to date of statement, including names of advertisers, date and time periods and rates charged, minimum monthly rentals paid to date and billing totals.

Section 5.03: Certified Statement of Gross Receipts Due within Ninety (90) Days of Close of each Agreement Year

Within ninety (90) days following the close of each Agreement Year, Concessionaire shall furnish to City a sworn statement certified by an independent certified public accountant or firm of certified public accountants showing the total of Gross Receipts at the Airport for said Agreement Year and stating that Gross Receipts correctly reported in accordance with the terms of this Agreement.

Within ninety days following the termination of any other agreement or permit with the City, Concessionaire must provide, at its sole cost and expense, an audit by an independent certified public accountant or firm of certified public accountants, of monthly gross revenues, as defined in any other agreement or permit with the City for the period beginning at the last audited month and ending at the commencement date of this Agreement.

If the aggregate payments made for any Agreement Year exceed the greater of: (1) the Minimum Annual Guarantee if applicable to such year, or (2) Percentage Fee, the excess balance shall be credited to Concessionaire's account and applied against one or more of the next succeeding monthly payments during the next ensuing Agreement Year, if there is one, as

the City may elect. If the Agreement is terminated, City shall repay such excess Annual Concession Fees to Concessionaire in lawful tender of the United States.

If the certified statement provided by the Concessionaire to the City indicates that the aggregate payments made for any Agreement Year was less than the aggregate payments due for any Agreement Year under the terms of this Agreement, then Concessionaire shall pay the difference to the City at the same time it provides the certified statement to the City. In the event the underpayment is greater than five percent (5%) then the Concessionaire shall pay Past Due Interest on the amount of such difference.

Section 5.04: Unpaid Rents

All rents to City hereunder will bear a reasonable service charge per month equal to the Past Due Interest if not paid to and received by City within ten business days following the due date. Concessionaire shall pay and discharge all reasonable costs and expenses, including reasonable attorneys' fees, incurred or expended by City in the collection of delinquent amounts due.

Section 5.05: Additional Fees and Charges

Concessionaire shall pay additional fees and charges only under the following conditions:

- A. If City has paid any sum or sums, or has incurred any obligation or expense, which Concessionaire has agreed to pay to, or to reimburse the City; or
- B. If City is required or elects to pay any sum or sums, or incur any obligation or expense, because of Concessionaire's failure, neglect or refusal to perform or fulfill any condition of this Agreement.
- D. Any payment of the above-described additional fees and charges shall include all interest, costs, damages and penalties incurred in connection with said fees and charges and may be added to any installment of future fees and charges due hereunder. Each and every part of such payment shall be recoverable by City in the same manner and with like remedies as if it were originally a part of the rents and fees or other charge set forth herein.

Section 5.06: Security Deposit

- A. In order to guarantee the timely payment of the Annual Concession Fee, Concessionaire must remit to the City within ten business days prior to the Effective Date, a Security Deposit equal to one-fourth (1/4) of the Concessionaire's Minimum Annual Guarantee Fee, pursuant to this Agreement. The Security Deposit must be in the form of (i) a payment bond or an irrevocable letter of credit, renewable annually, from an insurer or bank reasonably acceptable to the City, (ii) cash or (iii) such other form of security as the City may deem reasonably acceptable.
- B. At any time that any of Concessionaire's Annual Concession Fees, or any other amounts due hereunder are more than thirty (30) days past due, the City, upon written notice to Concessionaire, will be entitled to apply all or any portion of the Security Deposit to the payment of such unpaid amounts including any reasonable costs the City incurs in collecting the amounts it is owed. In any such event, Concessionaire

must again meet the Security Deposit requirements set forth above within seven business days from its receipt of such written notice.

Section 5.07: Place and Manner of Payments

Concessionaire shall make payment in legal tender of the United States of America at the office of the City's Department of Airports: 4995 E. Clinton Way, Fresno, CA 93727: Attn. Accounts Receivable or at such other place within the City of Fresno, California as City may direct in writing to Concessionaire.

Section 5.08: Retention of Records

Upon commencement of the Term, Concessionaire agrees that it will make available to the City within thirty (30) business days of written notice, the books and records of accounts of Concessionaire for the last three twelve-month periods completed operations and the current Agreement Year, showing the information required under this Article IV or other similar Article(s) contained in any previous agreement(s), relating to business conducted at the Airport, the deductions there from, and other pertinent information required by the provisions of this Article or other similar Articles contained in such previous agreement. Concessionaire's obligation to retain such books and records is limited to the extent required under this Agreement, and/or previous agreement(s), until the Concessionaire retains sufficient books and records to meet the retention requirements stated above. Upon the City's prior written notice such books and records of accounts must be accessible to City or its duly authorized agents or auditors, during regular business hours only for the purpose of verifying compliance by Concessionaire with the terms of this Agreement, and/or previous agreement. At the City's request, Concessionaire will pay for the copying and delivery of all records and books requested by the City. In the event the City determines that the auditors need to travel to the Concessionaire's location where the books and records are kept, Concessionaire will pay for the reasonable and customary travel and other incidental costs incurred by the City's auditors.

Section 5.9: Independent Certified Public Accountants

Wherever the statement of an Independent Certified Public Accountant is required, the parties agree that said CPA must not be an employee or agent of Concessionaire.

Section 5.10: City's Right to Audit Statements and Reports

City shall have the right to audit the statements and reports provided by Concessionaire in accordance with Article V herein. Except as provided in Section 5.10 above, the cost of audit shall be borne by City; unless the audit reveals an underpayment of Annual Concession Fees by Concessionaire of five percent (5%) or greater, or if the audit reveals that the condition of the Concessionaire's records is such that the revenue due City cannot reasonably be properly determined. In the event of either condition described above, the reasonable cost of the audit including any applicable travel costs, must be borne by the Concessionaire and must be paid within five business days of receipt of an invoice.

Section 5.11: Taxes and Assessments

In addition to the rents, Annual Concession Fees, and charges herein set forth, Concessionaire shall pay, as and when due, but not later than fifteen (15) days prior to the delinquency date thereof any and all taxes and general and special assessments of any and all types or

descriptions whatsoever which, at any time and from time to time during the life hereof, may be levied upon or assessed against Concessionaire, the Concession Facility and/or any one or more of the improvements located therein or thereon and appurtenances thereto, other property located therein or thereon belonging to City or Concessionaire, and/or upon or against Concessionaire's interest(s) in and to the Concession Facility, improvements and/or other property, including possessory interest as and when such be applicable to Concessionaire hereunder (See footnote 1 below).

Concessionaire agrees to protect and hold harmless City, the Concession Facility and any and all improvements located therein or thereon and any and all facilities appurtenant thereto and any and all other property(ies) located therein or thereon and any and all of City's interest(s) in and/or to the Concession Facility, improvements, appurtenant facilities, and/or other property(ies), from any and all such taxes and assessments, including any and all interest, penalties and other expenses which may be imposed thereby or result therefrom, and from any lien therefore or sale or other proceedings to enforce payment thereof.

Nothing within this Section of This Article shall be deemed to limit any of Concessionaire's rights to appeal any such levies and/or assessments in accordance with the rules, regulations, laws, statutes, or ordinances governing the appeal process of the taxing authority(ies) making such levies and/or assessments.¹

Section 5.12: Late Payment Charges

Any payment not received by the due date shall be deemed delinquent and shall accrue interest at the lesser of the rate of eighteen percent (18%) per year calculated on a daily basis at the rate of five-hundredths of a percent (0.05%) per day from the due date until paid in full, or the maximum rate allowed by law.

Section 5.13: City Held Harmless

Concessionaire agrees to protect and hold harmless City, the premises utilized by Concessionaire and any and all improvements located therein or thereon and any and all facilities appurtenant thereto and any and all other property(ies) located therein or thereon and any and all of City's interest(s) in and/or to such premises, improvements, appurtenant facilities, and/or other property(ies), from any and all such taxes and assessments, including any and all interest, penalties and other expenses which may be imposed thereby or result therefrom, and from any lien therefore or sale or other proceedings to enforce payment thereof.

Section 5.14: Concessionaire's Right to Appeal

Nothing within this section of this article shall be deemed to limit any of Concessionaire's rights to appeal any such levies and/or assessments in accordance with the rules, regulations, laws,

¹ Any interest in real property which exists as a result of possession, exclusive use, or a right to possession or exclusive use of any real property (land and/or improvements located therein or thereon) which is owned by the City of Fresno (Lessor) is a taxable possessory interest, unless the possessor of interest in such property is exempt from taxation. With regard to any possessory interest to be acquired by Concessionaire, Concessionaire, by its signature(s) hereunto affixed, warrants, stipulates, confirms, acknowledges and agrees that, prior to its executing this agreement, the company either took a copy hereof to the office of the Fresno County Tax Assessor or by some other appropriate means, independent of city or any employee, agent or representative of city determined, to company's full and complete satisfaction, how much company shall be taxed, if at all.

statutes or ordinances governing the appeal process of the taxing authority(ies) making such levies and/or assessments.

ARTICLE VI - OBLIGATIONS OF CITY

Section 6.01: Operation of Airport

City covenants and agrees during the life hereof to operate and maintain Airport and its public airport facilities as a public airport consistent with the Sponsor's Assurances given by City to the United States Government under the Federal Aviation Act.

Section 6.02: Maintenance and Repair

A. Public Facilities:

1. City shall, at its expense, operate and maintain in good condition and repair and keep, or make arrangements to keep, the public areas of the building(s) and premises in which the Advertising Displays are located, adequately and attractively equipped, furnished, and decorated and in a neat, clean, sanitary and sightly condition, and, insofar as is reasonable and fiscally prudent, City shall maintain the public areas and facilities in and about the Airport commensurate with first-class passenger terminal facilities of major airports in the State of California.
2. City agrees that City shall undertake to regulate, maintain and operate the public, common-use areas/facilities of the buildings and premises in which the Advertising Displays are located, and the public, common-use sidewalks, streets and roadways affording public access thereto and egress therefrom so as to best serve the interests of the public, building tenants, patrons and visitors at Airport, and to permit in/on such public, common use areas and facilities only such functions and concessions that: (1) will not interfere with the public's access to Concessionaire's Advertising Displays; and (2) are compatible with the purposes of providing a modern, functional, efficient, first-class air transportation facility.
3. Utilities and Janitorial Services. City shall provide and supply in the public, common-use areas signs, heat, electricity, light, power, air conditioning, wastewater disposal, water and janitorial services (except that Concessionaire is responsible for providing janitorial services for the cleaning of the Advertising Displays installed in such public common-use areas). Interruptions of such services shall not constitute a breach of this Agreement by City, but City shall use its best efforts to restore such services within a reasonable period of time after interruption.

NOTE: It is recognized that Concessionaire may have to grant credit or temporary reduction in charges to advertisers if for any reason said advertiser's displays should be out of service or lack visibility because of electrical power outages. For purposes of this Agreement, in as much as Concessionaire would not be collecting the funds representing the credit or reduced charges, such amounts would not be Gross Receipts and Concessionaire would therefore not pay

Concession Fees thereon, however said amounts are to be clearly identified and shown separately on Monthly Reports.

ARTICLE VII - OBLIGATIONS OF CONCESSIONAIRE

Section 7.01: Quality of Advertisements and Services

- A. Intent of City. In entering into this Agreement, City has foremost in mind providing the public and the air traveler with airport facilities and services of high quality, commensurate with the trade that is accustomed to using modern airport facilities and airline travel services. With respect to the quality of Advertisements and services provided by Concessionaire under this Agreement, the provisions of sub-sections 2 and 3 of this Section of this Article, below, shall apply.
- B. Director's Right to Object to Quality of Advertisements, Quality or Quantity of Services Provided, and Appearance/ Condition of Display Units. Director shall have the right to object to the quality of advertising media displayed, the quality or quantity of services provided by Concessionaire, and the appearance or condition of the Display Units. Upon Director's lodging any such objection with Concessionaire, either verbally or in writing, Concessionaire agrees to promptly correct any conditions mutually agreed as unsatisfactory. If Concessionaire disputes the need for corrective action, Concessionaire agrees that Director shall have the right to reasonably decide such disputes, and that Director's decision shall be binding, subject to appeal pursuant to the provisions of Chapter 1, Article 4 of the Fresno Municipal Code. Concessionaire agrees to abide by Director's decision pending any such appeal.
- C. Quality of Advertisements and Services to be Provided by Concessionaire. Concessionaire agrees that, to the full and complete satisfaction of City and in full conformity with any and all applicable Federal, State and local statutes, laws, ordinances, codes, rules, and regulations, Concessionaire shall:
 - 1. Operate the Advertising Concession at Airport in a first-class manner and maintain standards of service and quality commensurate to that provided by other Advertising Concessionaires at other major airports in the State of California who meet or exceed the highest standards of the airline industry;
 - 2. Ensure that any and all advertisements provided by Concessionaire shall be of the highest quality. All advertisements shall be subject to inspection at all times, and any advertisement found to be objectionable by City shall be removed from display immediately by Concessionaire.

