

CITY OF PHOENIX
TERMINAL 4 RETAIL AND AUTOMATED VENDING CONCESSIONS
LEASE

between

THE CITY OF PHOENIX,
an Arizona municipal corporation

and

dba _____

TABLE OF CONTENTS

SECTION 1	TERM.....	2
SECTION 1.1	Initial Term	2
SECTION 1.2	Primary Term	2
SECTION 2	PREMISES AND PRIVILEGES.....	2
SECTION 2.1	Premises	2
SECTION 2.2	Rights and Privileges.....	3
SECTION 3	RENT	4
SECTION 3.1	Gross Sales	4
SECTION 3.2	Credits and Discounts	5
SECTION 3.3	Annual Rent	5
SECTION 3.4	Percentage Rent Payments and Reports	6
SECTION 3.5	Rent Remittances.....	7
SECTION 3.6	Miscellaneous Charges	7
SECTION 3.7	Delinquent Rent and Charges	7
SECTION 3.8	Late Statements or Reports	7
SECTION 3.9	Books and Records	8
SECTION 3.10	Independent Audits	9
SECTION 3.11	Final Audit Binding	9
SECTION 3.12	Support Space	9
SECTION 4	LESSEE OPERATING STANDARDS.....	10
SECTION 4.1	Service Standards.....	10
SECTION 4.2	Employee Standards.....	12
SECTION 4.3	Management	13
SECTION 4.4	Sanitation, Hygiene and Cleanliness	13
SECTION 4.5	Deliveries	14
SECTION 4.6	Signs.....	15
SECTION 5	IMPROVEMENTS TO BE MADE BY LESSEE	15
SECTION 5.1	Furnish and Equip Premises	15
SECTION 5.2	Plans and Specifications for Leasehold Improvements.....	16
SECTION 5.3	Title to Leasehold Improvements.....	17
SECTION 5.4	Removal and Demolition	18
SECTION 6	CLOSURE, RELOCATION, REDUCTION, EXPANSION OR CONDEMNATION	18
SECTION 6.1	Lessor's Authority.....	18
SECTION 6.2	Compensation	19
SECTION 6.3	Condemnation.....	19
SECTION 7	JANITORIAL SERVICES.....	19
SECTION 8	MAINTENANCE OF PREMISES.....	19

SECTION 8.1	Maintenance	19
SECTION 8.2	Repairs	20
SECTION 8.3	Right to Enter	20
SECTION 8.4	Failure to Maintain or Repair	20
SECTION 8.5	Operation Costs	21
SECTION 8.6	Utilities	21
SECTION 9	INSURANCE REQUIREMENTS	21
SECTION 9.1	Introduction	21
SECTION 9.2	Minimum Scope and Limits of Insurance	21
SECTION 9.3	Additional Insurance Requirements	23
SECTION 9.4	Notice of Cancellation	23
SECTION 9.5	Acceptability of Insurers	23
SECTION 9.6	Verification of Coverage	23
SECTION 9.7	Sublessees and Subcontractors	24
SECTION 9.8	Approval	24
SECTION 10	INDEMNIFICATION OF CITY	25
SECTION 11	LIENS AND PERFORMANCE AND PAYMENT BONDS	25
SECTION 11.1	Liens	25
SECTION 11.2	Payment Bond	25
SECTION 11.3	Performance Guarantee	26
SECTION 12	ASSIGNMENT AND SUBLETTING	26
SECTION 12.1	Assignment	26
SECTION 12.2	Terms of Sublease	27
SECTION 12.3	Approved Partners	27
SECTION 13	CANCELLATION BY LESSOR	27
SECTION 13.1	General Default	27
SECTION 13.2	Rental Default	28
SECTION 13.3	Failure to Commence Construction of Leasehold Improvements	28
SECTION 14	CANCELLATION BY LESSEE	28
SECTION 14.1	General Defaults	28
SECTION 15	REDELIVERY AND HOLDING OVER	29
SECTION 15.1	Redelivery	29
SECTION 15.2	Holding Over	29

SECTION 16	DAMAGE OR DESTRUCTION	30
SECTION 16.1	Damage or Destruction to T4 or the Unimproved Shell.....	30
SECTION 16.2	Damage to Premises.....	31
SECTION 16.3	Protection of Contents of Premises	31
SECTION 17	FORCE MAJEURE	31
SECTION 18	ATTORNEYS' FEES	31
SECTION 19	AMENDMENT.....	31
SECTION 20	RELATIONSHIP OF PARTIES	31
SECTION 21	NO THIRD-PARTY BENEFICIARIES	32
SECTION 22	PROHIBITED INTERESTS	32
SECTION 23	QUIET ENJOYMENT	32
SECTION 24	COMPLIANCE WITH LAWS.....	32
SECTION 24.1	Rules and Regulations	32
SECTION 24.2	Supplemental Terms and Conditions to All Airport Agreements	33
SECTION 24.3	Taxes and Licenses	33
SECTION 25	GENERAL PROVISIONS.....	33
SECTION 25.1	Small Business Participation	33
SECTION 25.2	Equal Employment Opportunity and Equal Pay.....	35
SECTION 25.3	Subordination to Agreements with the United States.....	35
SECTION 25.4	Notices	36
SECTION 25.5	Approvals, Consents and Notices.....	36
SECTION 25.6	Offset Provisions	37
SECTION 25.7	Transactional Conflicts of Interest	37
SECTION 25.8	Paragraph Headings	37
SECTION 25.9	Savings Clause	37
SECTION 25.10	Waiver of Claims	37
SECTION 25.11	Corporation Authorization.....	38
SECTION 25.12	Right to Develop Airport	38
SECTION 25.13	Incorporation of Exhibits.....	38
SECTION 25.14	Incorporation of Required Provisions.....	38
SECTION 25.15	Successors and Assigns Bound	38
SECTION 25.16	Right to Amend	38
SECTION 25.17	Time of Essence	38
SECTION 25.18	Good Faith	38
SECTION 25.19	Interpretation.....	39
SECTION 25.20	Entire Lease.....	39
SECTION 25.21	Conflicts	39
SECTION 25.22	Hazard, Potential Hazard, Nuisance or Annoyance.....	39
SECTION 25.23	Airport Security Plan.....	40
SECTION 25.24	Lessee and Sublessee Worker Background Screening	40

SECTION 25.25	Contract Worker Access Controls, Badge and Key Access Requirements.....	41
SECTION 25.26	Lessor Improvements to T4.....	42
SECTION 25.27	Statutory Remedies.....	42
SECTION 25.28	Non-Waiver	42
SECTION 25.29	Tenant Liability Continues	42
SECTION 25.30	Lessee Bankruptcy.....	43
SECTION 25.31	Governing Law; Forum; Venue.....	43

EXHIBIT 1	PREMISES	
EXHIBIT 2	CONCEPT	
EXHIBIT 3	TENANT DESIGN CRITERIA	
EXHIBIT 4	PROPOSED CAPITAL INVESTMENTS	
EXHIBIT 5	LETTER OF CREDIT FORM	
EXHIBIT 6	CASH DEPOSIT AGREEMENT	
EXHIBIT 7	COMPLIANCE WITH ENVIRONMENTAL LAWS	
EXHIBIT 8	SUPPLEMENTAL TERMS & CONDITIONS	
EXHIBIT 9	RETAIL OPERATING AND SERVICE STANDARDS MANUAL	
EXHIBIT 10	AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PROGRAM RACE- AND GENDER-NEUTRAL CONTRACT CLAUSE	
EXHIBIT 11	OPERATIONS PLAN	
EXHIBIT 12	RESPONDENT'S PLANS (RESPONSE SUBMITTAL)	

**PHOENIX SKY HARBOR INTERNATIONAL AIRPORT
TERMINAL 4
RETAIL AND AUTOMATED VENDING CONCESSIONS LEASE**

This RETAIL AND AUTOMATED VENDING CONCESSIONS LEASE ("**Lease**") is made and entered into this _____ day of _____, 2020 ("**Effective Date**"), by and between the CITY OF PHOENIX, a municipal corporation of the State of Arizona (hereinafter referred to as the "**Lessor**" or "**City**"), and _____ (hereinafter referred to as "**Lessee**"), whose principal place of business is located at _____.

RECITALS

1. Lessor is the owner and operator of Phoenix Sky Harbor International Airport ("**Airport**") in Phoenix, Arizona, including Terminal 4 ("**T4**").
2. Lessor desires to grant to Lessee the non-exclusive rights specified in this Lease and to establish the terms and conditions for the operation of Lessee's retail ("**Retail**") concessions with automated vending ("**Automated Vending**") in T4.
3. Lessor desires to have new Retail facilities, upgraded and remodeled to offer the traveling public current Retail concepts in addition to Automated Vending concepts at designated locations in T4.
4. Lessor has solicited responses from concessionaires for T4 and Lessor has negotiated with Lessee to operate first class Retail and Automated Vending concessions for the convenience and necessity of the customers, passengers and public using T4.
5. At any time during the term of this lease, Lessor reserves the right to add or change concessions in T4.
6. Lessee is responsible for all contractual obligations of its Retail and Automated Vending operations in T4, including those Retail and Automated Vending operations operated by its Airport Concessions Disadvantaged Business Enterprise (ACDBE), Disadvantaged Business Enterprise (DBE), small business, sublease and joint ventures Partners (collectively referred to in this Lease as "**Partners**").
7. On _____, 2020, Phoenix City Council approved Ordinance S-_____ authorizing this lease.

NOW, THEREFORE, in consideration of the foregoing recitals, which the parties acknowledge are a part of this Lease, and of the following terms and conditions which are agreed by and between the parties as follows:

SECTION 1
TERM

SECTION 1.1 – Initial Term

The Initial Term of this Lease shall commence on the **Effective Date** listed above and shall extend until Lessee begins all Retail and Automated Vending operations included under this Lease for T4 or _____, 2020, whichever comes earlier.

SECTION 1.2 – Primary Term

The Primary Term of this Lease shall commence when Lessee begins all Retail and Automated Vending operations included under this Lease for T4, or _____, 2020, whichever occurs earlier. The Primary Term will expire on _____, 2025, unless this Lease is terminated earlier as hereinafter provided. If Lessee begins all operations on a day other than the first day of the month, all monetary obligations under the Lease will be prorated for the remainder of the month.

There are two one-year renewal options from _____, 2025 until _____, 2026 and _____, 2026 until _____, 2027. The option to extend the contract is at the sole discretion of the Aviation Director and will be exercised only if it is in the City's best interest to do so.

SECTION 2
PREMISES AND PRIVILEGES

SECTION 2.1 - Premises

2.1.1 Lessor hereby leases to Lessee those Premises and facilities in T4 shown on the drawings attached to this Lease and denoted as "Premises" in **Exhibit 1** ("**Premises**"), which occupy approximately _____ square feet (sq. ft.) for Retail and Automated Vending concessions space. Lessor grants Lessee the right of ingress and egress to and from the Premises on public access roadways, sidewalks and areas of the Airport. If available, Lessee may lease additional support space at the Airport at the current rates authorized by Phoenix City Code, subject to annual adjustment.

2.1.2 Lessee leases the Premises after a full and complete examination of the Premises and the title and has full knowledge of the present uses and non-uses. Lessee accepts the foregoing in the condition or state in which they now are "as-is" without any representation or warranty, express or implied in fact or by law, by Lessor and without recourse to Lessor as to the title, nature, condition or usability or use to which the Premises may be put. Lessor shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Premises other than those expressly provided in this Lease. Lessee assumes the full and sole responsibility for the condition, operation, repair and maintenance of the Premises.

SECTION 2.2 - Rights and Privileges

2.2.1 Lessor hereby grants to Lessee a nonexclusive right to engage in business at the Premises as a Retail and Automated Vending concessions operator, a commercial activity defined and regulated by this Lease and the Phoenix City Code, to operate the concession concept identified in **Exhibit 2** ("Concept"). Lessee shall use the Premises for no other purpose. Lessor may grant rights to others to conduct the same or similar operations in T4.

2.2.2 It is the objective of Lessor and Lessee that each T4 concession unit maintains a distinctive quality. Therefore, each Retail and Automated Vending concession unit must be operated in compliance with **Exhibit 2**. Any modifications to **Exhibit 2** must be approved in writing, in advance, by Lessor.

2.2.3 Unless expressly provided by this Lease, Lessee shall not operate vending machines containing any food items on the Premises.

2.2.4 The Lessor reserves the right to require modification to Lessee's merchandise plan.

2.2.5 Lessee may use up to, but not more than, three percent (3%) of the Retail concessions floor space of the Premises for storage, office, or other purposes not directly related to the display and sale of goods to customers unless otherwise approved by Lessor.

2.2.6 Exclusive of any support space allotted to the Premises under Section 2.2.5 or leased by Lessee as part of the Premises, Lessee agrees one hundred percent (100%) of the Premises shall be devoted to Lessee's operation of the Retail and Automated Vending concession concept listed in **Exhibit 2**. Lessee's failure to comply with **Exhibit 2** will be grounds for termination of this Lease. Such compliance by Lessee shall be at the sole determination of Lessor.

2.2.7 Lessor reserves the right, in its sole discretion, to install one (1) or more public address system speakers on or within the Premises for announcing flight arrivals and departures and other Airport information. Lessee shall not install any public address or paging system on the Premises.

2.2.8 The rights and privileges described in this Section may be modified by Lessor to implement the purpose and intent of this Lease.

2.2.9 Lessee shall have the right and obligation to construct Leasehold Improvements to the Premises for use in its Retail and Automated Vending concession units in accordance with **Section 5**.

2.2.10 As a condition of its right to occupy the Premises, Lessee shall ensure the operation of any wireless access point does not cause interference with existing communication users, including, without limitation, aviation-related operations and equipment at the Airport, the operation of any existing wireless users operating at the Airport, and the Airport's own radio systems. If the operation of Lessee's wireless access point causes any interference to any existing users, Lessee shall take all steps necessary to remove the cause of the interference. Lessee shall cooperate with the Lessor and any necessary third parties to identify and eliminate the cause of the interference. If Lessor determines, in its sole discretion, that Lessee's wireless access point or signals being transmitted by means of the wireless access point, are the cause of any interference, Lessor may direct Lessee to immediately cease operation of all or any portion of Lessee's wireless access point, or otherwise take action to eliminate the interference at sole cost to Lessee.

2.2.11 Lessee shall submit for Lessor's approval any and all television programming packages (including content of all channels) to be used within the Premises, prior to Lessee's implementation of such programming. The volume of all television programming must be set at a level that does not disturb other Airport operations or passengers. It is expressly agreed, however, that any programming related to any accident or incident involving a commercial passenger airline may only be included in the programming without graphic video coverage of the accident site, unless the incident involves a national emergency or threat to security. In accordance with 49 CFR 27.71 (i), Lessee must also ensure that the captioning function is enabled on all televisions for any programming, live or pre-recorded, shown within the Premises. The Airport conducts periodic monitoring for the captioning function and will notify the Lessee in writing about noncompliance. A Lessee that receives three Airport notifications within one calendar year could be subject to further Airport action, including fine or citation.

2.2.12 Lessee may participate in the Airport's Employee Parking Program, in accordance with all rules and regulations promulgated by the Aviation Department, and Phoenix City Code. Lessee shall be responsible for any parking fees for anyone enrolled under Lessee's account.

2.2.13 Lessor reserves the right to develop, construct, and operate a Consolidated Receiving and Distribution Center (CRDC) during the term of the lease. Lessee, along with Lessee's subtenants, joint venture partners and authorized vendors will be required to utilize this facility. Tenant costs associated with the CRDC will be assessed, if developed.

2.2.14 Lessor reserves the right to solicit and contract for airport wide exclusive beverage rights to include brands of bottled, canned and prepackaged beverage at airport food & beverage and retail and any other concessions facilities.

SECTION 3 **RENT**

SECTION 3.1 - Gross Sales

The term "Gross Sales," as used herein, shall be construed to mean the aggregate amount of all sales made and services rendered at or from the Premises, and any other revenues of any type arising out of or in connection with Lessee's operation under this Lease on the Premises, regardless of when or where the order therefore is received, where performed by Lessee or its Partners, from the Premises for cash or credit or otherwise, of every kind, name, and nature, regardless of when or whether collected or not, as if the same had been sold for cash, or the fair and reasonable value thereof, whichever is greater. Only the following shall be excluded or deducted from the computation of Gross Sales:

3.1.1 Any and all transaction privilege taxes (sales taxes), excise taxes or related taxes upon or passed through to customers and collected by Lessee on such sales.

3.1.2 Receipts from the sale or trade-in value of any furniture, fixtures or equipment used upon the Premises and owned by Lessee.

3.1.3 The value of any merchandise, supplies or equipment exchanged or transferred from or to Lessee's other business locations where such exchanges or transfers are not made for the purpose of avoiding a sale that otherwise would be

made at or from the Premises.

3.1.4 Receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers.

3.1.5 Receipts with respect to any sale where the subject of such sale, or some part thereof, is thereafter returned by a customer to and accepted by Lessee, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit.

3.1.6 The amounts of cash or quantity discounts received from sellers, suppliers and manufacturers.

3.1.7 Expenses charged to customers that are paid by Lessee for the shipment of approved retail goods sold as a convenience to customers.

3.1.8 The amounts of any gratuities paid or given by customers to Lessee's employees.

3.1.9 Receipts from the sale, at cost, of uniforms or clothing to Lessee's employees where such uniforms or clothing are required to be worn by such employees.

3.1.10 Receipts from the sale of garbage or scrap materials resulting from Lessee's operations at the Premises.

3.1.11 Meal, tip and other wage credits to Lessee's employees for purposes of compliance with minimum wage laws.

3.1.12 Gift cards sold at the Premises. When a gift card is redeemed or accepted as payment for a purchase at the Premises, the transaction must be reported as part of Gross Sales.

SECTION 3.2 - Credits and Discounts

Lessee may allow customary discounts on sales to its own employees. Lessee shall not be credited with nor allowed to have any reduction in the amount of Gross Sales that results from any arrangements for a rebate, discount or hidden credit given or allowed to any customer, City, or other Airport employees.

SECTION 3.3 - Annual Rent

3.3.1 Immediately upon Lessee's receipt of monies from the operation of the Retail and Automated Vending concessions herein authorized, the portion of monies belonging to Lessor under the terms of this Lease shall immediately be vested in and become the property of Lessor, and Lessee shall be responsible for the monies until the same are delivered to Lessor.

3.3.2 For purposes of this Lease, "Lease Year" means the twelve-month period beginning on January 1st and ending December 31st. "Prorated Lease Year" means the period from when Lessee begins operation or December 31st, whichever occurs first, until the beginning of the first Lease Year, and the period from the last Lease Year until termination.

3.3.3 Lessee, for and in consideration of the use of the Premises, facilities, rights and privileges granted hereunder, hereby covenants and agrees to pay Lessor without notice, and free from any and all claims, deductions or set-offs against Lessor, as rent:

- a. For the Initial Term, Lessee shall pay only a Percentage Rent of annual Gross Sales as follows: _____ percent (___%) for

_____ ; _____ percent (___%) for
_____ ; and _____ percent (___%) for
_____.

- b. For the Primary Term and through each Lease Year of the Primary Term hereof, Lessee shall pay the greater of Minimum Annual Guaranteed **(MAG)** rent as described below; or Percentage Rent as described above.

3.3.4 MAG for the first full Lease Year will be MAG in the amount of _____ dollars (\$_____). MAG shall be prorated for the Prorated Lease Year. MAG for the second Lease Year and all years thereafter will be established at eighty-five percent (85%) of the annual rent owed by Lessee during the immediate preceding year or one hundred percent (100%) of MAG for the first Lease Year, whichever is greater.

