

**NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT**

**SMALL CONCESSION AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF SAN JOSE**

**AND**

**AMS-SJC JV**

**DATED: 2/18/2022**

**(DOCUMENT NO. 10714-CA-21)**

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Corporate Secretary Certificate**

**NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT  
CITY OF SAN JOSE AND  
AMS-SJC JV**

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**SMALL CONCESSION AGREEMENT  
(Document No 10714-CA-21)**

THIS AIRPORT CONCESSION AGREEMENT (“Agreement”) is entered into this 18th day of February, 2022, by and between the CITY OF SAN JOSE, a municipal corporation of the State of California (“City”) and AMS-SJC JV, a Joint Venture authorized to do business in the State of California (“Concessionaire”), authorized to do business in the State of California. All capitalized terms in this Agreement shall have the meanings set forth in **Section 1** unless otherwise specifically defined in this Agreement.

**RECITALS**

- A. City is empowered to grant the right and privilege to operate certain concessions at the Norman Y. Mineta San José International Airport (“Airport”); and
- B. Concessionaire has warranted to City that it possesses the necessary experience and qualifications to conduct the Concession Operations at the Airport; and
- C. Concessionaire desires to receive the non-exclusive privilege of conducting the Concession Operations at the Airport, with the right to conduct such operations in the initial public locations by entering into an Agreement with City, under mutually acceptable terms, conditions and covenants.
- D. The Director of Aviation of the City of San José desires to grant Concessionaire certain operating privileges at the Airport pursuant to San José Municipal Code Section 25.08.1340.
- E. Based upon the Airport’s desire to implement a pilot program for an automated specialty retail at the Airport, the Director has determined pursuant to San José Municipal Code Section 25.08.1320 that the services to be provided by Concessionaire to Airport users or the general public are patented, unique, or available only from one provider.
- F. The Director has determined to enter into this Agreement pursuant to San José Municipal Code Section 25.08.1330.

Now, therefore, in consideration of the terms, conditions, covenants and other provisions of this Agreement, the parties agree:

## AGREEMENT

### 1 SUMMARY OF TERMS AND DEFINITIONS

Each reference in the body of this Agreement to specific terms or phrases set forth in this Section shall have the specific meanings and/or contain the respective express information set forth below. To the extent there is a conflict between the information in this Section and any more specific provision of this Agreement, such more specific provision shall control.

**“Commencement Date”** means the earlier of: the date of completion of installation of the Concession Improvements and Concessionaire’s Equipment; or ninety (90) days after the Effective Date of this Agreement.

**“Concession Area” (§3 AUTHORIZED ACTIVITIES)** means each of the areas designated as Concession Areas, on **Exhibit A** attached hereto and incorporated herein.

#### **“Concession Fee and Charges” (§5 FEES & DEPOSITS)**

Concessionaire shall pay a monthly concession fee of twelve percent (12%) of Gross Revenues for all sales except Apple, Beats and Lego products and ten percent (10%) of Gross Revenues for sales of Apple, Beats and Lego products, all payable in arrears, in accordance with the provisions in **Section 5**, commencing upon the Commencement Date and continuing through the Expiration Date or earlier termination.

(a) Security Deposit	\$17,000
(b) Delinquent Report Fee	\$25.00 per calendar day

**“Concession Improvements” (§22 ALTERATIONS AND IMPROVEMENTS)** means those fixtures and other permanent improvements, if any, as defined in **Exhibit B** which Concessionaire is permitted to construct in, on, or about the Concession Area, subject to the requirements of this Agreement and such other fixtures and other improvements authorized by Director in writing.

**“Concession Operations” (§3 AUTHORIZED ACTIVITIES)** means the installation, operation and maintenance of automated retail vending machines (“Automated Retail Vending Machines” and “Vending Machines”) in Terminals A and B, as described in **Exhibit C**.

#### **“Concessionaire’s Address for Notices” (§31 NOTICES):**

<b>Name:</b>	Courtney Thornton
<b>Title:</b>	Executive Vice President

<b>Mail Address:</b>	One Meadowlands Plaza, 8 <sup>th</sup> Floor East Rutherford, NJ 07073
<b>Street Address: (If different)</b>	Same as above
<b>Telephone:</b>	(504) 346-1566
<b>Fax No.:</b>	(201) 528-2591
<b>E-mail address:</b> (email Notices cannot be used in lieu of Notice Required Under §31 of this Agreement)	<b>cthornton@hudsongroup.com</b>
<b>24 Hour Emergency Contact No. for Service:</b>	408-624-0924

**“Concessionaire’s Equipment” (§22 ALTERATIONS AND IMPROVEMENTS)** means the Vending Machines and all proprietary items of Concessionaire displaying distinctive features associated with Concessionaire’s operations and all personal property, identified on **Exhibit C** (exclusive of “Concession Improvements”), which Concessionaire is permitted to install or locate within the Concession Area, subject to the requirements of this Agreement, and such other personal property or equipment authorized by Director in writing.

**“Concessionaire’s Plans” (§22 ALTERATIONS AND IMPROVEMENTS)** means those working drawings, plans and specifications for the construction of Concession Improvements.

**“Concessionaire’s Proposal” (§29.18 CONCESSIONAIRE’S PROPOSAL)** means Concessionaire’s unsolicited letter dated December 20, 2020 regarding Automated Retail Vending at the Airport (“Proposal”), and attached as **Exhibit I**.

**“Day”** means any calendar day. For purposes of this Agreement, the time in which any act is to be performed shall be computed by excluding the first day and including the last.

**“Director”** means the person designated Director of Aviation by City, or such other person, division, department, bureau or agency as may be designated by the City Council or the City Manager from time to time to exercise functions equivalent or similar to those now exercised by the Director of Aviation; the term also includes any person expressly designated by the Director of Aviation to exercise rights and/or obligations empowered in the “Director” under this Agreement.

**“Effective Date” (§2 TERM OF AGREEMENT)** means the date upon which this Agreement is executed by the City.

**“Environmental Laws” (§4 RESTRICTIONS ON ACTIVITIES)** means and includes all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all



implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up statutes.

**“Expiration Date” (§2 TERM OF AGREEMENT)** means the date three (3) years from the Commencement Date, subject to earlier termination as provided in this Agreement.

**“FAA” (§16 GRANT AGREEMENT COVENANTS; §17 MODIFICATIONS FOR GRANTING FAA FUNDS)** means the Federal Aviation Administration (“FAA”), created by the United States Government under the Federal Aviation Act of 1958, as amended, or such other successor agency or agencies of the United States Government.

**“Federal Inspection Building” or “FIS”** means that certain airline terminal building and related parking facilities at 2065 Airport Boulevard, San José, California 95110.

**“Gross Revenues”** means, and includes, but is not be limited to, all monies or other consideration of any nature paid or payable to or generated or earned by Concessionaire (including, but not limited to fees paid by customers and other financial institutions, all gross revenues generated or received by Concessionaire's sub-concessionaires, joint venture partner(s), and/or equity partner(s), or other occupants of the Concession Area, if any) for the conduct of its business at the Airport pursuant to this Agreement. Such monies or other consideration shall include all transactions made in connection with the Concession Operations or using the Concession Improvements or the Concessionaire's Equipment at the Airport, regardless of when or where the order therefor is received. Gross Revenues shall include all such transactions, whether for cash or for credit, regardless of whether a final collection is made in credit transactions. Gross Revenues shall include, without limitation:

- A. The full amount of any and all deposits that are forfeited by customers in connection with the conduct of business of Concessionaire under the Agreement;
- B. The full amount of any and all insurance proceeds that are paid on any Gross Earnings or Gross Revenues business interruption insurance policy to Concessionaire; and

However, there shall be excluded from Gross Revenues the following items:

- A. Any and all federal, state, municipal or other sales or use tax now or hereafter imposed on any customer as part of the price of any item of merchandise sold or service rendered, and collected by Concessionaire on behalf of any such

customer and required to be paid by Concessionaire to any governmental agency; and

- B. The proceeds from the sale of capital assets; and
- C. Any and all revenues of Concessionaire that arise solely from its operations under any other agreement with City at the Airport and that are subject to a percentage fee or flat fee under that agreement.

**“Hazardous Materials” (§4 RESTRICTIONS ON ACTIVITIES; §29 – HAZARDOUS MATERIALS-PROHIBITIONS AND RESTRICTIONS)** means any and all: (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws; and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

**“Interim Facility”** means that certain airline terminal building at 1675 Airport Boulevard, San José, California 95110.

**“Laws”** means all present and future applicable judicial decisions, statutes, laws, ordinances, regulations, building codes, Airport rules and regulations adopted from time to time, regulations, orders and requirements and policies of all governmental authorities including without limitation city, state, municipal, county, federal agencies or the federal government and the FAA, and their departments, boards, bureaus, commissions and officials and such other authority as may have jurisdiction including, without limitation, any regulation or order of a quasi-official entity or body.

**“Like New”** means the condition of the Concessionaire’s Equipment to appear in perfect condition, intact and pristine with no signs of wear on the Concession Area.

**“Municipal Code”** means the San José Municipal Code, as amended from time to time.

**“Percentage Fee”** is defined in the term “Concession Fee” above of this **Section 1**.

**“Person”** means an individual, a corporation, a partnership, a joint venture or any other form of business association.

**“Product” (SECTION 4.12 - Director’s Approval of Product and Services)** means any and all services, products, goods, food or beverages required or permitted under this Agreement to be made available for sale or sold by Concessionaire or any Subconcessionaire in the regular course of Concessionaire’s or Subconcessionaire’s business at or from the Concession Area.

**“Required Hours of Operation”** means a minimum of twenty four (24) hours per day from 12:00 a.m. to 11:59 p.m., or other hours, as approved by Director.

**“Security Deposit”** means the initial amount as set forth in the defined term “Concession Fee” of this **Section 1**, which may be adjusted from time to time pursuant to **Subsection 5.5**.

**“Subconcessionaire”** means any person who operates a business on the Concession Area under an agreement with Concessionaire, including, but not limited to, any franchise, joint venture, management or sublease agreement for which the Director has given prior written approval.

**“Summary”** means **Section 1** of this Agreement.

**“Tax”** means and includes any assessment, license, charge, fee, imposition, or levy imposed by any governmental body.

**“Term” (§2 TERM OF AGREEMENT)** is defined in **Section 2** of this Agreement.

**“Terminal A”** means that certain airline terminal building and related parking facilities at 2077 Airport Boulevard, San José, California, 95110.

**“Terminal B”** means that certain airline terminal building and related parking facilities at 1701 Airport Boulevard, San José, California 95110, including the North Concourse and Interim Facility.

**“Terminals”** means all the Terminal buildings at the Airport, defined as “Terminal A”, “Terminal B”, “Interim Facility” and “FIS”, with the meanings ascribed to them in **Section 1**.

**“TSA”** means the Transportation Security Administration, part of the Department of Homeland Security, created by the United States Government under the Aviation and Transportation Security Act (“ATSTA”) of 2001, as amended, or such other successor agency or agencies of the United States Government.

**“Unavoidable Delay” (Section 30.6 Force Majeure)** means any strike, boycott, labor dispute, riot or embargo (any of which is directly related to Concession Operations as referenced in **Section 3**, below), shortage of building materials or other acceptable substitute not reasonably contemplated by the party responsible for procuring the same, Acts of God (such as earthquake, to the extent not insured against or required under this Agreement), act of a public enemy, act of a superior governmental authority, major weather

disturbance, rebellion, sabotage and any other circumstance of a magnitude a reasonable person would believe is beyond the reasonable control of either party to this Agreement.

## **2 TERM OF AGREEMENT**

### **2.1 Term**

The term of this Agreement shall commence on the Effective Date and shall continue through the Expiration Date, unless and until terminated by no less than thirty (30) days' written notice from either City or Concessionaire, or unless sooner terminated in accordance with the terms of this Agreement. However, in no case shall the term of this Agreement, or any extensions thereof, extend beyond the Expiration Date.

### **2.2 Holdover**

It is not the intent of this Agreement to create any rights of Concessionaire beyond the Expiration Date or earlier termination of this Agreement. Any holding over after the Expiration Date or earlier termination of this Agreement shall be subject to and conditioned on the approval of the City Council and on terms and conditions approved by the City Council.

## **3 AUTHORIZED ACTIVITIES**

### **3.1 General Approvals**

In consideration of Concessionaire's payment of the Concession Fee and all other fees and charges and the performance of all provisions of this Agreement and any amendment thereto, City grants to Concessionaire, and Concessionaire accepts from City, the right to install, operate, and maintain the Concession Improvements, if any, and the Concessionaire's Equipment and to conduct the Concession Operations in the Concession Area.

### **3.2 Signs/Advertising**

Concessionaire shall not install, erect, affix, paint, or place or permit the installation, erection, affixation, painting, or placement of any sign, lettering, or other advertising device or media in, on, or about the Airport, the Terminals, or the Concession Area, without the prior written consent of the Director.

**3.2.1** No advertising, signage or messages (including screen savers) shall be on the Concessionaire's Equipment or in the Concession Area, including the ordering computer screen, without the written consent of the Director, provided that the Director shall permit instructions to the extent they are necessary and customary to instruct the public on the proper use of the Vending Machines, as described in **subsection 3.2.2** below. Signage for customer convenience, as approved by the Director, may include identification of the credit cards or bank cards, which may be used at the Vending Machines.

**3.2.2** Subject to the approval of the Director, Concessionaire shall furnish all written operational instructions necessary to instruct persons on how to use said Vending Machines, as well as written instructions as to where to obtain further information, service and/or refunds. All such instructions shall either be attached to the Vending Machine or they shall be accessible from the screen. Languages may be added to the operation instructions, if reasonably requested by Director.

#### **4 RESTRICTIONS ON ACTIVITIES**

The commercial activities authorized in **Section 3** shall be subject to the following conditions and restrictions:

##### **4.1 Use**

Concessionaire shall not be permitted any use of the Concession Area, the Terminals or the Airport except for the Concession Operations as provided in this Agreement. Notwithstanding Concessionaire's privilege and concession rights in the initially approved site(s), the City reserves the right to award agreements for additional concession operations similar to Concessionaire's at any time to any other person for other areas of the Airport, including, without limitation, any expanded or new terminal areas. Further, the Airport shall not be restricted in any manner from granting exclusive or nonexclusive uses of Airport facilities to others, with the exception of the Concession Area.

##### **4.2 Compliance With Laws**

This Agreement is issued by City subject and subordinate to all existing and future agreements between the City and the United States of America, and Concessionaire shall act in compliance therewith. Concessionaire shall, at its sole cost and expense, comply with and conform to all Laws applicable to or affecting, directly or indirectly, Concessionaire, the Concession Area, and Concessionaire's operations and activities under this Agreement. Further, Concessionaire shall not do anything in, on, or about the Concession Area, the Terminals, or the Airport, nor bring anything that is prohibited by a standard form of fire insurance policy or that in any way would increase or affect the then existing rate of fire or other insurance required to be carried upon the Concession Area, the Airport, or the Terminals or any part thereof, or any of their contents, or that will cause a cancellation of any insurance policy covering the Concession Area, the Airport, or the Terminals or any part thereof or any of their contents. Concessionaire agrees to observe and obey all rules and regulations adopted by City from time to time with respect to the use of all Airport property, terminal buildings and related facilities.

The judgment of any court of competent jurisdiction, or the admission of Concessionaire in any action or proceedings against Concessionaire, whether City be a party thereto or not, that Concessionaire has violated any such Law, statute, ordinance, rule, regulation, order or requirement in the use of the

Concession Area or the Airport shall be conclusive of that fact as between City and Concessionaire.

In connection with its operations in or about the Airport, Concessionaire shall pay to City all amounts, fees, charges and taxes due City under any ordinance, resolution or other applicable law governing activities in or about the Airport.

Without limitation of the foregoing, Concessionaire shall conduct its operations in accordance with all applicable United States Department of Transportation authorizations and FAA Operating Certificates. Concessionaire shall obtain any and all permits and licenses required by City or other governmental entity as are necessary to conduct the activities authorized under this Agreement.

#### **4.3 Limitation on Uses**

**4.3.1** Concessionaire shall not engage either directly or indirectly in any form of business on the Airport or the Concession Area except as expressly authorized pursuant to this Agreement.

**4.3.2** Concessionaire understands and agrees that the following products or services are not permitted to be sold under this Agreement in the Vending Machines or from the Concession Area: items that are sold by Concessionaire at the Airport, as determined by the Director.

#### **4.4 Disposal, Use and Storage of Hazardous Materials**

Concessionaire shall not store, use or dispose of Hazardous Materials on the Airport, including the Concession Area, nor cause, permit or allow any officer, agent, employee, Subconcessionaire, contractor, permittee or invitee of Concessionaire to store, use or dispose of Hazardous Materials on the Airport or on the Concession Area.

#### **4.5 Relocation, Expansion or Contraction of Operations**

In the event that implementation of the City's requirements for the Airport, changes in airlines or flight schedules, or other changes in business conditions necessitate the relocation, expansion or contraction of the Concession Area, or any part thereof, Concessionaire shall, at Concessionaire's sole cost and expense, relocate all or part of its operations on the Concession Area, or any part thereof, or contract or expand the size of the Concession Area in an expeditious manner only as may be permitted, directed or required by the Director.

Amendments to this Agreement which change or modify the description of the Concession Area set forth in **Exhibit A** to specify in writing increases, decreases, or relocation of space at 2077 and 1701 Airport Boulevard, and which include only such rates as are specified or authorized in accordance with **Section 5**, may be executed on behalf of the City by the Director.

#### **4.6 Covenant of Continuous Operation**

As a material inducement to City to enter into this Agreement, Concessionaire covenants to continuously operate or cause the continuous operation of its Concession Operations during the Term. The failure of Concessionaire to continuously operate and market or cause the operation and marketing of its Concession Operations, or any part thereof, for any period of time, except as may otherwise be permitted under this Agreement, shall constitute an Event of Default. Concessionaire may be temporarily excused from complying with this covenant as necessary during the renovation or remodeling of Concession Area, but only as otherwise approved in writing by the Director. City does not make, and has not made, any representation, warranty, assurance, or guaranty that the uses to which Concessionaire will put its Concession Operation will generate any minimum, maximum, or optimum volume of business, or that any minimum, maximum, or optimum volume of business will occur. The failure to comply with this covenant of continuous operation shall not be excused or waived by reason of Concessionaire's failure to realize or achieve targeted revenue forecasts or goals for any period of time during the Term.