Section 7.02: Concessionaire's Sub-Contracts

- A. Concessionaire shall enter into sub-contracts with all "advertisers" (any person engaging to display advertising material, media, or messages at Airport), the form of such sub-contracts to be acceptable to City. Concessionaire's sub-contract form shall clearly state, in addition to any other appropriate information, that the sub-contract is subordinate to this Agreement, and that any advertising agreement or contract made by Concessionaire which extends beyond the term of this Agreement

shall be null and void at the termination of this Agreement, or solely transferrable to the City at City's option, and that City reserves the right and power to decline or reject any such advertising agreement extending beyond the term of this agreement and the City shall have no liability thereunder.

- B. Concessionaire shall, within three business days of receipt of a Notice of Termination of this Agreement, inform all advertisers in writing of said termination and the effective date thereof. Concessionaire's sub-contract shall clearly state Concessionaire's responsibility to so notify advertisers of the termination of this Agreement.
- C. Concessionaire hereby grants City the right to contact advertisers upon the issuance by City to Concessionaire of a Notice of Termination of this Agreement, and agrees that City shall have no liability for any reason because of City's either contacting or not contacting such advertisers.

Section 7.03: Installation, Service, and Maintenance of Display Units

- A. Except for those certain obligations of City which are set forth within Article IV, "Utilities and Article VI "Obligations of City", hereof, Concessionaire shall have the full responsibility, at its sole cost and expense, for the marketing, solicitation, procurement, exhibition, installation, removal, relocation, servicing, maintenance and repair of any and all Advertisements installed by it on Airport and shall furnish all labor, parts, materials and supplies necessary for the operation, care and maintenance of such Advertisements.
- B. Concessionaire shall provide prompt maintenance and repair service to keep any and all Display Units operating properly. Such service shall be provided as soon as possible but not later than twenty-four (24) hours following notification to Concessionaire by client or City that such service is required. In the event immediate repair is not possible, Concessionaire shall make the repairs and restore any malfunctioning or inoperative unit to a satisfactory working condition within a reasonable period of time following notification by client or City of the need therefore, or remove the malfunctioning or inoperative unit and install a satisfactory replacement therefore.
- C. Concessionaire shall be responsible, at its sole cost and expense, for maintaining all Advertising Displays at Airport in a clean, neat, attractive condition at all times, and shall make all necessary arrangements to provide for regular periodic cleaning and inspection services in order to assure such Displays are so maintained.
- D. Concessionaire and/or any and all persons acting on its behalf shall normally perform any and all maintenance, repair and servicing required of Concessionaire hereunder during the hours in which the Passenger Terminal Building and Concourse Building at the Airport are open to the public.
- E. Should City provide janitorial service for Concessionaire's advertising displays at Concessionaire's request and Concessionaire approve an estimate of costs for such services, Concessionaire agrees to reimburse City for such service. If Concessionaire has been notified that a Display Unit or area requires maintenance or repair service and fail to correct the problem within three days following the

notification, then City may correct the problem and will charge Concessionaire for such service, which charge Concessionaire agrees to pay within thirty days of receipt of invoice therefore.

- F. Where and when possible, with facts and circumstances so permitting, but without any obligation whatsoever on its part hereunder to so perform, City shall provide reasonable general observational monitoring, control and security for unit(s) installed at Airport in order to minimize any damage thereto and/or loss thereof as a result of any readily detectable gross misuse, malicious mischief, or theft, and to provide Concessionaire with notice of any malfunctions or inoperative conditions or damage to or theft or loss of any unit(s); however, Concessionaire hereby assumes any and all of the risks associated with any and all such units and shall hold City harmless with respect to any and all damage(s) thereto or theft(s) thereof or other loss(es) of any nature and type whatsoever directly or indirectly related thereto and/or associated therewith.

Section 7.04: Repair/Restoration of Premises By Concessionaire

- A. Concessionaire expressly agrees that any damage to City's premises, resulting from Concessionaire's installation, removal and/or relocation of any units(s) at the Airport, shall be immediately repaired by and at the sole cost and expense of Concessionaire. Concessionaire further agrees that, during or at the end of the life hereof, or upon earlier termination as herein provided, immediately following the removal of any unit(s) from the location(s) at which installed, Concessionaire shall immediately restore any portion of City's premises at or upon which the units were located to the same condition as existed at the time the unit(s) was/were installed. In the event Concessionaire fails to immediately repair and/or restore City's premises as required by this Section, City may make such repairs and restore such premises and charge Concessionaire's account for any and all reasonable costs associated therewith and Concessionaire agrees to reimburse City for all such costs within thirty (30) days following receipt of City's request for payment therefore.
- B. Concessionaire expressly agrees that (1) any and all work associated with Concessionaire's installation and/or removal of units at Airport, including, without limitation, premises preparation, installation of any electrical improvements, and repair and/or restoration of premises shall be professionally accomplished and, (2) where and when applicable and/or appropriate, any and/or all such work shall be accomplished by professional contractors duly licensed to do such work in the State of California, (3) any and all such work shall be in full compliance with any and all applicable codes, ordinances, statutes, rules or regulations as may pertain thereto, and (4) Concessionaire shall obtain any and all applicable building permits and approvals as may be required and pay any and all fees or charges as may be assessed therefore.

Section 7.05: Concessionaire's Right of Ingress and Egress

Concessionaire, its agents and employees, shall have the right of ingress and egress to and from the Airport premises at all reasonable times in accordance with this Article, in order to carry out the terms and conditions of this agreement, and this right shall not be exercised in such manner and to such extent as to impede or interfere unduly with the operation of Airport, its tenants or other authorized occupants. Concessionaire's employees shall enjoy the same

parking privileges and pay the same fees therefore, if any, as other Passenger Terminal Building tenant employees; contract or visiting service personnel shall park in areas designated for temporary vendor parking and their vehicles shall be clearly identified as service vehicles, including the name of the service company.

Section 7.06: Permits and Licenses

Concessionaire shall obtain and pay for any and all licenses and/or permits necessary to install and operate its units at the Airport.

ARTICLE VIII - INDEMNIFICATION, EXCEPTION OF CITY, AND INSURANCE

Section 8.01: Indemnification

Concessionaire shall hold City completely harmless and indemnify, protect and defend City and each of its officers, officials, employees, agents and volunteers against any and all claims, judgments, fines, penalties, forfeitures, damages, demands, liabilities, suits, notices, costs and expenses [including all reasonable costs and expenses for investigation and defense thereof (including, but not limited to attorney fees, court costs and expert fees)], or any one, more or all of these, of any nature whatsoever, arising or allegedly arising, directly or indirectly, out of, as a result of, or incident to, or in any way connected with: (1) Concessionaire's occupancy(ies) and/or use(s) of any part or all of the Concession Facility; (2) Concessionaire's exercise of any one, more or all of the rights and privileges herein granted; (3) any breach or default in the performance of any obligation on Concessionaire's part to be performed under the terms of this Agreement; and/or (4) any act(s) or omission(s) on the part of Concessionaire and/or any officer(s), agent(s), employee(s), contractor(s), sub-contractor(s), servant(s), or representative(s) of Concessionaire during the Term, except for any claims, judgments, fines, penalties, forfeitures, damages, demands, liabilities, suits, notices, costs and expenses, or any of these, caused solely by the gross negligence or by the willful misconduct of City or any of its officials, officers, or employees acting within the scope of their duties for City.

Concessionaire shall conduct all defenses at no cost or expense to the City. City shall be reimbursed for all costs and attorney's fees incurred by City in enforcing this obligation. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Concessionaire. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Concessionaire and its officials, officers, employees, agents and volunteers.

City shall give to Concessionaire reasonable notice of any such claims or actions.

The provisions of this section of this article shall survive the expiration or early termination of this Agreement.

Section 8.02: Exemption of City

Concessionaire hereby specifically warrants, covenants and agrees that City shall not be liable for injury to Concessionaire's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property located in, upon or about the Concession Facility or elsewhere on Airport under authority hereof, whether belonging to Concessionaire, or any

employee, agent, contractor, sub-contractor, tenant, sub-lessee of Concessionaire, or any other person whomsoever. The City shall not be liable for any injury to the person of Concessionaire or Concessionaire's employees, agents, contractors, subcontractors, tenants, sub-lessees, customers, or invitees, whether or not said damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the leakage, breakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether or not the said damage or injury results from conditions arising in or on any part or all of the Concession Facility or in or on any of the improvements/ facilities appurtenant thereto located therein or thereon, or from other sources or places, and regardless of whether or not the cause of such damage or injury or the means of repairing the same is inaccessible to Concessionaire. Concessionaire also covenants and agrees that City shall not be liable for any damages arising from any act or neglect on the part of any third parties.

Section 8.03: Insurance

Concessionaire shall, at Concessionaire's expense, obtain and, throughout the Term, maintain in full force and effect all policies of insurance required hereunder, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-/VII" in Bests Insurance Rating Guide, or (ii) authorized by City's Risk Manager or his/her designee. The following policies of insurance are required and shall maintain limits of liability of not less than those amounts stated below. However, the insurance limits available to City, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or \$10,000,000 if Concessionaire's excess/umbrella policy provides same additional insured benefits as primary. The following policies of insurance are required:

- A. Commercial General Liability insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) form CG 00 01 and shall include insurance for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability of not less than \$2,000,000 per occurrence and \$3,000,000 general aggregate for bodily injury and property damage, \$2,000,000 per occurrence for personal and advertising injury and \$3,000,000 aggregate for products and completed operations.
- B. Commercial Automobile Liability insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) form CA 00 01 and shall include coverage for "any auto" with limits of liability of not less than \$3,000,000 per accident for bodily and property damage.
- C. Workers' Compensation insurance as required under the California Labor Code.
- D. Employers' Liability insurance with limits of liability of not less than \$2,000,000 each accident, \$2,000,000 disease each employee and \$2,000,000 disease policy limit.

Defense costs shall be provided as an additional benefit and not included within the above limits of liability. Concessionaire shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Concessionaire shall also be responsible for payment of any self-insured retentions.

The above-described policies of insurance shall be endorsed to provide an unrestricted thirty (30) day written notice in favor of City, of policy cancellation, change or reduction of coverage, except for the Workers' Compensation policy, which shall provide a ten (10) day written notice of such cancellation, change or reduction of coverage. Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, Concessionaire shall file with City a certified copy of the new or renewal policy and certificates for such policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name the City of Fresno, its officers, officials, employees, agents and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Concessionaire's insurance shall be primary and no contribution shall be required of City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers. Concessionaire shall furnish City with the certificate(s) and applicable endorsements for ALL required insurance prior to City's execution of this Agreement at the following address:

City of Fresno - Airports Department
Attn.: Properties Division
4995 E. Clinton Way
Fresno, CA 93727

or to such other address as City may, from time to time, provide Concessionaire in writing during the Term. Concessionaire shall furnish City with copies of the actual policies upon the request of City's Risk Manager or his/her designee at any time during the Term or any extension, and this requirement shall survive termination or expiration of this Agreement.

Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement.

Concessionaire shall have the right to provide the coverage specified in this Article by a program of self-insurance, which has been approved by the State of California. Concessionaire shall furnish City with a self-insured certificate of insurance and applicable endorsements. Said certificate and applicable endorsements shall document that Concessionaire's self-insurance program is approved by the State of California; the retention level of such self-insurance program; the City and its officials, officers, employees, agents and volunteers are named as additional insureds; and that the policy of insurance is primary and no contribution shall be required by City. Concessionaire shall also supply the name of Concessionaire's excess insurance carrier at the time the certificate of self-insurance is supplied to City.

Section 8.04: Delivery to Director of Evidence of Insurance

Concessionaire must deliver, without request or demand, to the Director, a certificate of insurance and all applicable endorsements or other evidence of insurance coverage required by this Article in form and content satisfactory to City's Risk Manager or his/her designee. Concessionaire must update such evidence of insurance not less frequently than annually.

Section 8.05: Expiration of Insurance Policy

Prior to the expiration of any insurance policy required by this Article, Concessionaire must submit to the Director a certificate of insurance and all applicable endorsements showing that such insurance coverage has been renewed. If such coverage is cancelled or reduced,

Concessionaire, within five business days following the date of written notice from the insurer of such cancellation or reduction in coverage, must file with the Director a certificate of insurance and all applicable endorsements showing that the required insurance has been reinstated or provided through another insurer or insurers.

Section 8.06: Adjustment of Claims

Concessionaire must provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of Concessionaire under this Agreement.

Section 8.07: Conditions of Default

If, at any time, Concessionaire fails to obtain and maintain the insurance required herein, City may but shall not be required to affect such insurance by taking out a policy or policies in a company or companies satisfactory to City. The amount of the premium or premiums paid for such insurance must be payable by Concessionaire to City with the installment of fees thereafter next due under the terms of this Agreement, with interest thereon at the rate of the lesser of one and one-half percent (1.5%) per month or the legal maximum.