3.3.5 MAG shall be paid in installments in advance on the first day of each month. On each such date Lessee shall pay one-twelfth (1/12) of MAG, plus all applicable taxes.

3.3.6 In the event the required MAG payment specified in Section 3.3.5 is in excess in any one (1) period of an amount that would be due were the Percentage Rent calculation applied, the MAG payment set forth above is nevertheless to be submitted to Lessor.

3.3.7 Although each new MAG will be effective on January 1, the calculation of MAG may not be finalized until later, at which time Lessor will send Lessee written notice of the new MAG amount. Lessee shall then pay Lessor the difference or receive a refund for any current Lease Year MAG payments made prior to the calculation.

3.3.8 If Lessee fails to complete construction on its Leasehold Improvements within its Lessor-approved construction timetable, Lessee shall nevertheless be responsible for MAG per Section 3.3.3.

3.3.9 The termination of this Lease, by the lapse of time or as otherwise provided herein, shall not relieve Lessee of its obligation to pay any rent or other charges that have accrued during the period in which this Lease is in effect or Lessee has had the benefit of the Premises.

SECTION 3.4 - Percentage Rent Payments and Reports

3.4.1 In computing Percentage Rent to be paid by Lessee, the first reporting period shall commence on the date Lessee opens for business and shall end at the close of business on the last day of the same calendar month. Thereafter, the reporting period shall be on a calendar month basis.

3.4.2 Lessee shall, within twenty (20) days after the close of each month, furnish Lessor a detailed statement of Gross Sales and any deductions from Gross Sales, from each individual Retail and Automated Vending concession unit for the preceding month prepared in accordance with Generally Accepted Accounting Principles (GAAP) and certified by a responsible financial officer of Lessee. These Gross Sales reports must show such data and breakdown for Lessee and Lessee's Partners, including ACDBEs and small businesses, including an itemized list identifying all Gross Sales by Percentage Rent category purchases of Goods & Services and any other type of reporting as may be required by Lessor, and shall be accompanied by Lessee's payment of additional rent that may be due hereunder based on the application of Percentage

Rent, plus all applicable taxes. Lessor may require changes to the format of these reports at any time.

3.4.3 By March 31st of each Lease Year, Lessee is required to submit to Lessor an annual accounting statement of Gross Sales and Percentage Rent for each Retail and Automated Vending Concession unit, including all Partners, ACDBEs and small businesses in accordance with GAAP. This statement must be prepared and audited by an independent Certified Public Accountant (CPA), in accordance with Generally Accepted Auditing Standards (GAAS). This requirement applies to prorated Lease Years at the start and end of the Lease.

The purpose of the audit is to determine if the Gross Sales and Percentage Rent reported accurately reflect the rents due and paid to Lessor for the Lease Year for each Retail concession unit.

SECTION 3.5 – Rent Remittance

Rent payments shall be made payable in check form to the Aviation Department's lockbox at Aviation Department, City of Phoenix, P.O. Box 29110, Phoenix, Arizona 85038-9110. In the event technological advances make point of sale Gross Sales reporting and payment transfers more economically feasible, Lessor reserves the right to revise how payment remittances are made. Any and all equipment and transmission changes necessary to accomplish the change in the reporting and/or remittance process will be the responsibility of Lessee.

SECTION 3.6 – Miscellaneous Charges

Lessee agrees it is responsible for all miscellaneous charges for services rendered by the Lessor to support the Premises and Retail concession operations. These charges may include but are not limited to: security badging for employees, City inspections for Lessee's construction projects, parking, and work orders.

SECTION 3.7 - Delinquent Rent and Charges

Without waiving any other right or action available to Lessor in the event of default in payment of rents or charges hereunder, late rent or charges are subject to delinquent fees as defined in Section 4-7 of the Phoenix City Code, currently eighteen percent (18%) per annum and as may be amended, beginning on the date the rent or charges were due.

SECTION 3.8 - Late Statements or Reports

If Lessee is delinquent for ten (10) or more days in furnishing Lessor any monthly statements or reports required under this Lease, Lessee shall pay one hundred dollars (\$100) per late statement or report to Lessor as liquidated damages for the additional administrative costs incurred by Lessor in processing and reviewing delinquent statements or reports. The parties agree this is a fair and reasonable estimate of Lessor's costs incurred in processing a delinquent monthly statement or report.

SECTION 3.9 - Books and Records

3.9.1 For the seven (7) most recent years of the term hereof, and until all claims by Lessor for payments hereunder shall have been fully ascertained, fixed and paid, or until three (3) years after expiration or earlier termination of this Lease, whichever is later, Lessee shall keep, in accordance with GAAP and GAAS, separate and accurate records of Gross Sales showing in detail all business done or transacted in, on, about, from, or pertaining to the Premises. Lessee shall enter all receipts arising from such business in regular books of accounts kept on the Premises for that purpose, and all entries in any such records or books shall be made at or about the time the transactions respectively occur. It is the intent and purpose of the foregoing provisions that Lessee shall keep all such records available for inspection by Lessor as will enable Lessor to ascertain and determine, accurately and clearly, the amount of money payable to Lessor hereunder, and the exact share of Gross Sales billed and/or received by Lessee under this Lease.

These records shall include, but are not limited to: chart of accounts, general ledger, daily business reports, and original or copies of rent agreements for all Airport-related transactions. Lessor prefers the records be kept in Phoenix. If Lessee elects not to maintain its records in Phoenix, then upon Lessor's request or in the event of an audit, it shall either: 1) pay for all expenses associated with delivering the records to the address of the auditors; or 2) pay for reasonable travel expenses for the auditors to have the audit conducted at Lessee's specified location, including an administrative fee of fifteen (15%) percent of the actual costs of the audit.

3.9.2 Lessor may audit Lessee's books and records at any time to verify compliance with this Lease. Within ten (10) days of Lessor's request, during normal business hours, Lessee will make available for inspection and review to Lessor's employees, agents, and contractors all of its records, which shall be maintained in accordance with GAAP and GAAS, showing in detail all business conducted pursuant to this Lease.

The records requirements of this Section shall extend to any of Lessee's subsidiaries, Partners, and sublessees.

Lessor may use its own staff to perform audits under this Section or may engage an independent CPA to perform the audits. If an audit reveals that Lessee has understated its Gross Sales by two percent (2%) or more, the entire expense of the audit shall be borne by Lessee. Lessee shall immediately pay any additional amounts due to Lessor in compliance with Section 3.7.

3.9.3 Lessee shall install and use or cause to be installed and used at each Retail concession unit, cash registers, sales slips, invoicing machines and other automatic accounting equipment required to properly and accurately record the gross revenues on all sales, by type and location, services, and other business transactions. The devices shall be equipped with a transaction log with auditing capabilities that track and store each transaction that is accumulated through the point of sale register(s). The transaction history shall be consecutive and cannot be interrupted or restarted without the proper audit logs to support the interruption in numerical sequence. Lessee shall provide evidence of such internal controls documenting complete recording of all receipts for all operating hours. All transactions recorded on the devices shall be visibly displayed so that the amount recorded can be viewed by customers from a reasonable distance.

3.9.4 Lessee shall maintain an internal control structure designed to provide reasonable assurance that assets are safeguarded from loss or unauthorized use, that transactions are executed in accordance with management's authority, and that the financial records are reliable for the purposes of preparing financial statements. The internal control structure shall be supported by the selection, training, and development of qualified personnel, by an appropriate segregation of duties, and by the dissemination of written policies and procedures.

3.9.5 It is agreed that examination of the books, ledgers, journals and accounts of Lessee will be conducted in accordance with GAAP and GAAS applicable in the circumstance, and that as such, the examinations do not require a detailed audit of all transactions. Testing and sampling methods may be used in verifying reports submitted by Lessee. Deficiencies ascertained by applying percentages of error, obtained from such testing and sampling, may be applied by Lessor to the entire period of reporting under examination and will be binding upon Lessee, and to that end shall be admissible in any court of law to prove any amounts due Lessor.

SECTION 3.10 – Independent Audits

If, as a result of an audit, Lessor determines that additional monies are due to Lessor, Lessee shall be notified of Lessor's findings and invoiced for the total amounts due. Within thirty (30) days of the notice and invoice from Lessor, Lessee shall do one of the following: (1) notify Lessor in writing that Lessee agrees with Lessor's audit findings and pay all monies due to Lessor; or (2) dispute the audit findings, in writing. Failure of Lessee to dispute the audit findings, in writing, within thirty (30) days of receiving the notice and invoice, shall constitute acceptance of the findings and waiver of the right to appeal the findings. If Lessee elects to dispute the audit findings, it shall, within ninety (90) days after providing notice to Lessor of the dispute, furnish to Lessor, at Lessee's expense, an audit made by an independent CPA mutually agreeable to both parties. If Lessee elects to request an independent audit under this Section, and if that audit results in a finding that there is a deficiency of two percent (2%) or more of the amount payable to Lessor, then Lessee agrees to pay Lessor for the cost of Lessor's audit and for all deficiencies and delinquent fees. Interest shall accrue from the date the delinquent payment was due under the Lease in accordance with Section 3.7.

SECTION 3.11 – Final Audit Binding

The final audit of the independent CPA shall be conclusive upon the parties, and Lessee shall pay to Lessor, within thirty (30) days after a copy of the CPA's final report has been delivered to Lessee, the amount, if any, shown thereby to be due and owing Lessor. The failure of Lessee to make payment to Lessor within this thirty (30) day period shall constitute a material breach of this Lease and shall give cause to Lessor for immediate termination thereof.

SECTION 3.12 – Support Space

Based on availability Lessee may lease support space in Terminal 4. Lessee shall

pay rent equal to the rate set forth in the Phoenix City Code Section 4-173 for terminal rental rates, as may be amended throughout the term of this Lease. Effective July 1, 2019, terminal rent is \$135.72 per sq. ft. per year (July 1, 2019 - June 30, 2020). All rent and fees assessed in accordance with Section 4-173 are due and payable monthly in advance on the first day of each month. On each such date, Lessee shall pay one-twelfth (1/12) of the annual rent plus applicable tax as may be adjusted by the taxing authority throughout the term of this Lease. The current tax rate is 2.9% for sales tax. Rent and fees are delinquent if not received by Aviation by the tenth day of the month. Rent and fees shall be deemed delinquent and assessed a delinquent account fee in accordance with Section 4-7 of the Phoenix City Code.

SECTION 4 **LESSEE OPERATING STANDARDS**

SECTION 4.1 - Service Standards

4.1.1 Lessor is dedicated to providing exceptional customer service and requires Lessee to operate the Retail and Automated Vending concession units in an efficient, customer friendly, well-run manner to meet the needs of passengers and other customers. Lessee shall maintain the standards in this Section and in **Exhibit 9** (“**Retail Operating and Service Standards Manual**”) and maintain equal or higher standards included in the proposed Operation Plan as attached as **Exhibit 11** (“**Operations Plan**”). Lessee is hereby granted the non-exclusive right and privilege to furnish, operate and supply six (6) Automated Vending concession units on the Premises of the Phoenix Airport System for use by passengers, airport employees and other customers. The Aviation Department shall have the right to require Lessee to add, remove, replace or otherwise change units based on needs and demands.

4.1.2 Lessee shall conduct its Retail and Automated Vending operations in a proper business-like manner so as not to disturb or be offensive to other tenants, customers, or passengers in T4. Lessee shall not solicit business anywhere at the Airport, except within the Premises. The Lessee may request suggested changes to the number, type and location of Automated Vending units to better enhance the program. These suggested requests will be evaluated and mutually agreed upon. Any request by the Lessee for any additions, removal or relocation of automated vending units shall be made in writing by the Lessee and approved in writing by the Aviation Department prior to Lessee taking such action.

4.1.3 Lessor may monitor, test, or inspect the services of Lessee at any time through the use of a shopping service or other commercially reasonable means that do not unduly interfere with Lessee’s Retail and Automated Vending operations. Lessee shall provide and have readily available customer comment cards at the Retail units.

4.1.4 If any of Lessee’s Partners fail to maintain Retail operations in compliance with this Lease, Lessee shall operate the Retail unit or Retail units to maintain compliance. Lessee agrees to furnish all management, labor, equipment, materials, supplies and trained personnel which may be necessary in order to install units and provide automated vending services for use by the passengers, airport employees and other customers on the Premises, all of which are at Lessee’s sole cost and expense.

4.1.5 Lessee shall be responsible for escorting all unbadged Partners, contractors

and any invitees to post-security locations, twenty-four (24) hours a day, seven (7) days a week.

4.1.6 Lessee shall utilize attractive merchandising that entices potential customers to purchase goods. Lessee shall develop and implement creative and effective merchandising displays within the Premises; those displays may include without limitation window displays, display cases, promotional displays (for which Lessor approval must be obtained), and attractive packaging. All signage and merchandising displays must conform to the Tenant Design Criteria attached as **Exhibit 3 (“Tenant Design Criteria”)** and must be approved in advance by Lessor under the Tenant Improvement Process.

4.1.7 Processing of payments at the Retail and Automated Vending units from customers shall be prompt. Receipts shall be properly itemized, reflect precisely the actual sale of goods and date of sale, and list individual prices, taxes and totals (when applicable). All customers shall be thanked for their patronage at the Retail units.

4.1.8 Lessee shall accept traveler's checks and at least three (3) major credit cards for any purchase inside the Retail concession unit. Lessee understands and agrees the operation of T4 Retail concession units necessitates the rendering of public services such as making reasonable change and giving directions.

4.1.9 Lessee is responsible for ensuring all debit and credit card transactions are conducted in accordance with all applicable laws and in compliance with payment card industry standards.

4.1.10 Tip buckets, jars or containers are prohibited at all Retail concession units unless approved in writing, in advance, by Lessor.

4.1.11 “Tipping” language is prohibited on printed sales and credit card receipts.

4.1.12 Lessee shall offer the same promotions and discounts, sell, and accept gift cards, as offered in street location(s) from the Retail units. Customers should not experience operational differences between the T4 Retail concession unit and its street location(s).

4.1.13 Lessee may offer gift wrapping and mailing services to its customers provided that Lessee may charge only enough for those services to cover Lessee's actual cost to provide the services from the Retail units. The prices to be charged by Lessee shall be reviewed and approved in writing by Lessor before Lessee begins providing the services. Lessee shall not deviate from the approved prices without the prior written consent from Lessor.

4.1.14 Lessee shall maintain appropriate stock levels in every Automated Vending unit on the Premises, replenish supplies as necessary and continually reassess stock levels and unit usage to determine and implement any necessary changes to drivers' routes and restocking schedule.

4.1.15 Lessee shall provide sufficient numbers of employees necessary to efficiently and effectively operate the Automated Vending service and shall furnish good, prompt and efficient service adequate to respond to all reasonable demands at the Premises.

4.1.16 Lessee shall develop and implement a system to manage and respond to incidents of Automated Vending units including but not limited to providing refunds for non-dispense and damaged items. Each Automated Vending unit shall be clearly labeled with contact phone number(s) and instructions to follow in those instances.

4.1.17 Lessee shall, during the term of this Lease, be qualified to do business in the State of Arizona and shall obtain and maintain all necessary business licenses and permits from Maricopa County and any other applicable governing department or agency.

4.1.18 Lessee shall provide a stock list and current price list to the Aviation Department. Lessee may add and/or remove items to/from stock at its discretion. Lessor reserves the right to initiate changes to the stock items based upon deficient sales, quality and health or safety concerns.

4.1.19 In no event shall the price charged by Lessee exceed the price marked on the item being sold. Lessor reserves the right to conduct its own price comparison at any time.

4.1.20 Except as otherwise expressly agreed by Lessor, Lessee shall operate the designated Retail Concessions seven (7) days a week which shall include Lessee's obligation to open the Retail for business at least one (1) hour prior to the first scheduled flight departure daily from Terminal 4 and one-half hour after the last scheduled flights arrival daily at Terminal 4. Exact hours of operation will be established and reestablished from time to time by Lessor based upon airline schedules and demands of the traveling public, including satellite locations. Such hours of operation shall be communicated to Lessee. Failure to adhere to the established hours of operation will result in inconvenience to the public and will adversely affect the operation of the Airport. Automated Vending units must be available and operational 24 hours a day. Quantification of the resulting damages is difficult. The parties agree that the liquidated damages set forth herein are reasonable estimates of the actual damages that would be incurred by the public and Lessor for the specified breaches of the foregoing operating standards. Therefore, for each violation of this Section, Lessee shall pay \$100.00 to Lessor as liquidated damages. Liquidated damages will also apply to the following: failure to service automated vending units weekly or a mutually agreed upon time; failure to supply refunds within two days or request or a mutually agreed upon time; failure to respond to request for automated vending unit maintenance/repair within 24 hours of request or mutually agreed upon time.

SECTION 4.2 - Employee Standards

4.2.1 Lessee shall recruit, train, supervise, direct, and deploy the optimum number of employees to match the service requirements of this Lease. Each employee shall: (1) be clean, neat, free from offensive body odor, professional, courteous, friendly, and not wear excessive amounts of jewelry, perfume, or cologne; (2) wear Lessor-approved uniforms and clearly display an Airport security identification badge showing the names of the employee and employer at all times while at the Airport. If an employee is found within a Security Identification Display Area (SIDA) without an Airport security identification badge clearly displayed, Lessee shall discipline, and, if necessary, discharge, the employee.

4.2.2 Lessee shall provide services in English to meet the expectations of the traveling public, whom are predominantly domestic passengers at this Airport. Offering services in other languages is encouraged but not required. Lessor reserves the right to require Lessee to increase staffing levels if the customer service requirements set forth in this Lease are not being met in Lessor's judgment. Lessee should anticipate peak travel seasons such as Spring Break, Thanksgiving, Christmas, and other holidays, and add additional staff accordingly.

4.2.3 Lessee and its Partners shall hire from the pool of current T4 Retail employees who are employed by the current T4 Retail concessionaire and retain those Retail concession employees for ninety (90) days. Lessee and its Partners may only

interview employee candidates outside this pool of Retail concession employees when there are no longer any employees of the current T4 Retail concessionaire available to hire in the same job classification.

SECTION 4.3 - Management

4.3.1 The operation and maintenance of Retail and Automated Vending concession units operated by Lessee shall be under the constant direct supervision of trained, qualified, and experienced managers employed by Lessee. Managers shall be authorized to accept any notice required or allowed by this Lease, and shall have authority to make all decisions reasonably necessary in the day-to-day operation of the concession units. Managers shall be available on-site during business hours, provided that a subordinate may be designated as an acting manager during brief absences of the manager.

4.3.2 Lessee must identify the General Manager (“**GM**”) to be assigned to the oversight of Retail and Automated Vending operations of the Premises including those Retail concession units operated by Lessee’s Partners. The GM is the primary individual responsible to fulfill Lessee’s obligations under the Lease and is the primary point of contact for interaction with Lessor. The GM should be available twenty-four (24) hours a day, seven (7) days a week for Lessor to communicate any challenges and/or emergencies. If the GM is not available, Lessee shall provide a name and telephone number of a manager who is available twenty- four (24) hours a day, seven (7) days a week and able to make decisions on Lessee’s behalf. The GM assigned under this Lease must be fully qualified. Lessee shall submit and maintain an updated organizational chart on file with Lessor at all times. At any time hereafter Lessee desires to change the GM while performing under the Lease, Lessee shall submit the qualifications of the new GM in writing to Lessor for prior approval. Lessor reserves the right to reject the requested change.