#### **4.7 Downtime Charges**

The continuous and uninterrupted operation of the Concession Operations is an important customer service aspect to the Airport. Concessionaire understands and agrees that City will suffer damage if Concessionaire fails to maintain continuous and uninterrupted operation of the Concession Operations and that, due to the nature of any such failure, the actual damage to the City would be impractical or very difficult to remedy. Therefore, the Concessionaire will be assessed a **\$100.00** fee per Vending Machine, for each day the Concession Operations are not fully available after the Commencement Date for customer use for a continuous period or periods totaling in excess of twenty-four (24) hours on that day, unless the unavailability of the Concession Operations is the result of a cause beyond Concessionaire's control. For the purpose of calculating downtime charges, one day shall be the period from 12:00 a.m. to 11:59 p.m. Assessment of this fee shall not limit City's remedies with respect to any other default of this Agreement. If the Concessionaire's Equipment or Concession Improvements do not function or the Concession Operations are otherwise unavailable for more than four (4) hours in any day: (a) more than two (2) times in any calendar month during the term of this Agreement; or (b) more than ten (10) times in any calendar year during the term of this Agreement; any such event shall be a separate event of default under this Agreement.

CONCESSIONAIRE AND CITY AGREE THAT THE DOWNTIME CHARGES SET FORTH ABOVE, SHALL BE PAID TO CITY AS LIQUIDATED DAMAGES AND CONCESSIONAIRE AND CITY ACKNOWLEDGE THAT CITY'S ACTUAL DAMAGES IN THE EVENT OF CONCESSIONAIRE'S FAILURE TO MAINTAIN CONTINUOUS AND UNINTERRUPTED OPERATION OF THE CONCESSION OPERATIONS WOULD BE IMPRACTICAL OR VERY

DIFFICULT TO DETERMINE. THEREFORE, BY PLACING THEIR SIGNATURES BELOW, CITY AND CONCESSIONAIRE ACKNOWLEDGE THAT THE AMOUNTS SET FORTH ABOVE HAVE BEEN AGREED UPON AS THE PARTIES' REASONABLE ESTIMATE OF CITY'S DAMAGES IN THE EVENT OF SUCH FAILURE. CITY'S ACCEPTANCE OF ANY LIQUIDATED DAMAGES AS A RESULT OF CONCESSIONAIRE'S FAILURE TO MAINTAIN CONTINUOUS AND UNINTERRUPTED OPERATION OF THE CONCESSION OPERATIONS SHALL NOT PREVENT CITY FROM EXERCISING ANY OTHER RIGHT OR REMEDY FOR DEFAULT AVAILABLE TO CITY UNDER THE AGREEMENT.

CITY:  \_\_\_\_\_

CONCESSIONAIRE:  \_\_\_\_\_

#### **4.8 Standards of Operation**

**4.8.1** During the term of this Agreement, Concessionaire covenants to maintain, operate and keep or cause the maintenance and operation of the Concession Operations and the Concession Area in accordance with the provisions of this Agreement in a Like New manner and in a safe, clean, orderly and sanitary condition at all times to the satisfaction of the Director. Concessionaire covenants not to allow the use of any false, misleading, or deceptive advertising in the promotion of the Concession Operations.

**4.8.2** The Vending Machines must:

**4.8.2.1** Be attractive, functional, and resistant to rough usage.

**4.8.2.2** Have Screen Liquid Nano protective anti-microbial coating.

**4.8.2.3** Meet the aesthetic standards of the Airport (as determined by the Director of Aviation)

**4.8.2.4** Accept credit cards only.

**4.8.2.5** Have color screens.

**4.8.3** Delivery of supplies to the Concession Area shall be made at such times, by such route/modes at such receiver locations as the Director may reasonably approve.

#### **4.8.4 Product Stock Levels.**

**4.8.4.1** Concessionaire's Equipment shall be serviced and stocked with Product, and currency at least twice a week, or more frequently if



reasonably requested by Director. Concessionaire shall provide a sufficient quantity (minimum of 50% Product stock levels at all times of all items and total items) until the next scheduled visit (“Product Stock Levels”).

- 4.8.4.2** Failure of Concessionaire to maintain Product Stock Levels as set forth in **subsection 4.8.4.1** above shall subject Concessionaire to liquidated damages in the amount of \$250.00 per day, per Vending Machine.

CONCESSIONAIRE AND CITY AGREE THAT THE PRODUCT STOCKING LEVELS SET FORTH ABOVE, SHALL BE PAID TO CITY AS LIQUIDATED DAMAGES AND CONCESSIONAIRE AND CITY ACKNOWLEDGE THAT CITY’S ACTUAL DAMAGES IN THE EVENT OF CONCESSIONAIRE’S FAILURE TO MAINTAIN THE PRODUCT STOCKING LEVELS WOULD BE IMPRACTICAL OR VERY DIFFICULT TO DETERMINE. THEREFORE, BY PLACING THEIR SIGNATURES BELOW, CITY AND CONCESSIONAIRE ACKNOWLEDGE THAT THE AMOUNTS SET FORTH ABOVE HAVE BEEN AGREED UPON AS THE PARTIES’ REASONABLE ESTIMATE OF CITY’S DAMAGES IN THE EVENT OF SUCH FAILURE. CITY’S ACCEPTANCE OF ANY LIQUIDATED DAMAGES AS A RESULT OF CONCESSIONAIRE’S FAILURE TO MAINTAIN PRODUCT STOCKING LEVELS SHALL NOT PREVENT CITY FROM EXERCISING ANY OTHER RIGHT OR REMEDY FOR DEFAULT AVAILABLE TO CITY UNDER THE AGREEMENT.

CITY:



CONCESSIONAIRE:



- 4.8.5** Concessionaire shall wipe down and keep Concessionaire’s Equipment clean and disinfected as often as needed to adhere to the Standards of Operations set forth in this **Section 4**
- 4.8.6** Concessionaire shall apply a fresh coat of Screen Liquid Nano protective anti-microbial coating every 30 days, or as needed.
- 4.8.7** The Automated Retail Vending Machines must have system management capabilities for reporting maintenance issues and for product replenishment notifications. Response time to service calls and inventory replenishment must be within twenty-four (24) hours. Each Automated Retail Vending Machine shall direct customers to a Hudson Retail store and have a twenty-four (24) hours a day, seven (7) days a phone number to call for inquiries, maintenance issues, and/or customer service. Concessionaire shall provide a customer service report to include any complaints, returns, and/or any other customer service issues upon request.

#### **4.9 Personnel**

A qualified, competent, and experienced manager representing Concessionaire shall supervise, manage, and maintain the Concession Operations and act for the Concessionaire in all matters pertaining to retail operations. At all times during regular business hours, the manager, who shall be subject at all times to the direction and control of Concessionaire, shall be assigned to a location of general availability on the Concession Area, and, during the manager's absence, a qualified subordinate shall be appointed to act in the Manager's absence. The Director reserves the right to reasonably approve any manager working in the Concession Operations.

#### **4.10 Nondiscrimination**

As a recipient of Department of Transportation financial assistance, the City will meet the non-discrimination requirements provided in 49 CFR Part 26, Section 26.7, with respect to the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

The City will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any concession agreement, management contract or other agreement covered by 49 CFR Part 23 on the basis of race, color, sex or national origin.

Concessionaire certifies that in dealing with Subconcessionaires under this Agreement, it has not discriminated or given any preference to any firm based on race, sex, color, age, religion, sexual orientation, actual or perceived gender identity disability, ethnicity or national origin. Concessionaire shall fully comply with all Federal, State of California and local laws pertaining to nondiscrimination, and shall not discriminate or grant preferential treatment on the basis of age, sex, race, religion, color, creed, disability, ethnicity, sexual orientation, actual or perceived gender identity or national origin in connection with or related to the performance of this Agreement. Concessionaire shall make efforts to include participation from all segments of the community in connection with or related to the performance of this Agreement.

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

The Concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

#### **4.11 Specific Services Provided by Concessionaire**

Concessionaire and its Subconcessionaires shall be responsible for ensuring the conduct, demeanor and appearance (properly attired and identified) of its officers, agents, employees and representatives as may be established and/or approved from time to time by Director. In effecting any sale, Concessionaire and all Subconcessionaires shall provide a receipt upon customer's request.

Concessionaire and its Subconcessionaires shall assure that its officers, agents, employees and representatives do not engage in the solicitation or pressure sales tactics for product offered on or about the Airport.

#### **4.12 Director's Approval of Product and Services**

Director shall approve Concessionaire performance standards for Subconcessionaires. Director reserves the right at all times to reasonably object to or approve Product offered for sale, the quality of Product offered for sale, the character of services offered to the general public, the methods of service of Product within the Retail Concession Area, the prices charged, and the appearance and condition of the Concession Area. Upon receipt of notice, Concessionaire agrees to immediately discontinue the sale of any Product and remedy any such services found by the Director to be unsatisfactory. The failure of Concessionaire to promptly cease marketing any disapproved Product or service shall constitute an Event of Default pursuant to **Section 23** below of this Agreement.

### **5 FEES & DEPOSITS**

#### **5.1 Concession Fee**

Commencing upon execution of this Agreement by City, Concessionaire agrees to pay to City, in arrears, a monthly Concession Fee based upon the preceding month's activity. The Concession Fee is an amount equal to the amount set forth in the Summary as the Concession Fee, for each month during the term of this Agreement. The Concession Fee is due for each month of the Agreement and is not an annualized amount. There will be no annual reconciliation or credit to Concessionaire if amounts paid for any month or months would exceed the fees owed if the Concession Fee were calculated on an annual basis.

## 5.2 Monthly Concession Report

No later than twenty (20) calendar days after the end of each month occurring after the Commencement Date, Concessionaire shall deliver to the City a Monthly Concession Report for the preceding month's activity, even if no money is due. If fees are due for any period less than a full calendar month, Concessionaire shall deliver the prorated Concession Fee for such period.

If the Monthly Concession Report is not provided on or before the twentieth (20th) day of each month as required herein, Concessionaire shall pay as a delinquency fee for administrative expenses incurred by City for delays and invoices, an amount (established by City Council Resolution and referenced in **Section 1** above) per day that the report is late until such date as the Monthly Concession Report is submitted to the Director.

City assessment of the late payment shall be in addition to any other remedies City may have in law or in equity, including termination and revocation of the Concession Agreement.

## 5.3 Payment

Any fees or charges which are payable by Concessionaire in arrears for the preceding month's activity are due and payable on or before the twentieth (20th) day of each month during the term and twenty (20) days after the termination date or expiration of this Agreement. Concessionaire hereby acknowledges that late payment to City of any fee, charge or other sum due hereunder will cause City to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. If any such fee, charge or other sum due from Concessionaire is not received by City on or before the twentieth (20th) day of the month, then Concessionaire shall pay to City a late payment fee of one percent (1%) per month of the amount not paid, calculated for each day from the due date until the date that payment is received by City. Payments made by Concessionaire to the City will be made in a form as specified by the Director. The parties hereby agree that such late fee represents a fair and reasonable estimate of the cost that City will incur by reason of Concessionaire's late payment. City's acceptance of such late fees shall not constitute a waiver of Concessionaire's default with respect to such overdue amount or stop City from exercising any of the other rights and remedies granted hereunder or at law or in equity.

## 5.4 Security Deposit

Concessionaire shall deposit and maintain with City upon execution of this Agreement a security deposit in an amount and form as determined by Director, against which City may deduct any delinquent or unpaid fees, costs or charges (including but not limited to employee parking and badging fees any late payment

fees and the charges stated in this Agreement) resulting from Concessionaire's operations at the Airport, to ensure prompt payment of required fees and charges. The initial amount of the Security Deposit shall be as specified in **Section 1**. The Director may adjust such deposit requirement from time to time, upon determination that such additional amount is warranted to protect the City and the Airport.

If City adjusts the amount of the Security Deposit or deducts any delinquent or unpaid fees, costs or charges (including late payments) from the Security Deposit, Concessionaire shall promptly replenish the Security Deposit to the full amount required by Director within thirty (30) days of a written demand by the Director. Concessionaire's failure to so replenish the Security Deposit shall constitute an event of default which entitles the City to terminate this Agreement, as provided in **Section 24** of this Agreement. City shall not be required to keep the Security Deposit separate from its funds, and Concessionaire shall not be entitled to interest on the Security Deposit. Any amounts remaining from the Security Deposit (after deductions for delinquent or unpaid fees, costs, or charges as specified above) at the expiration or earlier termination of this Agreement (as it may be extended or renewed) shall be returned to Concessionaire, without interest, after a determination by the Director that all amounts owed to City under this Agreement have either been paid in full or have been deducted from the Security Deposit.

City's assessment of the late payment fee shall be in addition to any other remedies City may have in law or in equity, including termination and revocation of this Agreement and all rights and privileges granted herein.

## **5.5 Taxes and Assessments**

Concessionaire shall pay or cause the payment of any and all other fees and charges, including, without limitation, all taxes, charges and assessments, interest payments, public agency fees and charges, insurance premiums, and bond payments that are due and payable by Concessionaire under the provisions of this Agreement or under any laws.

## **5.6 Payment Location**

All fees, charges and other amounts shall be paid by check made payable to the "City of San José" and delivered or mailed to Payment Processing – Airport, Finance Department, City of San José, 200 East Santa Clara Street, San José, CA 95113-1905, or to such other address as the Director may notify Concessionaire in accordance with **Section 31**. All such fees, charges and other amounts payable by Concessionaire shall be in lawful money of the United States of America and in same day funds as of the due date.

## **5.7 No Offset or Deduction**

All fees, charges and other amounts due by Concessionaire under this Agreement shall be paid without deduction, credit or offset of any kind and exclusive of any amounts which City may now or hereafter owe to Concessionaire.

### **5.8 Director Approval of Concessionaire's Rates**

Concessionaire's rates for products and services to the general public shall be that as proposed by the Concessionaire and accepted by the Director for the first year of operations. The initial schedule of Concessionaire's Rates is attached to this Agreement as **Exhibit G**. Director shall have the right to disapprove any fee increase or decrease imposed by Concessionaire if Director determines that the rates are not comparable to similar operations at Airports in the United States. Any rate increase or decrease must be approved by the Director in advance.

### **5.9 Other Financial and Statistical Reports**

No later than thirty (30) days after receipt of a request from the Director, Concessionaire shall furnish the City with such other financial or statistical reports or records as the Director, from time to time, may reasonably require, including but not limited to the purpose of determining the accuracy of Gross Revenues, labor compliance and FAA requirements (where applicable). Unless Concessionaire has requested additional time to produce any such reports and Director has approved any such request, a Delinquent Report Fee in the amount of \$25, or other amount as may be amended from time to time by Resolution of the City Council, will be assessed for each day any such additional reports or records are not timely received by the City.

## **6 AUDIT OF BOOKS AND RECORDS**

**6.1** Concessionaire shall maintain and make available for City's inspection and/or audit at Concessionaire's address specified in the Summary, for a period of not less than four (4) years, separate and accurate daily, monthly and annual records of Gross Revenues using a form and method approved by Director, and in accordance with generally accepted accounting principles, showing in detail all business done or transacted. Concessionaire shall furnish City with such other financial or statistical reports as Director, from time to time, may reasonably require.

**6.2** Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to City, at any time during regular business hours, upon written request by the Director, City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided for inspection at a location designated by City when it is practical to do so. Unless an alternative location is mutually agreed upon, the records shall be available at Concessionaire's address indicated for receipt of notices in this Agreement.

- 6.3** If City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Concessionaire's business, City may, by written request by any of the above-named officers, require that custody of such records and/or documents be given to City and that the records and documents be maintained at a location designated by the Director, City Attorney, City Auditor, or City Manager. Access to such records and documents shall be granted to any party authorized by Concessionaire, its representatives, or its successor-in-interest.
- 6.4** If any examination, inspection, and/or audit of Concessionaire's books and records by City discloses an underpayment by Concessionaire, Concessionaire promptly shall pay City the amount of such underpayment and, if such underpayment is in excess of one percent (1%) of the fees and charges due, the Concessionaire promptly shall reimburse City for all costs incurred in the conduct of such examination, inspection, or audit, including interest from the time such underpayment was due, at the rate of one (1%) per month. Concessionaire shall furnish City with such other financial or statistical reports as Director, from time to time, may reasonably require.

## **7 INSURANCE**

### **7.1 Required Insurance Coverage**

Prior to commencing any work or operations under this Agreement, Concessionaire at its sole cost and expense and for the full term of this Agreement and all extensions thereof, shall obtain and maintain or shall cause to be obtained and maintained insurance against claims for injuries to persons or damages to property which may arise from or in connection with the activities of Concessionaire and its agents, employees and contractors, meeting at least the minimum insurance requirements set forth in **Exhibit E** on terms and conditions and in amounts as required by the Director of Human Resources or the Director's authorized designee ("Risk Manager"). City shall not be obligated to take out insurance on Concessionaire's property. Concessionaire shall provide City with certificates of insurance and such endorsements as may be required by City's Risk Manager. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager.

From time to time at the request of the Risk Manager, Concessionaire shall provide a written statement of the replacement cost of the Concession Improvements, with a copy to the Director.

### **7.2 Waiver of Subrogation**

City and Concessionaire hereby mutually agree that so long as their respective insurance carriers concur, any fire and extended coverage insurance policies carried on properties which are the subject of this Agreement shall include a waiver of subrogation against the other party hereto, provided that such waiver of subrogation applies only to subsequent loss.

## **8 BAILEE DISCLAIMER**

The parties understand and agree that City in no way purports to be a bailee, and is therefore not responsible in any way for any damage to Concessionaire's property or the property of Concessionaire's contractors, agents, employees and invitees.

## **9 INDEMNITY**

### **9.1 Indemnification**

Concessionaire, for and on behalf of its directors, officers, employees and agents, covenants and hereby agrees to indemnify, defend, protect and hold harmless City, its officers, employees, contractors and agents, from and against any and all claims, demands, damages, obligations, liabilities, losses, costs, expenses, penalties, suits or judgments, at any time received, incurred or accrued by City, its officers, agents, employees, contractors or members of the public using Airport facilities, arising out of or resulting in whole or in part from any act (or failure to act) of Concessionaire, its officers, employees, contractors, agents, permittees or invitees, or which results from their noncompliance with any Laws respecting the condition, use, occupation or safety of the Airport or the Terminals, or any part thereof, or which arises from the Concession Operations or which arises from Concessionaire's failure to do anything required under this Agreement, except as may arise from the sole active negligence or the willful misconduct of City, its officers, employees or agents. City's right to full indemnity hereunder shall arise notwithstanding that principles of joint, several or concurrent liability or comparative negligence, might otherwise impose liability on City pursuant to statutes, ordinances, regulations or other Laws. All of Concessionaire's obligations under this Section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this Agreement. In an action or claim against City in which Concessionaire is defending City, City shall have the right to approve legal counsel providing City's defense. The provisions of **Section 19** regarding the Americans With Disabilities Act of 1990 ("ADA") shall not limit Concessionaire's indemnification under this provision.

### **9.2 Assumption of Risk**



Concessionaire agrees to and covenants that it shall voluntarily assume any and all risk of loss, damage or injury to the person or property of Concessionaire, its directors, officers, employees, agents and contractors which may occur in, on, or about the Terminals, or the Airport at any time and in any manner, except such loss, injury or damage as may be caused by the sole active negligence or the willful misconduct of City, its officers, employees or agents. The indemnification obligations of Concessionaire shall include the obligation of Concessionaire to defend, indemnify, protect and hold harmless City, its officers, agents or employees, from and against fines, costs, claims, damages, obligations, suits, judgments, penalties, proceedings, causes of action, losses, liabilities or costs arising under the ADA, which arise from Concessionaire's activities under this Agreement.