ARTICLE IX - HYPOTHECATION, SUB-LEASE, AND ASSIGNMENT

Section 9.01: General

Nothing within this Agreement contained shall be deemed to allow Concessionaire or Concessionaire's successors or assigns, either voluntarily or by operation of law, to hypothecate, encumber, sell, assign, surrender, or otherwise transfer this Agreement, in whole or in part; or to hypothecate, encumber, sell, assign surrender, or otherwise transfer, in whole or in part, any of Concessionaire's rights, title and interests in or to any part or all of the Concession Facility and/or in or to any part or all of the improvements and appurtenances which existed therein or thereon at the commencement of the Term or which may, at any time and from time to time, be constructed/installed therein or thereon during the Term; or to rent, sub-let or otherwise permit/allow/suffer occupancy and/or use of any part or all of the Concession Facility by any other person or entity, except as herein specifically provided for and in the manner and under the conditions herein expressly set forth, and any and all such action(s) which shall be contrary to and/or not in full conformity with the provisions hereof shall be null and void.

Section 9.02: Hypothecation

During the Term, Concessionaire shall not offer, mortgage, hypothecate, pledge, or otherwise encumber either this Agreement, the Concession Facility, any improvement(s) constructed/placed/installed/located on or in said Concession Facility, or any of Concessionaire's rights, title, and/or interest in or to any one or more of these, for any purpose whatsoever, any and all such actions by Concessionaire being expressly prohibited hereby.

Section 9.03: Sub-lease

During the Term, Concessionaire shall not rent, sub-lease, or suffer or permit the occupancy and/or use of any part or all of the Concession Facility by any other person or entity

whomsoever for any reason whatsoever, any and all such actions by Concessionaire being expressly prohibited hereby.

Section 9.04: Assignment

- A. City's Consent Required. Concessionaire may not and shall not assign this Agreement to any other rental car company without first obtaining the written consent of City in advance.
1. Any attempted/purported assignment of this Agreement without City's advance written consent shall be null and void and shall constitute a breach of this Agreement.
 2. City shall not be obligated to consent to and may withhold consent to any assignment of this Agreement by Concessionaire to any other rental car company where Concessionaire shall be in default of any of its obligations hereunder as of the date on which City's consent to such assignment would have otherwise been given.
 3. City's consent to any such action shall not constitute a waiver of the conditions, limitations, and restrictions of this Section of this Article relative to further or other such actions, which conditions, limitations, and restrictions shall apply to each and every transfer and/or assignment hereof and shall be binding upon each and every assignee, transferee, and/or other successor in interest of Concessionaire, subject to the provisions hereof.
- B. Advance Notice by Concessionaire. In the event of any proposed assignment of this Agreement by Concessionaire (as Assignor), to another rental car company (as Assignee), Concessionaire shall, not less than thirty (30) days prior to the proposed effective date of such action, provide City with written notice of the proposed assignment and assumption of this Agreement, setting forth the following:
1. The name, address and telephone number of the proposed Assignee; and
 2. The planned effective date of the proposed assignment and assumption action.
- C. Documents to Accompany Concessionaire's Notice. The notice that the Concessionaire provides to City pursuant to the provisions hereof shall be accompanied by:
1. Fully executed original set(s) of any and all documents being used to effect the proposed actions set forth within such notice in the number then specified by and in a form acceptable to City.
 2. All such documents shall, as, when, and where applicable and appropriate, by a specific provision therein contained, clearly evidence the fact that the Assignment and the assumption agreements and actions specified therein are subject to and/or conditioned upon City's consenting thereto and that such actions shall not become effective nor be binding on either Concessionaire, as Assignor, or the Assignee named therein, unless and until such consent shall be given by City in writing.

D. The Assignment/Assumption Agreement shall contain:

- 1 An "assignment of Concession Agreement" by Concessionaire whereby Concessionaire assigns all of its rights, title and interests in and to this agreement to the assignee;
- 2 An "Assumption of Concession Agreement" by Assignee which shall clearly evidence the fact that, as of the effective date of such assumption of this Agreement, Assignee assumes any and all of the obligations of Concessionaire under this Agreement and shall, on and after said date undertake, perform, keep and/or observe any and all of the terms, covenants, conditions, warranties, agreements, and/or provisions of this Agreement to be undertaken, performed, kept, and/or observed by Concessionaire; and
- 3 The specific date on which the Assignment and Assumption Agreements shall be effective.

- E. Modification of Documents. Once City's consent is given for any Assignment and Assumption Agreements, the documents provided City pursuant to the provisions hereof shall not be modified, in any way whatsoever, other than in writing, signed by the parties in interest at the time of the modification, and any such modification shall be null and void unless City's consent thereto, in writing, shall have been obtained by Concessionaire in advance.

Section 9.05: Transfer by Operation of Law

Any assignment or transfer of this Agreement by operation of law or any issuance, sale or transfer of a sufficient number of shares of stock or other ownership interest in Concessionaire to result in a change in control of the Concessionaire will be deemed an assignment of this Agreement for purposes of this Section; provided, however, that nothing in this Section will be deemed to require such consent solely as a result of issuance, transfer or sale of shares or ownership interests among the existing stockholders or other owners of the Concessionaire; transfer of shares or ownership interests by devise or descent upon the death of any existing stockholder; merger of the Concessionaire into any parent or subsidiary corporation of the Concessionaire or sale of all of Concessionaire's stock or ownership interests to any parent or subsidiary of Concessionaire.

Section 9.06: Modification

Unless stated otherwise in this Agreement, no provision of this Agreement may be waived, modified or amended except by written amendment signed by City and Concessionaire.

No act, conversation or communication with any officer, agent, or employee of City, either before or after the execution of this Agreement, will affect or modify any term or terminology of this Agreement and any such act, conversation or communication will not be binding upon City or Concessionaire.

ARTICLE X - DEFAULTS AND REMEDIES

Section 10.01: Default by City

City shall not be in default unless City fails to perform obligations required of City under this Agreement within a reasonable period of time, but in no event later than thirty (30) days after written notice is served upon City by Concessionaire specifying wherein City has failed to perform any such obligation; provided, however, that if the nature of City's obligation is such that more than thirty (30) days may reasonably be deemed to be required for performance, then City shall not be in default if City commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In the event any default shall occur, Concessionaire may declare this Agreement and all rights and interests thereby created to be terminated. Concessionaire expressly waives any claim against City, its officers, agents, or employees for loss of anticipated profits in any suit or proceeding involving this Agreement or any part hereof.

Section 10.02: Default by Concessionaire

- A. Defaults: The occurrence of any of the following events shall constitute a material default and breach of this agreement by Concessionaire:
1. The vacating or abandonment of all or any part of the Concession Facility by Concessionaire.
 2. The failure by Concessionaire to use the Concession Facility for lawful purposes only and/or failure by it to comply with or observe any statute, law, ordinance, rule, regulation, standard or requirement of any federal, state, or local government entity with respect to its occupancy(ies) and/or use(s) of any part or all of the Concession Facility, as such statutes, laws, ordinances, rules, regulations, standards or requirements exist(ed) on the commencement date of the Term or as such may exist at any time and from time to time during the Term, where any such failure shall be evidenced by either a finding or judgment of any court of competent jurisdiction or where any such shall be admitted by Concessionaire in any proceeding brought against Concessionaire by any government entity.
 3. The inability of and/or failure of Concessionaire to obtain, pay for, and maintain in full force and effect at all times during the life of this Agreement, without any lapse in coverage, such insurance as shall be required of Concessionaire hereunder.
 4. The occurrence of any of the following:
 - (a) Concessionaire's becoming insolvent or the making by it, of any general arrangement or an assignment for the benefit of creditors;
 - (b) The filing by or against Concessionaire of a petition to have it adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy unless, in the case of a petition filed against Concessionaire, the same is dismissed within sixty (60) days;

- (c) The appointment of a receiver to take possession of substantially all of Concessionaire's assets located in, on or about, the Concession Facility or elsewhere on Airport, or of its interest in this Agreement, where possession is not restored to Concessionaire within thirty (30) days; or
 - (d) The attachment, execution or other judicial seizure of substantially all of Concessionaire's assets located in, on or about the Concession Facility or elsewhere on Airport, or of Concessionaire's interest in this Agreement, where such seizure is not discharged within thirty (30) days.
- 5. The discovery by City that any financial statement provided to the City by Concessionaire, any Assignee of Concessionaire, any sub-lessee/-company of Concessionaire, any successor in interest of Concessionaire, or any guarantor of Concessionaire's obligations hereunder, and/or any one or more of such persons or entities, was materially false.
- 6. Any attempted/purported hypothecation, encumbrance, sale, assignment, or transfer of either this Agreement, in whole or in part; or of any of Concessionaire's rights, title and interests in or to any part or all of the Concession Facility and/or in or to any part or all of the improvements and appurtenances thereto which exist(ed) therein or thereon at the commencement of the Term or which may at any time and from time to time be constructed or installed therein or thereon during the Term or any attempted/purported subletting or permitting occupancy of any part or all of the Concession Facility by any person or entity other than Concessionaire, without City's prior written consent.
- 7. The failure by Concessionaire to make any payment of rent or Annual Concession Fees or any other required payment, or to furnish any Security Deposit or instrument, as and when due hereunder, where such failure shall continue for a period of ten (10) days following service of notice thereof upon Concessionaire by City.
- 8. The failure by Concessionaire to actively conduct a business at Airport for a period of seventy-two (72) consecutive hours, where such failure shall continue for a period in excess of seventy-two (72) hours following service of notice thereof upon Concessionaire by City; provided, however, Concessionaire shall not be in default and breach under this sub-paragraph of this Section of this Article, where such failure to conduct a business at airport shall have been caused by circumstances beyond Concessionaire's control.
- 9. The failure of Concessionaire to keep, observe, undertake, fulfill, or perform any of the terms, covenants, conditions, warranties, agreements, obligations, and/or provisions of this Concession Agreement to be kept, observed, undertaken, fulfilled, and/or performed by it, other than those hereinabove within sub-paragraphs "A" through "H" of this Section of this Article expressly set forth, where such failure shall continue for a period of thirty (30) days following service of notice thereof upon Concessionaire by City; provided, however, that if the nature of Concessionaire's default is such that more than thirty (30) days are reasonably required for its cure, then Concessionaire shall not be deemed to be in default and breach of this Agreement if Concessionaire commences such cure

within said thirty (30) day period and thereafter diligently prosecutes such cure to completion as soon as reasonably possible following service of such notice upon Concessionaire by City.

B. City's Remedies.

1. Abandonment. If Concessionaire abandons all or any part of the Concession Facility, this Concession Agreement shall continue in effect. City shall not be deemed to terminate this Concession Agreement as a result of such material default and breach other than by written notice of termination served upon Concessionaire by City, and City shall have all of the remedies available to City under Section 1951.4 of the Civil Code of the State of California so long as City does not terminate Concessionaire's right to possession of the Concession Facility, and City may enforce all of City's rights and remedies under this Agreement, including the right to recover the rents and the Annual Concession Fees as such becomes due under this Agreement. After abandonment of the Concession Facility by Concessionaire, City may, at any time thereafter, give notice of termination.
2. Termination. Upon the occurrence of any material default and Concessionaire's failure to cure such default within a reasonable period of time, but in no event later than thirty (30) days after written notice is served upon Concessionaire by City specifying wherein Concessionaire has failed to perform any such obligations and breach of this Agreement by Concessionaire as set forth within paragraph 1 of this Section of this Article, above, City may then immediately, or at any time thereafter, terminate this Agreement by service of a minimum of ten (10) days advance written notice to such effect upon Concessionaire and this Agreement shall terminate at 11:59:59 p.m., on the termination date specified within such notice.
 - (a) Such notice shall, as a minimum, set forth the following:
 - (i) The default and breach which resulted in such termination by City; and
 - (ii) A demand for possession, which, in the event only ten (10) days advance notice shall be given by City, shall be effective at 12:00:01 a.m., on the eleventh (11th) calendar day following the date on which the notice in which such demand is contained shall be sufficiently served upon Concessionaire by City in conformity with the provisions of Article XII, "Notices", of this Agreement; or, if more than the minimum number of days advance notice shall be given, at 12:00:01 a.m., on the next day following the date specified within such notice as being the date of termination hereof.
 - (b) Such notice may contain any other notice which City may, at its option, desire or be required to give (e.g., "Demand For Payment" of any and all monies due and owing).