SECTION 4.4 - Sanitation, Hygiene, and Cleanliness

4.4.1 Lessee shall keep the Premises, along with any service pathways used by Lessee, clean, well-maintained and free of garbage, unpleasant odors, and hazardous conditions and notify Lessor promptly of hazardous conditions in the public areas outside the Premises.

4.4.2 Lessee shall provide a complete and sanitary handling of all garbage and recyclables generated as a result of Retail and Automated Vending concession operations on the Premises and shall provide for its timely removal to the central collection point provided by Lessor. At no time shall Lessee accumulate garbage or recyclables outside the Premises or within passenger view.

4.4.3 Lessee shall keep all garbage and recyclable materials in durable, insect- and rodent-proof, fireproof containers that are easily cleaned. The containers shall have tight- fitting lids, doors, or covers, and shall be kept covered when material is not being deposited in them and shall be cleaned as necessary to prevent odors. Boxes, cartons, barrels, or other conveyance items shall be disposed of promptly by Lessee and not be within passenger view.

4.4.4 Lessee shall make arrangements to provide containers, for each individual concession, to separate concession-generated recyclable materials from non-recyclable

materials. All Retail and Automated Vending concession-generated recyclable materials acceptable to Lessor's recycling program must be brought to the recycle collection areas. All garbage and recycle containers (full or empty) shall be kept within the Premises, out of passenger view, and in compliance with Section 4.4.3.

4.4.5 Lessee shall retain within each Retail concession unit, and available upon Lessor's request, all equipment servicing schedules, maintenance logs and invoices documenting any and all routine inspections, services and cleanings of any equipment including, but not limited to: fire suppression equipment inspections and pest control services.

4.4.6 Lessee shall take appropriate action to exterminate and prevent the presence of rodents and other vermin within the Premises and within all Lessee on-Airport support space areas.

4.4.7 Lessee shall provide for Lessor's approval a schedule for the routine inspections, services, and cleanings required to meet 4.4.6 above. The schedule shall be updated with Lessor when changes are made. Lessor reserves the right to add items as necessary to ensure Lessee is conducting regular and routine cleanings, inspections and maintenance for each retail concession unit.

SECTION 4.5 - Deliveries

4.5.1 All designated vendor delivery vehicles must be inspected prior to entry into secured areas of the Airport.

4.5.2 Authorized vendor delivery zones are located on the service level of the T4 building. Delivery zones may be changed from time to time due to Lessor's construction activities or operational requirements. Use of the delivery zone by Lessee or Lessee's suppliers is limited to thirty (30) minutes at any one time. Deliveries taking longer than thirty (30) minutes must be approved in advance by Lessor.

4.5.3 All deliveries to Retail concession units shall be scheduled during non-peak passenger periods. Lessor may issue schedules for acceptable delivery times, which may be adjusted from time to time, and from which Lessee shall not deviate without Lessor's prior consent.

4.5.4 Lessee shall ensure items transported within the Airport are handled with care and packaged in covered containers that do not leak. The conveyance of items via delivery cart, dolly, Lessor-approved pallet jack, or any other Lessor-approved means within the Airport, shall not exceed the height of the person delivering the items as a safety precaution. In transporting items associated with Lessee's operations to and from Retail concession units, Lessee shall use only those delivery routes established by Lessor and shall use only carts, vehicles, or conveyances ("**Delivery Carts**") that are sealed and leak-proof. Items may only be transported on Delivery Carts equipped with rubber, air-filled, polyurethane non-marking wheels. Black wheels or other marking wheels are strictly prohibited. Delivered items must immediately be placed into the Retail concession units and not left within hallways or other Airport areas causing obstructions to Partners, passengers, Lessor's staff, or other lessees.

4.5.5 Deliveries are the responsibility of Lessee. Lessor shall take no responsibility or sign for any deliveries.

4.5.6 Commercial Delivery Vehicles on the Airfield: Lessor reserves the right to regulate and approve the size of all large commercial delivery vehicles to be used on

the Airfield by Lessee and all of Lessee's authorized vendors.

SECTION 4.6 - Signs

Lessor will permit Lessee to install and operate signs in and about the interior and exterior of the Premises to advertise the retail shop, but Lessee shall not install any sign until the sign has been approved in writing by Lessor. Signs will also be permitted to be installed on the actual Automated Vending units for the purpose of marketing the merchandise respective to the units. Lessee shall request the Lessor's approval by submitting a written request identifying the number, general type, size and location and must be accompanied by a detailed rendering or drawing of the proposed sign. Freestanding floor signs outside of the lease line are not permitted. All signs must conform to the minimum requirements established by the signage standards in the Tenant Design Criteria that are incorporated by reference as **Exhibit 3** and must be approved through the Lessor's Tenant Improvement Process.

SECTION 5 **IMPROVEMENTS TO BE MADE BY LESSEE**

SECTION 5.1 - Furnish and Equip Premises

5.1.1 Lessee shall provide and maintain at its own expense first-class Retail and Automated Vending concession units. This includes all improvements, alterations, and fixtures necessary for the customary operation of such a business, including, but not limited to: sales counters, display cabinets, interior partitions, special lighting, fixtures, wall coverings and finishes, and all other equipment, furniture, furnishings, and supplies necessary to conduct first-class Retail and Automated Vending concession units. All improvements affixed in any manner to the Premises are "**Leasehold Improvements.**" All non-affixed items, including cash registers, safes, racks and other furnishings and equipment are "**Trade Fixtures.**" All Leasehold Improvements must comply with **Exhibit 3**.

5.1.2 Lessee shall submit a phasing plan listing the start and end dates of construction for each Retail concession Premises. Construction shall be completed within 90 days. If not complete within 90 days, MAG will commence per Section 3.3.3. Lessee shall submit a phasing plan listing the delivery and installation dates of the Automated Vending units at each location.

5.1.3 Lessee shall not request, nor will Lessor execute, a Landlord's Waiver, Landlord's Consent, or similar document that would subordinate Lessor's interest in the Lease to any security interest or consent to Lessee's pledge of Leasehold Improvements or Trade Fixtures to obtain financing.

5.1.4 Lessee shall spend a total of _____ dollars (\$_____), as proposed for the Retail concession Premises for initial capital investment expenditures and included as **Exhibit 4** ("Proposed Capital Investment"). In the event Lessee does not spend the proposed initial capital investment per sq. ft. per Retail concession Premises, Lessee shall remit the unspent balance to Lessor within four (4) months of commencement of the Primary Term. Lessor reserves the right to conduct an audit of Lessee's initial capital investment expenditures.

5.1.5 Lessee shall maintain all Retail concession Premises in “opening day” condition throughout the term.

5.1.6 Within one hundred twenty (120) days from beneficial occupancy, Lessee shall provide Lessor a certified cost statement of total initial capital investment costs for each Premise and a certified cost statement listing the total initial capital investment costs of all Premises. The certified cost statements must be itemized and segregated into the categories of Leasehold Improvements and Trade Fixtures. Lessee agrees to pay Lessor one hundred dollars (\$100) per day each certified cost statement is late.

5.1.7 Lessor shall provide Lessee with all demising walls, concrete subfloors, and electrical, HVAC, fire alarm and sprinklers, water, and sewer (in sufficient capacity to support the concept in **Exhibit 2**) stubbed to the leasehold line at each Premises. Lessee shall be responsible for all interior utility installations and distribution of those utilities. If City determines in the future that utility separation is necessary, Lessee will work cooperatively with the City.

5.1.8 The Premises will be available to Lessee as soon as reasonably practicable after the Effective Date of this Lease. Lessee agrees Lessor shall not be legally, financially, nor equitably responsible for any delays in delivering the Premises to Lessee. Lessee acknowledges Lessor shall not be responsible for demolition of existing space, demising walls, or flooring within the Premises. Lessor shall be responsible for all costs associated with abating any asbestos existing on the Premises.

A phasing plan schedule that will be provided to Lessee is an estimated schedule only and no representations, direct or implied, are made by Lessor relating to the time periods stated therein and Lessee waives any rights to rely on same for purposes of any claim against Lessor.

5.1.9 Lessee shall not use any asbestos-containing material. If Lessee or its Partners use any asbestos-laden material within the Premises, Lessee shall be responsible for removing all asbestos-laden material at its cost and in compliance with all applicable environmental laws.

SECTION 5.2 - Plans and Specifications for Leasehold Improvements

5.2.1 In accordance with **Exhibit 3**, Lessee shall submit schematic design drawings and construction documents for Lessor’s approval.

5.2.2 Lessor will provide written notice to Lessee once the Premises have been certified by Lessor's engineer as available for improvement by Lessee. Upon approval of the construction documents by all appropriate City departments, Lessee shall receive a written Notice To Proceed (NTP) providing approval from Lessor’s TI Coordinator to initiate construction within the Premises.

5.2.3 All Leasehold Improvements shall be at Lessee's sole cost and expense and shall not damage T4 of which the Premises are a part.

5.2.4 Lessor’s approval shall not constitute a representation or warranty as to conformity with the requirements of local, state, and federal laws. Lessee shall at all times remain responsible for compliance with all applicable laws. Lessor reserves the right to approve architectural and aesthetic matters for each Retail concession square foot. Lessor may reject any design submitted and require Lessee to resubmit designs and layout proposals until they meet Lessor’s approval.

5.2.5 In the event Lessor rejects any portion of the Schematic Design drawings

or Construction Documents, Lessee shall promptly submit necessary modifications and revisions. No substantial changes or alterations shall be made in any executed plans or specifications after Lessor's initial approval, and no Leasehold Improvements or changes to Leasehold Improvements shall be made to or upon the Premises without Lessor's prior written approval.

5.2.6 One hundred twenty (120) days after completion of any Leasehold Improvement, Lessee shall provide to Lessor two (2) sets of detailed plans and specifications of the work as completed. One (1) copy shall be produced in a computer automated drafting (CAD) format and the second copy shall be as-built plans sealed by an Arizona registrant in an electronic format to be determined by Lessor at the time of submittal. Upon Lessor's request, Lessee will inspect the Premises jointly with Lessor to verify the as-built drawings.

5.2.7 Lessee shall, in the design and construction of Leasehold Improvements and operation of the Premises, comply with all applicable provisions of the Americans with Disabilities Act, 42 U.S.C. §12101 et al., the ADA Accessibility Guidelines (ADAAG), and implementing regulations as imposed upon the owner and/or operator of public facilities.

5.2.8 Any subsequent changes, alterations or additions to constructed Leasehold Improvements or the Premises shall be subject to the prior written approval of the Aviation Director. Before commencing any such improvements, additions or alterations, Lessee shall submit plans and specifications; construction costs and engineering and architectural fees; and a construction schedule for all work, facilities and improvements to the Aviation Director. All construction shall conform to the architectural requirements of the **Exhibit 3** and in accordance with the Tenant Improvement Handbook which may be amended from time to time.

SECTION 5.3 - Title to Leasehold Improvements

5.3.1 All contracts for the construction of the Leasehold Improvements must include provisions of insurance and suretyship reasonably satisfactory to Lessor for protection of Lessor, laborers, suppliers, subcontractors, and the general public.

5.3.2 All Leasehold Improvements approved by Lessor become and remain the property of Lessee until the expiration or termination of this Lease. Upon expiration or termination of this Lease for any reason, all Leasehold Improvements become the property of Lessor, with Trade Fixtures, signs and other personal property remaining the property of Lessee so long as: (1) the removal of such Trade Fixtures, signs, or personal property, at Lessee's sole expense, does not result in material damage to the Premises that cannot be repaired by Lessee to Lessor's satisfaction; (2) Lessee is not in default at the time of the expiration or termination of the Lease; and (3) the Trade Fixtures, signs, or personal property are removed from the Premises no later than ten (10) days after the expiration or termination of the Lease.

5.3.3 Notwithstanding the foregoing, if the Primary Term is less than five (5) years, upon the expiration or termination hereof, Lessor shall reimburse Lessee for the then- unamortized value of its Leasehold Improvements. For purposes of this provision, the amortization period for all the foregoing assets installed on the commencement of the Primary Term shall be five (5) years commencing with the start of the Primary Term. Any additional assets installed on the Premises must be brought to the attention of Lessor and will be amortized over five (5) years commencing on the date of installation.

5.3.4 Lessee shall remove its Trade Fixtures, signs, and personal property in a manner and at times that do not interrupt Airport operations. Lessee shall repair all damage done to the Premises or other Lessor-owned property resulting from the removal of such Trade Fixtures, signs, and personal property and shall restore the Premises and other Lessor-owned property to the state of good repair that existed prior to the installation of Lessee's Trade Fixtures, signs, and personal property, less normal wear and tear. Should Lessee fail to repair the damage to Lessor's satisfaction, Lessor shall have the right to make such repairs and be reimbursed by Lessee within ten (10) days following demand by Lessor for payment at Lessor's standard rates plus Lessor's administrative costs, or, if the work is performed by Lessor's contractor, Lessor's actual cost, including but not limited to Lessor's administrative costs. If Lessee fails to become current on all payments owed to Lessor within thirty (30) calendar days, title to the Trade Fixtures shall vest in Lessor. If Lessee is in default at the time of expiration or termination of this Lease, Lessor may hold title to the Trade Fixtures until Lessee is current on all payments owed to Lessor. If Lessee fails to remove its Trade Fixtures, signs, and other personal property within ten (10) calendar days, or a longer period of time agreed to in writing by Lessor, after the expiration or termination of this Lease, Lessor, at its option, may determine that title to these items shall vest in Lessor at no cost to Lessor, or Lessor may elect to exercise its rights under Section 15.

5.3.5 In the event of dispute as to the affixed or non-affixed nature of any Leasehold Improvements or Trade Fixtures, Lessor's determination shall be final.

5.3.6 Lessee shall maintain all Leasehold Improvements and Trade Fixtures at its own expense.

SECTION 5.4 - Removal and Demolition

Lessee shall not remove or demolish, in whole or in part, any Leasehold Improvement on the Premises without Lessor's prior written approval. Lessor may, at its sole discretion, condition such approval upon the obligation of Lessee to replace the Leasehold Improvement by an improvement specified by Lessor.

SECTION 6 **CLOSURE, RELOCATION, REDUCTION, EXPANSION, OR CONDEMNATION**

SECTION 6.1 - Lessor's Authority

If at any time during the term of this Lease Lessor determines it is necessary for the efficient operation of the Airport, Lessor may require Lessee to close or reduce its operations. If Lessor requires Lessee to close any or all of its operation, Lessee shall vacate the Premises within ninety (90) days of receipt of closure notice, unless exigent circumstances require an earlier closure or reduction of the Premises. If Lessor requires a reduction of Lessee's Premises, Lessee may elect to close the specific Retail concession unit and the closure shall be treated in the same manner as if Lessor had required closure. If Lessee makes a request to relocate a specific Retail concession unit promptly after receiving notice of a closure or reduction, Lessor will attempt to negotiate a mutually acceptable relocation within T4; but Lessee acknowledges relocation is unlikely.

SECTION 6.2 - Compensation

If a closure occurs under this Section, Lessor's liability shall be limited to reimbursement of Lessee for the net book value of all Leasehold Improvements and Trade Fixtures that Lessee cannot reasonably remove and use in a relocated or reduced Retail concession unit. For the purposes of this Lease, net book value shall mean the current value of the Leasehold Improvements after depreciation in accordance with Section 7.3.3.

SECTION 6.3 - Condemnation

This Lease shall terminate upon the filing of an action to condemn the Premises and Lessor shall be entitled to all compensation awarded in any condemnation action, except for the amount indicated in Section 6.2.

SECTION 7 **JANITORIAL SERVICES**

Lessee shall provide janitorial services within the Premises and along pathways to and from support space and garbage disposal areas, as needed, to maintain safety and cleanliness standards described in this Lease. Lessee shall ensure routine floor cleaning of back-of-house service ways and common areas will occur as needed and that no Retail concession-generated garbage is tracked onto T4 flooring. Lessee's responsibility includes the immediate cleaning of any flooring soiled by its Retail operations.

Lessee-provided janitorial services must be provided equal to or greater than the standards of cleanliness and appearance required by Lessor for T4 public areas. To maintain high standards throughout T4, Lessor shall have the right to perform such services for Lessee in the event of Lessee's failure to do so and to charge Lessee for the labor and materials used at such rates as Lessor may establish; provided, however, that Lessor, before commencing janitorial services within the Premises, shall give Lessee written notice of its default and a five (5) day period in which to correct any default.

SECTION 8 **MAINTENANCE OF PREMISES**

SECTION 8.1 – Maintenance

8.1.1 Obligations of Lessor: Lessor shall, at its expense, maintain T4 in good condition, including the ventilating and air conditioning equipment, electrical, fire suppression, water and sewer systems, and gas, where applicable, up to the leasehold of each Retail and Automated Vending concession unit.

8.1.2 Obligations of Lessee: Lessee shall, at all times and at its sole expense, maintain in good repair and keep in a clean and orderly condition the appearance of the Premises, all Leasehold Improvements and Trade Fixtures therein, whether installed by Lessee or Lessor. All maintenance shall be equal to or better than the materials, workmanship and appearance representative of similar areas in T4 directly controlled by

Lessor. Lessee shall conduct regular and routine cleaning, inspections and maintenance within the Premises, any support space and the pathways in between, and shall provide documentation of the cleaning, inspections and maintenance when requested by the Lessor. To maintain high standards of maintenance throughout T4, Lessor shall have the right to accomplish any required work in the event of Lessee's failure to do so and to charge Lessee for the labor and materials used at such rates as Lessor may establish provided, however, that Lessor, before commencing any required work within the Premises, shall give Lessee written notice of its default and a five (5) day period in which to correct any default.

SECTION 8.2 - Repairs

8.2.1 All repairs to the Premises done by or on behalf of Lessee shall be of first-class quality materials and workmanship, equal to or better than the Lessee's original materials and workmanship, and, except in emergencies requiring immediate response, approved in advance by Lessor in writing. Lessee shall be responsible for the cost to repair any damage to T4 or the Premises caused by the negligence or misconduct of Lessee or its Partners, contractors or invitees. Lessor shall be the sole judge of the quality of the repairs.

8.2.2 Lessee shall repaint or refinish, at its sole expense, high traffic areas subject to greater-than-normal wear as required by Lease, or as may be directed by Lessor. All Leasehold Improvements and Trade Fixtures that become worn, chipped, dented, or gouged, shall be repaired or replaced at Lessee's sole expense. If the floor within the Premises is carpeted, Lessee shall replace the carpet every thirty (30) months at Lessee's sole expense. The materials used to repair or replace Leasehold Improvements and Trade Fixtures must adhere to the requirements of Section 7.

SECTION 8.3 - Right to Enter

8.3.1 Lessor shall have the right to enter the Premises to inspect the Premises at reasonable times during Lessee's regular hours of operation to determine whether Lessee has complied, and is complying, with this Lease.

8.3.2 Lessor shall have the right to enter the Premises to cure any material breach that remains uncured by Lessee after reasonable notice and opportunity to cure.

8.3.3 Lessor shall have the right to enter the Premises to respond to any emergency.

8.3.4 Nothing in this Section shall be construed to be a limitation or restriction on the exercise of Lessor's police power.

SECTION 8.4 - Failure to Maintain or Repair

If found that Lessee or its Partners was responsible for damages associated with a lack of regular and routine cleaning, inspections or maintenance of the Premises, including support space, Lessee shall be responsible for all associated costs to repair the Premises as well as any adjacent spaces to which damage may have spread.