## **10 WAIVER OF CLAIM**

Concessionaire, as a material part of the consideration to be rendered to City under this Agreement, hereby waives all claims or causes of action against City, its officers, employees, contractors or agents which it may now or hereafter have for damages to its operations (including without limitation any interruption thereof), or to goods, wares, merchandise or other property on or about the Airport, and for injuries or death to persons on or about the Airport, from any cause or causes arising at any time, except as may arise from the sole active negligence or willful misconduct of City, its officers, employees, contractors or agents.

By way of example and not limitation, save and except as arises out of the sole active negligence or the willful misconduct of City, its officers, agents, contractors or employees, Concessionaire hereby waives any and all claims or causes of action which it may now or hereafter have against City, its officers, agents, contractors or employees (a) for loss, injury or damage sustained by reason of any deficiency, impairment and interruption of any water, electrical, gas, plumbing, air conditioning or sewer service or system serving any portion of the Airport; (b) for any loss, injury or damage arising or resulting from any negligent act or omission of any other tenant, subtenant, contractor, airline, concessionaire or occupant of the Airport, or any person who uses the Airport with or without the authorization or permission of City; (c) from the flight of any aircraft of any kind and all kinds in, through, across or about any portion of the airspace above the Airport; (d) from noise, vibration, currents and other effects of air, illumination, and fuel consumption, or fear thereof, arising or occurring from or during the flight of any aircraft or from or during the use by aircraft of the Airport including, but not limited to, landing, storage, repair, maintenance, operation, run-up and take-off of such aircraft and the approach and departure of aircraft to or from the airport; and (e) for any loss or damage to the property of, or injury or damage to Concessionaire, its officers, agents, employees, contractors, Subconcessionaires or any other person whomsoever, from any cause or causes arising at any time because of Concessionaire's uses or occupancy of such building or of the Airport, or its operations thereon.

## **11 SECURITY MEASURES**

- 11.1** Concessionaire agrees to abide by all provisions of the Airport's Master Security Plan approved by the FAA and/or Transportation Security Administration ("TSA"), and agrees to institute and carry out all security measures as provided in the plan. Any violations of the security plan which result in fines to the City by the FAA and/or TSA, and which are caused by Concessionaire, its officers, agents, or employees, will be assessable to Concessionaire by City and will be deemed to be additional fees and charges payable by Concessionaire to City following invoice thereof by City to Concessionaire pursuant to **Section 5** of this Agreement.
- 11.2** Concessionaire shall be solely responsible for instituting and carrying out specific security measures required by the Airport's Master Security Plan in the areas where it is authorized to operate to prevent vandalism or damage to persons or property. City shall be responsible only for general security throughout the Airport and shall not be liable for any vandalism or damage to persons or property that may occur in the areas of Concessionaire's operation.
- 11.3** Concessionaire understands and acknowledges that City reserves the right to implement or change security measures that may limit public access to the Airport or the Terminals. In such event, Concessionaire waives all rights against City for such limitation, and City shall not be liable to Concessionaire for any amount, including compensation, in the form of reduction of any fees.
- 11.4** Concessionaire further agrees that all or a portion of its operations hereunder may be temporarily or permanently reduced or terminated if the FAA and/or TSA requires that all or a portion of the Concession Improvements or Concessionaire's Equipment must be removed from the Airport and that City may terminate this Agreement immediately to comply with the FAA's and/or TSA's directive. In such event the Director is authorized, on behalf of City, to take all action necessary to comply with such requirement, including without limitation, terminating the Agreement.

## **12 WASTE OR NUISANCE**

- 12.1** Concessionaire shall not commit, cause, maintain or permit or suffer, or allow to be committed, caused, maintained, or permitted, any legal waste upon the Concession Area, the Terminals or the Airport, or any public or private nuisance, or injury or any improper or unlawful use on the Airport or surrounding areas of the Airport, or any other act or thing, or omission to act, which may in any way disturb the quiet enjoyment of or obstruct or interfere with the rights of, any other concessionaire, tenant, licensee, invitee, or occupant of any portion of the Concession Area, the Terminals or the Airport or any portion thereof. Concessionaire shall maintain in safe, good and clean condition all areas of the Airport where Concessionaire conducts its operations.

- 12.2** Without limitation of the foregoing, Concessionaire shall conduct its operations in accordance with all applicable United States Department of Transportation authorizations, if any, and FAA Operating Certificates, if any. Concessionaire shall obtain any and all permits and licenses required by City or other governmental entity as are necessary to conduct the activities authorized under this Agreement.

### **13 TAXES AND ASSESSMENTS**

#### **13.1 Concessionaire to Pay Taxes**

Concessionaire shall pay before delinquency, and without notice or demand, any and all taxes, (including, without limitation, any gross receipts income tax or excise tax) assessments, licenses, fees, possessory interest taxes and other public charges which may be levied, assessed or imposed upon any of Concessionaire's leasehold interest, upon Concessionaire's Equipment, business, operation, Gross Revenue or upon Concessionaire for the privilege of conducting business within the Concession Area, or upon any other property of Concessionaire within the Airport. Payment of any and all taxes, assessments, licenses, fees or other public charges shall not reduce the amount of charges or any other fee that is required to be paid by Concessionaire to City under the provisions of this Agreement.

#### **13.2 Possessory Interest Taxes**

Concessionaire recognizes and understands that this Agreement may, but is not intended to, create a real property possessory interest that may be, but is not intended to be, subject to real property taxation, and that any such possessory interest may be subject to the payment of real property taxes levied on such interest. If any possessory interest tax is levied on the Concession Area, Concessionaire's Improvements or Operations, Concessionaire shall pay such tax before delinquency. City shall have no obligation to pay any possessory interest tax. No such possessory interest tax, or any other tax by any governmental entity, shall in any way reduce or substitute for the fees or charges required in this Agreement.

#### **13.3 No Liens or Encumbrances**

Concessionaire shall not permit or suffer any liens or encumbrances to be imposed upon the Concession Area, the Airport or any building or structure thereon as a result of its activities without promptly discharging the same; provided, however, that Concessionaire may, if it so desires, contest the legality of same following prior written notice to City. In the event of a contest, Concessionaire shall provide a bond in an amount and in a form reasonably acceptable to City immediately following request therefor by City.

#### **13.4 Indemnity for Concessionaire's Failure to Comply**

Concessionaire shall defend, indemnify and hold City and any Concession Improvements now or hereafter on the Concession Area free and harmless from

and against any liability, loss, or damage resulting from any taxes, assessments or other charges required by this Agreement to be paid by Concessionaire and from all interest, penalties and other sums imposed thereon and from any proceedings to enforce collection of any such taxes, assessments or other charges.

### **13.5 Payment by City**

If Concessionaire fails to pay any tax or charge required by this Section to be paid by Concessionaire, City may, but is not obligated to, on five (5) days' prior written notice to Concessionaire, pay, discharge, or adjust such tax or charge for Concessionaire's benefit. In such event, Concessionaire, on receipt of written demand of City, shall reimburse City promptly for the full amount paid by City in paying, discharging or adjusting such tax or charge together with interest thereon from its due date at the rate of one percent (1%) per month until paid, plus pay any penalties.

### **13.6 Contest of Tax of Charge**

#### **13.6.1 Notice of Contest**

In the event that Concessionaire desires, in good faith, to contest or review by appropriate legal or administrative proceedings any tax or charge specified hereunder, Concessionaire, at least ten (10) days prior to the delinquency of any such tax or charge or within the applicable period of time allowed by law, shall give City written notice of its intention to contest such tax or charge.

#### **13.6.2 Procedure for Contest**

Concessionaire may withhold payment of the tax or charge being contested if, but only if, nonpayment is permitted during the pendency of such proceedings without the foreclosure of any tax lien or the imposition of any fine or penalty. The contest shall be prosecuted to completion (whether or not this Agreement has expired or terminated) without delay at Concessionaire's sole cost and expense.

#### **13.6.3 Payment Upon Final Determination**

Within the applicable period of time allowed by law after the final determination of the amount of tax due, Concessionaire shall pay the amount determined to be due, together with all costs, expenses and interest (whether or not this Agreement has then expired or terminated).

#### **13.6.4 Failure to Pay Constitutes Event of Default**

The failure to pay any tax or charge hereunder shall constitute an Event of Default, and the obligation to pay the same shall survive the termination of this Agreement.

## **14 ASSIGNMENT OR TRANSFER**

### **14.1 No Encumbrance**

Concessionaire shall not mortgage, pledge, encumber or otherwise hypothecate this Agreement, the Concession Operations or any interest of Concessionaire therein, voluntarily or involuntarily, or by operation of law.

### **14.2 Prohibition on Assignments, Transfers or Sublease**

Concessionaire shall not assign, sublease, transfer or convey the rights of Concessionaire under this Agreement, the Concession Improvements, the Concessionaire's Equipment or the Concession Operations without the prior written consent of City, which consent will not be unreasonably withheld.

**14.2.1** A transfer within the meaning of this Section shall include, but is not limited to, the following: the incorporation of an individual Concessionaire and the transfer of Concessionaire's rights hereunder to the corporation which is not wholly owned by Concessionaire; in the event that Concessionaire is a partnership, incorporation of Concessionaire and transfer of Concessionaire's rights hereunder to the corporation, or the withdrawal or addition of any partner to Concessionaire's partnership; in the event that Concessionaire consists of co-Concessionaires, the incorporation of Concessionaire and transfer of its rights hereunder to the corporation, or the voluntary or involuntary transfer by any one or more co-Concessionaires of his, her or its rights hereunder to his, her or its co-Concessionaire or to a third person; in the event that Concessionaire is a corporation, the change in the ownership of fifty percent (50%) or more of the capital stock of Concessionaire; and, in the event that Concessionaire is an unincorporated association, the incorporation of Concessionaire and the transfer of its rights hereunder to the corporation, or the change in fifty percent (50%) or more of the membership of the association.

**14.2.2** In determining whether to consent to such a transfer, City may consider, without limitation: (i) the financial condition and responsibility of the proposed transferee; (ii) the type of activity proposed to be conducted by such transferee at the Airport; (iii) the capabilities and expertise of the proposed transferee to manage and operate the proposed activity; (iv) the past service record of the proposed transferee, (v) references of the proposed transferee; and (vi) any cost to City associated with such proposed transfer. In addition, City's consent to any proposed transfer under this Agreement may be conditioned upon, among other things, the express written assumption by the proposed transferee of Concessionaire's obligations under this Agreement and/or performance of required or necessary repairs or maintenance to the Concession Area.

- 14.2.3** Reasonable grounds for denying consent shall include any of the following: (i) the proposed transferee's intended use of the Concession Area is not for an aviation-related purpose or will materially and adversely affect the City's interests at the Airport; (ii) the proposed transferee's financial condition is or may be inadequate to support its obligations under the Agreement; (iii) the proposed transferee has failed to meet any legal or contractual obligations to the City or is adverse to the City in any pending litigation; or (iv) the proposed transferee has failed to meet the minimum qualifications set forth in Concessionaire's Proposal.
- 14.2.4** City may require payment by Concessionaire of any processing fee established by City pursuant to a resolution or ordinance for reviewing the proposed transfer and preparing any documents in connection therewith. Concessionaire's failure to provide City with full, complete and necessary information, or to pay the processing fee, shall be sufficient cause for City to deny consent to, or to refuse to review, the proposed transfer.
- 14.2.5** The consent of City to any transfer described in this Section shall not relieve Concessionaire of its obligation to obtain the further consent of City for any subsequent transfer. Any attempt to transfer without the consent of City shall be void, and shall constitute an Event of Default under this Agreement.

## **15 AGREEMENTS WITH UNITED STATES**

This Agreement shall be subordinate to the provisions of any Federal agreement relative to the use, operation or maintenance of the Airport, the execution of which Federal agreement has been or may now or hereafter be required as a condition precedent to the obtaining and/or expenditure of Federal funds for the development of the Airport, and any properties acquired in conjunction with its operations. Concessionaire agrees that to the extent that any such Federal agreement shall affect Concessionaire and its use of the Concession Area and the Airport, Concessionaire shall act in compliance therewith.

## **16 GRANT AGREEMENT COVENANTS**

Concessionaire acknowledges that City is subject to Federal Grant Agreement obligations as a condition precedent to the granting of federal funds for improvements to the Airport, and, accordingly, Concessionaire agrees to, and agrees to be bound by, the following covenants provided by the FAA as they may apply to Concessionaire.

- 16.1** Concessionaire for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on any areas occupied by Concessionaire and described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits,

Concessionaire shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

- 16.2** Concessionaire for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities; (2) in the construction of any improvements on, over, or under any areas occupied by Concessionaire and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (3) Concessionaire shall use any areas occupied by Concessionaire in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as the Regulations may be amended.
- 16.3** In the event of breach of any of the above nondiscrimination covenants, City (through Director) shall have the right to terminate this Agreement and to reenter and repossess the areas occupied by Concessionaire and the facilities thereon, and hold the same as if this Agreement had never been made or issued. This provision does not become effective until the procedures of [Title 49 Code of Federal Regulations, Part 21](#) are followed and completed including expiration of appeal rights.
- 16.4** Concessionaire shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service. Concessionaire may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.
- 16.5** Without limiting the generality of any other terms or provisions of this Agreement, non-compliance with **Subsection 16.4** above shall constitute a material breach thereof and in the event of such non-compliance the City (through Director) shall have the right to terminate this Agreement and the estate hereby created without liability therefor or, at the election of the City or the United States, either or both governments shall have the right to judicially enforce **Subsections 16.1, 16.2, 16.3** and **16.4** of this Section.
- 16.6** Concessionaire agrees that it shall insert the above five (5) Provisions in any agreement by which Concessionaire grants a right or privilege to any person, firm

or corporation to render accommodations and/or services to the public in the Concession Area.

- 16.7** Concessionaire assures that it will comply with pertinent statutes, executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from federal assistance. This Provision obligates Concessionaire or its transferee for the period during which federal assistance is extended to the Airport, except where federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, this **Subsection 16.7** obligates Concessionaire or any transferee for the longer of the following periods: (a) the period during which the property is used by City or any transferee for a purpose for which federal assistance is extended, or for any purpose involving the provision of similar services or benefits; or (b) the period during which City or any transferee retains ownership or possession of the property. In the case of contractors, this **Subsection 16.7** binds the contractors from the bid solicitation period through the completion of the contract.
- 16.8** City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or views of Concessionaire and without interference or hindrance.
- 16.9** City reserves the right, but shall not be obligated to Concessionaire, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Concessionaire in this regard.
- 16.10** This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between City and the United States, relative to the development, operation or maintenance of the Airport.
- 16.11** There is hereby reserved to City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Concession Area herein authorized. This public right of flight shall include the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from or operation on the Airport.
- 16.12** Concessionaire agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations ("FAR") in the event any future structure or building is planned for the location(s) of its activities, or in the event of any planned modification or alteration of any present or future building or structure situated at the Airport.



- 16.13** Concessionaire by accepting this Agreement expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Airport to a height above the mean sea level that would exceed FAR Part 77 standards or elevations affecting the Airport navigable airspace. In the event the aforesaid covenants are breached, City reserves the right to enter upon any area utilized by Concessionaire and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Concessionaire.
- 16.14** Concessionaire by accepting this Agreement agrees for itself, its successors and assigns that it will not make use of the Concession Area in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event this covenant is breached, City reserves the right to enter upon the Concession Area and cause the abatement of such interference at the expense of Concessionaire.
- 16.15** It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of any exclusive right within the meaning of 49 U.S.C. §40103.
- 16.16** This Agreement and its provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

## **17 MODIFICATIONS FOR GRANTING FAA FUNDS**

In the event that the FAA requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this Agreement, Concessionaire agrees to consent in writing upon the request of City to any such reasonable amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required to enable City to obtain the FAA funds, provided that in no event shall such changes materially impair the rights of Concessionaire hereunder. A failure by Concessionaire to so consent shall constitute a breach of this Agreement.

### **17.1 ACDBE Participation Reporting Requirement**

Concessionaire shall report the level of Airport Concession Disadvantaged Business Enterprise (“ACDBE”) Program participation in the Concession as required pursuant to the City’s ACDBE requirements, which are set out in **EXHIBIT H** to this Agreement.

## **18 PROHIBITION ON GIFTS**

- 18.1** Concessionaire is familiar with City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.
- 18.2** Concessionaire agrees not to offer any City officer or designated employee any gift prohibited by said Chapter of the San José Municipal Code.
- 18.3** The offer or giving of any gift prohibited by San José Municipal Code Chapter 12.08 shall constitute a material breach of this Agreement by Concessionaire. In addition to any other remedies City may have in law or equity, City may terminate this Agreement for breach as provided in **Section 24** of this Agreement

## **19 AMERICANS WITH DISABILITIES ACT**

- 19.1** Disability Access Disclosure. Pursuant to California Civil Code Section 1938, City states that, as of the Effective Date, the Concession Area has not undergone inspection by a Certified Access Specialist to determine whether the Concession Area meet all applicable construction-related accessibility standards under California Civil Code section 55.53. A Certified Access Specialist (CASp) can inspect the Concession Area and determine whether the Concession Area comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Concession Area, the City may not prohibit the Concession Area from obtaining a CASp inspection of the Concession Area for the occupancy or potential occupancy of the Concessionaire if requested by the Concessionaire. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection. The parties mutually agree that Concessionaire shall be responsible for the payment of any fees for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Concession Area.
- 19.2** Concessionaire shall be solely and fully responsible for complying with the ADA in connection with: (i) the Concession Area or any portion thereof and its operations thereon, and the Concessionaire's Equipment and the Concession Improvements; (ii) removing physical barriers from the Concession Area; (iii) providing auxiliary aids and services for use of the Concession Area, Concession Improvements and Concessionaire's Equipment, where necessary or required, and; (iv) modifying its policies, practices and procedures to comply with the ADA. Concessionaire shall develop a work plan to correct or avoid any violations or non-compliance with the ADA. Concessionaire shall deliver to the City, upon City's request, a copy of each such report and work plan. City's approval of or acceptance of any aspect of Concessionaire's activities under this Agreement shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA. Concessionaire agrees to indemnify, defend and hold the

City harmless from and against any and all costs incurred by City with respect to Concessionaire's failure to comply with the ADA.

Nothing herein shall relieve Concessionaire from the obligation to seek and obtain City's consent prior to commencing any construction, alteration or renovation pursuant to **Section 22** hereof.

## **20 SERVICES AND UTILITIES**

### **20.1 City's Obligation**

Concessionaire has inspected and accepts the utility hookups in the Concession Area. Any electricity costs for the Concession Operations shall be deemed paid to the City as part of the Concession Fee, and the City shall not assess any additional electricity charges to Concessionaire for its Concession Operations.