3. Possession. Following termination of this Agreement by City pursuant to the provisions of this Article, without prejudice to other remedies City may have by reason of Concessionaire's default and breach and/or by reason of such termination, City may:
 - (a) Peaceably re-enter the Concession Facility upon voluntary surrender thereof by Concessionaire; or
 - (b) Remove Concessionaire and/or any other persons and/or entities occupying the Concession Facility therefrom, and remove all personal property therefrom and store all personal property not belonging to City in a public warehouse or elsewhere at the cost of and for the account of Concessionaire, using such legal proceedings as may be available to City under the laws or judicial decisions of the State of California; or
 - (c) Retake possession of the Concession Facility or relet the Concession Facility or any part thereof for such term (which may be for a term extending beyond the Term of this Agreement) at such rents and upon such other terms and conditions as shall be determined solely by City, with the right to make reasonable alterations and repairs to the Concession Facility.
4. Recovery. Following termination of this Agreement by City pursuant to the provisions of this Article, City shall have all the rights and remedies available to City under Section 1951.2 of the Civil Code of the State of California. The amount of damages City may recover following such termination of this Agreement shall include:
 - (a) The worth at the time of award of the unpaid rents which had been earned at the time of termination of this Agreement;
 - (b) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination of this Agreement until the time of award exceeds the amount of such rental loss that Concessionaire proves could have been reasonably avoided;
 - (c) The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss for the same period Concessionaire proves could be reasonably avoided; and
 - (d) Any other amount necessary to compensate City for all the detriment proximately caused by Concessionaire's failure to perform Concessionaire's obligations under this Agreement or which in the ordinary course of things would be likely to result therefrom.
5. Additional Remedies. Following the occurrence of any material default and breach of this Agreement by Concessionaire as set forth within paragraph 1 of this Section of this Article, above, in addition to the fore-going remedies, City may maintain Concessionaire's right to possession, in which case this Concession Agreement shall continue in effect whether or not Concessionaire shall have

abandoned the Concession Facility and, so long as this Agreement is not terminated by City or by a decree of a court of competent jurisdiction, City shall be entitled to enforce all of City's rights and remedies hereunder, including the right to recover the rent as it becomes due under this Agreement and, during any such period, City shall have the right to remedy any default of Concessionaire, to maintain or improve the Concession Facility without terminating this Concession Agreement, to incur expenses on behalf of Concessionaire in seeking a new sub-tenant, to cause a receiver to be appointed to administer the Concession Facility and any new or existing sub-leases and to add to the rent payable hereunder all of City's reasonable costs in so doing, with interest at the maximum reasonable rate then permitted by law from the date of such expenditure until the same is repaid.

6. Other. In the event Concessionaire causes or threatens to cause a breach of any of the covenants, terms or conditions contained in this Agreement, City shall be entitled to obtain all sums held by Concessionaire, by any trustee or in any account provided for herein, to enjoin such breach or threatened breach and to invoke any remedy allowed at law, in equity, by statute or otherwise as though re-entry, summary proceedings and other remedies were not provided for in this Agreement.
7. Cumulative Remedies. Each right and remedy of City provided for in this Article or now or hereafter existing at law, in equity, by statute or otherwise shall be cumulative and shall not preclude City from exercising any other rights or from pursuing any other remedies provided for in this Agreement or now or hereafter available to City under the laws or judicial decisions of the State of California.
8. Indemnification. Nothing contained within this Section of this Article affects the right of City to indemnification by Concessionaire, as herein provided, for liability arising from personal injuries or property damage prior to the termination of this Agreement.

ARTICLE XI - REDELIVERY

Section 11.01: General

Upon the expiration of the term of this Agreement and any extensions, or upon earlier termination as herein provided, Concessionaire shall have no further interest in the Concession Facility or the rights granted herein, and Concessionaire shall peaceably and quietly quit and deliver possession of the Concession Facility to City in as good order and condition as when received, except for reasonable wear and tear, and expecting any maintenance, repairs, reconstruction, and/or restoration which shall be the obligation of City pursuant to any of the provisions hereof. Concessionaire shall provide City with a recordable quitclaim or other recordable instrument to evidence the termination of any interests in the Concession Facility that Concessionaire may have under this Agreement.

ARTICLE XII - DESTRUCTION OF IMPROVEMENTS

Section 12.01: General

If the Concession Facility or any part and the City-owned improvements, fixtures, and equipment located therein or thereon shall be partially or totally destroyed at any time during the Term, the respective rights and obligations of the parties hereto, with respect to repairing, reconstructing, and restoring said premises and/or with respect to the matter of continuance or termination of this Agreement, shall be controlled by the provisions of this Article X.

Section 12.02: Partial Destruction

- A. In the event the Concession Facility shall suffer partial destruction at any time during the Term, but shall not be rendered untenable, then the Concession Facility shall be repaired, reconstructed, and restored by City, at City's cost and expense, as soon as possible, but within sixty (60) days, and payment of rents and Annual Concession Fees by Concessionaire shall continue without any abatement whatsoever.
- B. In the event the Concession Facility shall suffer partial destruction at any time during the life hereof, if such damage shall be so extensive as to render the Concession Facility untenable, but capable of being fully repaired, reconstructed, and restored within sixty (60) days, the Concession Facility shall be repaired, reconstructed and/or restored with due diligence by City, at City's cost and expense, during said period of time, and any rents payable by Concessionaire, hereunder, for the Concession Facility shall be prorated and paid to the date of such destruction but shall thereafter be abated until such time as the Concession Facility is restored to a tenantable condition.

Section 12.03: Total Destruction

In the event, the Concession Facility shall suffer total destruction at any time during the Term:

- A. City may (but shall not be obligated to so perform) repair/re-construct/restore the Concession Facility, and the monthly rents payable by Concessionaire therefore shall be prorated and paid to the date of such destruction and shall thereafter cease until such time as the Concession Facility is restored to a tenantable condition.
- B. If within sixty (60) days after the date of such destruction City has not commenced repair/reconstruction/restoration of the Concession Facility or, if such action has been commenced during said period but the Concession Facility shall not have been fully repaired/ reconstructed/ restored to a tenantable condition within one hundred twenty (120) days following the date of such destruction, then at any time prior to the completion of such repair/reconstruction/ restoration by City, Concessionaire may cancel and terminate this Agreement by service of a minimum of thirty (30) days advance written notice upon City to such effect, in which event, this Agreement shall terminate as of the date specified within Concessionaire's notice.

Section 12.04: Limitation on City's Obligations

The foregoing provisions of this Article notwithstanding, City shall not be liable for or obligated to reconstruct/repair/restore/re-install/replace any improvements or any furnishings, fixtures, or

equipment, or other personal property installed/ placed/located in, on or about the Concession Facility by Concessionaire, Concessionaire's employees, agents, representatives, tenants, or sub-lessees.

Section 12.05: Concessionaire's Obligations

In the event of any destruction to the Concession Facility which shall result in any reconstruction/ repair/restoration by City pursuant to any of the foregoing provisions of this Article, if such actions shall be taken by City and this Agreement remains in full force and effect pursuant to the provisions hereof, then, immediately upon the Concession Facility being returned to a tenantable condition by City, Concessionaire shall, as soon as possible, but within thirty (30) days, at Concessionaire's cost and expense, reconstruct//reinstall/replace such Concessionaire-installed improvements, decorations, furnishings, fixtures and equipment as shall have been destroyed/ damaged so as to result in the Concession Facility being restored to substantially the same condition that existed immediately prior to such destruction/damage.

Section 12.06: Use of Temporary Facilities

In the event the Concession Facility or any part shall suffer destruction to such an extent that it is rendered untenable for any period of time, City shall endeavor to make suitable temporary facilities for Concessionaire's temporary use until such time as the leased premises shall be returned to a tenantable condition.

In the event such temporary-use facilities are available and City offers such to Concessionaire, if Concessionaire accepts such temporary facilities, any and all costs and expenses associated with Concessionaire's adapting such facilities for its use, locating thereto, conducting its Advertising business operations therein and therefrom, and relocating back to the Concession Facility once they are returned to tenantable condition shall be borne by Concessionaire.

Section 12.07: Waiver By Concessionaire

Concessionaire waives the provisions of California Civil Code Sections 1932(2) and 1933(4) which relate to termination of leases when the thing leased is destroyed and agrees that such event shall be governed by the provisions of this Article of this Agreement.

ARTICLE XIII – SIGNS AND DISPLAYS

Each advertising display installed by Concessionaire at Airport shall be attractive, professionally prepared and compatible with the general architecture and decor of the Airport terminal facilities, with type, content, construction, and method of attachment of such displays being subject to Director's approval. All display units must comply with all applicable building and safety codes and regulations, including all aspects of the Federal Americans with Disabilities Act and Title XXIV of the California Code of Regulations. No signs or advertising displays of any type or nature whatsoever shall be affixed to the premises or installed, displayed or placed anywhere within the building(s) or elsewhere on Airport by Concessionaire, or by others on its behalf, unless Concessionaire shall have requested and obtained Director's consent thereto and approval thereof, in writing, prior to any such affixment, installation, display and/or placement.

ARTICLE XIV - HOLDING OVER

Section 14.01: General

In the event Concessionaire shall remain in possession of the Concession Facility or any part thereof, after the expiration of the Term of this Agreement, and thus hold over the Term, with or without the expressed written consent of City, such holding-over shall be a tenancy from month to month only, terminable by either party hereto upon service of a minimum of thirty (30) days advance written notice upon the other party.

Section 14.02: Rentals/Fees/Charges

During any such holding over period, Concessionaire agrees to pay and shall pay to City monthly rents, and monthly Percentage Fees and MAG and other fees and charges pursuant to this Agreement; provided, however, that the monthly rental to be paid by Concessionaire to City during any such holding over period for such space shall be at fair market value.

Section 14.03: Agreement Controls Computations

During any such holding-over period, all rents, MAG/Percentage Fees payable monthly and other charges shall be calculated as specified within this Agreement.

Section 14.04: Agreement Controls Holdover Tenancy

Except as otherwise specifically provided within this Article, any such holding over shall be subject to all the terms, covenants, conditions, restrictions, reservations, prohibitions, warranties, agreements, and provisions of this Concession Agreement applicable to a month to month tenancy.

ARTICLE XV - NON-DISCRIMINATION

Section 15.01: Non-Discrimination

A. To the extent required by controlling federal, state and local law, Concessionaire shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, Concessionaire agrees as follows:

1. Concessionaire will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, gender identification, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.
2. Concessionaire will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry,

physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, gender identification, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Concessionaire shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, gender identification, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to Concessionaire's employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Concessionaire agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

3. Concessionaire will, in all solicitations or advertisements for employees placed by or on behalf of Concessionaire in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.
4. Concessionaire will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Concessionaire's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

Section 15.02: Airport Concession Disadvantaged Business Enterprise (ACDBE) Program

City has developed and maintains and Concessionaire at all times hereunder shall comply with the Disadvantaged Business Enterprise Concession Plan for the Airport in accordance with U.S. Department of Transportation regulations 49 CFR Part 23, Subpart F, which plan establishes policies and procedures designed to promote City's interest in establishing Airport concession opportunities for Disadvantaged Business Enterprises and sets lawful, realistic and reasonable goals therefore, as enforceable in the Ninth Circuit.

Any questions concerning Disadvantaged Business Enterprise (DBE) issues should be directed to DBE Program Coordinator, City of Fresno, Finance; 2600 Fresno St., Room 2156; Fresno, CA 93721; Telephone (559) 621-1182 or Fax (559) 488-1069.

Section 15.03: Federal Immigration Reform and Control Act

As a material part of any Concession on a City of Fresno property, every Concessionaire who has employees who will work on a City of Fresno property is required to comply with all of the provisions of the Federal Immigration Reform and Control Act of 1986 (P.L. 99-603, 100 Stat. 3359). This requirement includes compliance with all of the employee documentation provisions. Furthermore, Concessionaire will make any employee documentation required to comply with such Act immediately available to City, upon its request for each individual employee working on a City of Fresno property.

ARTICLE XVI - MISCELLANEOUS PROVISIONS

Section 16.01: No Personal Liability

No Councilperson, Director, officer employee or other agent of either party shall be personally liable under or in connection with this Agreement.

Section 16.02: Agreements with the United States

This Agreement is subject and subordinate to the provisions of any agreements heretofore made between City and the United States relative to the operation, security or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for airport purposes, or to the expenditure of federal funds for development of the Airport, in accordance with the provisions of the Federal Aviation Act as it has been amended from time to time. This may include rules and regulations promulgated by the TSA and/or Airport security plan/requirements including pursuant to 49 CFR Part 1542, as modified from time to time by legislative/regulatory action. These FAA Grant Assurances attached hereto as Exhibit "C" are incorporated herein.

Section 16.03: Modifications for Granting FAA Funds/Bond Reimbursement

In the event that the FAA requires modifications or changes to this Agreement, Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as reasonably may be required to enable City to obtain FAA funds.