If Lessee refuses or neglects to undertake the maintenance, repair, or replacements requested by Lessor; or if Lessor is required to make any repairs necessitated by the acts or omissions of Lessee, its Partners, contractors, or invitees, Lessor shall have the right to make such repairs on behalf of and for Lessee. Such work

shall be paid for by Lessee within ten days' receipt of invoice from Lessor for payment at Lessor's standard rates, plus Lessor's administrative costs, or, if the work is performed by Lessor's contractor, Lessor's actual cost, including but not limited to Lessor's administrative costs.

SECTION 8.5 - Operation Costs

Lessee shall be responsible for all costs of operating Lessee's Retail and Automated Vending concessions included under this Lease, and shall pay, in addition to rent and other payments specified in this Lease, all other costs connected with the use of the Premises and facilities, and those rights and privileges granted.

SECTION 8.6 - Utilities

Lessor has provided and will maintain all utility service (ventilating and air conditioning equipment, electrical, fire suppression) to the Premises. Lessee shall be required to provide all utility hook-ups. Lessor shall not be responsible for charges relating to utility service usage, telephone service and special wiring and hookups for computer(s) for the Premises, including wireless internet access. Lessor shall have no liability for blackouts, brownouts, cessation, interruption, or failure of utilities.

SECTION 9 **INSURANCE REQUIREMENTS**

SECTION 9.1 – Introduction

Lessee and its Partners shall procure and maintain for the term of the Lease, insurance against claims for injury to persons or damage to property which may arise from or in connection with this Lease.

Lessee shall deliver to Lessor, prior to its occupancy of the Premises, a certificate of insurance acceptable to Lessor in the amounts as stated within Section 11.2. Lessor reserves the right to review the sufficiency of and to modify the insurance requirements of this Lease at the time MAG is reviewed for adjustment in order to determine whether existing insurance requirements are reasonable, adequate and commercially available so that Lessee's operations are insured to protect the Lessor's interests. Lessee shall maintain insurance coverage throughout the term of the Lease or Lessor may terminate this Lease. Additional insurance coverage may be required depending on the type of concession services being provided.

SECTION 9.2 – Minimum Scope and Limits of Insurance

Lessee shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided the coverage is written on a "following form" basis.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- Each Occurrence \$ 1,000,000
- General Aggregate \$ 2,000,000
- Products – Completed Operations Aggregate \$ 1,000,000
- Personal and Advertising Injury \$ 1,000,000
- Fire Damage (Damage to Rented Premises) \$ 100,000

- a. The policy shall be endorsed to include the following additional insured language: **"The City of Phoenix shall be named as an additional insured with respect to liability arising out of the use and/or occupancy by Lessee of the Premises subject to this Lease."**
- b. The policy shall not contain any restrictions of coverage with regard to operations on or near Airport Premises.

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Lease.

- Combined Single Limit (CSL) airside driving \$ 5,000,000
- Combined Single Limit (CSL) non-airside driving \$ 1,000,000
- a. The policy shall not contain any restrictions of coverage with regard to operations on or near the Airport.

3. Worker's Compensation and Employers' Liability

- Workers' Compensation Statutory
- Employers' Liability
 - Each Accident \$ 100,000
 - Disease-Each Employee \$ 100,000
 - Disease-Policy Limit \$ 500,000
- a. Policy shall contain a waiver of subrogation against the City of Phoenix.
- b. This requirement shall not apply when a Lessee or sublessee is exempt under A.R.S. 23-901, **AND** when such Lessee or sublessee executes the appropriate sole proprietor waiver form.

4. Property Insurance

- Coverage for Lessee's Leasehold Improvements Replacement Value
- Coverage for Lessee's contents Replacement Value
- a. Property insurance shall be written on an all risk, replacement cost coverage, including coverage for flood and earth movement.
- b. The **City of Phoenix shall be named as a loss payee** on property coverage for Lessee's Leasehold Improvements.
- c. The policy shall contain a **waiver of subrogation** against the City of Phoenix.

5. Fidelity Bond or Crime Insurance – Employee Theft

The bond or crime policy shall provide coverage for loss of monies belonging to

the Lessor under the terms of the Lease as a result of theft by Lessee's employees.

Bond or Policy Limit \$ 10,000

- a. The bond or policy shall include coverage for all directors, officers, agents and employees of the Lessee.
- b. The bond or policy must include coverage for third party fidelity, i.e. property of the Lessor that is held by the Lessee in any capacity, or property for which the Lessee is legally liable.
- c. The bond or policy shall not contain a condition requiring an arrest and conviction.

SECTION 9.3 – Additional Insurance Requirements

The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the City is named as an additional insured, the City shall be an additional insured to the full limits of liability purchased by Lessee even if those limits of liability are in excess of those required by this Lease.
2. Lessee's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

SECTION 9.4 – Notice of Cancellation

For each insurance policy required by the insurance provisions of this Lease, Lessee must provide to the Lessor, within two (2) business days of receipt, a notice if a policy is suspended, voided, or canceled, for any reason. Such notice shall be mailed, hand-delivered or sent via facsimile transmission to:

City of Phoenix Aviation Department
Business & Properties Division
Phoenix Sky Harbor International Airport
2485 East Buckeye Road
Phoenix, AZ 85034

and shall be sent by certified mail, return receipt requested.

SECTION 9.5 – Acceptability of Insurers

Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than B+ VI. Lessor in no way warrants the above-required minimum insurer rating is sufficient to protect Lessee from potential insurer insolvency.

SECTION 9.6 – Verification of Coverage

Lessee shall furnish Lessor with certificates of insurance (ACORD form or equivalent approved by Lessor) as required by this Lease. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage

on its behalf.

All certificates and any required endorsements are to be received and approved by Lessor before the Lease term commences. Each insurance policy required by this Lease must be in effect at or prior to the commencement of work and must remain in effect for the duration of the Lease. Failure to maintain the insurance policies as required by this Lease or to provide evidence of renewal will be considered a material breach of the Lease.

The City Lease number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Lease at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

The **initial certificates** required by this Lease shall be sent directly to:

City of Phoenix, Aviation Department
Business and Properties Division
2485 East Buckeye Road
Phoenix, AZ 85034
ATTN: Terminal Properties
Fax Number: 602-273-4083
Email: *aviation.business@phoenix.gov*

All subsequent and renewal certificates of insurance and endorsements shall be sent directly to:

City of Phoenix, Aviation Department
c/o EXIGIS Insurance Compliance Services
P.O. Box 4668 – ECM #35050
New York, NY 10163-4668
Email: *certificates-cityofphoenix@riskworks.com*

SECTION 9.7 – Sublessees and Partners

Lessee's certificate(s) shall include all sublessees and Partners as additional insureds under its policies **or** Lessee shall furnish to the City separate certificates and endorsements for each sublessee and partner. All coverages for sublessees and partners shall be subject to the minimum requirements identified above.

SECTION 9.8 – Approval

Any modification or variation from the insurance requirements in this Lease must have prior approval from the City's Law Department, the decision of which shall be final. Such action will not require a formal Lease amendment but may be made by administrative action.

SECTION 10
INDEMNIFICATION OF CITY

Lessee (Indemnitor) must indemnify, defend, save and hold harmless the City of Phoenix and its officers, officials, agents, and employees (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (“Claims”) caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Lessee or any of its owners, officers, directors, agents, employees or contractors, arising out of or related to Lessee’s operations or occupancy and use of the Leased Premises. This indemnity includes any Claims arising out of or recovered under the Workers’ Compensation Law or arising out of the failure of Lessee to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Lessee must indemnify Indemnitee from and against any and all Claims, except those arising solely from Indemnitee’s own negligent or willful acts or omissions. Lessee will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration for the use and occupancy of the Leased Premises, Lessee waives all rights of subrogation against Indemnitee for losses arising from the Indemnitee’s operations use, occupancy or condition of the Leased Premises. The obligations of Lessee under this provision survive the termination or expiration of this Lease.

SECTION 11
LIENS AND PERFORMANCE AND PAYMENT BONDS

SECTION 11.1 - Liens

Lessee shall not create, permit, or suffer any lien to be imposed upon the Premises or upon any Leasehold Improvements without promptly discharging the same. Lessee shall at all times indemnify and save the City harmless from all liens, claims, losses, demands, costs, expenses or liability cost for labor or materials in conjunction with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Premises, and against all reasonable attorneys’ fees and other costs arising by reason of any such liens or claims and the removal of liens.

SECTION 11.2 - Payment Bond

Prior to the commencement of any construction, alteration, or repair hereunder of Lessee’s Leasehold Improvements and/or Trade Fixtures which exceeds \$10,000 in cost, Lessee shall furnish to the Lessor, without expense to the Lessor, a payment bond issued by a surety company licensed to transact business in the State of Arizona and satisfactory to and approved by the Lessor with Lessee’s contractor or contractors as principals. The penal amount of the bond shall be not less than 100 percent of the total cost of the contract or contracts for the construction, alteration, or repair of such Leasehold Improvements and/or Trade Fixtures. In the event that such contracts involve alteration or work on or to the Lessor’s facilities, the payment bond shall be posted regardless of the dollar value of the work. The payment bond required by this Section shall guarantee the prompt payment to all persons supplying labor, materials,

provisions, supplies, and equipment used directly or indirectly by any contractor, subcontractor(s), and suppliers doing work provided for in the above-mentioned construction contract and shall protect the Lessor from any liability, losses, or damages arising from it.

SECTION 11.3 - Performance Guarantee

Lessee shall provide and maintain during the term of this Lease a performance guarantee in the form of an irrevocable standby letter of credit (“**LOC**”) or cash guaranteeing the full and faithful performance by Lessee of all the terms and conditions of this Lease, including security for payment by Lessee of all claims by Lessor. The amount of the performance guarantee for this Lease shall be either six (6) months’ rent or \$_____, whichever is greater. Lessee shall increase the performance guarantee upon written demand of Lessor, provided such increases are found reasonable and necessary by Lessor. Lessor may draw or make a claim against the posted performance guarantee for failure of Lessee to perform according to the covenants, terms and conditions of the Lease. If Lessor draws or makes a claim on the posted performance guarantee, Lessee shall replenish the performance guarantee to its original amount within thirty (30) days’ notice of Lessor’s draw or claim unless otherwise agreed by Lessor in writing. The performance guarantee is required to be in place for the entire term of this Lease. Lessee’s failure to provide and maintain a performance guarantee under this paragraph shall be a material breach of this Lease.

If the performance guarantee is in the form of a LOC, Lessee will use Lessor approved LOC form attached as **Exhibit 5**. The LOC shall be issued by a local financial institution preferably in the Phoenix Metropolitan area in a form that is satisfactory to the Lessor and Lessor must be able to draw upon the letter of credit at any of the financial institution’s counters in the Phoenix Metropolitan area. Any modification to the Lessor approved LOC form must be approved by Lessor. If an LOC is obtained, then unless Lessor receives a written extension of that LOC, in a form acceptable to Lessor, at least sixty (60) days before the end of the term of such LOC, Lessor, without notice to Lessee, may draw upon the full amount of that LOC and retain all proceeds as a cash security pursuant to this Section. Lessor will not pay interest to Lessee on any performance guarantee.

If the performance guarantee is in the form of cash, Lessee will be required to execute a cash deposit performance guarantee agreement that sets out the terms and conditions for the posting and handling of the cash security, and each party’s obligations. The required cash deposit performance guarantee agreement is attached as **Exhibit 6**. The Lessor will not pay interest to Lessee on any performance guarantee.

SECTION 12 **ASSIGNMENT AND SUBLETTING**

SECTION 12.1 – Assignment

Lessee shall not assign, hypothecate, surrender, sublease, or transfer all or any portion of its interest under this Lease, (collectively, an “**Assignment**”) nor permit any other person, firm or corporation to occupy the Premises without the prior written consent of

Lessor. Lessor's consent may be unreasonably withheld at the sole discretion of Lessor provided, however, that Lessee may, with the consent of Lessor, assign its interest under this Lease to a corporation in which fifty-one percent (51%) or more of the stock is owned by and management is controlled by the same person who owns and controls Lessee. For purposes of this Section, any transfer of control of Lessee's business by sale of stock consolidation, merger or other means, is considered to be an Assignment of interest.

Lessor, as a condition of approval, will require that any transferee submit biographical and financial information and Lessor shall have thirty (30) days from the date Lessor receives a completed request to approve or deny same.

In the event Lessor consents to an Assignment of this Lease within the first Lease Year, if Lessee receives as any consideration for such Assignment, Lessee shall pay Lessor fifty percent (50%) of the consideration received for such Assignment, less any unamortized initial capital investment. Amortization must be calculated in accordance with Section 7.3.3. Total capital investment shall equal the total dollar amount identified in Section 7.1.4.

Lessee understands and agrees that any such approval will require Lessee to pay in advance a \$250 document processing fee.

This Lease or any interest therein, shall not be subject to Assignment by operation of law.

Any Assignment without prior written consent of Lessor shall be null and void.

SECTION 12.2 – Terms of Sublease

12.2.1 Each sublease to this Lease is in all respects subject to and subordinate to this Lease. The terms of this Lease shall be reviewed with each Partner, and each Partner shall confirm in its sublease that such review has occurred. A copy of this Lease shall be attached as an exhibit to each sublease. Lessee shall provide complete copies of the executed subleases to Lessor.

12.2.2 The use, distribution and all associated rent fees for support space Premises among Lessee and its Partners shall be the responsibility of Lessee. Lessor reserves the right to reduce or relocate Lessee's support space to other reasonably comparable areas in T4 if available, by giving thirty (30) days' prior notice.

SECTION 12.3 – Approved Partners

Lessee's selection of Partners shall be subject to Lessor's approval and the operation of Retail concession units by Partners shall be in accordance with **Exhibit 2**.

SECTION 13 **CANCELLATION BY LESSOR**

SECTION 13.1 - General Default

In addition to those events of defaults provided elsewhere in this Lease, Lessor may immediately terminate this Lease by giving Lessee written notice of the immediate termination upon the happening of any of the following events:

13.1.1 The taking of possession for a period of twenty (20) or more days of all or substantially all of the property used on the Premises belonging to Lessee by or

pursuant to lawful authority of any legislative act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator.

13.1.2 The filing of any lien against the Premises because of any act or omission of Lessee that is not discharged or contested in good faith as determined by Lessor by proper legal proceedings within twenty (20) days' receipt of notice by Lessee.

13.1.3 Unless otherwise provided in this Lease, the breach by, or the failure, or refusal of Lessee to observe or perform, any of the covenants, terms and conditions herein contained and, on its part, to be observed and performed, which is addressed below, and such failure shall continue for a period of more than twenty (20) days after delivery by Lessor of a written notice of such breach.

13.1.4 The voluntary abandonment by Lessee of its operations at T4 for a period of one day or longer.

SECTION 13.2 - Rental Default

Lessor may place Lessee in default of this Lease by giving Lessee ten (10) days written notice for Lessee's failure or refusal to timely pay rent as provided in Section 3. During the ten (10) day notice period, Lessee shall cure its rent default, including delinquent fees; otherwise, this Lease may be terminated at Lessor's sole option without further notice.

SECTION 13.3 - Failure to Commence Construction of Leasehold Improvements

If Lessee fails to commence construction of the Leasehold Improvements in accordance with the Lessor-approved phasing plan or if Lessee fails to furnish the required performance guarantee and insurance policies on or before the time Lessee has given its contractor a Notice to Proceed, this Lease shall be considered breached and may be terminated by Lessor, and Lessee's performance guarantee shall be forfeited as liquidated damages, not as a penalty, but to cover expenses incurred by Lessor as a result of Lessee's breach. Further, all of Lessee's rights and claims upon the Premises shall be immediately forfeited.

SECTION 14 **CANCELLATION BY LESSEE**

SECTION 14.1 - General Defaults

Lessee may cancel this Lease at any time that it is not in default in its obligations by giving Lessor thirty (30) days written notice after the happening of any of the following events materially impairing the conduct of its normal business from the Premises:

14.1.1 Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining normal use of the Airport or any substantial part of it and the remaining in force of such injunction for a period of ninety (90) consecutive days.

14.1.2 The inability of Lessee or its customers to use, for a period of ninety (90) consecutive days, the Airport or any substantial part of it due to enactment or enforcement of any law or regulation, or because of fire, earthquake or similar casualty, or

Acts of God or the public enemy.

14.1.3 The lawful assumption by the United States (U.S.) government of the operation, control, or use of the Airport or any substantial part of it for military purposes in time of war or national emergency.

SECTION 15 **REDELIVERY AND HOLDING OVER**

SECTION 15.1 - Redelivery

Upon expiration or other termination of this Lease, Lessee's right to occupy the Premises and exercise of the privileges herein granted shall cease and it shall surrender the same and leave the Premises in good condition except for normal wear and tear. Unless otherwise provided, personal property placed by Lessee on the Premises shall remain the property of Lessee, and Lessee shall have the right at any time during the term of the Lease, and for up to an additional period of thirty (30) calendar days after its expiration, to remove same from Airports; provided Lessee is not in default in its payments to Lessor hereunder, and provided that Lessee shall repair any damage caused by such removal. In the event Lessee fails to repair any damage to the Premises caused by the removal of Lessee's personal property, Lessor shall have the right to make such repairs it deems necessary at Lessee's sole expense. If Lessee's personal property remains on the Premises up to an additional period of thirty (30) days after expiration, cancellation or termination of the Lease, then Lessee shall pay the proportionate share of rent for every day that the personal property remains on the Premises. Any personal property not removed by Lessee within the thirty (30) day period shall become a part of the Premises and title thereto shall vest in Lessor.

SECTION 15.2 - Holding Over

Lessor may, at its option, allow Lessee to hold over under this Lease on a month-to-month basis. It is agreed and understood that any holding over of Lessee after the termination of this Lease with Lessor's consent shall not renew and extend the Primary Term but shall operate and be construed as a month-to-month permit and Lessee agrees to pay to Lessor fees or other payments that are in effect at the end of the Primary Term of the Lease unless Lessor has given prior notice of any increased fees. Such increase in fees may be given at any time with notice of not less than sixty (60) days. Lessee shall be liable to Lessor for all loss or damage on account of any such holding over against Lessor's will after the termination of this Lease, whether such loss or damage may be contemplated at this time or not. It is expressly agreed that acceptance of the foregoing payment to Lessor in the event that Lessee fails or refuses to surrender possession shall not constitute a waiver by Lessor of its right to immediate possession.

SECTION 16
DAMAGE OR DESTRUCTION

SECTION 16.1 - Damage or Destruction to T4 or to Unimproved Shell

Lessor shall be under no obligation to repair damage or destruction to T4 or to the unimproved shell. At Lessor's sole discretion, Lessor may choose not to repair or reconstruct if the repairs cannot be made within six (6) months, if repair of damage deemed too costly by Lessor, or if the lease term would expire within twelve (12) months from the date of the damage or destruction.

If the unimproved shell is damaged by fire, explosion, Act of God, the public enemy, or other casualty, but not rendered untenable, the same may be repaired with due diligence by Lessor at its own cost and expense. If such damage is so extensive as to render the unimproved shell untenable, but capable of being repaired within six (6) months, the same may be repaired with due diligence by Lessor at its own cost and expense, and the rent payable under Section 3 shall be proportionately paid up to the time of such damage, and thereafter abate and cease until such time as the unimproved shell is again tenable.