### **20.2 Concessionaire's Obligation**

During the Term, Concessionaire shall pay or cause to be paid at its sole cost and expense, within thirty (30) days after Concessionaire receives an invoice therefor, and protect, defend, indemnify and hold harmless City and the property of City, including the Concession Area, the Terminals and the Airport, from and against any charge for the installation, connection, maintenance and furnishing of all necessary utility services to the Concession Area which are not expressly supplied by City. Concessionaire shall comply with all City, county, state or federal government-mandated energy conservation programs in fulfilling its obligations hereunder.

**20.2.1** Concessionaire agrees that it shall take reasonable steps and any such other action, which it deems necessary to protect Concessionaire's Equipment from any damage that may be caused to such equipment in the event of any deficiency, impairment and/or interruption of utility services. As more fully set forth in **Section 10**, Concessionaire waives any and all claims and/or causes of action against City for any such damages.

## **21 MAINTENANCE AND REPAIRS**

### **21.1 Limitation on City's Liability**

Except as otherwise provided or permitted by Law, City shall not be liable for, and Concessionaire waives all claims or causes of action for, any injury or damage resulting in whole or in part, directly or indirectly, from, nor shall the Concession Fee or any other fee or charge reserved herein be abated by reason of, the installation of any City equipment, or the use or interruption of use of the Concession Operations in connection with the furnishing of any of the services to the Concession Area and/or the Terminals or by the making of necessary repairs or improvements to the Concession Area and/or the Terminals.

## **21.2 Concessionaire's Obligations**

Concessionaire shall be obligated at all times throughout the term of this Agreement, without cost to City, to maintain the Concession Area, Concession Improvements and Concessionaire's Equipment in Like New good appearance, repair and safe condition, except for ordinary wear and tear, and in a condition otherwise satisfactory to Director.

**21.2.1** Concessionaire shall maintain all Improvements on the Concession Area whether installed by Concessionaire or City as it relates to the Concessionaire's Equipment only. Concessionaire shall be responsible, also without cost to City, for the repainting of the interior of any space occupied hereunder, replacing of light fixtures (including bulbs, tubes, ballasts and transformers), miscellaneous hardware, window glass and floor coverings. All maintenance shall be performed diligently and shall be of a quality equal to or better than the original work in materials and workmanship, and all work shall be subject to the prior written approval of Director. When used in this Agreement, the term "maintenance" shall include all repairs, alteration, maintenance and/or removals deemed necessary by Director.

**21.2.2** The Director shall be the sole judge of the quality of the repairs or maintenance or custodial services required of Concessionaire under this Agreement. City's employees and agents may enter upon the Concession Area to determine if maintenance satisfactory to Director is being performed. If Concessionaire fails to perform the maintenance or the maintenance is not being performed in a manner satisfactory to Director, Director will notify Concessionaire in writing. If the maintenance is not so performed by Concessionaire within fifteen (15) calendar days after receipt of written notice, City shall have the right (but not the obligation) to enter upon the Concession Area and perform the necessary maintenance and, upon receipt of the notice of maintenance cost, Concessionaire agrees to promptly reimburse City for the maintenance cost incurred, plus an additional amount equal to ten percent (10%) thereof for administrative overhead. The demand for any payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of Concessionaire.

**21.2.3** Concessionaire shall arrange at Concessionaire's sole cost and expense for the adequate sanitary and safe handling of all trash and other refuse resulting from Concessionaire's operations. Concessionaire shall provide and use suitable covered fireproof receptacles for all trash and other refuse generated in connection with the Concession Operations in locations specified by Director. Piling of refuse or other similar items in view of a public area is prohibited.

## **22 ALTERATIONS AND IMPROVEMENTS**

### **22.1 Concessionaire's Improvements**

**22.1.1** Concessionaire agrees to install the Concession Improvements and Concessionaire's Equipment in the Concession Area at its sole cost and expense without any reimbursement from City in accordance with the provisions of the Agreement.

**22.1.2** Concessionaire shall be solely responsible for the proper installation of the Concession Improvements and Concessionaire's Equipment, and shall be liable for any damage or loss to any portion of the Terminals which results from the installation or use of the Concession Improvements or any work related thereto. If Concessionaire causes the disturbance or damage of any asbestos and asbestos-containing materials, Concessionaire shall be solely responsible for the costs of remedying the disturbance or damage including, without limitation, the removal of any asbestos and asbestos-containing materials.

**22.1.3** Asbestos Notification for Property Constructed Before 1979. Concessionaire acknowledges that City has advised Concessionaire that the Concession Area contains or, because of its age, is likely to contain asbestos-containing materials (ACMs). If Concessionaire undertakes any alterations, additions, or improvements to the Concession Area, as permitted by this Section 22, Concessionaire shall, in addition to complying with the requirements of this Section 22, undertake the alterations, additions, or improvements in a manner that avoids disturbing any ACMs present in the Concession Area. If ACMs are likely to be disturbed in the course of such work, Concessionaire shall encapsulate or remove the ACMs in accordance with an approved asbestos-removal plan and otherwise in accordance with all applicable Environmental Laws, including giving all notices required by California Health and Safety Code §§25915-25919.7.

### **22.2 Schedule**

Concessionaire shall comply with the schedule attached as **Exhibit D** for the installation of the Concession Improvements. In the event that Concessionaire has not completed installation of the Concession Improvements by the Commencement Date, Concessionaire will be assessed downtime charges in accordance with **Section 4.7** for each calendar day after the Commencement Date that Concessionaire's Improvements and Concessionaire's Equipment are not operational.

### **22.3 Approval of Plans and Specifications**

**22.3.1** Concessionaire shall not construct any Concession Improvements, remove any asbestos or asbestos-containing materials from the Concession Area, or make any subsequent alterations or additions to the Concession Improvements, without the prior written approval of the Director. Full and complete plans and specifications for all work, facilities and Concession Improvements, and the time required to complete same, shall be submitted to and receive the written approval of Director before work or construction is commenced. First-class standards of design and construction will be required in connection with all such work, facilities and improvements. All construction must conform with the plans and specifications as approved by Director and the established architectural design scheme for the Airport, and must be subject to City's Department of Public Works "Planning Guide." All of Concessionaire's construction, improvements and/or alterations shall conform with the Airport's "Tenant Improvement Design Criteria", as available at <https://www.flysanjose.com/standards-and-guidelines/tenant-guidelines>.

**22.3.2** Concessionaire may enter the Concession Area to conduct pre-construction planning and preparation work that does not interfere with the operations of the then current concessionaires, upon the Director's prior written approval.

**22.3.3** Eight (8) copies of plans for all improvements or subsequent changes or alterations shall be given to Director for review prior to commencement of construction. Director, after giving his final approval, shall return to Concessionaire one (1) approved copy for its records.

**22.3.4** Upon completion of all work, Concessionaire shall provide to Director two (2) completed sets of as-built drawings and provide a CAD disk if Concessionaire produces drawings on disk, and a breakdown which shows all costs incurred for such works. Concessionaire agrees that, upon the request of Director, Concessionaire will inspect the Concession Area jointly with Director to verify the "as-built" drawings.

## **22.4 General Approvals**

**22.4.1** All Concession Improvements, Concessionaire's Equipment and fixtures, including the plans and specifications therefor, constructed or installed by Concessionaire, its agents or contractors, shall conform in all respects to applicable statutes, ordinances, building codes and rules and regulations.

**22.4.2** Concessionaire shall obtain at its sole cost and expense all governmental reviews and approvals (including any approvals of the Director or any other City official), licenses and permits which are, or may be, required and are necessary to install the Concession Improvements and/or Concessionaire's Equipment and to operate the Concession Operations, including, but not limited to, all plans and specifications approvals, site development reviews,

development permits and building permits. The costs and expenses which are payable by Concessionaire to secure these reviews and approvals may include City engineering and inspection fees ("E&I Fees"), and a check in the amount of ten percent (10%) of the total estimated cost must be deposited with City with submission of construction plans, as a deposit amount toward payment of such E&I Fees. Any unused E&I Fees in excess of the amount deposited shall be refunded to Concessionaire. Any amount incurred by City in excess of the deposit amount will be invoiced to and payable by Concessionaire in accordance with **Section 5**. Concessionaire shall comply with all conditions, restrictions or contingencies imposed upon, or attached to, the governmental approvals, licenses and permits described herein.

**22.4.3** All work shall be performed only by competent contractors duly licensed under the laws of the State of California and shall be performed pursuant to written contracts with such contractors.

**22.4.4** The Director's approval shall not be deemed to include the approval of any other City department or governmental or public entity, which Concessionaire may be required to obtain.

## **22.5 City's Right**

City shall have the right to renovate or remodel any portion of the Terminals (including the Terminal A Addition), including, but not limited to, any portion of the Concession Area. The provisions of **Section 4.5** shall govern any relocation of Concessionaire's operation due to City's renovation or remodeling of the Terminals. If possible, City shall exercise such right with a minimum amount of inconvenience to Concessionaire, and Concessionaire shall not be entitled to any payment or credit from City if City exercised such right in accordance with this Section.

## **22.6 Removal**

**22.6.1** During the Term, Concessionaire shall not remove the Concession Improvements and/or Concessionaire's Equipment, in whole or in part, without the Director's prior written consent. The Director may exercise his absolute discretion and condition such consent upon the obligation of Concessionaire to replace the same with other improvements or equipment specified in such consent.

**22.6.2** Upon installation, the City shall have title to the Concession Improvements, provided that City shall have the right in the Director's sole discretion to require Concessionaire to remove any or all Concession Improvements upon termination or expiration of this Agreement. The Concessionaire's Equipment shall remain the property of Concessionaire and shall be removed from the Airport upon termination or expiration of this Agreement

unless Concessionaire obtains Director's written consent to leave Concessionaire's Equipment at the Airport. Concessionaire shall ascertain from the Director, at least sixty (60) days prior to the Expiration Date, or as soon as possible if this Agreement is terminated earlier, whether City will require Concessionaire to remove any Concession Improvements or, if Concessionaire desires to leave Concessionaire's Equipment at the Airport, whether the City will accept such Concessionaire's Equipment.

- 22.6.3** Any Concession Improvements or Concessionaire's Equipment left by Concessionaire at the Airport shall be free and clear of any liens and Concessionaire shall execute any documents conveying title to City, at City's request. Any removal shall be at Concessionaire's sole cost and expense. In the event of an early termination of this Agreement by City for cause, the Director shall give notice of removal of Concession Improvements, if removal is required by City. Removal shall occur within thirty (30) days following Concessionaire's receipt of such notice, but in no event later than the Expiration Date or earlier termination date.
- 22.6.4** In the event Concessionaire fails to remove or expresses an intention not to remove any Concession Improvements and/or Concessionaire's Equipment required to be removed by the Director pursuant to this Section, City may enter upon the Concession Area and remove such Concession Improvements or Concessionaire's Equipment at the sole cost and expense of Concessionaire. Concessionaire agrees to promptly reimburse City for all costs and expenses of removal, plus ten percent (10%) thereof for administrative overhead or such percentage as approved and established from time to time by the City Council. The obligation to reimburse City for such expenditures shall survive the termination of this Agreement. Any receipt showing payment by City of expenditures associated with the removal of Concession Improvements and/or Concessionaire's Equipment shall be prima facie evidence that the amount of such payment was necessary and reasonable and made by City on Concessionaire's behalf.
- 22.6.5** Concessionaire shall repair at its sole cost and expense any and all damage to the Concession Area, the Terminals or any part of the Airport occasioned by the removal of the Concession Improvements and/or Concessionaire's Equipment, or Concessionaire's property from the Concession Area or any other area of the Airport, and shall leave all of the remaining improvements in good and clean condition and repair, ordinary wear and tear excepted, and shall appropriately "cap off" all utility connections. City may also require Concessionaire to remove any and all special equipment and any installations which are unique to Concessionaire, and Concessionaire shall comply with such requirement.

## **22.7 Liens**



Concessionaire shall keep the Concession Area, the Terminals and the Airport free of any liens arising out of the work performed, materials furnished or obligations incurred by Concessionaire in the performance of any construction or installation of Concession Improvements or Concessionaire's Equipment. Concessionaire shall notify City at least ten (10) business days prior to the commencement of any work to be performed or materials to be furnished on the Concession Area which could give rise to any such lien, and City shall have the right to post and keep on the Concession Area any notices that may be required by law or which City may deem proper for the protection of City, the Terminals or the Concession Area from such liens.

## **22.8 Payment Bonds - Construction**

**22.8.1** Prior to the commencement of any construction, alteration or repair hereunder which exceeds Five Thousand Dollars (\$5,000) in cost, Concessionaire shall furnish to City and file with the City Clerk, at no cost to City, a payment bond. In addition to the specific requirements set forth below, each bond shall be issued by a surety, be in a sum of not less than one hundred percent (100%) of the total cost of the contract or contracts for the construction, alteration, demolition or repair of the Concession Area, Concession Improvements and/or Concessionaire's Equipment, be satisfactory to and approved by City's Risk Manager and Director, and be approved as to form by the City Attorney for City. Immediately upon completion of any improvement, Concessionaire shall record in the Official Records of the Santa Clara County Recorder a notice of completion complying with the requirement of California Civil Code Section 9204.

**22.8.2 Payment Bond.** The payment bond shall guarantee the prompt payment to all persons named in California Civil Code Section 9100, and of amounts due under the Unemployment Insurance Code, amounts required to be deducted, withheld or paid over to the Employment Development Department from the wage of employees of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code and reasonable attorneys' fees. The payment bond shall name Concessionaire as owner, obligee or principal and Concessionaire's contractor or contractors as principals.

## **23 DEFAULT BY CONCESSIONAIRE**

**Events of Default.** An Event of Default shall occur under this Agreement upon the occurrence of any of the following events (severally "Event of Default" and collectively "Events of Default"):

**23.1** Concessionaire shall have failed to pay when due any fee, charge or obligation of Concessionaire requiring the payment of money under the terms of this Agreement; or

- 23.2** Concessionaire shall have failed to maintain any insurance required under **Section 7**; or
- 23.3** Concessionaire shall have failed to perform any term, covenant, or condition of this Agreement to be performed by Concessionaire, except those referred to in **Subsections 23.1, 23.2 or 23.11** of this Section, and Concessionaire shall have failed to cure same within ten (10) days after written notice from City; provided, however, that if the nature of Concessionaire's default is such that more than ten (10) days are reasonably required for its cure, then Concessionaire shall not be deemed to be in default if Concessionaire commences such cure within said ten (10) day period and thereafter diligently prosecutes such cure to completion and to the satisfaction of Director; or
- 23.4** Any representation or warranty made by Concessionaire hereunder shall have been false or misleading in any material respect as of the date on which such representation or warranty was made; or
- 23.5** Concessionaire shall have made a general assignment of its assets for the benefit of its creditors; or
- 23.6** Concessionaire shall have assigned or otherwise transferred its interest in this Agreement in violation of the provisions contained in this Agreement whether voluntarily or by operation of law; or
- 23.7** A court shall have made or entered any decree or order: (i) adjudging Concessionaire to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of Concessionaire or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof; (iii) appointing a receiver, trustee or assignee of Concessionaire in bankruptcy or insolvency or for its property; (iv) directing the winding up or liquidation of Concessionaire and such decree or order shall have continued for a period of sixty (60) days; or (v) Concessionaire shall have voluntarily submitted to or filed a petition seeking any such decree or order; or
- 23.8** The sequestration or attachment of or execution or other levy on Concessionaire's interest in this Agreement or the Concessionaire's Equipment or any improvements located thereon shall have occurred and Concessionaire shall have failed to obtain a return or release of such property within thirty (30) days thereafter, or prior to sale pursuant to such levy, whichever first occurs; or
- 23.9** The occurrence of any act or omission on the part of Concessionaire which operates to suspend, revoke or terminate any certificate, permit, franchise, approval, authorization or power necessary for Concessionaire to lawfully conduct the operations which Concessionaire is required or permitted to conduct on the Concession Area or on the Airport; or

- 23.10** Concessionaire shall fail to install the Concessionaire's Equipment and Concession Improvements in compliance with the Schedule for Installation attached hereto; or
- 23.11** The Concession Operations shall be repeatedly unavailable for use by the public, as more specifically provided in **Section 4.7**; or
- 23.12** Any lien shall be filed against the Concession Area and/or Concessionaire's Equipment because of any act or omission of Concessionaire, and shall not be discharged or contested by Concessionaire in good faith by proper legal proceedings within twenty (20) calendar days after receipt of notice thereof by City.

## **24 CITY'S REMEDIES**

### **24.1 Termination**

Upon any default, City shall have the right at City's election to terminate this Agreement by giving Concessionaire written notice of termination in which event this Agreement shall terminate on the date set forth for termination in such notice. Any termination under this paragraph shall not relieve Concessionaire from the payment of any sums then due to City or from any claim for damages or fees previously accrued or then accruing against Concessionaire. In no event shall City have any obligation to Concessionaire, financial or otherwise, as a result of the termination of this Agreement following a default.

### **24.2 Damages**

In the event City elects to terminate this Agreement, Concessionaire shall pay to City all amounts owing at the time of termination on account of Concessionaire's breach of any term, covenant or condition of this Agreement including, but not limited to, unpaid fees plus interest thereon on all such amounts from the date due until paid at the rate of the lesser of one percent (1%) per month or the maximum rate then allowed by law; and any other amount to compensate City fully for all detriment proximately caused by Concessionaire's failure to perform its obligations hereunder or which in the ordinary course would likely result therefrom.

### **24.3 City's Right to Cure**

Upon any default of Concessionaire, City may, at City's election, after first giving Concessionaire written notice, cure any default in the payment of money or performance of any act required under this Agreement, but without obligation of City to make such payment or perform such act and without waiving any rights of City or relieving Concessionaire from any obligation under this Agreement. All amounts incurred by City, plus ten percent (10%) thereof for administrative overhead as such percentage is approved, established or modified from time to time by the City Council, and all penalties, interest and costs in connection therewith shall be due and payable by Concessionaire to City on demand

together with interest thereon at the rate of one percent (1%) per month from the date paid by City, plus any collection costs. The receipt for any payment by City on behalf of Concessionaire shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of Concessionaire.

## **25 NO WAIVER BY CITY**

The waiver by City of any breach of any term, condition or provision herein contained shall not be deemed to be a waiver of any subsequent breach of such term, covenant or condition. The consent or approval by City to any act of Concessionaire requiring City's approval shall not be deemed to waive or render unnecessary the need for City's consent or approval to or of any subsequent similar act of Concessionaire. The subsequent acceptance of any fees or charges hereunder by City shall not be deemed to be a waiver of any preceding breach by Concessionaire of any term, covenant or condition of this Agreement other than the failure of Concessionaire to pay the particular fee or charge so accepted, regardless of City's knowledge of such preceding breach at the time of the accepting of such fee or charge. No waiver, consent or approval by City shall be effective unless made by a duly authorized representative of City.