The Concessionaire acknowledges that the City has issued Bonds and reimbursed expenditures related to the construction of the Concession Facility with Bond proceeds. This Agreement shall be deemed modified or, upon the mutual agreement of the parties, the Concession granted terminated, to any extent necessary to comply with the Indenture.

Section 16.04: Notices

- A. All notices required to be served by City or Concessionaire, one upon the other, under the terms of this Agreement shall be in writing.
- B. All notices or demands of any kind which City shall have cause to serve upon Concessionaire under the terms of this Agreement shall be served upon Concessionaire by mailing a copy thereof by certified or registered mail, return receipt requested, to Concessionaire at the address shown below or to such other address as Concessionaire may, from time to time, specify to City in writing.
- C. All notices or demands of any kind which Concessionaire shall have cause to serve upon City under the terms of this Agreement shall be served upon City by mailing a copy thereof by certified or registered mail, return receipt requested, to City at the address shown below or to such other address as City may, from time to time, specify to Concessionaire in writing.

City of Fresno
Airports Department
4995 E. Clinton Way
Fresno, CA 93727

- D. In the event of any service of notice or demand by mail, as aforesaid, such notice or demand shall be deemed to have been sufficiently served as of 12:00:01 a.m., on the fourth (4th) calendar day following the date of deposit in the United States mail of such certified or registered mail properly addressed and postage prepaid.

Section 16.05: Amendments

This Agreement may be amended from time to time by written Amendment, duly authorized and executed by representatives the parties hereto.

Section 16.06: Headings; Construction of Agreement; Gender

The headings of each Section of this Agreement are for reference only. Unless the context of this Agreement clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender. Words of any gender in this Agreement will be held and construed to include any other gender.

Section 16.07: Force Majeure

Neither City nor Concessionaire will be deemed in violation of this Agreement if either is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which are not within its control.

Section 16.08: Exclusiveness of Concessionaire's Rights

Nothing herein contained shall be deemed to grant to Concessionaire any exclusive right or privilege within the meaning of Section 3.08 of the Federal Aviation Act for the conduct of any activity on the Airport.

Section 16.09: Withholding Required Approvals

Whenever the approval of City or Director or Concessionaire is required herein, no such approval shall be unreasonably, conditioned, delayed or withheld.

Section 16.10: Inspection of City Records

Concessionaire, at its expense and upon reasonable notice, shall have the right to inspect the books, records and other data of City relating to the provisions and requirements hereof, provided such inspection is made during regular business hours.

Section 16.11: Successors and Assigns

Subject to the limitations on assignment contained herein, all of the terms, provisions, covenants, stipulations, conditions and considerations in this Agreement shall extend to and bind the legal representatives, successors and assigns of the respective parties hereto.

Section 16.12: Accord and Satisfaction

No payment by Concessionaire or receipt by City of a lesser amount than the rent, fees and/or charges due to be made by Concessionaire hereunder shall be deemed to be other than on account of the rent, fees and/or charges due. No endorsement or statement on any check or in any letter accompanying any check or payment as rent; fees and or charges shall be deemed an accord and satisfaction. City may accept such check or payment without prejudice to City's right to recover the balance of such rent, fees and/or charges or to pursue any other remedy provided in this Agreement.

Section 16.13: Observation of Governmental Regulations

City's Airport Rules and Regulations: City reserves the right to adopt, amend and enforce reasonable rules and regulations governing the Concession Facility and the public areas and facilities used by Concessionaire in connection therewith. Such rules and regulations shall be consistent with the safety, security and overall public utility of Airport and with the rules, regulations and orders of the Federal Aviation Administration (FAA) (or such successor agency[ies] as may, at any time and from time to time during the Term be designated by the Federal Government to perform either similar, new, additional, and/or supplemental functions, powers and/or duties with respect to air transportation, aircraft, Airports, etc.), and such rules and regulations shall not be inconsistent with the provisions of this Agreement or the procedures prescribed and approved, from time to time, by the FAA with respect to the operation of aircraft at the Airport. Concessionaire agrees to observe, obey and abide by all such rules and regulations heretofore or hereafter adopted or amended by City, including compliance with all FAA and Airport security rules, regulations and plans, including any and all measures mandated by the FAA from time to time to provide increased levels of security at Airport, and Concessionaire shall be fully liable to City for any and all claims, demands, damages, fines and/or penalties of any nature whatsoever which may be imposed upon City by the United States Government as a result of any unauthorized entry by Concessionaire, Concessionaire's employees, agents, representatives, servants, tenants, and/or sub-lessees, or vehicle operated by any of these or by a customer of Concessionaire, into any area of the Airport to which access by persons or vehicles is restricted/controlled pursuant to FAA/Airport Security Rules and Regulations.

Other Governmental Regulations: Concessionaire shall, at all times during the Term, observe, obey and comply with any and all laws, statutes, ordinances, codes, rules, regulations, and/or orders of any governmental entity(ies) lawfully exercising any control(s) over either the Airport or over any part or all of Concessionaire's activities/ operations thereon and/or therefrom, including, without limitation, any and all local business license and/or permit requirements.

Increased Levels of Security: In the event City must provide for an increased level of security in the areas occupied or used by any or all of the Concessionaires as mandated by the Transportation Security Administration ("TSA"), the Concessionaire agrees that the City shall have the following options:

1. Require Concessionaire to take whatever steps are necessary to meet the security requirements of the TSA mandate, at its own cost and expense; or
2. Close the Ready/Return Areas. In the event of closure of any part of such Area the City may at its option provide an alternate location for such area, but shall not be required to do so; or

3. Take the steps necessary to provide the required additional security measures and assess the cost of those steps to Concessionaire. Such costs will be allocated among all the Concessionaires based on each Concessionaire's proportionate share of Ready/Return Area. For example, a Concessionaire that occupies twenty-five percent (25%) of the ready/return spaces will be responsible for twenty-five percent (25%) of the costs. City shall invoice Concessionaire directly, in arrears, for its share, and payment to the City shall be due upon receipt of such invoice. In the event that Federal reimbursement for such costs is made available to City, the City shall apply for such funds prior to seeking reimbursement from Concessionaire.

Section 16.14: Governing Law and Venue

This Agreement shall be construed and governed in accordance with the laws of the State of California. The parties submit to the jurisdiction of the courts of the State of California, Fresno County judicial district.

Section 16.15: Waiver

Waiver by City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Agreement can be waived except by written consent of City, and forbearance or indulgence by City in any regard whatsoever shall not constitute a waiver of same to be performed by Concessionaire to which the same may apply and, until complete performance by Concessionaire of the term, covenant or condition, City shall be entitled to invoke any remedy available to it under this Agreement or by law despite any such forbearance or indulgence.

Section 16.16: Modification

Unless stated otherwise in this Agreement, no provision of this Agreement may be waived, modified or amended except in writing and signed by City.

Section 16.17: Severability of Provisions

Except, as specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

Section 16.18: Conflicts of Interest

Concessionaire certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Concessionaire in this Agreement.

Section 16.19: Public Address System

Concessionaire shall permit the installation, within its Concession Facility, of outlets for the Airport public address system and allow the reception in and about its Concession Facility of flight announcements and other information broadcast over such system. Concessionaire may, at its option, have access to the public address system for the purpose of making customer-service announcements. Should Concessionaire elect to have such access, then Concessionaire shall pay to City such public address system fees as are established from time to time by the City Council.

Section 16.20: Employee Parking

City has provided off-street parking facilities to meet the employee parking requirements of all persons whose primary place of duty is in the Airport's main passenger terminal/concourse Building complex/area, and, except as provided within paragraph 3 of this Section below, Concessionaire's employees shall be required to use such employee parking facilities/lots as are designated by Director and to pay appropriate employee parking fees for such use at such rates as are from time to time established therefore by the City Council.

Employee parking fees for Concessionaire's employees shall be paid to City by Concessionaire, as and when due, whether or not Concessionaire includes the costs of such parking in the benefits it provides its employees or requires its employees to reimburse it for the costs of such parking.

Nothing in this Section of this Article shall be construed to represent a prohibition against Concessionaire's allowing one, more or all of its employees to use, for employee parking purposes, space located on the Service Facility which Concessionaire occupies and uses on the Airport by separate agreement with City, and, in such event, no parking fees shall accrue to City with respect to those employees of Concessionaire who park their vehicles on such Service Facility.

Section 16.21: Special Provisions

A. Concessionaire's Responsibility Regarding Hazardous Substances:

1. Definition: The term "Hazardous Substances", as used in this Agreement, shall include, without limitation, flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority. The terms "Environmental Law" or "Environmental Laws", as used in this Agreement, shall mean any and all federal, state, local laws, statutes, ordinances, rules, regulations and/or common law relating to environmental protection, contamination, the release, generation, production, transport, treatment, processing, use, disposal, or storage of Hazardous Substances, and the regulations promulgated by regulatory agencies pursuant to these laws, and any applicable federal state, and/or local regulatory agency-initiated orders, requirements, obligations, directives, notices, approvals, licenses, or permits,

including but not limited to those for the reporting, investigation, cleaning, or remediation of any Hazardous Substances in, on under or about the Concession Facility.

2. Restrictions: Concessionaire shall not cause or permit to occur:

- (a) Any violation of any federal, state, or local law, ordinance, or regulation now or hereafter enacted, related to environmental conditions in, on, under or about the Concession Facility, or arising from Concessionaire's use(s) or occupancy(ies) thereof, including, but not limited to, soil and ground water conditions; or
- (b) The use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance in, on, under or about the Concession Facility, or the transportation to or from the Concession Facility of any Hazardous Substance, except where: (1) such use, generation, release, manufacture, refining, production, processing, storage or transportation shall be expressly authorized in this Agreement; or (2) City's advance written consent to any such use, generation, release, manufacture, refining, production, processing, storage or transportation shall have first been requested in writing and received by Concessionaire. Any and all such authorizations/consents of City shall be deemed given subject to and conditioned upon Concessionaire's fully and faithfully complying with any and all federal, state, or local statutes, laws, ordinances, rules and/or regulations, now or hereafter enacted, applicable to the use, generation, manufacture, refining, production, processing, transport, transfer, storage, disposal and/or sale of that/those Hazardous Substances to which any such authorization/consent of City may, in any way whatsoever, be deemed to apply.
- (c) Notwithstanding Subsection B, City's consent/approval shall not be required for the use, storage and disposal of materials/supplies containing hazardous substances where such materials/supplies are used on the Concession Facility in commercially reasonable quantities as a consumer and generator thereof, and in connection with the rental, leasing and storage of motor vehicles, for the cleaning and preparation of such vehicles, for fuel storage and dispensing fuel, for office, administrative and other uses incidental or related; provided
 - (i) So long as the use, storage and disposal of any and all of such materials/supplies shall be in full compliance with any and all federal, state and local statutes, laws, ordinances, codes, rules and regulations applicable thereto now or hereafter enacted (including, without limitation, any and all Occupational Safety and Health statutes, laws, codes, rules and regulations of the Federal Government and the State of California).

Section 16.22: Entire Agreement

This Agreement, together with all documents referenced herein and exhibits attached hereto, constitutes the entire Agreement between the parties. All other representations or statements heretofore made, verbal or written, are merged herein.