If any portion of T4 other than the unimproved shell is so damaged and such damage is capable of being repaired within six (6) months, the same may be repaired, with due diligence by Lessor at its own cost and expense. If such damage is so extensive as to substantially impair Lessee's operations within the Premises, the rent payable hereunder shall be paid up to the time of such damage, and thereafter shall be equitably reduced in proportion to such impairment until such time as Lessee's operations shall be fully restored.

If either the unimproved shell, excluding Lessee's Trade Fixtures or Leasehold Improvements, or T4, or both, be completely destroyed by fire, explosion, Act of God, the public enemy or other casualty, or so damaged as to be untenable and incapable of being repaired within six (6) months the rent obligations of Lessee hereunder shall be paid up to the time of such damage or destruction, and thereafter shall be proportionately reduced for impaired operation, or if no operation is possible, shall cease until such time as the Premises are fully restored, and rent obligations shall thereafter resume in the same proportion as Lessee's operation on the Premises shall resume.

If the damage or destruction to the unimproved shell, Trade Fixtures or Leasehold Improvements, or T4, or all of the above, renders the entire premise untenable and is not repaired or restored within twelve (12) months after such damage or destruction, Lessor or Lessee shall have the right to cancel this Lease upon written notice to the other party as to such election.

If damage was caused by Lessee, Lessee shall pay for the repair or restoration at Lessee's own cost and expense.

SECTION 16.2 - Damage to Premises

If any of the Leasehold Improvements or Trade Fixtures constructed or installed by Lessee in or at the Premises are damaged or destroyed by fire, explosion, Act of God, the public enemy or other casualty, Lessee shall repair or replace the same with due diligence at its own cost and expense. Such replacements or repairs shall be equivalent to or better in quality than the Leasehold Improvements and Trade Fixtures so destroyed or damaged. This paragraph shall not be applicable, however, if Lessor is not obligated and elects not to rebuild pursuant to Section 18.1. If Lessee fails to repair or replace such damaged Leasehold Improvements or Trade Fixtures subject to a schedule approved by Lessor and provided that this Lease has not been canceled, Lessor may make such repairs or replacement and recover from Lessee the cost and expense of such repair or replacement, plus an additional twenty-five percent (25%) of the expenses for Lessor's administrative costs.

SECTION 16.3 - Protection of Contents of Premises

Protection against loss by fire or other casualty to the contents of the Premises shall not at any time be an obligation of the Lessor.

SECTION 17
FORCE MAJEURE

In the event Lessor or Lessee shall be prevented or unable to perform any act required by this Lease by reason of acts or determination of federal, state or local governments or fire, earthquake or similar Acts of God, or any other reason of a like nature beyond their control, then performance of such act shall be extended for a period equivalent to the period of delay; provided, however, that no such delay shall exceed ninety (90) days unless approved in writing by Lessor; otherwise, this Lease shall terminate.

SECTION 18
ATTORNEYS' FEES

In the event of litigation between Lessor and Lessee to enforce the rights or obligations provided by this Lease, the non-prevailing party shall pay for the prevailing party's reasonable attorneys' fees and costs of litigation as may be determined by the court.

SECTION 19
AMENDMENT

Any amendment, modification, or alteration of this Lease shall be effective only if mutually agreed upon, reduced to writing, and signed by both parties.

SECTION 20
RELATIONSHIP OF PARTIES

Nothing contained in this Lease shall be deemed or construed by Lessor or Lessee,

or by any third party, as creating the relationship of principal and sublessee, agent, Partners, joint ventures', or any other similar such relationship, between Lessor and Lessee. It is understood and agreed that neither the method of computation of rent and other payments, nor any other provision contained in this Lease, nor any acts of Lessor or Lessee creates a relationship other than the relationship of Lessor and Lessee as described in this Lease.

Lessee agrees no persons supplied by it in the performance of the Lease are employees of Lessor and further agrees no rights to Lessor's civil service, retirement or personnel rules and benefits accrue to such persons.

Lessee shall be responsible for all salaries, wages, bonuses, retirement, withholdings, workers' compensation, unemployment compensation, other benefits, taxes and premiums appurtenant thereto concerning such persons provided by Lessee in the performance of the Lease, and Lessee shall save and hold Lessor harmless with respect thereto.

SECTION 21 **NO THIRD-PARTY BENEFICIARIES**

The parties expressly agree that this Lease is not intended by any of its provisions to create any right of the public or any member thereof as a third-party beneficiary nor to authorize anyone not a party to this Lease to maintain a suit for injuries or damage pursuant to the terms or provisions of this Lease.

SECTION 22 **PROHIBITED INTERESTS**

No member, officer, or employee of Lessor during his or her tenure, and for one (1) year thereafter, shall have any interest, direct or indirect, in this Lease or its proceeds.

SECTION 23 **QUIET ENJOYMENT**

Lessor agrees that, on payment of rent and all other fees due Lessor and the performance of the covenants and agreements on the part of Lessee to be performed hereunder, Lessee shall peaceably have and enjoy the Premises free from interference from Lessor except as may otherwise be provided herein and the privileges granted herein for the commercial use of Airport facilities.

SECTION 24 **COMPLIANCE WITH LAWS**

SECTION 24.1 - Rules and Regulations

24.1.1 Lessee, its officers, Partners, agents, employees, contractors, and any other person whom Lessee controls or has the right to control shall comply with all present and future laws, ordinances, orders, directives, rules, and regulations of the U.S. government,

the State of Arizona, the County of Maricopa, and the City and all agencies thereof that may be applicable to its operations or to the operation, management, maintenance or administration of the Airport now in effect or hereafter promulgated, without limits to other conditions in this Lease.

24.1.2 Without limiting the above, in performing this Lease, Lessee its officers, Partners, agents, employees, contractors, and any other person whom Lessee controls or has the right to control, shall comply with Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act of 1990 (ADA), and all pertinent Executive Orders, regulations and rules promulgated thereunder, and must train all employees and agents performing under this Lease on Section 504 and ADA requirements.

24.1.3 Compliance with Environmental Laws - Lessee shall, at its own expense, comply with all present and subsequently enacted environmental law, and any amendments thereto, affecting Lessee's use of the Premises including the requirements set forth in **Exhibit 7 ("Compliance with Environmental Laws")** attached hereto and incorporated herein by reference.

SECTION 24.2 - Supplemental Terms and Conditions to All Airport Agreements

Without limiting any other conditions set forth in this Lease, Lessee shall comply with the specific requirements more particularly set forth in **Exhibit 8 ("Supplemental Terms and Conditions to All Airport Agreements")**, attached hereto and incorporated herein by reference.

SECTION 24.3 - Taxes and Licenses

Lessee shall pay, on or before their respective due dates, to the appropriate collecting authority, any and all leasehold tax, sales tax, transaction privilege tax, federal, state, and local taxes, including real or personal property taxes and business taxes that are now or may be levied upon the Premises, or upon Lessee, upon Lessee's interest in this Lease, or upon the business conducted on the Premises, or upon any of Lessee's property used in connection with the Premises whether or not such tax, fee or assessment is levied, charged or assessed on City or Lessee; provided, however, that Lessee may at its sole expense dispute and contest these taxes and in such case such disputed items need not be paid until finally adjudged to be valid. In the event laws or judicial decisions result in imposition of a real property tax on the interest of Lessor, the prorata share of such tax attributable to the Premises should also be paid by Lessee for the period this Lease is in effect.

Lessee shall maintain in current status all federal, state, and local licenses and permits necessary or required by law for the construction of Leasehold Improvements and/or the installation of Trade Fixtures, and any other licenses necessary for the operation of Lessee's Retail concessions.

SECTION 25 **GENERAL PROVISIONS**

SECTION 25.1 – Small Business Participation (Exhibit 10)

This Lease is subject to ACDBE Program requirements issued by USDOT in 49 CFR Parts 23 and 26. Despite the lack of a race- and gender-conscious ACDBE participation goal for this Agreement, the City must track and report all Small Business participation that occurs as a result of any procurement, JV, goods/services, or other arrangement involving Small Business. For this reason, the concessionaire shall provide all relevant information to enable the required reporting.

Every year on the anniversary date of the Agreement, concessionaire shall provide to the Equal Opportunity Department any material changes to the Small Business participation commitment captured in Section 25.

Furthermore, concessionaire is required to comply with Airport ACDBE Program Plan and 49 CFR Parts 23 and 26. Concessionaire shall track and report all small business participation that occurs at Airport as a result of a contract, procurements, purchase orders, subleases, JV, goods/services or other arrangements involving sub-tier participation. Such documentation must be entered monthly into the internet-based reporting program Business2Government (B2G) System at www.phoenix.diversitycompliance.com.

25.1.1 The City encourages Lessee to voluntarily utilize small businesses wherever possible in accordance with the service standards of this Lease.

25.1.2 Lessee acknowledges it proposed the following Small Business utilization throughout the term of this Lease.

25.1.3 Participation as Partners as a percentage of this Lease's value:

Small Business _____ percent (___%)

25.1.4 Participation as suppliers of goods and services as a percentage of the operating expenses or cost of goods sold associated with this Lease:

Small Business _____ percent (___%)

25.1.5 Lessee agrees to maintain the above-listed Small Business utilization throughout the term of the Lease. Lessee agrees to notify the City of Phoenix Equal Opportunity Department of any changes in Small Business status, including level of utilization, identity of Small Business Partners and suppliers of goods and services. Lessee agrees to use continued good faith efforts to maintain the utilization of its Small Business partners in its concession(s) included in this Lease.

25.1.6 If during the term of this Lease a Small Business Partner or supplier of goods and services is no longer available to conduct business with Lessee, then Lessee will be required to conduct outreach efforts to continue to achieve Small Business utilization in accordance with this Lease. The outreach efforts by Lessee must meet requirements of Lessor and the selection of the replacement Partner or supplier of goods and services is subject to the approval of the Lessor.

25.1.7 This Lease shall be subject to review for Small Business utilization and goals may be established before any Lease extension.

25.1.8 Failure of Lessee to maintain its Small Business utilization throughout the term of the Lease, or to demonstrate it has met the outreach requirements for a reduction in the amount of utilization, may be a material breach of the Lease.

SECTION 25.2 - EQUAL EMPLOYMENT OPPORTUNITY AND EQUAL PAY

- A. In order to do business with the City, Consultant must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements.
- B. Any supplier/lessee in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The supplier and/or lessee will SHALL ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, AND SHALL ADHERE TO A POLICY TO PAY EQUAL COMPENSATION TO MEN AND WOMEN WHO PERFORM JOBS THAT REQUIRE SUBSTANTIALLY EQUAL SKILL, EFFORT, AND RESPONSIBILITY, AND THAT ARE PERFORMED WITHIN THE SAME ESTABLISHMENT UNDER SIMILAR WORKING CONDITIONS. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.

Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee. The supplier/lessee further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

SECTION 25.3 - Subordination to Agreements with the United States

This Lease is subject to and subordinate to the provisions of any agreement currently in force or subsequently made between Lessor and the U.S. government, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to Lessor for Airport purposes, or the expenditure of federal funds for the improvement or development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. Lessor warrants it has no existing agreements with the U.S. government in conflict with the express provisions of this Lease.

SECTION 25.4 - Notices

Any notice, consent or other communication (“Notice”) required or permitted under this Lease shall be in writing and either: (1) delivered in person; (2) sent via e-mail, return receipt requested; (3) sent via facsimile transmission; (4) deposited with any commercial air courier or express delivery service; or (5) deposited in the U.S. mail, postage prepaid.

If to Lessor: City of Phoenix Aviation Department
 Business & Properties Division
 2485 East Buckeye Road
 Phoenix, AZ 85034-4405
 ATTN: Terminal Properties

 Telephone: (602) 273-4085
 Facsimile: (602) 273-4083
 E-Mail: aviation.business@phoenix.gov

If to Lessee: Company Name
 Address 1
 Address 2
 ATTN: Contact Name

 Telephone: (____) ____-____
 Facsimile: (____) ____-____
 E-Mail: _____@_____._____

Notice shall be deemed received: (1) at the time it is personally served; (2) on the day it is sent via e-mail; (3) on the day it is sent via facsimile transmission; (4) on the second day after its deposit with any commercial air courier or express delivery service; or (5) five (5) business days after the Notice is deposited in the U.S. mail as above provided. Any time period stated in a Notice will be computed from the time the Notice is deemed received.

Notices sent by e-mail and facsimile transmission will also be sent by regular mail to the recipient at the above address. This requirement for duplicate Notice is not intended to change the effective date of the Notice sent by e-mail or facsimile transmission.

SECTION 25.5 - Approvals, Consents and Notices

All approvals, consents and notices called for in this Lease must be in writing and may not be established by oral testimony.

SECTION 25.6 – Offset Provisions

Lessee acknowledges and accepts the provisions of Chapter 18, Section 14 of the Charter of the City of Phoenix, pertaining to claims or demands against the City, including provisions therein for set-off of indebtedness to the City against demands on the City, which require that no payment be made to Lessee as long as there is any outstanding liquidated undisputed obligation due to the City and direct that any such obligations be offset against any payment due Lessee.

Lessee agrees to adhere to the prescribed procedure for presentation of claims and demands. Nothing in Chapter 18, Section 14 of the Charter of the City of Phoenix alters, amends or modifies the supplemental and complementary requirements of the State of Arizona Notice of Claim statutes, Arizona Revised Statutes (A.R.S.) §§ 12-821 and 12-821.01, pertaining to claims or demands against the City. If for any reason it is determined that the City Charter and state law conflict, then state law shall control.

Moreover, nothing in this Lease shall constitute a dispute resolution process, an administrative claims process, or contractual term as used in A.R.S. § 12-821.01(C), sufficient to affect the date on which the cause of action accrues within A.R.S. § 12-821.01(A) and (B).

SECTION 25.7 - Transactional Conflicts of Interest

Lessee acknowledges that this Lease is subject to cancellation by the City pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

SECTION 25.8 - Paragraph Headings

All section and subsection headings of this Lease are inserted for reference only and shall not be considered to define or limit the scope of any provision.

SECTION 25.9 - Saving Clause

Should any provision of this Lease be declared invalid by a court of competent jurisdiction, the remaining terms shall nonetheless remain effective, provided that elimination of the invalid provision does not materially prejudice either Lessor or Lessee with regard to their respective rights and obligations.

SECTION 25.10 - Waiver of Claims

Lessee hereby waives any claim against Lessor and its officers or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Lease or any part of this Lease, or by any judgment or award in any suit proceeding declaring this Lease null, void, or voidable, or delaying the Lease or any part of it from being carried out.

SECTION 25.11 - Corporation Authorization

In the event Lessee is a corporation, certified copies of resolutions of the directors and stockholders authorizing this Lease shall be furnished to Lessor prior to final execution of this Lease.

Contract holder must be authorized or registered to transact business in the state of Arizona and must be in good standing prior to City Council approval.

SECTION 25.12 - Right to Develop Airport

Lessee agrees Lessor reserves the right to further develop or improve the Airport and all landing areas and taxiways as Lessor may see fit, regardless of the desires or views of Lessee and without any interference or hindrance from Lessee.

SECTION 25.13 - Incorporation of Exhibits

All exhibits and documents referred to in this Lease are intended to be and hereby are specifically made a part of this Lease.

SECTION 25.14 - Incorporation of Required Provisions

Lessor and Lessee hereby incorporate by this reference all provisions lawfully required to be contained in this Lease by any governmental body or agency.

SECTION 25.15 - Successors and Assigns Bound

All the provisions of this Lease shall bind the legal representatives' successors and assigns of the respective parties.

SECTION 25.16 - Right to Amend

In the event that the FAA or its successors requires modifications or changes in this Lease as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Lessee agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Lease as may be reasonably required to satisfy the FAA requirements.

SECTION 25.17 - Time of Essence

It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Lease.

SECTION 25.18 - Good Faith

The terms and conditions set forth in this Lease are for the mutual benefit of both parties. Because of the nature of this Lease, Lessor and Lessee agree that

there is an obligation and implied duty of reasonable diligence and good faith imposed on both parties to make reasonable efforts to fulfill the terms, conditions, and covenants imposed by this Lease.

SECTION 25.19 - Interpretation

Lessor and Lessee agree that any rule of construction of contracts resolving disputes of interpretation against the drafting party is waived and shall be inapplicable to this document.

SECTION 25.20 - Entire Lease

It is understood and agreed that this Lease (including all exhibits and documents incorporated by reference) contains the entire Lease between Lessor and Lessee as to this Lease. Lessee's response to the Retail Concessions at PHX Terminal 4 Revenue Contract Solicitation (RCS) is incorporated by reference as fully set forth herein. It is further understood and agreed by Lessee that Lessor and Lessor's agents have made no representations or promises with respect to this Lease or the making or entry into this Lease, except as in this Lease expressly set forth, and that no claim or liability or cause for termination shall be asserted by Lessee against Lessor for, and Lessor shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Lease. Any other written or parole agreement with Lessor is expressly waived by Lessee. It is understood Lessor requires leases to be in writing and adopted by the City Council.

SECTION 25.21 - Conflicts

Conflicts among the documents composing this Lease shall be resolved in favor of the document that appears earliest in the following list:

- a. Lease amendments, with later amendments superseding inconsistent provisions of earlier amendments;
- b. This Lease including all Exhibits.
- c. Retail Concessions at PHX Terminal 4 Revenue Contract Solicitation (RCS) Response

SECTION 25.22- Hazard, Potential Hazard, Nuisance, or Annoyance

Any nuisance, annoyance, or hazardous or potentially hazardous condition on or emanating from the Premises shall be corrected immediately upon Lessee's actual knowledge of the condition, nuisance, or annoyance or receipt of oral or written notice from Lessor. If, in Lessor's sole discretion, a hazard or potentially hazardous condition presents an unreasonable and imminent risk of bodily injury, Lessor may require Lessee to close its business and bar the public from the Premises until the hazard or potentially hazardous condition has been abated. Nothing in this subsection shall be deemed to preclude Lessor from pursuing any available remedy for breach of this Lease. Lessee's failure to promptly correct a nuisance, annoyance, or hazardous or potentially hazardous condition under this paragraph shall be a material breach of this Lease.

SECTION 25.23 – Airport Security Plan

Lessor has implemented an Airport Security Program (Program) in a form acceptable to the Federal Aviation Administration (FAA) and/or Transportation Security Administration (TSA) pursuant to Title 49 Code of Federal Regulations. Lessor reserves the right to modify that Program from time to time as it deems necessary to accomplish its purposes. Lessee shall at all times comply with the Program and indemnify and hold harmless Lessor from any violations of the Program committed by Lessee, its employees, agents, invitees or contractors.

SECTION 25.24 – Lessee and Sublessee Worker Background Screening

25.24.1 Lessee agrees all employees and subcontractors [collectively “Contract Worker(s)”] that Lessee and its Partners furnish to the City pursuant to this Lease shall be subject to background and security checks and screening (collectively “Background Screening”) at Lessee’s sole cost and expense as set forth in this Section. The Background Screening provided by Lessee shall comply with all applicable laws, rules and regulations. Lessee further agrees the Background Screening required in this Section is necessary to preserve and protect public health, safety and welfare. The Background Screening requirements set forth in this Section are the minimum requirements for this Lease. The City in no way warrants that these minimum requirements are sufficient to protect Lessee from any liabilities that may arise out of Lessee’s services under this Lease or Lessee’s failure to comply with this Section. Therefore, in addition to the specific measures set forth below, Lessee and its Contract Workers shall take such other reasonable, prudent and necessary measures to further preserve and protect public health, safety and welfare when providing services under this Lease.