## **26 ACCEPTANCE OF CONCESSION AREA**

**26.1** Concessionaire has carefully examined the Concession Area and is satisfied with the current condition, subject to any improvements to be constructed by Concessionaire in accordance with **Section 22**. Concessionaire acknowledges that no representation or warranty has been made by City concerning the nature, quality or suitability for Concessionaire's business of the Concession Area or the Airport, or the existence of any Hazardous Materials in, on, upon, under or about the Concession Area or the Airport, and Concessionaire acknowledges that it shall have no rights against City by reason of such matters or any claimed deficiencies therein. Concessionaire accepts the Concession Area "as is," and as being in good, safe and sanitary condition satisfactory for Concessionaire's use.

**26.2** Concessionaire acknowledges that City has made no representations or warranties with respect to the Concession Area, the Airport or this Agreement, except as expressly set forth in this Agreement, and no rights, easements or licenses, implied or otherwise, are or shall be acquired by Concessionaire unless expressly set forth in this Agreement.

## **27 RIGHT TO ENTER**

City reserves the right to enter the Concession Area at any and all times for any purpose and the right to inspect the Concession Improvements and Concessionaire's Equipment.

## **28 REPRESENTATIONS AND WARRANTIES**

Concessionaire represents, warrants and covenants with respect to this Agreement and any

amendment hereto as follows:

- 28.1** If Concessionaire is a partnership or joint venture, at least two (2) partners or each of the joint ventures, as the case may be, shall execute this Agreement on behalf of Concessionaire.
- 28.2** That there are no unresolved claims or disputes between Concessionaire and City.
- 28.3** That Concessionaire shall furnish true and accurate financial statements, records, reports, resolutions, certifications and other information as may be requested of Concessionaire by City from time to time during the term of this Agreement.
- 28.4** That Concessionaire is in compliance with all local, state and federal laws related to the Concession Operations.
- 28.5** That Concessionaire possesses the necessary experience and qualifications to conduct the Concession Operations at the Airport.
- 28.6** That all information provided to City in connection with this Agreement is true and correct in all material respects.

## **29 HAZARDOUS MATERIALS - PROHIBITIONS AND RESTRICTIONS**

Concessionaire shall at all times comply with the provisions of this Agreement, including those provisions of **Exhibit F**, regarding Hazardous Materials.

## **30 MISCELLANEOUS**

### **30.1 Concessionaire not an Agent of City**

Concessionaire is not an agent, contractor or employee of City and nothing in this Agreement nor any action of Concessionaire shall be construed in any way to constitute Concessionaire as an agent, contractor or employee of City for any purpose.

### **30.2 Consent**

Unless expressly stated otherwise, whenever in this Agreement the approval or consent of a party is required, such approval or consent must be in advance, shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.

### **30.3 Controlling Law**

Except as federal law may apply, the parties agree that this Agreement shall be governed and construed by and according to the laws of the State of California.

### **30.4 Entire Agreement**

This instrument contains all of the terms and conditions entered into and made by and between the parties and may not be modified orally, or in any manner, other than by an agreement in writing signed by all the parties hereto or their respective successors-in-interest.

### **30.5 Exhibits and Addenda**

All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment thereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as if set forth fully herein.

### **30.6 Force Majeure**

If performance by a party of any portion of this Agreement is made impossible by any prevention, delay, or stoppage caused by: strikes; trade embargoes or sanctions; lockouts; labor disputes; acts of God; inability to obtain services, labor, or materials or reasonable substitutes for those items; government actions or inactions; civil commotions; terrorism; riots; war; enemy or hostile governmental action; judicial orders; fire or other casualty; delay, failure, or interruption of any utility service; or other causes beyond the reasonable control of the party obligated to perform, any such performance made impossible for a period equal to the period of that prevention, delay or stoppage shall not constitute a default under this Agreement. However, Concessionaire's obligation to pay Concession Fees or any other fees and charges payable pursuant to this Agreement is not excused by this Section.

### **30.7 Headings**

The headings of the several paragraphs and sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

### **30.8 Hold Harmless**

Concessionaire shall defend, indemnify and hold City harmless from and against claims for any broker's commissions, finder's fee or other commission or fee relating to the leasing of the Concession Area by anyone claiming by or through Concessionaire.

### **30.9 Joint and Several**

If there be more than one Concessionaire designated in or signatory to this Agreement, the obligations hereunder imposed upon Concessionaire shall be joint and several; and the term Concessionaire as used herein shall refer to each

and every of said signatory parties, severally as well as jointly.

### **30.10 Material Considerations**

Each and every term, condition, covenant and provision of this Agreement is and shall be deemed to be a material part of the consideration for City's entry into this Agreement, and any breach hereof by Concessionaire shall be deemed to be a material breach. Each term and provision of this Agreement to be performed by Concessionaire shall be construed to be both a covenant and a condition.

### **30.11 Modification of Agreement**

This Agreement shall not be modified, unless the parties first agree to and approve of such modification in writing.

### **30.12 No Assumption**

The review, approval, inspection, examination or consent of City of or to any item to be reviewed, approved, inspected, examined or consented to by City shall not constitute the assumption of any responsibility by City for either accuracy or sufficiency of any item or the quality or suitability of such item for its intended use, but rather for the sole purpose of protecting City's interests. No third parties, including Concessionaire or persons claiming under Concessionaire, shall have any rights hereunder resulting therefrom or otherwise.

### **30.13 Number and Gender**

Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and words of any gender used herein shall include each other gender, where appropriate.

### **30.14 Severability**

If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the remaining provisions of this Agreement shall remain in effect.

### **30.15 Successors and Assigns**

The provisions of this Agreement shall, subject to the provisions of this Agreement concerning transfer, apply to and bind the successors and assigns of the parties hereto.

### **30.16 Time of Essence**

Time is of the essence of this Agreement and each of its provisions, and failure to comply with this provision shall be a material breach of this Agreement.

### **30.17 Venue**

In the event that suit shall be brought by either party hereunder, the parties agree that venue shall be exclusively vested in the state courts of California in the County of Santa Clara or if federal jurisdiction is appropriate, exclusively in the United States District Court in the Northern District of California, San José, California.

### **30.18 Concessionaire's Proposal**

Concessionaire's Proposal, attached to this Agreement as **Exhibit I**, is hereby incorporated into this Agreement by reference. In the event of any conflict between this Agreement (or any portion thereof) and Concessionaire's Proposal, the terms of this Agreement shall prevail and apply.

### **30.19 Counterparts**

The Agreement may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

### **30.20 Use of electronic signatures**

Unless otherwise prohibited by law or City policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the City.

## **31 NOTICES**

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other, shall be in writing and shall be addressed as follows:

If to City, the same shall be addressed to:

Director of Aviation  
Norman Y. Mineta San José International Airport  
1701 Airport Blvd., Suite B-1130  
San José, California 95110  
Facsimile No. 408-441-4588

or to such other places as City may designate in writing.



If to Concessionaire, the same shall be addressed to the address for notices to Concessionaire specified in the Summary, or such other place as Director or Concessionaire, respectively, may notify the other in writing. All notices, including but not limited to termination notices, shall be sufficiently given and served upon the other party if sent by first-class U.S. mail, postage prepaid, or by facsimile to the facsimile numbers indicated herein for either party.

## **32 TITLE VI CLAUSES FOR COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS**

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

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Acts and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such

contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

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

### 33 TITLE VI LIST OF PERTINENT NONDISCRIMINATION AUTHORITIES

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

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the

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

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

### **34 GENERAL CIVIL RIGHTS PROVISIONS**

The (tenant/concessionaire/lessee) agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the (tenant/concessionaire/lessee) transfers its obligation to another, the transferee is obligated in the same manner as the (tenant/concessionaire/lessor).

This provision obligates the (tenant/concessionaire/lessee) for the period during which the property is owned, used or possessed by the (tenant/concessionaire/lessee) and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

### **35 TITLE VI CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM**

- A. The Concessionaire for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to this Agreement, in the event of breach of any of the above Nondiscrimination covenants, City will have the right to terminate the Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.

### **36 TITLE VI CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM**

- A. The Concessionaire for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Concessionaire will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.
- B. With respect to this Agreement, in the event of breach of any of the above nondiscrimination covenants, City will have the right to terminate the Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued.

### **37 DISADVANTAGED BUSINESS ENTERPRISES**

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

**Contract Assurance (49 CFR Part 26 §26.13)** - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**Prompt Payment (49 CFR Part 26 §26.29)** - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from

City. The prime contractor agrees further to return retainage payments to each subcontractor within ten (10) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

### **38 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The Concessionaire has full responsibility to monitor compliance to the referenced statute or regulation. The Concessionaire must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

### **39 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

### **40 LABOR PEACE ASSURANCES AND EMPLOYEE WORK ENVIRONMENT REPORT**

Pursuant to San José Municipal Code Chapter 25.11, "**Labor Peace Assurances and Employee Work Environment Report**" are attached hereto as **EXHIBIT J**. Concessionaire shall require each of its Subconcessionaires to provide it with assurances as to how the Subconcessionaire will prevent service disruptions at the Airport due to labor disputes.

### **41 ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY**

Concessionaire shall perform its obligations under this Agreement in conformance with City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy." Concessionaire shall procure environmentally preferable products and services that meet environmental product standards established by governmental or other widely recognized authorities. Examples include the Green Seal 37 standard for janitorial products ([www.greenseal.org](http://www.greenseal.org)), EPEAT for IT equipment, and GreenGuard for furniture.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

**“CITY”**

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation  
of the State of California

Jon Calegari  
\_\_\_\_\_  
JON CALEGARI  
Deputy City Attorney

[Signature]  
\_\_\_\_\_  
JOHN AITKEN A.A.E.  
Director of Aviation

Date: February 18, 2022

**“CONCESSIONAIRE”**

AMS-SJC JV, a Joint Venture

AIRPORT MANAGEMENT SERVICES, LLC  
(dba Hudson Group), a Delaware limited  
liability company authorized to do business in  
the State of California \_\_\_\_\_

Signature  
[Signature]  
\_\_\_\_\_  
Print Name

Brian J. Quinn Deputy CEO  
\_\_\_\_\_  
Title

January 11, 2022

\_\_\_\_\_  
Date

J.R. LESTER & ASSOCIATES, LTD,  
a California corporation

By: \_\_\_\_\_

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

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

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

**"CITY"**

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation  
of the State of California

\_\_\_\_\_  
JON CALEGARI  
Deputy City Attorney

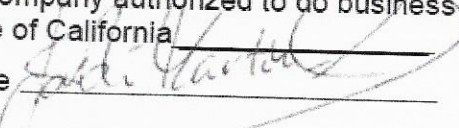
\_\_\_\_\_  
JOHN AITKEN A.A.E.  
Director of Aviation

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

**"CONCESSIONAIRE"**

AMS-SJC JV, a Joint Venture

AIRPORT MANAGEMENT SERVICES, LLC  
(dba Hudson Group), a Delaware limited  
liability company authorized to do business in  
the State of California

Signature 

Jordi Martin-Consuegra  
\_\_\_\_\_  
Print Name

CEO  
\_\_\_\_\_  
Title

11/08/2021  
\_\_\_\_\_  
Date

J.R. LESTER & ASSOCIATES, LTD,  
a California corporation

By: 