ARTICLE XVII: SIGNATURE

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

CITY OF FRESNO

a municipal corporation

By: _____

Kevin R. Meikle
Director of Aviation

Address for Notice:

City of Fresno
Airports Department
4995 E. Clinton Way
Fresno, CA 93727

CONCESSIONAIRE

**CLEAR CHANNEL OUTDOOR, INC.,
D/B/A CLEAR CHANNEL AIRPORTS**
a Delaware corporation

By: _____

Name: Craig Gangi
Title: EVP, General Counsel

By: _____

Name: David Sailer
Title: EVP & Chief Financial Officer
(CFO/Secretary/Treasurer)

ATTEST:

Yvonne Spence, CMC
City Clerk

By: _____

Deputy

Address for Notice:

Clear Channel Airports
7450 Tilghman Street
Suite 104
Allentown, PA 18106

APPROVED AS TO FORM:

Douglas T. Sloan
City Attorney

By: _____

Amanda B. Freeman, Deputy
Date

-
- | | |
|-----------|---|
| Exhibit A | Map of the Airport Advertising Concession Locations |
| Exhibit B | Terms and Conditions for FYI-TV Network |
| Exhibit C | FAA Grant Assurances |
| Exhibit D | Disclosure of Conflict of Interest Form |
| Exhibit E | Gross Revenues Statement Form |

EXHIBIT “A”

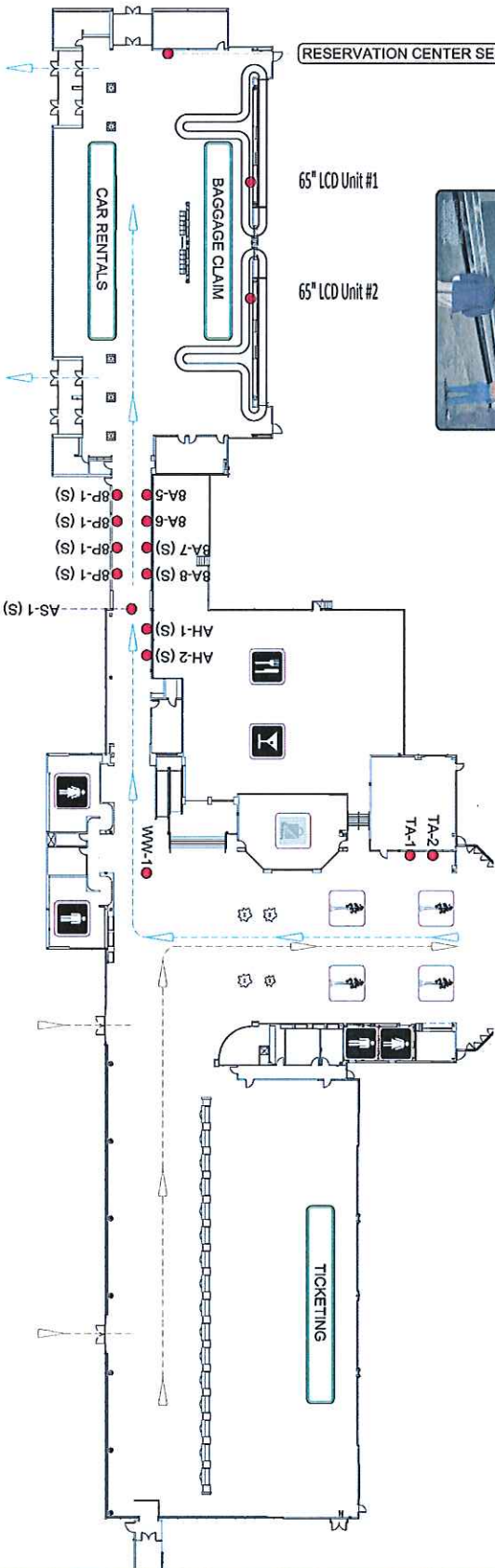
LOCATION KEY: TERMINAL PLAIN LOWER LEVEL



RESERVATION CENTER SEE MAP E

65" LCD Unit #1

65" LCD Unit #2



7" STATIC LIGHT PANEL

8" STATIC LIGHT PANEL

15" STATIC LIGHT PANEL

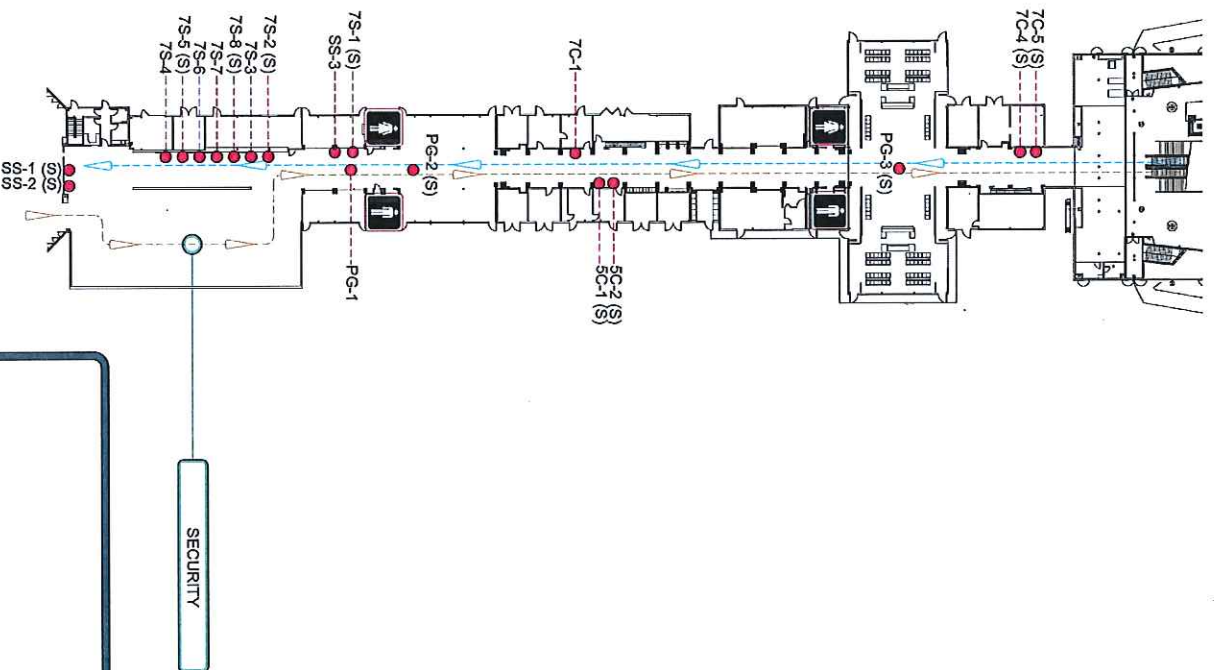
WALL WRAP

WALL WRAP

FRESNO YOSEMITE INTERNATIONAL AIRPORT

AREA OF DETAIL: BAG CLAIM & TICKETING

LOCATION KEY: TERMINAL, PLAN LOWER LEVEL



FRESNO YOSEMITE INTERNATIONAL AIRPORT

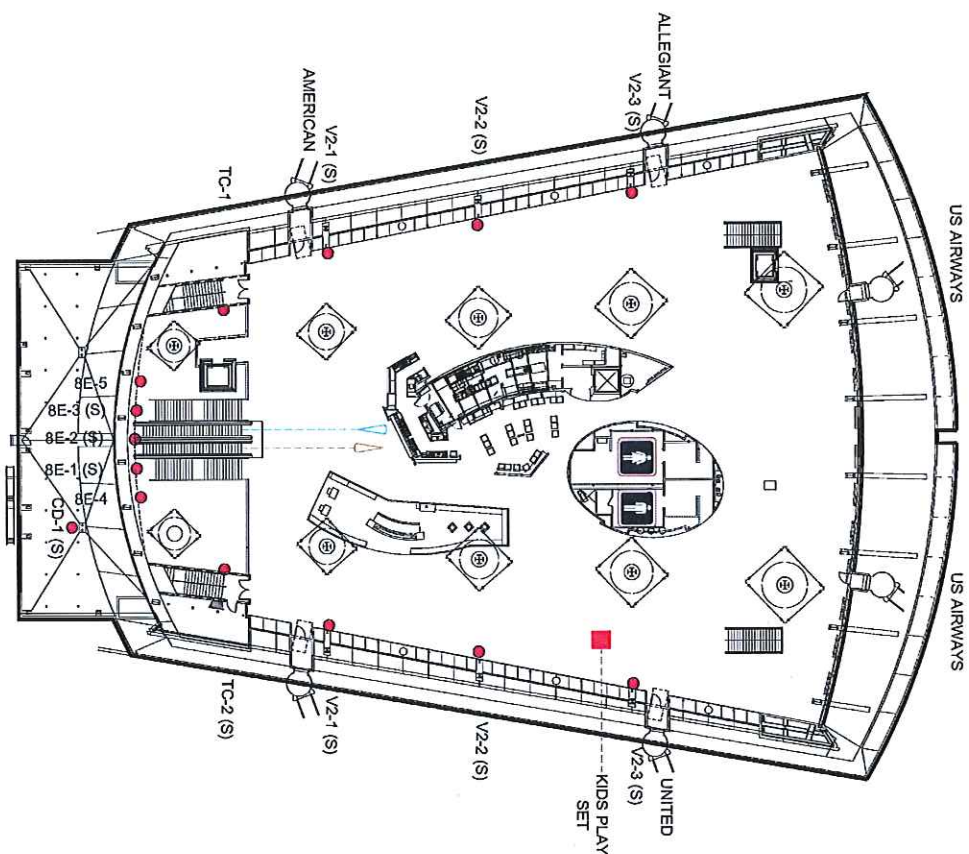
AREA OF DETAIL: CONCOURSE

5 STATIC LIGHT PANEL

7 STATIC LIGHT PANEL

8 STATIC LIGHT PANEL

PRODUCT DISPLAY CASE



FRESNO YOSEMITE INTERNATIONAL AIRPORT

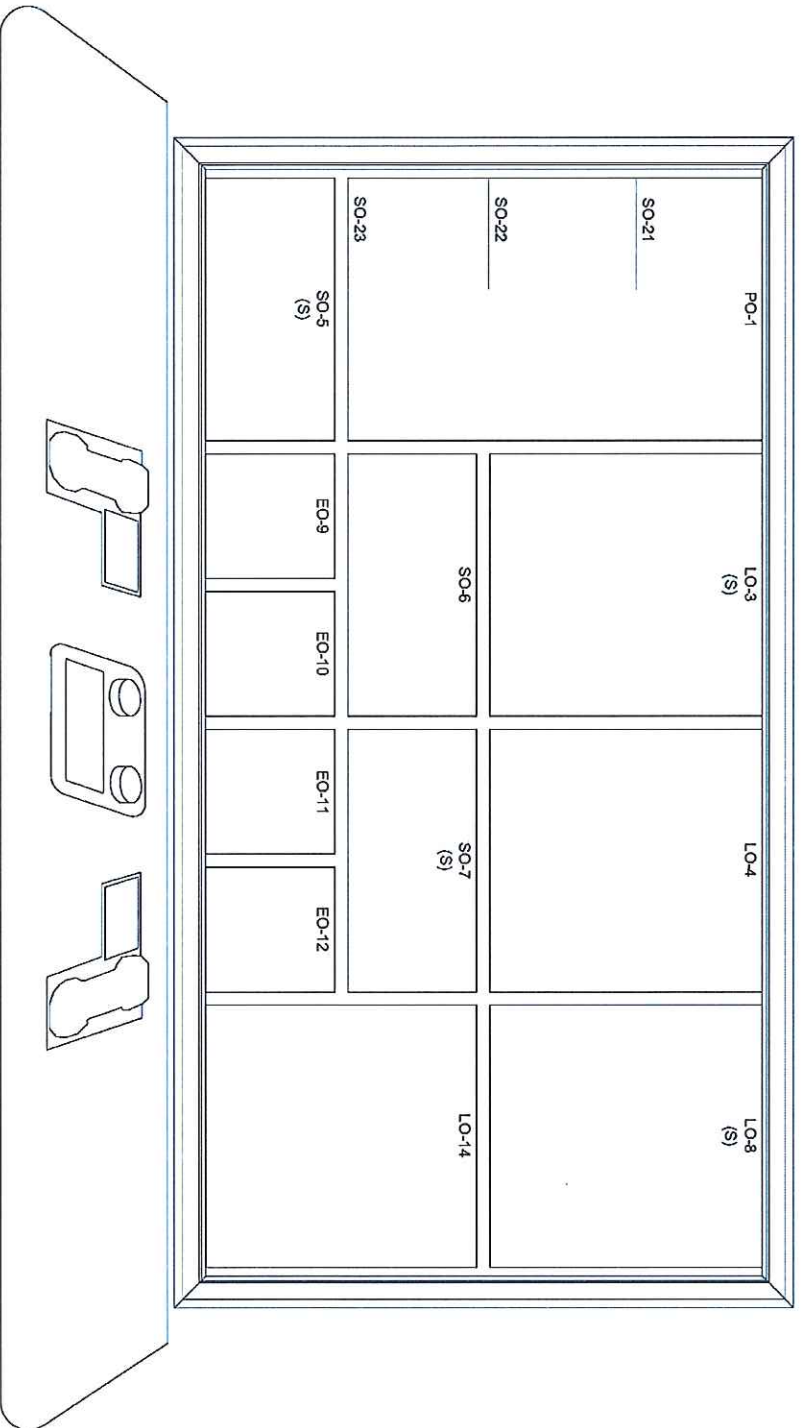
AREA OF DETAIL: CONCOURSE EXPANSION

3 POSTER PANEL

8 STATIC LIGHT PANEL

SPECIALTY DISPLAY

TENSION FABRIC DISPLAY



FRESNO YOSEMITE INTERNATIONAL AIRPORT

AREA OF DETAIL: RESERVATION CENTER



EXHIBIT “B”

**FYI-TV NETWORK PROGRAMMING SERVICE COMPONENT OF
EXCLUSIVE AIRPORT ADVERTISING CONCESSION AGREEMENT
EXHIBIT B**

THIS EXHIBIT B ("Exhibit B") sets forth the terms and conditions under which City grants Concessionaire the privilege to provide its ClearVision airport television product in approved terminal buildings and concourses (including passenger gate areas located therein), and other mutually agreed upon areas at the Airport by maintaining and/or installing the necessary equipment and delivering the Service (as defined below), pursuant to that certain Exclusive Airport Advertising Concession Agreement effective as of August 1, 2015 (said Agreement for Advertising Concession, together with all attachments and exhibits thereto, being hereinafter collectively referred to as the "Agreement");

1. DEFINITIONS. The following words and phrases not specifically defined herein shall have the respective meanings ascribed to them in the Agreement. The following words and phrases shall have the respective meaning ascribed to them below when used in this Exhibit B, for the purposes of this Exhibit B only:

1.1 "Advertising Time" shall mean the time allotted per hour for paid advertising on the ClearVision programming service.