25.24.2 Lessee agrees it will verify legal Arizona worker status as required by A.R.S. § 41-4401. Lessee further agrees it will conduct a background check for real identity/legal name on all Contract Workers prior to proposing the Contract Worker to the City. In addition to the foregoing, the City reserves the right but not the obligations to: (1) have a Contract Worker be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4) or Phoenix City Code § 4-22; (2) act on newly acquired information whether or not such information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of Contract Workers; and (4) object, at any time and for any reason, to a Contract Worker performing work (including supervision and oversight) under this Lease.

25.24.3 By executing this Lease, Lessee certifies and warrants it has read the Background Screening requirements and criteria in this Section, understands them and that all Background Screening information furnished to the City is accurate and current. Also, by executing this Lease, Lessee further certifies and warrants it has satisfied all such Background Screening requirements as required. A Contract Worker rejected for work under this Lease shall not be proposed to perform work under other City contracts or engagements without the City’s prior written approval.

25.24.4 Lessee shall include the terms of this Section for Contract Worker Background Screening in all contracts and subcontracts for services furnished under this Lease including, but not limited to, supervision and oversight services.

25.24.5 The Background Screening requirements of this Section are material to the City's entry into this Lease and any breach of this Section by Lessee shall be deemed a material breach of this Lease. In addition to the indemnity provisions set forth in Section 12 of this Lease, Lessee shall defend, indemnify and hold harmless the City for any and all Claims (as defined in Section 12) arising out of this Background Screening Section including, but not limited to, the disqualification of a Contract Worker by Lessee or the City for failure to satisfy this Section.

25.24.6 Lessee's obligations and requirements that Contract Workers satisfy this Background Screening Section shall continue throughout the entire term of this Lease.

Lessee shall notify the City immediately of any change to a Background Screening of a Contract Worker previously approved by the City. Lessee shall maintain all records and documents related to all Background Screenings and the City reserves the right to audit Lessee's compliance with this Section pursuant to Section 3.9.

SECTION 25.25 – Contract Worker Access Controls, Badge and Key Access Requirements

25.25.1 A CONTRACT WORKER SHALL NOT BE ALLOWED TO BEGIN WORK IN ANY CITY FACILITY WITHOUT: (1) THE PRIOR COMPLETION AND THE CITY'S ACCEPTANCE OF THE REQUIRED BACKGROUND SCREENING; AND (2) WHEN REQUIRED, THE CONTRACT WORKER'S RECEIPT OF A CITY ISSUED BADGE. A BADGE WILL BE ISSUED TO A CONTRACT WORKER SOLELY FOR ACCESS TO THE CITY FACILITY(S) TO WHICH THE CONTRACT WORKER IS ASSIGNED. EACH CONTRACT WORKER WHO ENTERS A CITY FACILITY MUST USE THE BADGE ISSUED TO THE CONTRACT WORKER.

25.25.2 After receipt of the badge application, the Contract Worker will proceed to the badging office for processing of the badge application and issuance of the badge. The City will not process the badge application until the Contract Worker satisfies the required Background Screening (as defined herein). The Contract Worker shall comply with all requirements and furnish all requested information as requested by the badging office. Any and all fees associated with security badging will be assessed in compliance with Phoenix City Code § 4-22.

25.25.3 If the Contract Worker's services require keyed access to enter a City facility(s), a separate key issue/return form must be completed and submitted by Lessee for each key issued.

25.25.4 Lessee shall report lost or stolen badges or keys to the City immediately. A new badge application or key issue form shall be completed and submitted along with payment of the applicable fees prior to issuance of a new badge or key.

25.25.5 All badges and keys are the property of the City and must be returned to the City at the badging office within one (1) business day of when the Contract Worker's access to a City facility is no longer required to furnish the services under this Lease. Lessee shall collect a Contract Worker's badge and key(s) upon the termination of the Contract Worker's employment; when the Contract Worker's services are no longer required at the particular City facility(s); or upon termination, cancellation, or expiration of this Lease.

25.25.6 Lessee's default under this Section shall include, but is not limited to, the following: (1) Contract Worker gains access to a City facility(s) without the proper badge or

key; (2) Contract Worker uses a badge or key of another to gain access to a City facility; (3) Contract Worker commences services under this Lease without the proper badge, key or Background Screening; (4) Contract Worker or Lessee submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable Background Screening; or (5) Lessee fails to collect and timely return Contract Worker's badge or key upon termination of Contract Worker's employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Lease. Lessee acknowledges and agrees the access control, badge and key requirements in this Section are necessary to preserve and protect public health, safety, and welfare. Accordingly, Lessee agrees to properly cure any default under this Section within three (3) business days from the date notice of default is sent by the City. The parties agree Lessee's failure to properly cure any default under this Section shall constitute a breach of this Section. In addition to any other remedy available to the City at law or in equity, Lessee shall be liable for and shall pay to the City the sum of one thousand dollars (\$1,000) for each breach by Lessee of this Section. The parties further agree the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this Lease in the event Lessee breaches this Section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City's actual damages in the event Lessee breaches this Section. The parties further agree three (3) breaches by Lessee of this Section arising out of any default within a consecutive period of three (3) months, or three (3) breaches by Lessee of this Section arising out of the same default within a period of twelve (12) consecutive months, shall constitute a material breach of this Lease by Lessor and the City expressly reserves all of its rights, remedies and interests under this Lease, at law and in equity including, but not limited to, termination of this Lease.

SECTION 25.26 - Lessor Improvements to T4

Lessor and Lessee agree and acknowledge that, from time to time, Lessor may undertake improvements to T4 during the term of this Lease. Lessor will attempt to make those improvements in a manner that does not interfere unreasonably with the operations of Lessee authorized under this Lease. Lessee expressly waives any and all claims for damages of any kind, including but not limited to, loss of profits as a result of the interruption of business of Lessee that may arise as a result of such improvements undertaken by Lessor.

SECTION 25.27 - Statutory Remedies

A.R.S. Title 33, Chapter 3, Article 4, entitled "Remedies of Landlord" and any subsequent amendments shall apply to this Lease and shall be in addition to any other remedy available to Lessor under law or in equity at the election of Lessor.

SECTION 25.28 - Non-Waiver

No waiver or failure or delay in exercising any rights, power, or privilege by Lessor of default by Lessee in performance of any requirements of this Lease shall be construed to be or act as a waiver of any subsequent default in performance of the same or

any other requirement. The acceptance of rent or other payments by Lessor for any period or periods after a default by Lessee shall not be deemed a waiver of Lessor's right to exercise its remedies under this Lease for nonperformance.

SECTION 25.29 - *Tenant Liability Continues*

No such cancellation or termination of this Lease shall relieve Lessee of its liability and obligations under this Lease and such liability and obligations shall survive any such expiration or termination.

SECTION 25.30 - *Lessee Bankruptcy*

In the event that a petition in bankruptcy is filed:

- a. this Lease shall be deemed to be a "Shopping Center Lease" as provided in 11 U.S.C. §365(b)(2)(D) and (b)(3), governing certain non-monetary defaults;
- b. Lessor shall have the right to cure and be reimbursed for any non-monetary defaults that it cures;
- c. Under 11 USC § 365(b)(1), the meaning of a "prompt" cure shall be defined as a cure which occurs within thirty (30) days; and
- d. Lessee shall seek no more than an additional thirty (30) days in addition to the time provided by law whenever Lessee may petition the court for "additional time."

SECTION 25.31 *Governing Law; Forum; Venue*

This Lease is executed and delivered in the State of Arizona, and the substantive laws of the State of Arizona (without reference to choose of law principles) shall govern their interpretation and enforcement. Any action brought to interpret or enforce any provision of this Lease that cannot be administratively resolved, or otherwise related to or arising from this Lease, shall be commenced and maintained in the state or federal courts of the State of Arizona, Maricopa County, and each of the parties, to the extent permitted by law, consents to jurisdiction and venue in such courts for such purposes.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

CITY OF PHOENIX, a municipal corporation
Ed Zuercher, City Manager

By: _____

James E. Bennett, A.A.E.
Director of Aviation Services

ATTEST:

City Clerk

APPROVED AS TO

FORM:

Acting City Attorney

Lessee

Company Name
State and Type of Business Entity

By: _____
PRINT NAME

Title: _____

Signature: _____

**CITY OF PHOENIX
Aviation Department**

EXHIBIT 1

Premises

To be added prior to Lease execution

Visit <https://solicitations.phoenix.gov/Solicitations/Details/528>

To view the T4 Retail Location Map (Premises)

**CITY OF PHOENIX
Aviation Department**

EXHIBIT 2

Concepts

To be added prior to Lease execution

**CITY OF PHOENIX
Aviation Department**

EXHIBIT 3

Tenant Design Criteria

Visit <https://solicitations.phoenix.gov/Solicitations/Details/528>

To view the T4 Retail Tenant Design Criteria

ALL RESPONDENTS ARE RESPONSIBLE FOR REVIEWING EXHIBIT 3 IN ITS ENTIRETY
PRIOR TO SUBMITTING A RESPONSE(S) TO THIS RCS. THE TENANT DESIGN CRITERIA
BECOME COMPONENTS OF THE LEASE.

IT IS RECOMMENDED RESPONDENTS DOWNLOAD
EXHIBIT 3 FOR THEIR RECORDS

**CITY OF PHOENIX
Aviation Department**

EXHIBIT 4

Proposed Capital Investments

To be added prior to Lease execution

**CITY OF PHOENIX
Aviation Department**

**EXHIBIT 5
Letter of Credit Form**

[BANK]
IRREVOCABLE STANDBY LETTER OF CREDIT
NO. [REDACTED]

To: City of Phoenix – Beneficiary
Aviation Department
Business & Properties Division
2485 East Buckeye Road
Phoenix, Arizona 85034-4301
Attn: Deputy Aviation Director

Applicant: Company Name

Amount: \$ xxx.xx

Expiration Date: mm/dd/yyyy

We hereby establish our irrevocable Standby Letter of Credit No. [REDACTED] in your favor available against sight drafts drawn on (name of bank) at the office of the undersigned located at (insert address of bank), accompanied by the following documents:

1. A certificate purportedly signed by Aviation Director, or by any other director of the City of Phoenix Aviation Department, stating one or more of the following:

A. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. [REDACTED] as Company Name has failed to perform its obligations under or failed to comply with its Agreement No. [REDACTED], or any amendments thereto, or any replacement agreement, and the City requires payment under this Standby Letter of Credit of \$ [REDACTED].

B. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. [REDACTED] as Company Name has failed to provide a replacement Standby Letter of Credit prior to sixty (60) days before the expiration date as required by its Agreement No. [REDACTED] or any amendments thereto, or any replacement agreement, and the City of Phoenix requires payment under this Standby Letter of Credit of \$ [REDACTED].

C. The City of Phoenix is drawing against (name of bank) Standby Letter of Credit No. [REDACTED] as City of Phoenix has received notice from (name of bank) that the Standby Letter of Credit No. [REDACTED] will not be extended, and the City of Phoenix requires payment under this Standby Letter of Credit of \$ [REDACTED].

2. This original Standby letter of credit for endorsement.

All documents may be forwarded to us by mail, overnight courier, hand delivered to our counters, or via telefacsimile ("fax"). Documents to be directed to our counters at: (insert address as to counter location).

**CITY OF PHOENIX
Aviation Department**

Drawing presented to us via fax must be sent to our fax number *[insert – bank’s fax number]* (each such drawing, a “Fax Drawing”) provided, however, that Beneficiary confirm our receipt of any Fax Drawing by telephone to our telephone No. *[insert – bank’s telephone number(s)]*.

If Beneficiary presents an improper drawing, we shall notify you in writing sent by overnight courier or by fax to (602) 273-4083 that the demand was not affected in accordance with the terms and conditions of this Standby Letter of Credit, stating the reasons therefore and that we are holding any demand at your disposal. Upon being notified that the purported demand was not affected in conformity with this Standby Letter of Credit, you may attempt to correct any such nonconforming demand for payment.

Partial drawing and multiple presentations are permitted under this Standby Letter of Credit.

This Standby Letter of Credit will automatically be renewed for a one (1) year period from the Expiration Date set forth above and upon each anniversary of such Expiration Date, unless at least sixty (60) days prior to such expiration, or prior to any anniversary of such expiration, we notify both Beneficiary and Applicant in writing by registered mail or overnight courier that we elect not to renew this Standby Letter of Credit.

We hereby agree that this Standby Letter of Credit shall be duly honored upon presentation and delivery of the certification specified above.

This Standby Letter of Credit is subject to the "International Standby Practices (ISP98)," International Chamber of Commerce Publication No. 590, and, as to matters not governed by ISP98, shall be governed by and construed in accordance with the laws of Arizona, without regard to principles of conflicts of law.

[Bank]

By: _____
Authorized Signature

**CITY OF PHOENIX
Aviation Department**

**EXHIBIT 6
CASH DEPOSIT FOR PERFORMANCE GUARANTEE**

To: City of Phoenix – Beneficiary
Aviation Department
Business & Properties Division
2485 East Buckeye Road
Phoenix, Arizona 85034-4405
Attn: Deputy Aviation Director

Tenant: Tenant Full Legal Name
Address 1
Address 2
City, State, Zip

Date: [Insert Date]

Amount: [Insert Amount]

As required by [Lease Agreement No. TBD – dated] or [Permit No. _____], [Insert Tenant Full Legal Name (_____)] is providing a cash deposit to the City of Phoenix (City) as security for the faithful performance by [Insert Tenant Name] to secure payment of all amounts owed by [Insert Tenant Name] to City and its performance of other obligations under the [Lease No. TBD – dated] or [Permit No. _____]. [Insert Tenant Name]'s cash deposit is for the initial amount of (Insert Printed Dollar Amount) (Insert Numerical Dollar Amount), representing three months of payments under its [Lease No. TBD – dated] or [Permit No. _____].

The amount of this performance guarantee established as of the date of the [Lease No. TBD – dated] or [Permit No. _____] may become inadequate during the [Lease No. TBD – dated] or [Permit No. _____] term and [Insert Tenant Name]'s agrees that it will increase the amount as the City may reasonably prescribe from time to time on at least thirty (30) days prior written notice to [Insert Tenant Name]. The City may commingle the performance guarantee with the City's other funds and City shall have no obligation to pay or account to [Insert Tenant Name] for any interest that may be earned on the performance guarantee.

If [Insert Tenant Name] defaults with respect to any provision of the [Lease No. TBD – dated] or [Permit No. _____], including but not limited to the provisions relating to payment of all amounts owed by [Insert Tenant Name] to City, the City may use, apply or retain all or any part of the performance guarantee for the payment of any amounts owed to the City or any other sum in default, or for the payment of any other amount which the City may spend or become obligated to spend by reason of the [Insert Tenant Name]'s default or to compensate the City for any other loss which the City may suffer by reason of the [Insert Tenant Name]'s default. If any portion of the performance guarantee is so used or applied, [Insert Tenant Name] shall, within ten (10) business days after written demand from the City, deposit with the City cash in an amount sufficient to restore the performance guarantee to its original amount, and [Insert Tenant Name]'s failure to do so shall be a material breach of the [Lease No. TBD – dated] or [Permit No. _____].

If [Insert Tenant Name] fully and faithfully performs every provision of the [Lease No. TBD – dated] or

**CITY OF PHOENIX
Aviation Department**

[Permit No. _____] to be performed by it, the performance guarantee or any balance thereof shall be returned to [Insert Tenant Name]'s within a reasonable time after the expiration of the [Lease No. TBD – dated] or [Permit No. _____], provided, however, that the City may retain the performance guarantee until such time as any amount due from [Insert Tenant Name] under the [Lease No. TBD – dated] or [Permit No. _____] has been determined and paid in full.

AGREED AND ACCEPTED:

By: _____
[Insert Tenant Full Legal Name]

Title: _____
Print

Name: _____
Print

Date: _____

**CITY OF PHOENIX
Aviation Department**

**EXHIBIT 7
Compliance with Environmental Laws**

Contractor shall, at Contractor's own expense, comply with all present and subsequently enacted Environmental Laws, and any amendments thereto, affecting Contractor's occupation and use of the Premises.

A. DEFINITIONS

1. "Environmental Laws" means those laws promulgated for the protection of human health or the environment, including but not limited to, the following as the same are amended from time to time: the **Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [CERCLA]**, 42 U.S.C. Sections 9601 et seq., as amended by the **Superfund Amendment and Reauthorization Act [SARA]**; the **Solid Waste Disposal Act [SWDA]**, 42 U.S.C. Sections 6901 et seq., as amended by the **Resource Conservation and Recovery Act [RCRA]** including Subtitle I, Underground Storage Tanks; the **Toxic Substances Control Act [TSCA]**, 15 U.S.C. Sections 2601 et seq.; the **Public Health Service Act (Title XIV) [PHSA]** a.k.a. the **Safe Drinking Water Act [SDWA]** and SDWA Amendments of 1996, 42 U.S.C. Sections 300f et seq.; the **Federal Water Pollution Control Act [FWPCA]**, as amended by the **Clean Water Act**, 33 U.S.C. Sections 1251 et seq.; the **Clean Air Act**, 42 U.S.C. Sections 7401 et seq.; **Title 49 of the Arizona Revised Statutes**, including the **Arizona Environmental Quality Act**, A.R.S. Sections 49-101 et seq.; the **Arizona Comprehensive Air Quality Act**, A.R.S. Sections 49- 401 et seq.; the **Arizona Solid Waste Management Act**, A.R.S. Section 49-701 et seq.; the **Arizona Hazardous Waste Management Act**, A.R.S. Sections 49-901 et seq.; the **Arizona Underground Storage Tank Regulation Act**, A.R.S. Sections 49-1001 et seq.; the **Occupational Safety and Health Act of 1970** as amended, 29 U.S.C. Sections 651-678 and the regulations promulgated thereunder, and, any other laws, regulations and ordinances (whether enacted by local, state or federal government) now in effect or hereafter enacted, that provide for the regulation or protection of human health or the environment, including the ambient air, ground water, surface water, and land use, including substrata soils.

2. In this Contract, the term "**regulated substances**" means:

- a. Those substances identified or listed as a hazardous substance, pollutant, hazardous material, and, petroleum, in **CERCLA/SARA**; the **Hazardous Materials Transportation Act**, 49 U.S.C. Sections 5101 et seq.; **RCRA, Subtitle I, Regulation of Underground Storage Tanks**, 42 U.S.C. Sections 6991 through 6991i; **Clean Air Act**, 42 U.S.C. Section 7412 et seq.; and in any rule or regulation adopted to implement said statutes.
- b. Those substances identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a hazardous, special, or solid waste in the **Arizona Environmental Quality Act**, A.R.S. Sections 49-101 et seq., including but not limited to, the **Water Quality Assurance Revolving Fund Act [WQARF]**, A.R.S. Sections 49-281 et seq.; the **Arizona Comprehensive Air Quality Act**, A.R.S.

**CITY OF PHOENIX
Aviation Department**

Sections 49-401 et seq.; the **Arizona Solid Waste Management Act**, A.R.S. Sections 49-701 et seq.; the **Arizona Underground Storage Tank Regulation Act**, A.R.S. Sections 49-1001 et seq.; A.R.S. Sections 49-851 through 49-868 pertaining to **Management of Special Waste**; the **Arizona Hazardous Waste Management Act**, A.R.S. Sections 49-921 et seq.; and in any rule or regulation adopted to implement said statutes.

- c. All substances, materials and wastes that are, or that become, regulated, or that otherwise are classified as hazardous or toxic, under any Environmental Law during the term of this Contract.