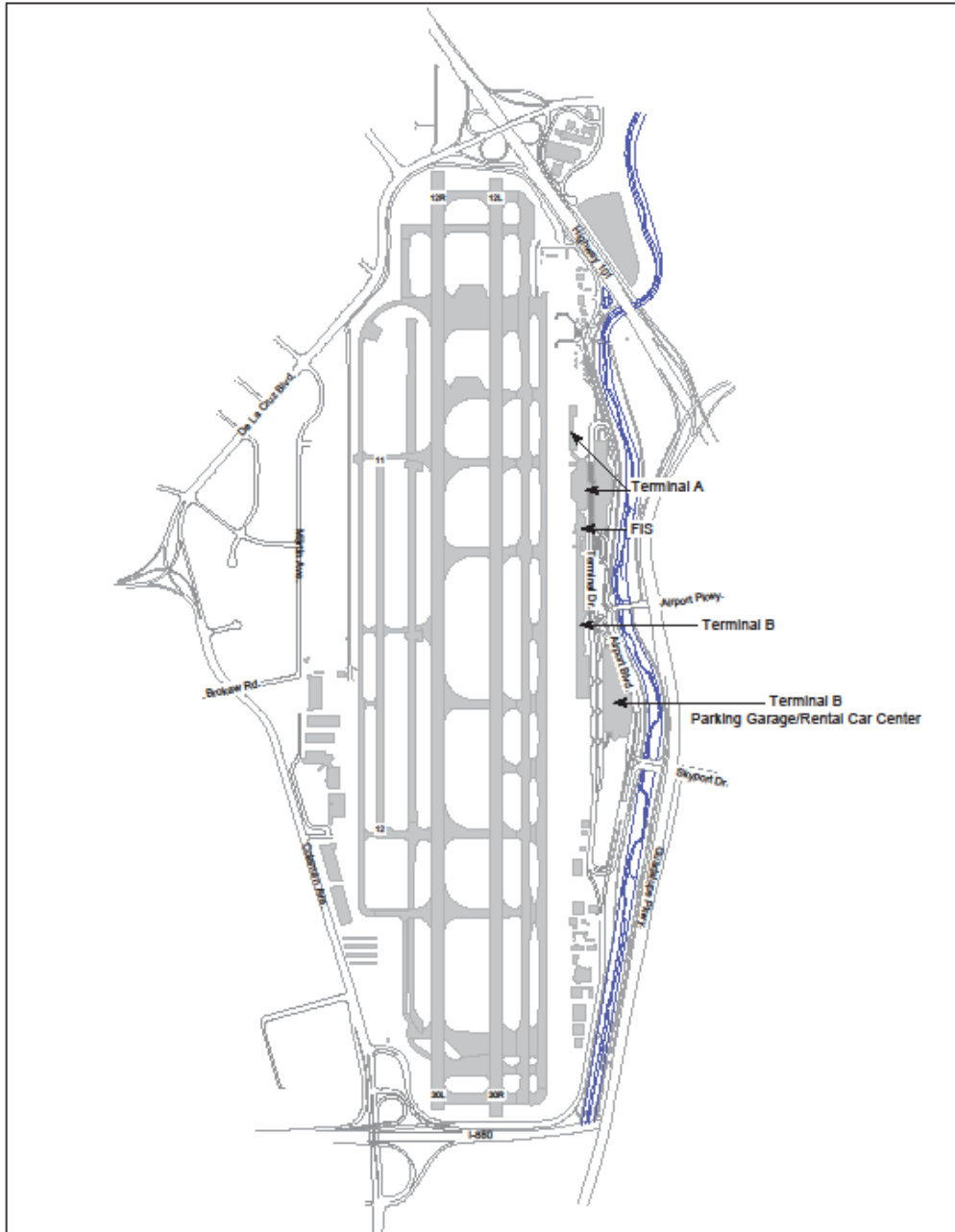
Name: NJAMBI G MUNGAI



Title: PRESIDENT/CEO

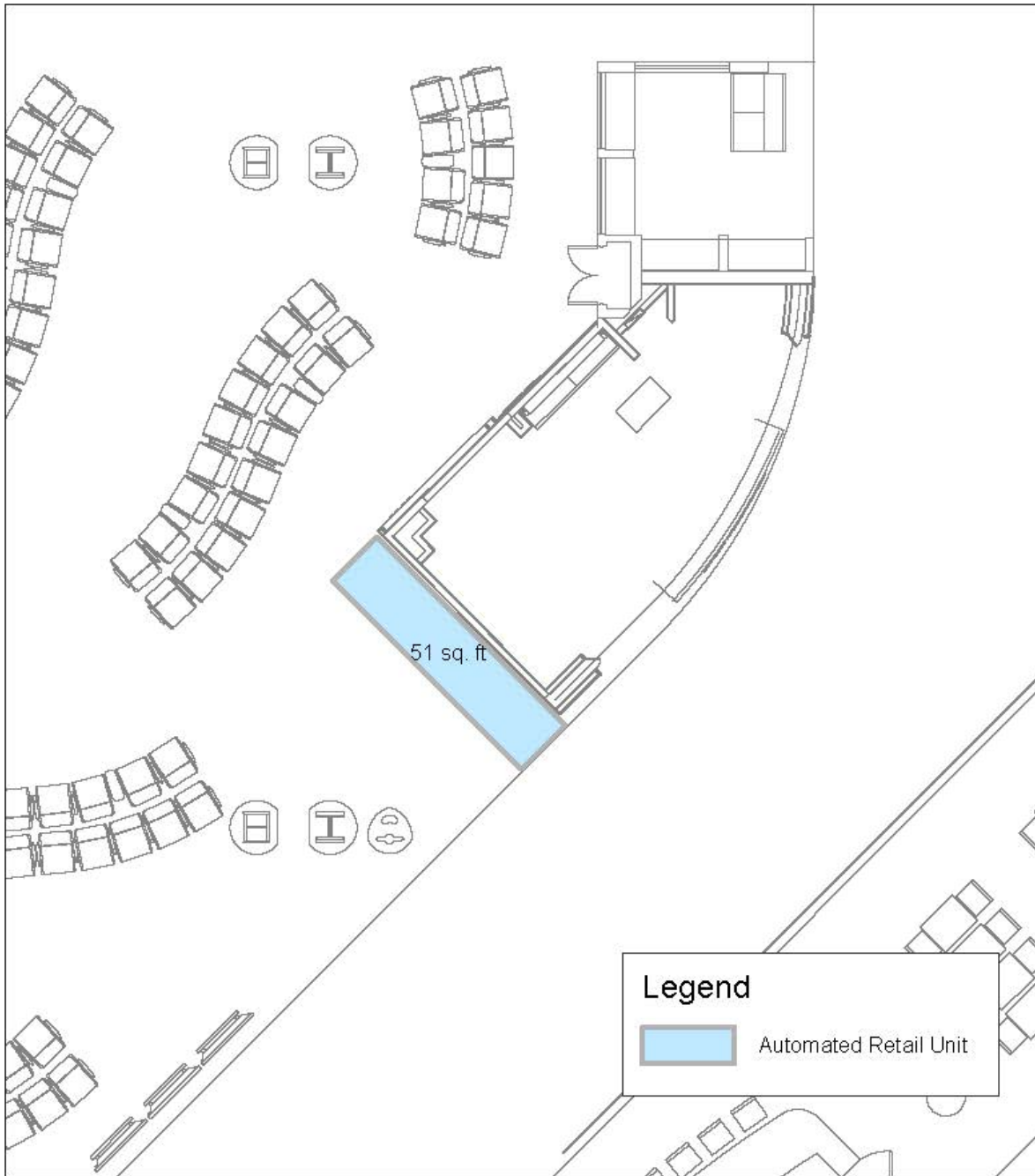
Date: 11/12/2021




## EXHIBIT A CONCESSION AREA

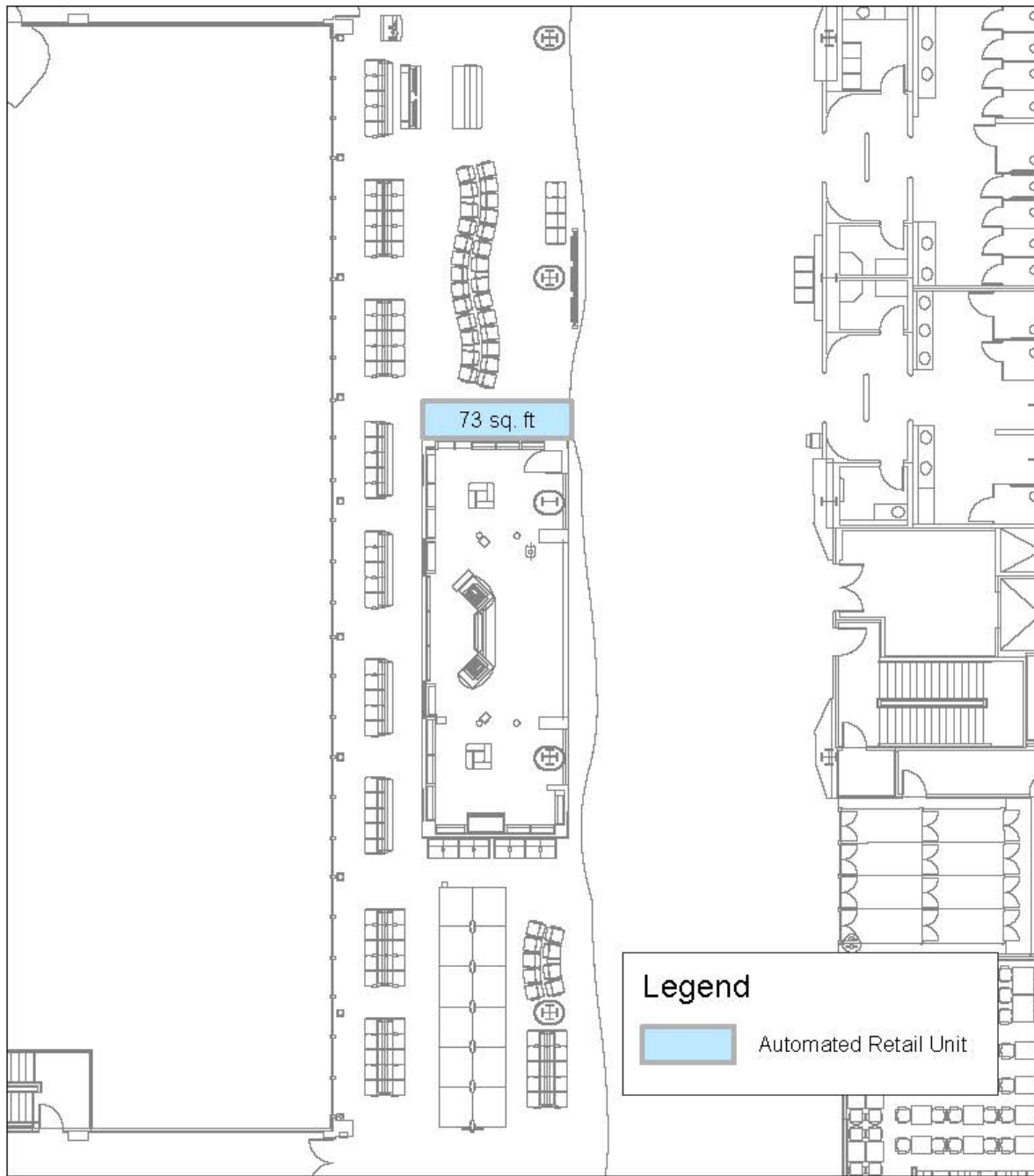



 Date: 9/11/2012	Airport Campus Map	<small>MORGAN Y. BURETA</small> <b>SAN JOSE</b> INTERNATIONAL AIRPORT 
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<p>●</p> <p>10/7/2021</p>	<p>Exhibit A-2 Terminal A Floor 2</p>	<p>NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT</p> 
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<p>● 10/7/2021</p>	<p>Exhibit A-3 Terminal B Floor 2</p>	<p>NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT </p>
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## **EXHIBIT B CONCESSION IMPROVEMENTS**

Concessionaire may be required to alter electrical outlets in order to power the Vending Machines along with any other upgrades to the locations in Exhibit A where Concessionaire will be installing retail Vending Machines.

**EXHIBIT C**  
**CONCESSIONAIRE'S EQUIPMENT**

Two Vending Machines to be placed in the locations set forth in Exhibit A.

## **EXHIBIT D SCHEDULE FOR INSTALLATION**

Concessionaire shall install the Automated Retail Vending Machines in the Concession Area within ninety (90) days of the Effective Date of this Agreement.

## EXHIBIT E INSURANCE

### CONCESSIONAIRE'S REQUIRED INSURANCE COVERAGE

Concessionaire shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Concessionaire's operation and use of the Airport. The cost of such insurance shall be borne by the Concessionaire.

#### **Minimum Limits of Insurance**

##### **A. Concessionaire shall maintain limits no less than:**

1. Commercial General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers Compensation limits as required by California Labor Code and Employer's Liability limits of \$1,000,000 per accident; coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, employees, agents and contractors; and
4. Property Insurance: Full replacement cost with no coinsurance penalty provision.

**B. Deductibles and Self-Insured Retentions** Any deductibles or self-insured retentions must be declared to and approved by the City's Risk Manager.

##### **C. Other Insurance Provisions**

The general liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of San José, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to: liability arising out of activities performed by, or on behalf of, Concessionaire, premises owned,

occupied or used by the Concessionaire, or automobiles owned, leased, hired or borrowed by Concessionaire. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

2. The Concessionaire's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Concessionaire's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
4. Coverage shall state that the Concessionaire's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, agents and contractors.

#### All coverage

1. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City, except that ten (10) days' written notice shall in the event of cancellation for non-payment of premium.

#### **D. Workers' Compensation and Employers' Liability**

Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors.

**Acceptability of Insurers** Insurance is to be placed with insurers acceptable to the City's Risk Manager.

**Verification of Coverage** Concessionaire shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this



agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Proof of insurance shall be emailed in pdf format to Riskmgmt@sanjoseca.gov:

CERTIFICATE HOLDER  
City of San José – Finance Department  
Risk & Insurance  
200 East Santa Clara Street, 14<sup>th</sup> Floor  
San José, California 95113-1905

with a copy mailed to:

Airport Property Management  
Norman Y. Mineta San José International Airport  
1701 Airport Blvd., Suite B-1130  
San José, California 95110  
Fax No. (408) 441-4588

**Review of Coverage** These insurance requirements shall be subject to periodic review by City's Risk Manager. Should the Risk Manager require any change in any coverage such change shall be communicated in writing to Concessionaire and Concessionaire shall comply with the said change within thirty (30) days of the date of receipt of the notice.

## **EXHIBIT F HAZARDOUS MATERIALS**

Concessionaire shall be solely and fully responsible for notifying the appropriate public agencies of any Hazardous Material release which occurs on the Concession Area, or is caused by or results from the activities of Concessionaire, Concessionaire's officers, agents, employees, contractors, permittees or invitees on the Airport other than the Concession Area. Concessionaire shall immediately notify City of any Hazardous Material release which occurs on the Concession Area, regardless of whether the release was caused by or results from Concessionaire's activities or is in a quantity that would otherwise be reportable to a public agency, or which occurs on the Airport other than the Concession Area and is caused by or results from the activities of Concessionaire, Concessionaire's officers, agents, employees, contractors, permittees or invitees, regardless of whether the release is in a quantity that would otherwise be reportable to a public agency.

## **EXHIBIT G CONCESSIONAIRE'S RATES**

Concessionaire's Rates shall be reviewed and approved by the Director upon final selection of the brands and Products to be offered in the Automated Retail Vending Machines after the Effective Date.

## EXHIBIT H

### AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REQUIREMENTS

#### POLICY STATEMENT

The City of San José has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) Program in accordance with regulations of the U. S. Department of Transportation (DOT), 49 CFR Part 23. A copy of the ACDBE Program is available from the Office of Equality Assurance, 200 East Santa Clara Street, Fifth Floor, San José, CA 95113, 408-535-8455. The City receives federal financial assistance from the DOT, and as a condition of receiving this assistance, the City assures that it will comply with 49 CFR Part 23.

It is the policy of the City of San José to ensure that Disadvantaged Business Enterprises (ACDBEs), as defined in Part 23, have an equal opportunity to receive and participate in Airport Concessions. It is also our Policy to:

- Ensure nondiscrimination in the award and administration of Airport Concessions;
- Create a level playing field on which ACDBEs can compete fairly for Airport Concessions;
- Ensure that the ACDBE Program is narrowly tailored in accordance with applicable law;
- Ensure that only firms that fully meet 49 CFR Part 23 eligibility standards are permitted to participate as ACDBEs;
- Help remove barriers to the participation of ACDBEs in Airport Concessions; and
- Assist the development of firms that can compete successfully in the marketplace outside the ACDBE Program.

The City's Director of the Office of Equality Assurance has been delegated as the ACDBE Liaison Officer (ACDBELO). In that capacity, the Director is responsible for implementing all aspects of the ACDBE Program. Implementation of the ACDBE Program is accorded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with the Department of Transportation.

## DEFINITION OF TERMS

The terms used in the Program have the meanings defined in 49 CFR Section 23.3 and Section 26.5 and are as follows:

### Disadvantaged Business Enterprise

Means a for-profit small business concern that is:

- 1) At least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- 2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and
- 3) Whose personal net worth does not exceed \$1.32 million.

### Small Business Concern

In order to qualify as an ACDBE, a firm must qualify as a small business concern. As a general rule, the ACDBE regulations treat a firm as a small business concern eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years, do not exceed \$56.42 million.<sup>1</sup>

### Socially and Economically Disadvantaged Individual

Means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who meets one or more of the following conditions:

- Any individual determined to be a socially and economically disadvantaged individual on a case-by-case basis;
- Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
  - "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

- "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- Women;
- Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

### Personal Net Worth

Means the net value of the assets of an individual remaining after total liabilities are deducted.

An individual's personal net worth does not include:

- 1) The individual's ownership interest in an applicant or participating ACDBE firm; or
- 2) The individual's equity in his or her primary place of residence.

An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

The imposition of a personal net worth cap of \$1.32 million means that regardless of race, gender or size of their business, any individual whose personal net worth exceeds \$1.32 million is not considered economically disadvantaged and is not eligible for the ACDBE Program.

### A. NON-DISCRIMINATION

As a recipient of DOT financial assistance, the City will meet the non-discrimination requirements provided in Part 26, §26.7, with respect to the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by Part 23.

The City will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any concession agreement, management contract or other agreement covered by 49 CFR Part 23 on the basis of race, color, sex or national origin.

In administering its ACDBE Program, the City will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the ACDBE Program with respect to individuals of a particular race, color, sex, or national origin.

The City acknowledges these representations are also in accordance with obligations contained in its Civil Rights, ACDBE, and ACDBE Airport grant assurances.

### QUOTAS

The City will not use quotas in any way in the administration of its ACDBE Program.

## ACDBE LIAISON OFFICER (ACDBELO)

The City has designated the following individual as its ACDBELO.

Christopher Hickey  
Division Manager, Office of Equality Assurance  
City of San José  
200 East Santa Clara Street, 5th Floor  
San José, CA 95113  
Telephone: 408.535.8481  
Fax: 408.292.6270  
E-Mail: Christopher.Hickey@sanJoseca.gov

In this capacity, the Director is responsible for implementing all aspects of the ACDBE Program and ensuring that the City complies with all provisions of 49 CFR Part 23.

The DBELO is responsible for developing, implementing, and monitoring the ACDBE Program in coordination with other appropriate officials. Duties and responsibilities include the following:

- Gathers and reports statistical data and other information as required by FAA or DOT.
- Reviews third party contracts and purchase requisitions for compliance with this program.
- Works with all departments to set overall annual goals.
- Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
- Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
- Analyzes the City's progress toward attainment and identifies ways to improve progress.
- Participates in pre-bid meetings.
- Advises the CEO/governing body on ACDBE matters and achievement.
- Provides ACDBEs with information and assistance in preparing bids, obtaining bonding, financing, and insurance; acts as a liaison to the OSDBU-Minority Resource Center (MRC).
- Plans and participates in ACDBE training seminars.
- Acts as liaison to the Uniform Certification Process in the State of California.
- Provides outreach to ACDBEs and community organizations to advise them of opportunities.

## DIRECTORY

The directory identifying all firms eligible to participate as ACDBEs is available at [www.dot.ca.gov](http://www.dot.ca.gov) or by contacting the California Department of Transportation/Unified Certification Program at 1-916-324-1700.

## REQUIRED CONTRACT CLAUSES

### Contract Assurance

The City will ensure that the following paragraphs are placed in every Airport Concession contract and subcontract:

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

The Concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

## REPORTING, COMPLIANCE AND ENFORCEMENT PROCEDURES

The City will retain sufficient basic information about its ACDBE Program implementation, ACDBE certification, and the award and performance of agreements and contracts to enable the FAA to determine compliance with Part 23. This data will be retained for a minimum of three years following the end of the concession agreement or other covered contract.

It is the Concessionaire's or contractor's responsibility to maintain records and documents for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City or DOT. This reporting requirement is also extended to any certified ACDBE.

Beginning March 1, 2006, we will submit to the FAA Regional Civil Rights Office, an annual ACDBE participation report on the form in Appendix A of Part 23.

Confidentiality: The City will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal law and the California Public Records Act, Government Code §§6250-6276.48. The California Public Records Act provides for disclosure of public documents when a request is made unless they fall within specified exceptions. There are numerous exceptions which may or may not apply depending on the type of documents.

Except as otherwise required pursuant to federal, state or local law, we will not release personal financial information submitted by an ACDBE in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

The City will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23.

At the Norman Y. Mineta San José International Airport, the Airport Contracts Section monitors ACDBE sales. ACDBE sales are tracked as a percentage of overall concession revenue. The Airport maintains these statistics and graphs the results which are tracked on a monthly basis to ensure that work committed to ACDBEs at contract award is actually performed by the ACDBEs.



On a daily basis, Airport staff monitors the ongoing operation of the concession-related contracts consistent with the requirements of Part 23 and this Program. The City may impose such contract remedies as are available under the contract and under federal, state, and local law and regulations for non-compliance. Failure to carry out the City's ACDBE Policy and goals and obligations set forth above shall constitute a breach of contract that may result in termination of the Concession Agreement, or such other remedy as deemed appropriate by the City.

The following monitoring and enforcement provisions are included in the City's concession agreements and management contracts:

Compliance. Failure to carry out the ACDBE Policy and obligations set forth above shall constitute a breach of contract that may result in termination of the Agreement, or such other remedy as deemed appropriate by the City.

Audits. The City may also perform interim audits of contract payments to ACDBE management firms or subcontractors. The audit will review payments to ACDBE subcontractors and gross receipts earned by or payments for goods and services and management agreements to ACDBEs to ensure that the actual amount equals or exceeds the dollar amounts stated in the report of proposed ACDBE participation.

Replacement/Substitutions of ACDBEs. For concession contracts that include concession-specific ACDBE goals, Concessionaire will be required to have a valid arrangement with the ACDBE(s) designated by Concessionaire to fulfill the contract goal. For any such concession contracts that include concession-specific ACDBE goals, Concessionaire will be allowed to substitute the originally designated ACDBE(s) only if it is demonstrated to the City that the ACDBE(s) is unwilling or unable to perform. For any such concession contracts that include concession-specific ACDBE goals, Concessionaire's ability to negotiate a more advantageous contract with another ACDBE firm will not be considered a valid basis for substitution. For any such concession contracts that include concession-specific ACDBE goals, if an ACDBE is unwilling or unable to perform, Concessionaire shall inform the City in writing and include documentation to justify the substitution, including a statement from the ACDBE to be replaced acknowledging the substitution. In any such instance, Concessionaire will identify a replacement ACDBE or document good faith efforts to replace the ACDBE with another ACDBE. For any such concession contracts that include concession-specific ACDBE goals, if Concessionaire or a non-ACDBE firm performs the work originally committed to an ACDBE, the Concessionaire shall submit a revised ACDBE plan to the City detailing how the ACDBE goal will be met or will supply documentation detailing good faith efforts which have been made to meet the goal.

ACDBE Reports. Concessionaire shall submit, in the format required by the City, a monthly report of ACDBE utilization. The City reviews the monthly reports that are required to be submitted to the City by concessionaires to ensure that the ACDBE participation levels remain in compliance with any contract requirements and to verify that the work committed to ACDBEs is actually performed by ACDBEs. This information will also be used to provide the statistical data for the achievement reports to the FAA. If the City determines that any concessionaire is not complying with any contract requirements regarding this Program, the City will implement the contract remedies specified above.

Notices to DOT. The City will also notify the U.S. Department of Transportation of any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension, and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR Section 26.107.

### CONTRACT GOALS

The City will use concession-specific goals to meet any portion of the overall goals the City does not project being able to meet using race-neutral means. Concession specific goals are established so that, over the period to which the overall goals apply, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

The City has not established an ACDBE goal for this Concession Agreement.

### GOOD FAITH EFFORTS

To be eligible to be awarded a concession that has a concession-specific goal; competitors must make good faith efforts to meet the goal. A competitor may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so. (23.25(e)(1)(iv)). Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The procedures applicable to 49 CFR Part 26.51-3, regarding contract goals apply to the City's concession-specific goals. Specifically,

#### **Demonstration of good faith efforts (26.53(a) & (c))**

The Airport Managers are responsible for determining whether a concessionaire who has not met the concession-specific goal has documented sufficient good faith efforts to be regarded as responsive.

We will ensure that all information is complete and accurate and adequately documents the concessionaire's good faith efforts before we commit to the concession agreement with the bidder/offeror.

#### **Information to be submitted (26.53(b))**

For concessions that have a concession-specific goal, the City treats concessionaire's compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a concession-specific goal has been established will require the concessionaires to submit the following information:

1. The names and addresses of ACDBE firms or ACDBE suppliers of goods and services that will participate in the concession;
2. A description of the work that each ACDBE will perform;
3. The dollar amount of the participation of each ACDBE firm/supplier participating;

4. Written and signed documentation of commitment to use an ACDBE whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

#### Administrative reconsideration (26.53(d))

Within three (3) days of being informed by the City that it is not responsible because it has not documented sufficient good faith efforts, a proposer may request administrative reconsideration. Proposers should make this request in writing to the City Manager, 200 East Santa Clara Street, San José, California 95113. The reconsideration official will not have played any role in the original determination that the proposer did not document sufficient good faith efforts.

As part of this reconsideration, the proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The proposer will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the proposer a written decision on reconsideration, explaining the basis for finding that the proposer did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the DOT.

For concessions that have a concession-specific goal, any business that fails to demonstrate that it achieved the concession-specific ACDBE participation goal and fails to demonstrate that it made sufficient good faith efforts to do so shall be deemed "non-responsive" and, therefore, shall be ineligible for award of the concession contract.