1.2 "Approved Areas" shall mean areas of the Airport's terminal buildings and concourses designated by the City for Exhibition Equipment, and any other areas of the Airport that might be mutually agreed upon and approved by Concessionaire and the City.

1.3 "Airport Distribution Equipment" shall mean the equipment necessary to distribute the Service to the Approved Areas (i.e., cabling and conduit and network devices), provided by the Airport.

1.4 "Airport Promotions" shall mean any programming content about the Airport or the City to be broadcast over the ClearVision television network.

1.5 "City Revenue Share Payment" shall mean the portion of Revenue derived from advertising on the ClearVision television network at the Airport that is shared with the City.

1.6 "Exhibition Equipment" shall mean the speakers and display screens and related components necessary for actual viewing of the Service within the Approved Areas. Ownership and responsibilities for this equipment belong to the City upon the expiration or earlier termination of this Agreement.

1.7 "Concessionaire Insertion Equipment" shall be defined as that equipment necessary for Concessionaire to provide a video signal to the Distribution Equipment which is to be transmitted to the Exhibition Equipment.

1.8 "Programming" shall mean the news, information and entertainment television programming material professionally produced and provided by Concessionaire, any entity controlled by, under common control with or controlling Concessionaire, or any third-party entity which Concessionaire has contracted with to provide such content included in the Service.

1.9 "Revenue" shall mean gross advertising revenue from the sale of Advertising Time displayed at the Airport by Concessionaire to third parties in a given calendar quarter. Excluded from Revenue shall be: (i) only those sales, excise, or similar taxes imposed by a governmental authority and collected from customers and directly paid out by Concessionaire to the government entity; (ii) standard third party selling commission paid to sales/advertising agencies or other third parties in an amount not to exceed 15% of the contract value where such fees are paid to a third party that is not directly related to Concessionaire; and (iii) the amount of refunds and/or withheld funds caused by the loss of power or loss of service to displays that extends for three or more business days including Concessionaire's share of lost revenue, provided that neither Concessionaire nor a third party outside the control of the City is responsible for such loss of service or loss of power; and, provided further that this exclusion serves only to reduce the amount of Revenue included in the calculation and does not obligate the City to reimburse Concessionaire or any other party for revenue lost as a result of any interruption of service.

1.10 "Service" shall mean the steps necessary to create a useable video feed from the Programming.

1.11 "Trade Secrets" shall mean any data, information (financial or otherwise), formula, pattern, compilation, program, device, method, technique, drawing, plan, process, research results and name or list of actual or potential licensees, advertisers or suppliers, which is disclosed to Concessionaire or the City, as the case may be, by or on behalf of the other party hereto in connection with the relationship contemplated by this Agreement and which has a value to the other party and is not generally known by the other party's competitors. Trade Secrets include, but are not limited to, information relating to the financial affairs, products, services, customers, officers, directors, and employees of the other party.

2. USE OF THE AIRPORT.

A. Grants and Approvals. The City hereby grants Concessionaire the right to provide the Service as defined and described herein. Any expansion plans and the installation schedule applicable thereto shall be subject to the mutual agreement of the parties. Concessionaire shall deliver, maintain and operate the Service in a manner consistent with the guidelines specified in Attachment A, Equipment and Network Services, attached and incorporated herein. Concessionaire shall not use the Headend Room for any purpose other than to provide the Service and to perform certain services and activities related thereto and expressly agreed to by the City.

The City will be responsible for establishing the Approved Areas within its passenger terminals for the broadcast of the Programming provided by Concessionaire. The City

may not broadcast the Programming to any other locations on the Airport without the prior written agreement of Concessionaire.

B. Headend Room. The City will provide Concessionaire space in a secured room (the "Headend Room") at the Airport with sufficient space to accommodate the placement, installation and operation of the Concessionaire Insertion Equipment used to distribute the Service. The signal will be subsequently distributed from this point to the Approved Areas located throughout the Airport via the Distribution Equipment. The City understands and agrees that Concessionaire shall have the right, 24 hours a day, to access the Headend Room as necessary to operate and maintain the Insertion Equipment located therein.

C. Security and Other Rules and Regulations. Concessionaire's access to and use of the Airport will be conditioned upon compliance with all security rules and regulations instituted by the City and by any other governing City exercising jurisdiction over the Airport. In conducting its operations hereunder, Concessionaire agrees to comply with all applicable laws and regulations of the United States of America and the State of Texas and all other applicable laws, rules and regulations specifically including, but not limited to, the ordinances, rules, regulations, policies and procedures of the City.

5. DESCRIPTION OF SERVICE.

A. Content of Programming. The Service shall be in the format of continuous audio and video programming packages (the "Packages"), each Package consisting of (i) approximately forty-five (45) minutes of Programming per hour and (ii) approximately twelve (12) minutes of advertising and promotional time (the "Advertising Time") per hour and (iii) up to three (3) minutes of City Promotions (the "Airport Time") per hour.

Concessionaire shall manage and control content selection, format, production, editing and updating of the ClearVision programming and schedule. Advertising Time and the arrangement of the segments and spots will also be managed and arranged by the City. All content will adhere to ClearVision broadcast standards and City's Commercial Advertising Policies and Guidelines attached and incorporated herein as Attachment B. Concessionaire will engage in discussions with the City to review the ClearVision programming schedule. All content shall adhere to the ClearVision broadcast standards.

It is expressly agreed, however, that any Programming related to any accident or incident involving a commercial passenger airline shall only be included in the Programming without graphic video coverage of the accident site, unless the incident involves a national emergency or threat to security. The City hereby reserves the right to temporarily withdraw the Service, or any portion thereof, at any time as it deems necessary or advisable in the exercise of its sound business judgment, and any such temporary withdrawal, interruption, delay or interference shall not constitute or be deemed a breach of this Agreement; provided, however, that the City agrees to use commercially reasonable efforts to restore the Service as soon as possible. The City shall have no responsibility whatsoever for producing, securing and/or selling the Programming, as applicable, and the City hereby expressly disclaims any liability for the

content thereof. Concessionaire shall be solely responsible for any liability associated with the Programming provided by it for the Service, except to the extent that any such Programming is provided by the City.

It is expressly agreed that all Programming, advertising and promotional material to be broadcast by Concessionaire hereunder shall be in accordance with the highest industry standards, truthful and not misleading and shall not be any material that would be disallowed under any standard cable or network programming guidelines.

B. Airport Time Allotments. Subject to the other provisions of this Agreement, Concessionaire shall retain all Advertising Time included in the Service, and the revenue derived therefrom. Concessionaire shall have the absolute right to determine the rate applicable and the rate actually charged for all Advertising Time. The party responsible for providing the content for the Advertising Time hereunder shall be responsible for any liability related thereto, regardless of the nature of the claim. The City shall be responsible for all City Promotions and will indemnify Concessionaire for any claims relative thereto. With respect to City Promotions, the City understands and agrees that content for such City Promotions shall be subject to compliance with all applicable laws, rules and regulations. For purposes of this provision, Airport Time shall be used to promote Airport services and programs, non-profit groups or other community based organizations. The intent of City Promotions is to promote the Airport and community. City Promotions should not feature a single or select merchant who would otherwise buy advertising on the Service. The City agrees and acknowledges that City Promotions must meet the general advertising policies and practices utilized by Grantee.

Concessionaire shall have no responsibility whatsoever for producing City Promotions and Concessionaire hereby expressly disclaims any liability for the content thereof. If such programming is not created by the City and provided to Concessionaire for insertion, or, if inserted, such programming is not updated in accordance with Concessionaire's guidelines to maintain the quality of the Service, Concessionaire reserves the right to use the Airport Time as it deems appropriate and deliver its regularly scheduled Programming segments to the Airport.

In the event that Concessionaire goes live to a breaking news event or interrupts its Service to provide coverage of a significant sporting or other event or a full length news program, the City will not be able to utilize the Airport Time and/or preempt the designated Concessionaire Programming segments to provide the Airport Time during the duration of the alternative programming. Furthermore, Concessionaire will not be able to provide any "make goods" for the interrupted segments. Concessionaire expressly disclaims any responsibility or liability to the Airport for any lost revenue or other monetary damages attributable to Concessionaire's decision to provide the alternate programming as described in this paragraph.

6. COPYRIGHT.

The City agrees and acknowledges that the sole right of copyright in, and all rights of copyright with respect to the Service and the Programming (including, without limitation, the sequence or organization of Concessionaire's compilations of programming segments

constituting the Service) belong to Concessionaire, and that the City shall not acquire, obtain or claim any copyright or other proprietary ownership interests therein or thereto by virtue of this Agreement. Except to the extent expressly limited or prohibited by the terms of this Agreement, Concessionaire shall be entitled to, and hereby reserves all rights necessary to, exploit, exercise, and dispose of and/or utilize any rights in, to and with respect to the Service and the Programming without limitation and without prior notice or any obligation to the City.

Concessionaire agrees and acknowledges that the sole right of copyright in, and rights of copyright with respect to the Airport promotional materials belongs to the City, Concessionaire shall not acquire, obtain or claim any copyright or the proprietary ownership interest therein or thereto by virtue of this Agreement. The City shall be entitled to, and hereby reserves all rights necessary to, exploit, exercise, and dispose of and/or utilize any rights in, to and with respect to the City Promotions inserted by it without limitation and without prior notice or any obligation to Concessionaire whatsoever.

7. REVENUE PARTICIPATION.

A. Calculation of Sums Owed by Grantee. For the privileges granted to Grantee hereunder, Concessionaire shall pay to the City the City Revenue Share Payment of fifteen percent (15%) of total Revenue. Within twenty (20) days of the end of each calendar quarter, Concessionaire shall calculate and deliver to the City the City Revenue Share Payment for the immediately preceding calendar quarter.

B. Payment. All payments hereunder to the City shall be sent to the following address: City of Fresno, 4995 E. Clinton Way, Fresno, CA 93727.

C. Sales, Use or Other Taxes. Concessionaire shall be solely responsible for the payment of all sales, use or other taxes levied upon the fees and other charges payable by Concessionaire to the City hereunder, whether or not the same shall have been billed or collected by the City, together with any and all interest and penalties levied thereon, and Concessionaire hereby agrees to indemnify City and hold it harmless from and against all claims by any taxing authority that the amounts, if any, collected from Concessionaire and remitted to the taxing authority by City, or the amounts, if any, paid directly by Concessionaire to such taxing authority, were less than the total amount of taxes due, and for any sums including interest and penalties payable by City as a result thereof. The provisions of this Section shall survive the expiration or termination of this Agreement.

8. PROTECTION OF THE SERVICE.

A. The City shall not have any right to record, or duplicate, all or any portion of the Service nor shall the City authorize any such recording, or duplication, of the Service unless specifically and expressly authorized in advance in writing by Concessionaire. The Service shall only be distributed to the agreed upon Approved Areas. The City agrees to

cooperate fully and in good faith with Concessionaire and/or its agent or representative for the purposes of securing and preserving Concessionaire's rights herein and in and to the Service.

B. City shall not be liable to Concessionaire for any loss of business or damages sustained by Concessionaire as a result of any change in the operation or configuration of, or any change in any procedure governing the use of, the terminal complex or the Airport or any terminal therein.

9. MARKETING RESEARCH.

Concessionaire must have prior written approval by the City prior to conducting any observational studies or analyses (i.e. oral and written surveys and/or polls) of airport patrons within the Airport. Concessionaire shall not have any obligation under this Agreement to perform or conduct any such research at the Airport.

10. DISCLAIMER.

Neither Concessionaire nor its suppliers nor any person or entity acting for or on behalf of Concessionaire has made or makes any warranties, express or implied, including, without limitation, implied warranties of merchantability or fitness for a particular purpose with respect to any product or service to be supplied by Concessionaire hereunder, all of which warranties are hereby expressly disclaimed. Any remedies of the City for any breach of this Agreement by Concessionaire shall be limited to those expressly provided herein and Concessionaire shall not have any liability to the City under any circumstances whatsoever for any incidental, indirect or consequential damages.

11. DAMAGE OR DESTRUCTION.

Concessionaire shall be responsible for repairing and or replacing Concessionaire Insertion Equipment in the event of damage or destruction. The City shall be responsible for replacing or repairing Exhibition and Distribution Equipment in the event of damage or destruction.

If a negligent act by either Concessionaire or the City damages or destroys equipment owned and controlled by the other party, the party at fault will be responsible for reimbursing the property owner amounts in excess of what is reimbursed by any insurance proceeds. Amounts in excess of insurance will be deemed legitimate only if accompanied by an invoice or receipt from a business or service required to replace or repair the damaged equipment.