3. The term “release” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.

4. As used herein, the term “Premises” means Contractor’s leasehold and/or any part or portion of Phoenix Sky Harbor International Airport (PSHIA), Phoenix Deer Valley Airport (DVT), Phoenix Goodyear Airport (GYR) or City owned property where Contractor or its employees or agents causes to occur a release of a regulated substance.

5. As used herein, the term “Contractor” means every consultant, lessee, sublessee, licensee, permittee, concessionaire, tenant or other person, firm or corporation occupying or using the Premises pursuant to an agreement and includes Contractor’s heirs, personal representatives, successors-in-interest and assigns.

B. COMPLIANCE

1. Contractor shall not cause or permit any regulated substance to be used, generated, manufactured, produced, stored, brought upon, or released on, or under the Premises, or transported to or from the Premises, by Contractor, its agents, employees, Contractor’s invitees or a third party in a manner that would constitute or result in a violation of any Environmental Law or that would give rise to liability under an Environmental Law.

Contractor may provide for the treatment of certain discharges regulated under the City of Phoenix pretreatment ordinances pursuant to Chapter 28 of the Phoenix City Code or such other ordinances as may be promulgated and the Federal Clean Water Act, 33 U.S.C. Section 1251 et seq.

Contractor shall indemnify, defend and hold harmless, on demand, City of Phoenix (“City”), its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys, for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons, the environment or Premises and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, human health or the environment pursuant to any Environmental Law, the common law, or other statute, ordinance, rule, regulation, judgment or order of any governmental agency or judicial entity,

CITY OF PHOENIX
Aviation Department

which are incurred or assessed as a result, whether in part or in whole, of Contractor's occupancy or use of the Premises during the term of this Contract or any previous contract or uses of the Premises by Contractor or its owners or affiliated entities, agents, employees, invitees, visitors or licensees. Regardless of the date of termination of this Contract, Contractor's obligations and liabilities under this Section shall continue so long as City bears any liability or responsibility under the Environmental Laws arising from Contractor's occupancy or use of the Premises during the term of this Contract. This indemnification of City by Contractor includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal or restoration work required or conducted by any federal, state or local governmental agency or political subdivision because of regulated substances caused by Contractor to be present on or under the Premises or present in the soil or ground water on or under the Premises or present in surface waters on or adjacent to the Premises.

2. Without limiting the foregoing, if the release by Contractor of any regulated substance on or under the Premises, or to the air, groundwater or surface waters on or adjacent to the Premises results in any contamination of the Premises, air, groundwater or surface waters, Contractor shall promptly take all actions at its sole cost and expense that are necessary to mitigate any immediate threat to human health or the environment. Contractor shall then undertake any further action necessary to return the contaminated site to the condition existing prior to the introduction by Contractor of any regulated substance; provided that City's approval of such actions shall first be obtained. Contractor shall undertake such actions without regard to the potential legal liability of any other person; however, any remedial activities by Contractor shall not be construed to impair Contractor's rights, if any, to seek contribution or indemnity from another person.

3. Contractor shall, at Contractor's own cost and expense, make all tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to Contractor's occupancy or use of the Premises. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or remediation plan that may be necessary due to any actual or potential spills or discharges of regulated substances on, under or from the Premises, or to the air, groundwater or surface waters on or adjacent to the Premises during the term of this Contract. At no cost or expense to City, Contractor shall promptly provide all information requested by City pertaining to the applicability of the Environmental Laws to the Premises, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination.

In addition, City shall have the right to inspect, within ten (10) days of Contractor's receipt of written request, and copy any and all records, test results, studies and/or other documentation, other than trade secrets and legally privileged documents, regarding environmental conditions relating to the use, storage, or treatment of regulated substances by Contractor on, under or from the Premises or to the air, groundwater or surface waters on or adjacent to the Premises.

**CITY OF PHOENIX
Aviation Department**

4. Contractor shall notify the Aviation Director within twenty-four (24) hours upon learning of the following:
 - a. Any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Premises or Contractor's occupancy or use of the Premises;
 - b. Any change in Contractor's activities on the Premises that will change or have the potential to change Contractor's or City's obligations or liabilities under Environmental Laws;
 - c. Any assertion of a claim or other occurrence for which Contractor may incur an obligation under this Section.
5. Contractor shall at its own expense obtain and comply with any permits or approvals that are required or may become required as result of any occupancy or use of the Premises by Contractor, its agents, employees, invitees and assigns.
6. Contractor shall insert the provisions of this Exhibit in any agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Contract.
7. Contractor shall obtain and maintain compliance with any applicable financial responsibility requirements of federal, state and/or local law regarding the ownership or operation of any underground storage tank(s) or any device used for the treatment or storage of a regulated substance and present evidence thereof to the City, as may be applicable.
8. Contractor shall take reasonable precautions to prevent other persons not acting under Contractor's authority from conducting any activity that would result in the release of a regulated substance on, under or from the Premises or to the air, groundwater or surface waters on or adjacent to the Premises. Contractor shall also exercise due care with respect to any regulated substance that may come to be located on the Premises as a result of the actions of third parties who are not under Contractor's authority.
9. Contractor shall make its best efforts to minimize its production of a waste stream that includes regulated substances, and shall minimize the storage of regulated substances on, in and around the Premises.

C. TERMINATION OF AGREEMENT

Contractor's failure or the failure of its agents, employees, contractors, invitees or of a third party to comply with any of the requirements and obligations of this Exhibit or applicable Environmental Law shall constitute a material breach of this Contract and shall permit the City to pursue the following remedies, in addition to all other rights and remedies provided by law or otherwise provided for in this Contract, to which the City may resort cumulatively, or in the alternative:

1. The City of Phoenix may, at the City's election, keep this Contract in effect and enforce

**CITY OF PHOENIX
Aviation Department**

all of its rights and remedies under the Contract, including (1) the right to recover rent and other sums as they become due by appropriate legal action and/or (2) the right, upon ten (10) day's written notice to Contractor, to make payments required of Contractor or perform Contractor's obligations and be reimbursed by Contractor for the cost thereof, unless such payment is made or obligation performed by Contractor within such ten (10) day period.

2. The City of Phoenix may, at the City's election, terminate this Contract upon written notice to Contractor. Upon the City's termination, Contractor shall immediately pay to the City an amount equal to all accrued but unpaid rents plus interest thereon calculated from the date the rent is past due at a rate equal to: (1) eighteen percent (18%) per annum or (2) the maximum interest rate permitted by state law, whichever is greater.

3. Notwithstanding any other provision in this Contract to the contrary, the City shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Laws on, under or from the Premises or in surface waters on or adjacent to the Premises, without waiving any of its rights under this Contract.

4. The exercise by the City of any of its rights under Section C of this Exhibit shall not release Contractor from any obligation it would otherwise have under this Exhibit.

5. The covenants of this Exhibit shall survive the termination of this Contract.

D. AZPDES STORMWATER GENERAL PERMIT COMPLIANCE SUPPLEMENT

Contractor shall also comply with the attached AZPDES Stormwater General Permit Compliance Supplement to this Exhibit as if the Supplement is fully set forth herein.

CITY OF PHOENIX
Aviation Department

SUPPLEMENT TO EXHIBIT 7

AZPDES Stormwater General Permit Compliance

With the exception of discharges on Indian Country, stormwater discharges in Arizona are regulated by the Arizona Department of Environmental Quality through the Arizona Pollutant Discharge Elimination System (AZPDES) program. An AZPDES permit is required for any point source discharge of pollutants to waters of the United States. Because stormwater runoff can transport pollutants to either a municipal separate storm sewer system (MS4) or to waters of the United States, AZPDES permits are required for stormwater discharges.

The City of Phoenix (the “City”) and its Contractors are required to obtain AZPDES permit coverage to the extent that stormwater is discharged from the Premises. Coverage under the AZPDES General Permit for Discharges from Construction Activities to Waters of the United States (AZG2008-001) (“AZPDES Construction General Permit”) is required for stormwater discharges generated by construction activities. Coverage under the AZPDES General Permit for Stormwater Discharges Associated with Industrial Activity from Non-Mining Facilities to Waters of the United States (AZMSG2010-002) (“AZPDES Multi-Sector General Permit”) is required for stormwater discharges generated by facilities and operations engaged in certain industrial activities. Among these industries are those engaged in “air transportation” and associated activities.

The City has obtained coverage under the AZPDES Multi-Sector General Permit for its “air transportation” facilities at Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport and Phoenix Goodyear Airport (collectively hereinafter referred to as the “Airports”). The City has adopted a Stormwater Quality Protection ordinance, Phoenix City Code Ch. 32C, and has in place an “Aviation Department Stormwater Enforcement Procedures and Civil Penalty Policy” (“Aviation Stormwater Policy”), both of which were developed to comply with federal and local laws governing stormwater pollution.

Compliance Generally

The City adopted the Aviation Stormwater Policy to achieve compliance with the AZPDES program requirements by the Aviation Department, its contractors and permittees. Contractor is subject to the policy as a condition of its activities, operations, and location at the Airports. The City shall have the right to monitor and require compliance with the Aviation Stormwater Policy.

Contractor agrees to comply with the Aviation Stormwater Policy and to implement at its sole expense, unless otherwise agreed to in writing between City and Contractor, those requirements of the Airports’ Stormwater Pollution Prevention Plans (SWPPP) and City ordinances that pertain to its operations and activities on the Premises at the Airports. Contractor warrants that it will use its best efforts to meet all deadlines that are established by statute, regulation, ordinance, and the Aviation Stormwater Policy, or that are agreed to by the parties. Contractor acknowledges that time is of the essence in the implementation of all City Permit requirements.

**CITY OF PHOENIX
Aviation Department**

Full compliance with the AZPDES Permit Program as contained in 18 A.A.C. 9, Art. 9; Chapter 32(C) of the Phoenix City Code; and the Aviation Stormwater Policy is a material condition of this Contract, and for any breach thereof which exposes City to civil or criminal fine, penalty, sanction or remediation cost by any governmental entity, City may terminate this Contract. This remedy is in addition to any other remedies available to the City.

AZPDES Construction General Permit

If Contractor elects to perform construction activities at the Airports, Contractor is required, prior to commencing those construction activities, to obtain stormwater discharge authorization from ADEQ under an AZPDES Construction General Permit. Contractor will obtain that authorization by preparing a SWPPP and filing for AZPDES Construction General Permit coverage in coordination with the City's project manager. The City will consult with and assist Contractor with regard to the filing for AZPDES Construction General Permit coverage as time and personnel allow. Contractor will also work with the City's project manager to develop pollution controls (e.g., Best Management Practices, Control Measures, schedules and procedures) for the SWPPP. Contractor is solely responsible for implementation of the pollution controls, all related costs and compliance with its AZPDES Construction General Permit obligations.

AZPDES Multi-Sector General Permit

Contractor is required, prior to commencing its operations and activities at the Airports, to obtain stormwater discharge authorization from the ADEQ under an AZPDES Multi-Sector General Permit. Contractor will obtain that authorization as a "Co-Permittee" with the City. As a Co-Permittee, the Contractor agrees to:

- a. Provide the City with a copy of Contractor's written Authorization to Discharge to the extent Contractor has received such from the Arizona Department of Environmental Quality; and
- b. Implement the Airports' SWPPP, including Best Management Practices, Control Measures, schedules, and procedures, as applicable to the Contractor's operations.

In connection with its coverage under the AZPDES Multi-Sector General Permit, the City has developed a SWPPP for the Airports to minimize the contact of storm and other precipitation event water with "significant materials" (as defined in the Regulations and City Ordinances) generated, stored, handled or otherwise used on Airport facilities. The City shall provide a copy of the SWPPP, including Best Management Practices, Control Measures, schedules, and procedures to Contractor, and Contractor shall implement that portion of the SWPPP applicable to its activities.

**CITY OF PHOENIX
Aviation Department**

The City agrees that, to the extent allowed by law, Contractor shall have the right to be removed as a Co-Permittee from coverage under the AZPDES Multi-Sector General Permit should its Contract be canceled or terminated for other reasons, or due to Contractor's relocation, noncompliance with the AZPDES Multi-Sector General Permit requirements or Contractor's exercise of choice. In no event shall Contractor be relieved of its obligation to comply with the requirements of the AZPDES permit program with regard to its occupation and use of the Premises at the Airports, nor shall Contractor be excused from any obligations or indemnifications incurred and owed to City prior to Contractor's removal as a Co-Permittee that result from a failure of Contractor to fulfill an obligation of a Co-Permittee.

Pollution Controls

City reserves the right to impose upon Contractor any Best Management Practices, Control Measures, schedules, and procedures, other action necessary to ensure City's ability to comply with its AZPDES program requirements or applicable City ordinances; however, except in "extreme emergency" conditions, Contractor shall have ten (10) days from date of receipt of written notice imposing such pollution control measures or other requirements to notify City in writing if it objects to any action it is being directed to undertake. If Contractor does not provide the specified timely notice, it will be deemed to have assented to implementation of the pollution control measures or other requirements. If Contractor provides City with timely written notice of its objections, the parties agree to negotiate a prompt resolution of their differences. Contractor warrants that it will not serve a written notice of objections for purposes of delay or avoiding compliance.

As used herein, "extreme emergency conditions" means:

- a. Conditions that impose an immediate impact on waters of the United States (e.g., Salt River) resulting from an emergency situation such as fire, spill, release or explosion, such that the facility responsible for the release must immediately begin appropriate response activities independently of City's direction or oversight;
- b. An emergency such that a facility has to close because of a catastrophic event, where the facility can extend the ten (10) day notice period, but must implement pollution control measures before it reopens;
- c. A collapse of the storm sewer system or other event which forecloses the Airports and/or City from performing its obligations under the City Permit due to lack of capacity.

Covenant of Good Faith

City and Contractor covenant to act in good faith to implement any AZPDES program requirements imposed on them pursuant to 18 A.A.C. 9, Art. 9. City and Contractor acknowledge that close cooperation will be necessary to ensure compliance with any AZPDES Multi-Sector General Permit requirements to promote safety and minimize costs, and each party agrees to a candid exchange of information necessary to coordinate a

**CITY OF PHOENIX
Aviation Department**

stormwater management and monitoring plan.

Indemnification

The covenants of insurance and indemnification in favor of City imposed by other provisions of the Contract shall extend to, and are incorporated into, the provisions of this Supplement to Exhibit 7.

Revised April 4, 2012

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**CITY OF PHOENIX
Aviation Department**

EXHIBIT 8

Supplemental Terms and Conditions to All Airport Agreements

1. Definitions

1.1 "Airport" means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport, and/or Phoenix Goodyear Airport, according to the context of the contract.

1.2 "Contract" means all City of Phoenix Aviation Department contracts, subcontracts, agreements, leases, subleases, licenses, permits, concessions, and other documents, however denominated, that grant or convey a right or privilege on an Airport and to which this Exhibit is attached.

1.3 "Contractor" means all lessees, sublessees, licensees, permittees, consultants, concessionaires and other persons, firms, or corporations exercising a right or privilege on an Airport pursuant to a Contract and includes Contractor's heirs, personal representatives, successors, and assigns.

1.4 "Premises" means the area of an Airport occupied or used by Contractor pursuant to a Contract.

2. Federal Aviation Administration (FAA) Grant Assurances

2.1 Title VI of the Civil Rights Act of 1964 – Compliance with Nondiscrimination Requirements – 49 U.S.C. § 47123 and FAA Order 1400.11

During the performance of this Contract, Contractor agrees as follows:

A. Compliance with Regulations. Contractor will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as provided in Section 7 below), as it may be amended from time to time, which is incorporated herein by reference and made a part of this Contract.

B. Nondiscrimination. With regard to the work performed by it under this Contract, Contractor 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. Contractor will not participate, directly or indirectly, in the discrimination prohibited by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, including employment practices when this Contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.

**CITY OF PHOENIX
Aviation Department**

C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation, made by 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 Contractor of Contractor's obligations under this Contract and the Title VI List of Pertinent Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

D. Information and Reports. The Contractor will provide all information and reports required by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, 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 City of Phoenix or the FAA to be pertinent to ascertain compliance with the Title VI List of Pertinent Nondiscrimination Acts and Authorities and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will so certify to the City of Phoenix or the FAA, as appropriate, and will set forth what efforts Contractor has made to obtain the information.

E. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of this Contract, the City of Phoenix will impose such Contract sanctions as it or the FAA may determine to be appropriate, including:

(i) Withholding payments to Contractor under this Contract until Contractor complies, and/or

(ii) Cancelling, terminating, or suspending this Contract, in whole or in part.

F. Covenant Running with the Land. Contractor for itself and its heirs, personal representatives, successors, and assigns, as a part of the consideration for this Contract, hereby covenants and agrees that, in the event facilities are constructed, maintained, or otherwise operated on the property described in this Contract for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Contractor will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities. In the event of a breach of any of the above Nondiscrimination covenants, the City of Phoenix will have the right to terminate this Contract and to enter, re-enter and repossess the property and facilities thereon and hold the same as if this Contract had never been made or issued.

**CITY OF PHOENIX
Aviation Department**

G. Incorporation of Provisions. Contractor will include the provisions of paragraphs A through F in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, the Regulations, and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as the City of Phoenix or the FAA may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, Contractor may request the City of Phoenix to enter into any litigation to protect the interests of the City of Phoenix. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

2.2 General Civil Rights Provisions – 49 U.S.C. § 47123

A. Sponsor Contracts. Contractor 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. This provision binds Contractor and subtier contractors from the bid solicitation period through the completion of this Contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

B. Sponsor Lease Agreements and Transfer Agreements. Contractor 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, including Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. If Contractor transfers its obligations to another, then the transferee is obligated in the same manner as Contractor. This provision obligates Contractor or its transferee for the period during which the property is owned, used, or possessed by Contractor and the City of Phoenix remains obligated to the FAA. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

2.3 Economic Nondiscrimination – 49 U.S.C. § 47107

In any Contract under which a right or privilege on the Airport is granted to a Contractor to conduct or to engage in any aeronautical activity for furnishing services to the public, Contractor shall:

A. Furnish its services on a reasonable, and not unjustly discriminatory basis to all users of the Airport, and

B. Charge reasonable, and not unjustly discriminatory prices for each unit or services, provided that Contractor may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to

**CITY OF PHOENIX
Aviation Department**

volume purchasers. Non-compliance with this requirement shall be a material breach of this Contract for which the City of Phoenix shall have the right to terminate this Contract and any estate created herewith without liability therefor or, at the election of the City of Phoenix or the United States shall have the right to judicially enforce said requirement.

2.4 Disadvantaged Business Enterprise Requirements – 49 C.F.R. Part 26

A. Contract Assurance (§ 26.13). To the extent that this Contract is covered by 49 C.F.R. Part 26, Contractor agrees that this Contract is subject to the requirements of the U.S. Department of Transportation regulations at 49 C.F.R. Part 26. Contractor or its subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by 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 City of Phoenix deems appropriate, which may include (i) withholding monthly progress payments, (ii) assessing sanctions, (iii) liquidated damages, and/or (iv) disqualifying Contractor from future bidding as non-responsible. Contractor agrees to include the foregoing statement in any subsequent contract that it enters into and cause those businesses to similarly include the statement in further agreements.

B. Prompt Payment (§ 26.29). Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract not later than seven (7) days from the receipt of each payment Contractor receives from City of Phoenix. Contractor agrees further to return retainage payments to each subcontractor within seven (7) 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 of Phoenix. This clause applies to both DBE and non-DBE subcontractors.