#### Good Faith Efforts when an ACDBE is replaced on a concession (26.53(f))

The City will require concessions that have a concession-specific goal to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its concession agreement, lease, or subcontract with another certified ACDBE, to the extent needed to meet the concession-specific goal. We will require the concessionaire to notify the ACDBELO immediately of the ACDBEs inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the concessionaire to obtain our prior approval of the substitute ACDBE and to provide copies of new or amended subcontracts or documentation of good faith efforts.

If the concessionaire fails or refuses to comply in the time specified, our contracting office will give notice and opportunity to cure until satisfactory action has been taken. If the concessionaire still fails to comply, the contracting officer may issue a termination for default proceeding.

When a concession-specific goal is established pursuant to the City's ACDBE Program, the following specification will be used to notify concession firms of the requirements to make good faith efforts:

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the City of San José to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to

submit bids/proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal/bid specification. These requirements apply to all concessions, firms, and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of **10.64 percent (10.64%)** of annual gross receipts; value of leases, and/or purchases of goods and services has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 to meet the concession-specific goal for ACDBE participation in the performance of this concession.

The concession firm will be required to submit the following information: (1) the names and addresses of ACDBE firms and suppliers that will participate in the concession, (2) A description of the work that each ACDBE will perform; (3) The dollar amount of the participation of each ACDBE firm participating; (4) Written and signed documentation of commitment to use an ACDBE whose participation it submits to meet a contract goal; (5) Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment, and (6) If the contract goal is not met, evidence of good faith efforts.

#### COUNTING ACDBE PARTICIPATION FOR CAR RENTALS

The City will count ACDBE participation toward overall and contract goals for car rentals as provided in 49 CFR Part 23.5e.

#### COUNTING ACDBE PARTICIPATION FOR CONCESSIONS OTHER THAN CAR RENTALS

The City will count ACDBE participation toward overall and contract goals for concessions other than car rentals as provided in 49 CFR Part 23.55.

#### ACDBE CERTIFICATION

The City will use the procedures and standards of 49 CFR Part 26, except as provided in 49 CFR Section 23.31, for certification of ACDBEs to participate in our concession program and such standards are incorporated herein.

For information about the certification process or to apply for certification firms should contact:

California Department of Transportation  
Civil Rights – MS 79  
1823 14<sup>th</sup> Street  
Sacramento, CA 95811  
Phone: 916-324-1700  
Fax: 916-324-1862  
Website: [www.dot.ca.gov](http://www.dot.ca.gov)

The City is a member of the California UCP, which has established four Regional DBE Certification Clusters throughout the State to effectively facilitate statewide DBE certification activities. Completed certification packets are to be mailed to one of the agencies serving the county where the firm has its principal place of business.

The California UCP will not process a new application for DBE certification from a firm having its principal place of business in another state, unless the firm has already been certified in that state.

Certification decisions for ACDBEs to participate in the City's concession program are made by the California Unified Certification Program (CUCP).

All firms certified by the CUCP on behalf of the City and included in the CUCP directory will be reviewed and recertified by the CUCP based on the submittal of the information required for certification to determine their ACDBE eligibility. These reviews will be completed as soon as possible, but not later than April 21, 2006, or three (3) years from the anniversary date of each firm's most recent certification, whichever is later. The City will ensure that only firms certified as eligible ACDBEs participate as ACDBEs in its concession program.

All owners of all certified ACDBEs will be required to submit, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(i), including any change in their circumstances affecting their ability to meet size, disadvantaged status, personal net worth, ownership, or control criteria or of any material changes in the information provided with the application for certification. A copy of the renewal serves as the City's and CUCP's no change affidavit.

The California UCP handles all decertification decisions on behalf of the City with respect to the Airport's concession program.

We will treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts averaged over the firm's previous three fiscal years do not exceed \$56.42 million. The size standard for banks and other financial institutions is \$1 billion in assets, for car rental companies it is \$75.23 million, and for pay telephone companies the standard is 1,500 employees. (23.33) The personal net worth standard used in determining eligibility for purposes of part 23 is \$1.32 million, and any person who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual, even if a member of a group is otherwise presumed to be disadvantaged. (23.35).

We will presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. However, before certifying such a firm, we will ensure that the disadvantaged owners of a DBE certified under part 26 are able to control the firm with respect to its activity in our concessions program. We are not obligated to certify a Part 26 DBE as an ACDBE if the firm does not do work relevant to our concession program. (23.37).

We recognize that the provisions of Part 26, sections 26.83(c) (2-6) do not apply to certifications for purposes of Part 23. We will obtain resumés or work histories of the principal owners of the firm and personally interview these individuals. We will analyze the ownership of stock of the firm, if it is a corporation. We will analyze the bonding and financial capacity of the firm. We will determine the work history of the firm, including any concession contracts or other contracts it may have received. We will compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive. We will obtain a statement from the firm of the types of concessions it prefers to operate or the type of other contracts it prefers to perform. We will ensure that the ACDBE firm meets the applicable size standard. (23.39(a)(b)).

We acknowledge that a prime contractor includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient. We recognize that the eligibility of Alaska Native

Corporations (ANC) owned firms for purposes of Part 23 is governed by Part 26 section 26.73(h). (23.39(c)(d)).

We will use the certification standards of Part 23 to determine the ACDBE eligibility of firms that provide goods and services to concessionaires. (23.39(i)).

In instances when the eligibility of a concessionaire is removed after the concessionaire has entered into a concession agreement because the firm exceeded the size standard or the owner has exceeded the PNW standard, and the firm in all other respects remains an eligible DBE, we may continue to count the concessionaire's participation toward ACDBE goals during the remainder of the current concession agreement. We will not count the concessionaire's participation toward ACDBE goals beyond the termination date for the concession agreement in effect at the time of the decertification. (23.39(e)). Attachment 7 to the ACDBE Program recites the Part 26.87 procedures for removal of an ACDBE's eligibility.

We will use the Uniform Application Form found in appendix F to Part 26 with additional instruction as stated in 23.39(g).

**EXHIBIT I**  
**CONCESSIONAIRE'S PROPOSAL**  
**(to be attached)**



December 2, 2020

Rebekah Bray  
Acting Senior Property Manager  
Finance and Administration  
Mineta San Jose International Airport  
1701 Airport Blvd., Suite B-1170  
San Jose, CA 95110

Re: Automated Retail Proposal

Dear Rebekah,

We are pleased to announce Hudson's entrance into the Automated Retail sector featuring select specialty retail brands. We believe there are incremental sales opportunities in the strategic placement of these units which offer 24 hour a day shopping.

This is a Hudson program in which we own and service the units. If ever there is an issue with a purchase our nearest store and staff can provide immediate assistance.

The categories offered are geared for the traveler including:

- Skincare
- Electronics
- Accessories
- Toys
- Locally themed products

A key feature of the program is customization. The units can be configured in just about any size and shape to fit the specific spaces available. We have surveyed potential locations and believe the following offer the best passenger exposure and logistical needs:

- Duty Free bump out area
- Gate 15 previous pay phone location
- At the connector
- Adjacent to our store at Gate 26/27

North American Support Center: One Meadowlands Place, East Rutherford, NJ 07073





December 2, 2020

We are offering the following business terms:

- Rent: Percentage rent of 12% on all sales except Apple, Beats and Lego products.  
Percentage rent of 10% on all sales of Apple, Beats and Lego products.
- Contract Term: 3 years

The attached presentation provides additional detail on the benefits of the program

Thank you for your consideration of the innovative proposal. We are available to answer and questions you may have.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mike Blakely".

Mike Blakely  
Senior Vice President – Business Development  
Hudson

CC: Megan Kennedy  
Mike Petersen

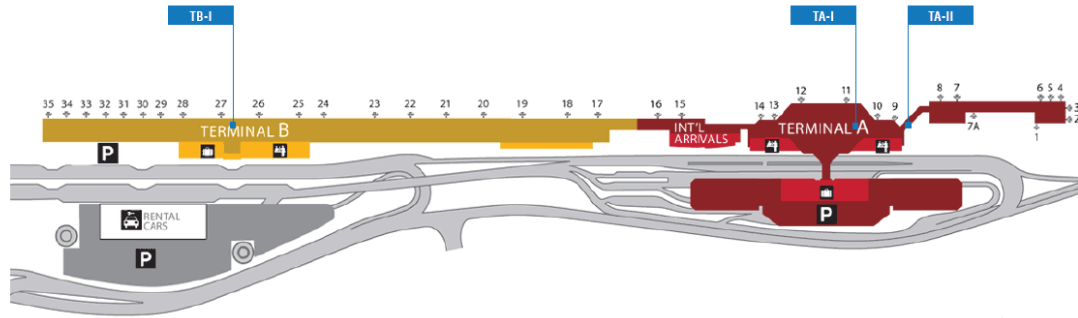
Attachments: Automated Retail Presentation

North American Support Center: One Meadowlands Plaza, East Rutherford, NJ 07073





### SAN JOSE INTERNATIONAL AIRPORT TERMINAL MAP



### LOCATION MAP

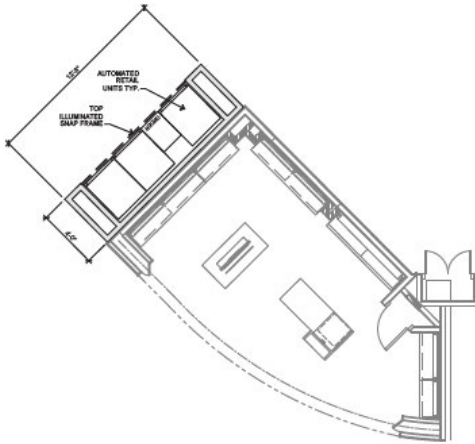
SAN JOSE INTERNATIONAL AIRPORT | DESIGNWORK STUDIOS | V.03 | 01.18.2021



01



LOCATION: TA-1

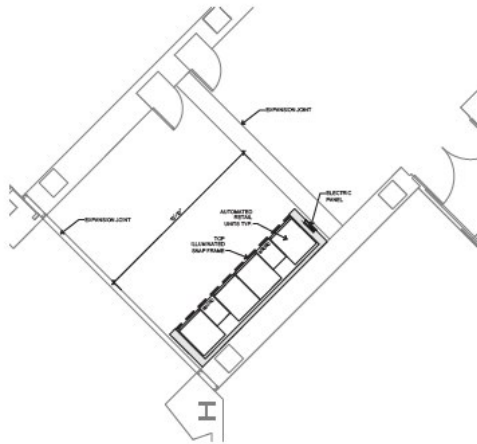


12' LF VENDING

## FLOOR PLAN



LOCATION: TA-II



20' LF VENDING

## FLOOR PLAN

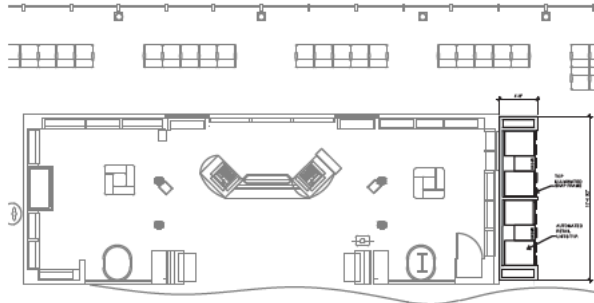
SAN JOSE INTERNATIONAL AIRPORT | DESIGNWORK STUDIOS | V.03 | 01.18.2021



03



LOCATION: TB-1



20' LF VENDING

## FLOOR PLAN

SAN JOSE INTERNATIONAL AIRPORT | DESIGNWORK STUDIOS | V.03 | 01.18.2021



## EXHIBIT J

### Labor Peace/Employee Work Environment Report

I, Courtney C. Thornton, an authorized representative of AMS SJC JV,  
(name of Airport Business)

attach a copy of the following existing or planned programs that demonstrate a good work environment that prevents the disruption in services due to disputes with employees.

Copy of Company Employee Handbook that includes information such as: terms of employment; performance appraisals; employee responsibilities; non-discrimination and anti-harassment policy; complaint resolution procedures; working hours and conditions; breaks; assignment of responsibilities; general rules of conduct; prohibited activities; disciplinary procedure; leaves of absence; drug and alcohol use; appearance, grooming and uniform policy; health and safety.

Joint Labor-Management Committee

Collective Bargaining Agreement

Labor Neutrality Provision

Card Check Provision

Any other information, plan, benefits or programs undertaken by Airport Business to attract and retain qualified employees and assist in providing uninterrupted service through the Airport Business's workplace conditions and practices.

The above listed benefits and complaint procedure(s) will be maintained during the period of time work is performed at the Norman Y. Mineta San José International Airport. It is the intent of AMS SJC JV  
(name of Airport Business) to ensure that essential services and labor for

which it has been contracted will be provided efficiently and without interruption.

Courtney C. Thornton  
Signature

EVP, Corporate Strategy & Business Development  
Title

AMS SJC JV  
Name of Airport Business

2/8/2022  
Date

Labor Peace Exhibit J



## EMPLOYEE BASIC BENEFITS

1. Indicate the basic benefits your workers receive.

Years of Service	# of Vacation Days	# of Sick Days	# of Personal Days
After 1 year	5	5 or 6	0
After 5 years	10	5 or 6	0
After 10 years	15	5 or 6	0

Other: (Explain.)

Healthcare Pension Parking
----------------------------------

Indicate the paid holidays your workers receive by placing check mark to the left of each.

<input checked="" type="checkbox"/>	New Year's Day	<input checked="" type="checkbox"/>	Independence Day	<input checked="" type="checkbox"/>	Christmas
<input type="checkbox"/>	Martin Luther King Jr. Day	<input checked="" type="checkbox"/>	Labor Day	<input type="checkbox"/>	Floating Holiday
<input type="checkbox"/>	Washington's Birthday	<input type="checkbox"/>	Veterans' Day	<input type="checkbox"/>	Other:
<input checked="" type="checkbox"/>	Memorial Day	<input checked="" type="checkbox"/>	Thanksgiving Day	<input type="checkbox"/>	Other:

2. Do you allow for unpaid leave?  Yes, please briefly explain policy.  
 No

- FMLA
- Medical
- military
- Personal up to 12 weeks

Labor Peace Exhibit J



## COMPLIANCE WITH STATE AND FEDERAL WORKPLACE STANDARDS

Have any of the following State or Federal Regulatory agencies obtained final orders or final judgments finding a violation by your company of State or Federal law relating to the treatment of your employees?

1. California Department of Fair Employment and Housing (DFEH).

**NO**, our company has not had any final judgment or administrative order.

**YES**, our company has had final judgment(s) or administrative order(s).

Date of entry of final judgment or order: \_\_\_\_\_

Agency that obtained the order: \_\_\_\_\_

Attach a description of the nature of violation.

2. California Department of Industrial Relations (Cal OSHA).

**NO**, our company has not had any final judgment(s) or administrative order(s)

**YES**, our company has had final judgment(s) or administrative order(s).

Date of entry of final judgment or order: \_\_\_\_\_

Agency that obtained the order: \_\_\_\_\_

Attach a description of the nature of violation.

3. California Department of Industrial Relations (Minimum Wage, hours or working conditions) Labor Board

**NO**, our company has not had any final judgment(s) or administrative order(s).

**YES**, our company has had final judgment(s) or administrative order(s).

Date of entry of final judgment or order: \_\_\_\_\_

Agency that obtained the order: \_\_\_\_\_

Attach a description of the nature of violation.

Labor Peace Exhibit J

respect to any such subcontracting, the Company will provide the Union with reasonable notice prior to its implementation.

- b. Except as specifically abridged, delegated, granted or modified by this Agreement, all of the rights, powers and authority of the Employer existing prior to the signing of this Agreement are retained by the Company and remain exclusively and without limitation within the rights of management.

**Article 28. No Strike, No Lockout**

Tills Agreement establishes a collective bargaining relationship and equitable procedures for the peaceful resolution of any disputes that may arise. Accordingly, it is agreed that during the term of this Agreement neither the Company nor the Union (or its affiliates) nor the employees covered under this Agreement, will engage in, sanction, or authorize any job action of any kind, whether it takes the form of strikes, lockouts, slowdowns, picketing, boycotts, sympathy strikes, or any other interference with the operation of the Employer, whether such action is attributable to a dispute over existing contract rights, a dispute involving another unit of the Company, another employer or Union, or any other reason.

**Article 29. Change of Ownership**

- a. In the event that the Employer sells or assigns his/her business, or in the event that there is a change in the form of ownership, the Employer shall give the Union reasonable advance notice thereof in writing and shall make all payments which are then due or shall be due as of the date of transfer of the business for wages, vacation and health and welfare for Employees covered by this Agreement.
- b. This Agreement shall be binding upon the successors and assigns of the parties hereto.

## CERTIFICATE OF LLC AUTHORITY

This Certificate of LLC Authority shall be executed by the manager of the limited liability company.

I, Brian J. Quinn, certify that I am the manager of the  
**Name of Manager**

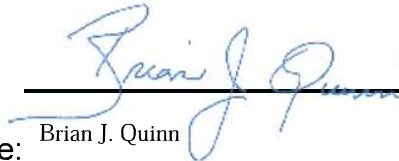
limited liability company named in the attached agreement;

that Brian J. Quinn signed the agreement on behalf of the limited  
**Name of Person that Signed Agreement**

liability company as the Deputy CEO of the limited liability  
**Title of Person that Signed Agreement**

company; and that the agreement was duly signed for and on behalf of the limited liability company by authority of its members, and is within the scope of its limited liability company powers.

By:

  
Name: Brian J. Quinn

Its: **Manager**

Date: January 11, 2022

## CORPORATE SECRETARY CERTIFICATE

This certificate shall be executed by the secretary or assistant secretary of the corporation.

I, NIJAMBI G MUNGAI certify that I  
Name of Secretary or Assistant Secretary

am the  Secretary or  Assistant Secretary of the corporation named in the

attached agreement; that NIJAMBI G MUNGAI  
Name of Person that Signed Agreement

signed the agreement on behalf of the corporation as the PRESIDENT/CEO  
Title of Person that Signed the Agreement

of the corporation; and that the agreement was duly signed for and on behalf of the corporation by authority of its Board of Directors, and is within the scope of its corporate powers.