12. ASSIGNMENT; SUBCONTRACTORS; THIRD PARTY BENEFICIARIES.

A. City's Rights to Approve Assignments and Subcontracts. Concessionaire shall not sell, assign, sublease or transfer this Exhibit 5 or any of its rights and privileges hereunder or permit any such sale, assignment, sublease or transfer to occur by operation of law, or contract for the performance of any of the services to be provided by it hereunder without the

City's prior written approval, which approval may not be unreasonably withheld by the City. Any cost of considering or approving such a request for assignment or subcontract shall be borne by Concessionaire.

B. Change of Control. Concessionaire may assign this Agreement to any controlling, controlled by or under common control with CONCESSIONAIRE, subject to such assignee being bound to the terms and conditions of this Agreement.

C. Subcontractors and Employees. Notwithstanding the foregoing, the City expressly acknowledges Grantee's right to engage the services of one or more third parties to assist Grantee in the performance of its obligations and responsibilities hereunder; provided, however, that any such third parties performing functions at the Airport meet any requirements imposed by the City on contractors providing similar services to the Airport, and by engaging any such third party, Grantee shall not be relieved of any obligation or representation hereunder.

D. Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to confer upon or give to any person or entity other than the parties hereto, any rights or benefits or remedies under or by reason of this Agreement. Further, no party to this Agreement shall have any rights hereunder not expressly granted to such party herein.

13. CITY'S RIGHT TO REPAIR OR ALTER FACILITIES.

Notwithstanding any other provisions herein contained, the City shall have the absolute right to make any repairs, alterations and additions to airport facilities, free from any and all liability to Concessionaire for disruption to Concessionaire's activities during the completion of any such repairs, alterations or additions or for any loss of business or damages sustained by Concessionaire for whatever reason as a result of the making of any such repairs, alterations or additions. The City agrees to use reasonable efforts to notify Concessionaire of the need to make such repairs, alterations and/or additions in advance in an effort to minimize any disruption to Concessionaire's operations.

ATTACHMENT A

EQUIPMENT AND NETWORK SERVICES

1. INSTALLATION, MAINTENANCE AND OPERATION OF CONCESSIONAIRE INSERTION EQUIPMENT

A. Insertion Equipment Materials. Except as otherwise specifically provided herein, Concessionaire shall be solely responsible for providing, installing, maintaining and operating, at its sole cost, all Concessionaire Insertion Equipment at the Airport, and shall provide all personnel necessary to perform these functions.

B. Mode of Installation. Concessionaire agrees to cause its designated representatives to install such Concessionaire Insertion Equipment in a proper and workmanlike manner, and shall coordinate such installations with the City's designated representative with as little disruption as practicable to the normal operations of the Airport.

C. Repair, Replace, Upgrade. During the Term, Concessionaire shall repair or replace any Concessionaire Insertion Equipment installed by it at the Airport that is damaged or otherwise in need of repair as soon as possible, subject to its ability to obtain any necessary approval from the City. Concessionaire will respond to routine service requests within twenty-four (24) hours of notification by the City. In addition, Concessionaire reserves the right, subject to compliance with any required tenant approval requirements, and at any time during the Term of this Agreement, to replace and/or up-grade any and all Concessionaire Insertion Equipment installed in the Airport to maintain and/or improve the Service.

D. Modifications to Grantee Insertion Equipment. The City shall have no right to modify, request a modification of, approve a placement or modification of or interfere with any Concessionaire Insertion Equipment or the location thereof in any way. Once the placement of the Concessionaire Insertion Equipment is approved by the City and installed, The City shall not tamper with, move, remove, relocate, use or otherwise interfere with any Concessionaire Insertion Equipment.

E. Sound Levels. Concessionaire and the City will mutually agree upon the minimum sound level of the audio portion of the Service within each of the Approved Areas. When there is a scheduled event in an Approved Area and the City will notify Concessionaire that the audio will be turned off for the event.

F. Loss of Business Liability. The City shall not be liable to Concessionaire for any loss of business or damages sustained by Concessionaire as a result of any change in the operation or configuration of, or any change in any procedure governing the use of the Airport or any terminal therein.

2. DELIVERY OF SERVICE.

Concessionaire shall deliver the Service (7) days a week for a minimum of twenty (20) hours each day. The Service shall be delivered to the Headend Room for subsequent distribution via a VGA or DVI video signal to the Distribution Equipment to the Exhibition Equipment.

3. DISTRIBUTION OF SERVICE.

The City shall be solely responsible for transmitting the service over the Distribution Equipment to the Exhibition Equipment. All replacements, repairs, and service issues arising from the Distribution or Exhibition Equipment shall be the sole responsibility of the City. The City warrants the Distribution and Exhibition Equipment to be in working order for transmitting the Service (7) days a week.

In the event an issue with the Distribution or Exhibition equipment prevents the Service from being transmitted and broadcast on the Exhibition Equipment, the City shall notify Concessionaire within one (1) business day of the issue along with an issue resolution timeline.

The City shall strive for maximum uptime in regard to the Distribution and Exhibition Equipment. Concessionaire shall be notified at least one week prior to all planned upgrades, or maintenance operations concerning the Distribution or Exhibition equipment. In the event a PC VGA or DVI signal is no longer compatible with SAT's Distribution equipment, the City shall provide Concessionaire with three (3) months' notice so as to allow Concessionaire time to modify the Concessionaire Insertion Equipment.

4. CUSTOMER RELATIONSHIP MANAGEMENT.

Concessionaire and the City will work cooperatively to address all customer complaints and inquiries, if any, during the Term. Any problems concerning the Concessionaire Insertion that comes to the attention of the City, such as any problems with the Concessionaire Insertion Equipment or customer inquiries or complaints with respect to the Programming, shall be directed to Concessionaire's designated local representative or communicated to Concessionaire through any other communication procedure established and agreed to by Concessionaire and the City.

ATTACHMENT B

CLEARVISION BROADCAST STANDARDS & PRACTICES GUIDELINES

The objective of these Broadcast Standards and Practices is to ensure that programming is acceptable and beneficial to ClearVision viewers. These guidelines shall serve as a general reference.

When evaluating content the segment shall be evaluated using the following criteria:

- Compatibility with the airport environment
- Family friendliness**
- Sensitivity towards current events
- General audience acceptability and addressing the interests of the largest possible audience

**Submission of materials specifically created for kid-friendly audiences is strongly encouraged.

General Audience Acceptability is defined as content that most parents would find suitable for all ages. Most parents may permit younger children to watch content unattended. It contains little or no violence, no strong language, and little or no sexual dialogue or situations.

The following is a list of subjects that are generally considered unacceptable content:

1) Nudity / Revealing Clothing

Nudity, revealing clothing and the display of undergarments is not appropriate.

2) Sexual Reference

Depiction of sexual activity, sexual gestures, symbolic sexual references, sexual dialogue or innuendo is not acceptable.

3) Violence

Intense or realistic-looking violence is not permitted. Violent instances will be evaluated in context on a case-by-case basis. Content containing extensive and detailed instruction in the use of harmful devices/weapons or that describe imitable techniques are not appropriate for use.

4) Drugs

Illegal drugs, drug use, drug paraphernalia, symbolic gestures that may refer to drug use or the symbols that represent illegal drugs are not acceptable. Images, dialogue or overall themes that may be considered insensitive, crude, irreverent, or shocking are not acceptable.

5) Language

Strong language, including offensive slang, suggestive dialogue, innuendo, and double entendre is not acceptable. Also, the hand gestures that represent various offensive words are not permitted. References of a personal nature (i.e. body or bodily function) are not appropriate. Words of questionable taste are not acceptable.

6) Religion / Sacrilege

Content is strictly evaluated with sensitivity towards the religious beliefs, views, and diversity of the largest possible audience. Blasphemy, mockery, aggression or irreverence towards religious institutions or the icons or symbols that represent them is not acceptable.

7) Symbols of the Occult

666, Satan, pentagrams, etc., are not acceptable content.

8) Disparaging or Demeaning

Content that may be considered offensive, demeaning and/or hurtful to a particular individual or group of people is not acceptable. Content will not contain negative stereotypes or demeaning images/dialogue that exploit or objectify based on gender, race or disability.

9) Gross or Tasteless

Images, dialogue or overall themes that may be considered insensitive, crude, irreverent, or shocking are not acceptable.

10) Tobacco, Alcohol

Depiction of tobacco and alcohol use and signage is highly restricted and requires special approval.

11) Anti-Social Behavior

Content that involves a strong depiction of illegal, reckless, or problematic behavior without negative consequences, punishment or proper resolution will not be used. In addition, elements that are highly imitable and pose a health risk will not be used.

EXHIBIT “C”



ASSURANCES

Airport Sponsors

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

1. Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.

The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. Airport Planning Undertaken by a Sponsor.

Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Airport Revenue so long as the airport is used as an airport.

C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. General Federal Requirements.

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act - 5 U.S.C. 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.^{1, 2}
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).¹
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.¹
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.¹
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 - 42 U.S.C. 4151, et seq.¹
- s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.¹
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- u. Copeland Anti-kickback Act - 18 U.S.C. 874.1
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.¹
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

Executive Orders

- a. Executive Order 11246 - Equal Employment Opportunity¹
- b. Executive Order 11990 - Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 - Intergovernmental Review of Federal Programs
- e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction¹
- f. Executive Order 12898 - Environmental Justice

Federal Regulations

- a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].^{4, 5, 6}
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
- d. 14 CFR Part 13 - Investigative and Enforcement Procedures 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- e. 14 CFR Part 150 - Airport noise compatibility planning.
- f. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
- g. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- h. 29 CFR Part 1 - Procedures for predetermination of wage rates.¹
- i. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹
- j. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).¹
- l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- m. 49 CFR Part 20 - New restrictions on lobbying.
- n. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.

- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.^{1 2}
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.¹
- s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- t. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
- v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.

Specific Assurances

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

Footnotes to Assurance C.1.

¹ These laws do not apply to airport planning sponsors.

² These laws do not apply to private sponsors.

³ 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

⁴ On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

⁵ Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

⁶ Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

4. Good Title.

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. Consideration of Local Interest.

It has given fair consideration to the interest of communities in or near where the project may be located.

8. Consultation with Users.

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. Public Hearings.

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. Metropolitan Planning Organization.

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

11. Pavement Preventive Maintenance.

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. Terminal Development Prerequisites.

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and

has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. Minimum Wage Rates.

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. Veteran's Preference.

It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications.

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans,

specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

17. Construction Inspection and Approval.

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. Planning Projects.

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal,

state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

- 1) Operating the airport's aeronautical facilities whenever required;
 - 2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
 - 3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or

to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

- 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
 - d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
 - e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
 - f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
 - g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
 - h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
 - i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights.

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure.

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
 - 1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or

operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

- 2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
 - 3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
 - c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - 2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft.

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

- a. It will keep up to date at all times an airport layout plan of the airport showing
 - 1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
 - 2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and

roads), including all proposed extensions and reductions of existing airport facilities;

- 3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and
 - 4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.
- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.
- b. Applicability
 - 1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 - 2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.

- 3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- 1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- 2) So long as the sponsor retains ownership or possession of the property.

- d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

"The (Name of Sponsor), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

e. Required Contract Provisions.

- 1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
- 2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
- 3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
- 4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a

covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:

- a) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. Disposal of Land.

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.
- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another

eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.

- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. Engineering and Design Services.

It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. Foreign Market Restrictions.

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. Policies, Standards, and Specifications.

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated _____ (the latest approved version as of this grant offer) and included in this grant, and in accordance

with applicable state policies, standards, and specifications approved by the Secretary.

35. Relocation and Real Property Acquisition.

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its DBE and ACDBE programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

38. Hangar Construction.

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. Competitive Access.

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
 - 1) Describes the requests;
 - 2) Provides an explanation as to why the requests could not be accommodated; and
 - 3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

EXHIBIT “D”

Exhibit "C"
DISCLOSURE OF CONFLICT OF INTEREST

Exclusive Airport Advertising Concessions between City of Fresno ("Fresno")

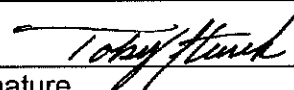
And Clear Channel Outdoor, Inc. d/b/a Clear Channel Airports ("CCA")

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	☐	☒
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	☐	☒
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	☐	☒
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	☐	☒
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	☐	☒
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	☐	☒

* If the answer to any question is yes, please explain in full below.

Explanation: _____

☐ Additional page(s) attached.


Signature

6/24/2015
Date

Toby Sturek
(name)

Clear Channel Outdoor, Inc. d/b/a Clear Channel Airports
(company)

7450 Tilghman Street, Suite 104
(address)

Allentown, PA 18106
(city state zip)

EXHIBIT “E”