\_\_\_\_\_  
Corporate Seal

[Signature]  
Signature of Secretary or Assistant Secretary

11-12-2021  
Date



# CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)  
12/17/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Aon Risk Services Northeast, Inc. Morristown NJ Office 44 Whippany Road, Suite 220 Morristown NJ 07960 USA	<b>CONTACT NAME:</b> PHONE (A/C. No. Ext): 8662837122      FAX (A/C. No.): (800) 363-0105		
	<b>E-MAIL ADDRESS:</b>		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>	
<b>INSURED</b> HUDSON GROUP (HG), INC. One Meadowlands Plaza, Ste. 902 East Rutherford NJ 07073 USA	INSURER A: Zurich Insurance Company Ltd		AA1460190
	INSURER B: Zurich American Ins Co		16535
	INSURER C: Travelers Property Cas Co of America		25674
	INSURER D: The Travelers Indemnity Co.		25658
	INSURER E: The Travelers Indemnity Co of CT		25682
	INSURER F: The Charter Oak Fire Insurance Company		25615

Holder Identifier :

COVERAGES      **CERTIFICATE NUMBER: 570090667037**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURED	SUBROGATION WAIVED	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			GL0824971712	07/01/2021	07/01/2022	EACH OCCURRENCE	\$10,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
							MED EXP (Any one person)	\$5,000
							PERSONAL & ADV INJURY	\$10,000,000
							GENERAL AGGREGATE	\$10,000,000
							PRODUCTS - COMP/OP AGG	\$10,000,000
C	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			TC2JCAP-2924B312-TIL-21 Auto Liability TC2JBAP-1003A683-TIL-21 Auto Physical Damage	12/31/2021	12/31/2022	COMBINED SINGLE LIMIT (Ea accident)	\$3,000,000
							BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
A	<input type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION			GL0824971709	07/01/2021	06/30/2022	EACH OCCURRENCE	\$10,000,000
							AGGREGATE	\$10,000,000
C	<input checked="" type="checkbox"/> <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N <input checked="" type="checkbox"/> N	UB1R0869552151K Hudson Group (HG), Inc. UB0R8111392151R Hudson Group (HG), Inc.	12/31/2021	12/31/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
D			N/A		12/31/2021	12/31/2022	E.L. EACH ACCIDENT	\$1,000,000
							E.L. DISEASE-EA EMPLOYEE	\$1,000,000
							E.L. DISEASE-POLICY LIMIT	\$1,000,000

Certificate No : 570090667037

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Hudson Group (HG) Inc., its parent, all Named Insured and Subsidiaries operations at Norman Y. Mineta San Jose International Airport, 1701 Airport Blvd., San Jose, CA 95110. The City of San Jose and any Lender and any other party providing financing to the City and Hudson Group (HG) Inc., et al are included as Additional Insured on General Liability policy where required by written contract or agreement. General Liability and Automobile Liability Policies are Primary and Non-Contributory basis but only in accordance with the policies provisions. See Attached Addendum.

**CERTIFICATE HOLDER****CANCELLATION**

City of San Jose  
200 East Santa Clara St.  
3rd Floor Tower  
San Jose CA 95113-1905 USA

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Aon Risk Services Northeast, Inc.*





# ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Northeast, Inc.		NAMED INSURED HUDSON GROUP (HG), INC.	
POLICY NUMBER See Certificate Number: 570090667037			
CARRIER See Certificate Number: 570090667037	NAIC CODE	EFFECTIVE DATE:	

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance**

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER G: The Travelers Indemnity Co of America	25666
INSURER	
INSURER	
INSURER	

**ADDITIONAL POLICIES** If a policy below does not include limit information, refer to the corresponding policy on the ACORD certificate form for policy limits.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
	WORKERS COMPENSATION							
F		N/A		UB0R8064672151R AMS South Florida	12/31/2021	12/31/2022		
E		N/A		UB1R0494502151D Barbara's Bookstore	12/31/2021	12/31/2022		
G		N/A		UB1R04683A2151D NMC Brookstone Stores	12/31/2021	12/31/2022		



# ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Northeast, Inc.		NAMED INSURED HUDSON GROUP (HG), INC.	
POLICY NUMBER See Certificate Number: 570090667037			
CARRIER See Certificate Number: 570090667037	NAIC CODE	EFFECTIVE DATE:	

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
 FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance**

Named Insured- Active Companies

- Hudson Group (HG), Inc.
- Hudson Group (HG) Retail, LLC
- Airport Management Services, LLC
- AMS AS3 JV
- AMS BW Newark, JV
- AMS OF SOUTH FLORIDA SGH JV
- AMS South Florida, J.V.
- AMS TEI Miami JV
- AMS-AJA Jackson J.V.
- AMS-Myrtle Beach JV
- AMS-NIA Richmond, J.V.
- AMS-Olympic Nashville, J.V
- AMS-SJC, JV
- AMS-watson Mobile, J.V.
- Barbara's Bookstore O'Hare J.V.
- DENVER DUTY FREE, JV
- Dufry Houston Duty Free & Retail Partnership
- Dufry Houston, Inc.
- Dufry MSP Retailers JV
- Dufry Newark, Inc.
- Dufry North America, LLC
- Dufry O'Hare T5 JV
- Dufry Phoenix Retailers JV
- Dufry-Seattle JV
- HG BURBANK, JV
- HG Burlington, JV
- HG CV-Epicure-Martinez San Diego JV
- HG Denver, JV
- HG DFW Retailers JV
- HG DFW Retailers P7, JV
- HG EWR Terminal 1, JV
- HG Grand Rapids Retailers JV
- HG IND Retailers JV
- HG LAX MSC Retailers JV
- HG LAX T6 JV
- HG LGA Retailers JV
- HG Logan Retailers, JV

**ADDITIONAL REMARKS SCHEDULE**

AGENCY Aon Risk Services Northeast, Inc.		NAMED INSURED HUDSON GROUP (HG), INC.	
POLICY NUMBER See Certificate Number: 570090667037			
CARRIER See Certificate Number: 570090667037	NAIC CODE	EFFECTIVE DATE:	

**ADDITIONAL REMARKS****THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,****FORM NUMBER:** ACORD 25 **FORM TITLE:** Certificate of Liability Insurance

Named Insured Active Companies Continued

HG MAGIC CONCOURSE TBIT, JV  
 HG Manchester JV  
 HG Midway JV  
 HG MULTIPLEX DFW, JV  
 HG Multiplex-Regali Dallas, JV  
 HG National, JV  
 HG ONT Retailers, JV  
 HG ORLANDO AS-1 JV  
 HG PHL Retailers, JV  
 HG Phoenix Retailers JV  
 HG PHX T3 RETAILERS 2017 JV  
 HG PIE Retailers JV  
 HG REGALI DFW, JV  
 HG SFO Retailers 2017, JV  
 HG St. Louis II, JV  
 HG St. Louis, JV  
 HG TAMPA, JV  
 HG Tucson Retailers JV  
 HG Tulsa Retailers JV  
 HG-BW Charleston, JV  
 HG-KCGI-TEI JFK T8, JV  
 Houston 8/WDFG Joint Venture  
 Houston Duty Free LLC  
 Hudson - Garza Albuquerque J.V  
 Hudson - NIA Norfolk, J.V.  
 Hudson - NIA Roanoke, J.V.  
 Hudson - NIA Rochester, J.V.  
 Hudson ACY Retailers JV  
 HUDSON BIRMINGHAM, JV  
 Hudson Cleveland Partner Airport JV  
 Hudson Group Canada, Inc.  
 Hudson JME Newark C, JV  
 Hudson KELLEEE JFK 7 JV  
 Hudson Las Vegas JV  
 Hudson Magic Johnson Enterprises-Concourse Ventures, LLC  
 Hudson Newburns Orlando AS2 JV  
 Hudson News - O'Hare J.V.  
 Hudson Northwind Anchorage, J.V.  
 Hudson O'Hare T5, JV



**ADDITIONAL REMARKS SCHEDULE**

AGENCY Aon Risk Services Northeast, Inc.		NAMED INSURED HUDSON GROUP (HG), INC.	
POLICY NUMBER See Certificate Number: 570090667037			
CARRIER See Certificate Number: 570090667037	NAIC CODE	EFFECTIVE DATE:	

**ADDITIONAL REMARKS****THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,****FORM NUMBER:** ACORD 25 **FORM TITLE:** Certificate of Liability Insurance

Named Insured Active Companies Continued

Hudson Retail - Dallas, J.V  
 Hudson Sanford, JV  
 HUDSON-BW GSP, JV  
 Hudson-NIA JFK TI, JV  
 JFK Air Ventures II, JV  
 Jimmy-Stewart, LLC  
 John Wayne NG-AC, JV  
 LAX Retail Magic 2, JV  
 LAX Retail Magic 3-4, JV  
 Nuance Group (Chicago) LLC  
 RDU Air Ventures II, JV  
 Seattle Air Ventures JV  
 SSP-Hudson PIE Concessions LLC  
 The Nuance Group (USA) LLC  
 The Nuance Group/Las Vegas  
 HSTA JV  
 WDFG Bush Lubbock Airport JV  
 WDFG CA LLC  
 WDFG Howell/Mickens Terminal A Retail II LLC  
 WDFG JV Holdings, LLC  
 WDFG Little Rock, JV  
 WDFG LTL ATL JV, LLC  
 WDFG Miami Airport Retail Partners Joint Venture  
 WDFG North America LLC  
 WDFG Portland Retailers, JV  
 WDFG Shellis Atlanta JV  
 WDFG TAC ATL Retail, LLC  
 WDFG US Inc.  
 WDFG/Howell-Mickens JV III  
 WDFG-Aranza/Howell D2-13, LLC  
 WDFG-Aranza/Howell D2-13/20, JV  
 WDFG-Aranza/Howell D2-14, LLC  
 WDFG-Aranza/Howell D2-14/20, JV  
 WDFG-Branch McGowen HOU, LLC  
 WDFG-Detroit & Partners LLC  
 WDFG-DMV DTW Retail, LLC  
 WDFG-ELN MSP TERMINAL 2 RETAIL, LLC  
 WDFG-Houston 8 2014, LLC  
 WDFG-Houston 8 San Antonio JV



# ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Northeast, Inc.		NAMED INSURED HUDSON GROUP (HG), INC.	
POLICY NUMBER See Certificate Number: 570090667037		EFFECTIVE DATE:	
CARRIER See Certificate Number: 570090667037	NAIC CODE		

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
**FORM NUMBER:** ACORD 25 **FORM TITLE:** Certificate of Liability Insurance

Named Insured Active Companies Continued

- WDFG-Houston 8 Terminal E, LLC
- WDFG-Howell Mickens Terminal A - Retail I JV
- WDFG-Love Field Partners II, LLC
- WDFG-Love Field Partners III, LLC
- WDFG-Partners Duty Free, JV
- WDFG-Skyview Concessions, LLC
- WDFG-SPI DEN Retail LLC
- WDFG-Transglobal TPA JV
- Areas Brookstone Atlanta JV, LLC
- Brookstone DFW, LLC
- Brookstone Houston T-B, LLC
- Brookstone IAD, T-B, LLC
- Brookstone LAX T-6, LLC
- Brookstone O'Hare II, LLC
- Brookstone O'Hare T-5, LLC
- Brookstone SFO T-2, LLC
- Brookstone Stores DTW, LLC
- NCM Brookstone Stores Georgia II, LLC
- NCM Brookstone Stores Georgia, LLC
- Music City Retailers JV
- Smokey Mountain Provisions LLC
- HG ORD Tech Retail JV
- HG LAX T3 Concessionaires JV
- MSP Retail Partnership JV
- HG Dallas Love Field Concessionaires JV
- Hudson-Nash-F&B JV
- Hudson JFK T5 Retailers JV

**ADDITIONAL REMARKS SCHEDULE**

AGENCY Aon Risk Services Northeast, Inc.		NAMED INSURED HUDSON GROUP (HG), INC.	
POLICY NUMBER See Certificate Number: 570090667037		EFFECTIVE DATE:	
CARRIER See Certificate Number: 570090667037	NAIC CODE		

**ADDITIONAL REMARKS****THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,****FORM NUMBER:** ACORD 25 **FORM TITLE:** Certificate of Liability Insurance

## Excess Liability Information

## Excess Liability Information

Policy #GL0824971709 - Zurich Insurance Company Ltd. - Motor Excess:

\$10,000,000 per occurrence and in the aggregate per insurance year. The coverage provided by Zurich is limited to the difference between the limit of indemnity under the Master Policy and the limit of indemnity under local mandatory or existing motor vehicle liability insurance; but at least the sum of \$2,000,000 if the motor vehicle is not covered by liability insurance or where such coverage exists but provides a limit of indemnity of less than \$2,000,000 or in cases of partly or fully exhaustion of the existing limit of indemnity.

Policy #GL0824971709 - Zurich Insurance Company Ltd. - Employer's Liability Excess:

\$50,000,000 per occurrence and in the aggregate per insurance year. The coverage provided by Zurich is limited to the difference between the limit of indemnity under the Master Policy and the limit of indemnity under local mandatory or existing employer's liability insurance; \$1,000,000 for claims in the USA if employer's liability insurance is not covered or where such coverage exists but provides a limit of indemnity of less than the amount mentioned in this article or where the agreed limit of indemnity of the existing coverage is partly or fully exhausted.

**BUSINESS TAX LOOKUP**

Search:

HUDSON NEWS/RIP CURL/TUMMI

Business Name

HUDSON NEWS/RIP CURL/TUMMI

Business Address

1732 N 1ST ST SAN JOSE, CA 95112-4508

Business Owner

AMS-SJC, JV

Mailing Address

ONE MEADOWLANDS PLAZA STE 902 LIC COMP EAST RUTHERFORD, NJ 07073

NAICS

451212-NEWS DEALERS AND NEWSSTANDS

Nature Of Business

NEWSTAND & TOBACCO

Account Id

6350503210

Status

ACTIVE

Start Date

12/01/2008

Expiration Date

12/15/2022

Employees

88



Shirley N. Weber, Ph.D.  
California Secretary of State

## Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed through Tuesday, February 15, 2022. Please refer to document [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

### C3184385 HUDSON GROUP (HG), INC

**Registration Date:** 01/08/2009  
**Jurisdiction:** DELAWARE  
**Entity Type:** FOREIGN STOCK  
**Status:** ACTIVE  
**Agent for Service of Process:** **CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS CSC - LAWYERS INCORPORATING SERVICE (C1592199)**

To find the most current California registered Corporate Agent for Service of Process address and authorized employee(s) information, click the link above and then select the most current 1505 Certificate.

**Entity Address:** 1 MEADOWLANDS PLAZA  
EAST RUTHERFORD NJ 07073  
**Entity Mailing Address:** 1 MEADOWLANDS PLAZA  
EAST RUTHERFORD NJ 07073

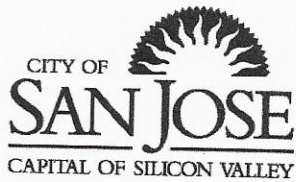
 [Certificate of Status](#)

A Statement of Information is due EVERY year beginning five months before and through the end of January.

Document Type	↕	File Date	↕	PDF
SI-NO CHANGE		12/29/2021		
SI-COMPLETE		12/10/2020		
REGISTRATION		01/08/2009		

\* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code [section 2114](#) for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to [Name Availability](#).
- If the image is not available online, for information on ordering a copy refer to [Information Requests](#).
- For information on ordering certificates, status reports, certified copies of documents and copies of documents not currently available in the Business Search or to request a more extensive search for records, refer to [Information Requests](#).



- FOR YOUR ELECTRONIC SIGNATURE
- FULLY EXECUTED COPY TO FOLLOW

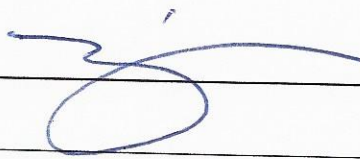
CITY STAFF: Megan Kennedy  
STAFF EMAIL: mkennedy@sjc.org

### SCANNED SIGNATURE AUTHORIZATION

DATE: Nov 12, 2021 TOTAL PAGES: (INCLUDING THIS PAGE) 93

COMPANY NAME: NJAMBI G MUNGAI FOR JR LESTER & ASSOCIATES LTD  
EMAIL: concessions@jrtonline.com  
PHONE: 510 912-0557

I agree to use electronic signatures

SIGNATURE OF COMPANY: 

#### DIRECTIONS:

REVIEW THE ENCLOSED DOCUMENT, IF IT IS ACCEPTABLE:

1. SIGN THE DOCUMENT
2. CHECK THE BOX BELOW YOUR NAME AND SIGN AGREEING TO THE USE OF ELECTRONIC SIGNATURES
3. SCAN YOUR EXECUTED DOCUMENT TOGETHER WITH THIS COVER PAGE IN **BLUE** INK
4. EMAIL THE ENTIRE DOCUMENT TO (CITY STAFF EMAIL ADDRESS): [HTRUONG@SJC.ORG](mailto:HTRUONG@SJC.ORG)

#### TO BE COMPLETED BY CITY STAFF:

ALTERNATIVE METHODS OF VERIFICATION:

- USE OF A PASSWORD PROTECTED WEBSITE
- CONFIRMED BY A KNOWN TELEPHONE NUMBER / EMAIL
- PERSONALLY KNOWN TO CITY STAFF

# City of San José Contract/Agreement Transmittal Form

## Route Order

## Attached / Completed

## Electronically Signed

TO:  City Attorney  
 City Manager  
 City Clerk **OR** Return to Dept. (circle one)

Insurance Certificates / Waivers  Electronically Signed: Select one  
 Business Tax Certificate  Audit Trail Attached (if applicable)  
 Contacted Clerk re: Form 700  Scanned Signature Authorization  
 Supplemental Memorandums (if applicable): Select One

Type of Document: New Contract

Type of Contract: Revenue Agreement

### REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 667473-000

Contractor: AMS-SJC JV

Address: One Meadowlands Plaza, 8th Floor, East Rutherford, NJ 07073

Phone: (201) 939-5050 or (800) 326-7711

Email: mmullaney@hudsongroup.com

Contract Description: Small Concession Agreement Doc. #10714-CA-21.

Term Start Date: Upon execution Term End Date: 3 Year's After Commer Extension: Select one

Method of Procurement: Select one RFB, RFP or RFQ No.: \_\_\_\_\_ Date Conducted: \_\_\_\_\_

Agenda Date (if applicable): \_\_\_\_\_ Agenda Item No.: \_\_\_\_\_

Resolution No.: \_\_\_\_\_ Ordinance No.: 25.08.1340

Original Contract Amount: \_\_\_\_\_ Amount of Increase/Decrease: \_\_\_\_\_

Option #: \_\_\_ of \_\_\_ Option Amount: \_\_\_\_\_ NTE/Updated Contract Amount: \_\_\_\_\_

Fund/Appropriation: \_\_\_\_\_

Form 700 Required (Selection mandatory for processing): No

Revenue Agreement: Yes


Tax Certificate No.: 6350503210

Expiration Date: 12/15/2022

Department: Airport (80)

Department Contact: Holly Truong 408-392-3659 Customer (Finance Only): Á' \_\_\_\_\_

Notes: SJMC 25.08.1340 gives the Director authority to execute, on behalf of the City, any lease or license agreement of land, structures, or other premises on the Airport if the total monetary value received by the City from such lease or license agreement does not exceed two hundred fifty thousand dollars (\$250,000.00)

Department Director Signature:  \_\_\_\_\_ 2/17/2022 \_\_\_\_\_  
Date

Office of the City Manager Signature: \_\_\_\_\_ \_\_\_\_\_  
Date