2.5 Airport Concessions Disadvantaged Business Enterprise Requirements – 49 C.F.R. Part 23

Contract Assurance (§ 23.9). To the extent that this Contract is a concession agreement covered by 49 C.F.R. Part 23, 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 C.F.R. Part 23. Contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 C.F.R. Part 23 that it enters into and cause those businesses to similarly include the statements in further agreements.

CITY OF PHOENIX
Aviation Department

2.6 Miscellaneous

A. Contractor agrees that it will undertake an affirmative action plan in conformance with 14 C.F.R. Part 152, Subpart E (Nondiscrimination in Airport Aid Program), to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment, contracting, or leasing activities covered in 14 C.F.R. Part 152, Subpart E. Contractor assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. Contractor further agrees that it will require its covered suborganizations to provide assurances to Contractor that they similarly will undertake affirmative action programs and that they will require like assurances from their suborganizations as required by 14 C.F.R. Part 152, Subpart E.

B. City of Phoenix reserves the right to further develop, improve, repair, and alter the Airport and all roadways, parking areas, terminal facilities, landing areas, and taxiways, as it may reasonably see fit, free from any and all liability to Contractor for loss of business or damages of any nature whatsoever to Contractor occasioned during the making of such improvements, repairs, alterations, and additions.

C. The City of Phoenix reserves the right, but is not obligated to Contractor, 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 Contractor in this regard.

D. Contractor acknowledges that this Contract is subordinate to any existing or future agreement between the City of Phoenix and the United States concerning the development, operation, or maintenance of the Airport. If the FAA or its successors require modifications or changes in the Contract as a condition to obtaining funds for improvements at the Airport or as a requirement of any prior grants, Contractor hereby consents to any and all such modifications and changes as may be reasonably required and agrees that it will adopt any such modifications and changes as part of this Contract.

E. This Contract is subordinate to the reserved right of the City of Phoenix and its successors and assigns to occupy and use for the benefit of the public the airspace above the Premises for the right of flight for the passage of aircraft. This public right of flight includes the right to cause in the airspace any noise inherent in the operation of any aircraft through the airspace or in landing at, taking off from, or operating at an Airport.

F. Contractor agrees to comply with the notification and review requirements, as required by 14 C.F.R. Part 77 (Safe, Efficient Use, and Preservation of the Navigable Airspace), if future construction of a structure is planned for the Premises or a planned modification of a structure on the Premises. Contractor shall

**CITY OF PHOENIX
Aviation Department**

submit the required FAA Form 7460-1 (Notice of Proposed Construction or Alteration) and provide documentation showing compliance with the federal requirements. After the FAA has completed the aeronautical study, Contractor shall provide to the City of Phoenix the FAA determination letter on proposed construction and any impact to air navigation. Contractor covenants for itself and its successors and assigns that it will not erect or permit the erection of any structure or permit the growth of any tree on the Premises above the mean sea level elevation for (1) Phoenix Sky Harbor International Airport, 1,134 feet, (2) Phoenix Goodyear Airport, 968 feet, and (3) Phoenix Deer Valley Airport, 1,476 feet. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and remove the offending structure or cut the offending tree at Contractor's expense.

G. Contractor, by accepting this Contract, covenants for itself and its successors and assigns, that no use will be made of the Premises that might in any manner interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard to air navigation. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and abate the interference at Contractor's expense.

H. Contractor agrees that nothing in this Contract may be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. § 40103(e) (No exclusive rights at certain facilities).

I. This Contract is subordinate to whatever rights the United States now has or in the future may 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 a time of war or national emergency.

J. If this Contract involves construction, Contractor shall carry out the project in accordance with FAA airport design, construction, and equipment standards and specifications current on the date of project approval.

K. Contractor is encouraged to use fuel and energy conservation practices.

3. Immigration Reform and Control Act of 1986 (IRCA)

Contractor agrees that IRCA (Public Law 99-603) applies to it. Contractor shall comply with the provisions of IRCA as it applies to its activities under this Contract and to permit the City of Phoenix to inspect its personnel records to verify its compliance.

4. Conflict of Interest

Contractor agrees that the City of Phoenix may cancel this Contract pursuant to Arizona Revised Statutes (A.R.S.) § 38-511 (Cancellation of political subdivision and state contracts).

**CITY OF PHOENIX
Aviation Department**

5. Legal Worker Requirements

The City is prohibited by A.R.S. § 41-4401 from awarding an agreement to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A) (Verification of employment eligibility; e-verify program). Therefore, Contractor agrees that:

A. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214(A).

B. A breach of warranty under paragraph A above shall be deemed a material breach of this Contract and is subject to penalties up to and including termination of the Agreement.

C. The City of Phoenix retains the legal right to inspect the papers of Contractor or its subcontractor employees who work on this Contract to ensure that Contractor or its subcontractors are complying with the warranty under paragraph A above.

6. City of Phoenix Equal Employment Opportunity Requirement

6.1 If Contractor is by this Contract a supplier to or lessee of the City, then the requirements of the Phoenix City Code, Chapter 18, Article V applies, including the agreement that:

“Any supplier/lessee in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The supplier and/or lessee shall ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.”

Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee.

**CITY OF PHOENIX
Aviation Department**

If the supplier/lessee employs more than 35 employees, the following language shall be included as the last paragraph to the clause above:

“The supplier/lessee further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.”

6.2 Documentation. Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.

6.3 Monitoring. The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this Section 3 as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

7. Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Contract, Contractor agrees to comply with all federal, state, and local nondiscrimination laws, rules, and regulation, including the following:

A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) (prohibits discrimination on the basis of race, color, or national origin).

B. 49 C.F.R. Part 21 (Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964).

C. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §§ 4601, *et seq.*) (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal aid programs and projects).

D. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 701, *et seq.*), as amended (prohibits discrimination on the basis of disability), and 49 C.F.R. Part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance).

E. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101, *et seq.*) (prohibits discrimination on the basis of age). Airport and Airway Improvement Act

CITY OF PHOENIX
Aviation Department

of 1982 (49 U.S.C. § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex).

F. The Civil Rights Restoration Act of 1987 (Public Law 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 the programs or activities are federally funded or not).

G. Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, *et seq.*), 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 as implemented by U.S. Department of Transportation regulations at 49 C.F.R. Part 37 (Transportation Services for Individual with Disabilities) and Part 38 (Americans with Disabilities Act Accessibility Specification for Transportation Vehicles).

H. 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.

I. Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency) and resulting agency guidance and 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).

J. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681, *et seq.*), as amended, which prohibits you from discriminating because of sex in education programs or activities.

**CITY OF PHOENIX
Aviation Department**

EXHIBIT 9

Retail Operating and Service Standards Manual

Section 1 – Cleanliness Standards

Section 2 – Premises Standards

Section 3 – Storage Space / Delivery Standards

Section 4 – Information, Directions & Signs Standards

Section 5 – Employee Standards

Section 6 – Operational Standards

Section 1 - Cleanliness Standards

- 1.1 All Premises shall be kept clean and well-maintained.
- 1.2 All garbage shall be removed from counters and tables within five (5) minutes.
- 1.3 Carpeting shall be vacuumed or cleaned daily or immediately when soiled.
- 1.4 Entrance doors, glass windows and display cases shall be clean and free of smears, smudges, and dirt.
- 1.5 Sales and cashier areas shall be clean and organized.
- 1.6 Light fixtures and their attachments shall be kept clean and free of dust.
- 1.7 Delivery palettes shall be neatly stacked/organized (while on loading dock or outside the Premises) between deliveries.
- 1.8 All cardboard boxes shall be broken down and placed within the designated cardboard receptacles.
- 1.9 Hallways, elevators and areas around the Premises shall be free of Lessee-generated garbage.
- 1.10 Garbage shall be disposed of by placing accumulated garbage in Lessor-provided garbage compactor(s) and compacted.
- 1.11 Air conditioning, heating registers, and vents shall be clean.

Section 2 - Premises Standards

- 2.1 Floors within the Premises shall be free of garbage, stains, holes, potential trip hazards and shall be clean and well-maintained.

CITY OF PHOENIX
Aviation Department

- 2.2 All display cases and fixtures shall be in good condition with no broken pieces, deep scratches or graffiti.
- 2.3 All walls, ceilings, glass surfaces and fixtures shall be free of dust, stains, and well maintained.
- 2.4 All lights shall be in working order with burned out bulbs replaced within 24 hours.
- 2.5 Shipping materials, packaging, and delivery carts shall be stored out of the passenger's view when not in use.
- 2.6 Cleaning supplies and equipment shall be stored out of the public view.
- 2.7 Closet doors shall be kept closed.
- 2.8 The personal belongings of employees shall not be in the public view.
- 2.9 All entrances to Retail concession units shall be free from obstruction(s), including concession merchandise, sales/advertising stanchions, and Lessee-generated garbage.
- 2.10 Lessee-provided air conditioning and heating units shall be maintained as required.
- 2.11 If music is played in the Retail concession unit, volume levels shall be appropriately set.

Section 3 - Storage Space / Delivery Standards

- 3.1 Products and merchandise stocked in Lessee's support space shall not block doors, electrical panels or hinder the fire suppression system.
- 3.2 Lessee shall not erect walls within the storage space to create office space, private storage or additionally secured areas.
- 3.3 Lessee shall be responsible for communicating with Lessor's Operations Division to make arrangements for escorting deliveries to Retail concession units located post-security, if necessary.

Section 4 - Information, Directions and Signs Standards

- 4.1 Store policies pertaining to credit cards, returns/refunds, shall be clearly displayed.
- 4.2 Clearly display a toll-free number for customer complaints or customer compliments.

**CITY OF PHOENIX
Aviation Department**

- 4.3 Hours of operation shall be fully displayed.
- 4.4 Handwritten and unprofessional signs shall not be used.
- 4.5 Illuminated signs shall be in proper working condition.
- 4.6 All signage/postings shall comply with Exhibit 3 of the Lease. All necessary licenses, permits, notices and inspection certificates on the Premises will be clearly displayed.

Section 5 - Employee Standards

Employees shall:

- 5.1 Project a friendly and attentive demeanor, and have a positive attitude towards customers and fellow employees at all times.
- 5.2 Provide appropriate attention to customers, purchasing, asking questions, or needing assistance and not gather to chat while on duty.
- 5.3 Make every effort to satisfy a customer's needs, even when those needs are outside the employee's scope of work.
- 5.4 Maintain appropriate eye contact and a pleasant tone of voice while conversing with customers and fellow employees.
- 5.5 Provide each customer with correct change, a receipt, and a "thank you."
- 5.6 Be well informed, capable of providing directions and knowledgeable about where and how to obtain requested information or service for customers.
- 5.7 Remain calm when encountering an upset customer, try to calm the customer, listen carefully and show empathy with the customer's problem. When encountering a dissatisfied customer, employees should obtain the facts; state any applicable policy clearly and politely; and be able to offer a solution or an adequate alternative to the customer. If unable to satisfy the customer or resolve the issue, employees shall direct the customer to the immediate supervisor.
- 5.8 Be trained on how to obtain assistance to resolve customer questions, address language barriers, and respond to medical and operational emergencies.
- 5.9 Refrain from using foul or inappropriate language at all times.

**CITY OF PHOENIX
Aviation Department**

5.10 Employees shall not:

- 5.11 Eat, drink or chew gum in the view of customers.
- 5.12 Sleep on duty or in a public area.
- 5.13 Use cell phones and personal music devices while on duty.
- 5.14 Wear sunglasses indoors while on duty, unless medically required and accompanied by a doctor's note.

Section 6 - Operational Standards

- 6.1 Employees have sufficient cash available immediately upon opening to make change for early morning sales.
- 6.2 All complaints be dealt with promptly and documented appropriately.
- 6.3 All odor-producing operations, products and equipment must be controlled by wrapping, enclosing, containing or other treating to prohibit the entry of objectionable odors into public spaces. Objectionable odors include odors of machinery, electrical devices, perfumes and perfume products, cleansers, and oils.
- 6.4 All prepackaged food items shall be labeled with an "expiration date." No items shall be offered for sale or remain on shelves after the expiration dates and times.

**CITY OF PHOENIX
Aviation Department**

Exhibit 10

**Airport Concession Disadvantaged Business Enterprise (ACDBE) Program
Race- and Gender-Neutral Lease Clause**

SECTION I DEFINITIONS

The following definitions shall apply to this Exhibit, Airport Concession Disadvantaged Business Enterprise (ACDBE) Program Race- and Gender-Neutral Lease Clause:

Airport Concession Disadvantaged Business Enterprise (ACDBE) means a firm that has been granted ACDBE certification status by the City acting as a member of the Arizona Unified Certification Program pursuant to the criteria contained in 49 Code of Federal Regulations (CFR) Parts 23 and 26.

Arizona Unified Certification Program (AZUCP) is a consortium of government agencies organized to provide reciprocal ACDBE and DBE certification within Arizona pursuant to 49 CFR Part 26. The official ACDBE and DBE database containing eligible ACDBE and DBE firms certified by AZUCP can be accessed at: www.adot.dbesystem.com. The certification system is called the Arizona Unified Transportation Registration and Certification System (AZ UTRACS).

City means the City of Phoenix.

Commercially Useful Function means that an ACDBE or DBE is responsible for executing the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. If an ACDBE or DBE does not perform or exercise responsibility for at least 30% of the total cost of the contract with its own work force, or if the ACDBE or DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the ACDBE or DBE is presumed not to be performing a Commercially Useful Function.

Compliance Specialist means an EOD employee responsible for ACDBE Program compliance with this Lease Clause.

Concession means a business that primarily serves the public on an airport. This includes direct sales or services, management contracts, advertising contracts and goods and services providers.

Contract is a written agreement between any of the following parties: Respondent and JV partner, sublessee, subcontractor, or a Goods and Services Provider.

DBE stands for disadvantaged business enterprise. In this context, DBE means a Small Business Concern that has successfully completed the DBE certification process and has been granted DBE status by an AZUCP member pursuant to the criteria contained in 49 CFR Part 26.

CITY OF PHOENIX
Aviation Department

EOD means the City of Phoenix Equal Opportunity Department.

Goods and Services Providers are firms that provide goods and services that represent a Commercially Useful Function directly to airport concessionaires as an ACDBE, DBE or small business.

Joint Venture (JV) means an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. For purposes of this Lease Clause, one participant in the JV arrangement must be a certified ACDBE or DBE by an AZUCP member. The JV is limited in scope and duration to this Lease. The resources, asset and labor of the participants must be combined in an effort to accrue profit.

Lease is a written agreement for a direct concession opportunity with the City.

Outreach Efforts means the diligent and good-faith efforts demonstrated by a Respondent to solicit participation from Small Businesses. Respondent shall: identify and document potential business opportunities for Small Businesses; describe what efforts were undertaken to solicit Small Business participation; disclose results of negotiations with Small Businesses; and communicate and record Respondent's selection decisions and notifications relating to Small Business participants.

Respondent means an individual, partnership, JV, corporation or firm that submits a Response to the City to perform services requested by a RCS.

Response is a written proposal to the City prepared by a Respondent to perform services.

Revenue Contract Solicitation (RCS) is a solicitation or procurement issued by the City.

Race- and Gender-Neutral (RGN) Measures means effort(s) or program(s) that is, or can be, used to assist all Small Businesses, in the absence of a goal.

Small Business means, with respect to firms seeking to participate as ACDBEs or DBEs in contracts funded by the U.S. Department of Transportation (US DOT), a Small Business Concern as defined in section 3 of the Small Business Act and Small Business Administration regulations implementing the Act (13 CFR part 121), which Small Business Concern does not exceed the cap on average annual gross receipts specified in 49 CFR § 26.65(b) and self-identified small businesses. "Small Business" and "Small Business Concern" are used interchangeably in this Lease Clause.

Subcontractor means an individual, partnership, JV, corporation or firm that holds a contract at any tier below the Lease, including a vendor under a purchase order.

Sublease is an agreement between the Respondent and another entity or entities [sublessee(s)].

**CITY OF PHOENIX
Aviation Department**

Successful Respondent means an individual, corporation, firm or JV that has been selected by the City to perform services requested by a RCS.

SECTION II GENERAL REQUIREMENTS

- A. Applicable Federal Regulations.** This Lease is subject to ACDBE requirements issued by USDOT in 49 CFR Parts 26 and 23. Despite the lack of a race- and gender-conscious ACDBE participation goal for this Lease, the Agency must track and report ACDBE and DBE participation that occurs as a result of any procurement, JV, goods/services, or other arrangement involving an ACDBE or DBE. For this reason, the Successful Respondent shall provide all relevant information to enable the required reporting.
- B. ACDBE Participation.** For this solicitation, the City has *not* established a race- or gender-conscious ACDBE participation goal. The City extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The City uses race- and gender-*neutral* measures to facilitate participation of Small Businesses. The City *encourages* each Respondent to voluntarily subcontract or joint venture with Small Businesses to perform part of the work—a Commercially Useful Function—that Respondent might otherwise perform with its own forces. The City also encourages each Respondent to voluntarily utilize Small Businesses as suppliers of Goods and Services.
- C. Counting ACDBE and DBE Participation.** The City will count ACDBE and DBE participation as authorized by federal regulations. A summary of these regulations can be found at www.phoenix.gov/eod .
- D. ACDBE and DBE Certification.** *Only* firms (1) certified by the City or another AZUCP member, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine ACDBE and DBE participation resulting from RGN measures on this Lease. This ACDBE and DBE determination affects the City’s tracking and reporting obligations to USDOT.
- E. Civil Rights Assurances.** As a recipient of USDOT funding, the City has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Lease signed by the City and the Successful Respondent, and each Subcontract signed by the Successful Respondent and a Subcontractor, must include the following assurance *verbatim*:

“The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, sex, or creed in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Parts 21 and 23 in the award and administration of USDOT- 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 City of Phoenix deems appropriate.”

**CITY OF PHOENIX
Aviation Department**

Note: For purposes of the required Contract and Subcontract language above, the Successful Respondent is the “contractor.”

SECTION III REQUIRED OUTREACH EFFORTS

The City has implemented outreach requirements for this Lease. Specifically, each Respondent shall: (1) identify small-business-participation opportunities, including Commercially Useful Functions; (2) actively solicit proposals from small businesses; (3) evaluate small-business proposals; and (4) communicate selection decisions to small businesses, including each rejection of a small-business proposal. If a Respondent fails to conduct these Outreach Efforts or fails to submit the required documentation of Respondent’s Outreach Efforts as indicated in Section IV, Parts A, B and C below, the City may determine that the Respondent’s proposal is *nonresponsive*. A determination of non-responsiveness *disqualifies* Respondent from further consideration for the Lease award.

SECTION IV SUBMITTAL REQUIREMENTS

Forms EO2 and EO3, along with supporting documentation for Form EO2 are due with the Response.

A. Form EO2. Each Respondent shall complete and submit Form EO2 documenting its diligent, good-faith Outreach Efforts.

1. Each Respondent shall list in Form EO2 all Small Businesses contacted by Respondent in preparing its Response. Each Respondent shall also provide the following minimum information to document its Outreach Efforts. The Compliance Specialist will consider this information to determine whether Respondent has demonstrated the required Small Business Outreach Efforts:
 - a. Each business’s full legal name and contact information;
 - b. Business status (ACDBE, DBE, Small Business, SBE, or unknown);
 - c. Scope of work solicited (brief description, percentage of contract value);
 - d. Solicitation method (personal contact, telephone, fax, e-mail, other);
 - e. Selection process; and
 - f. Communication of selection outcome to each participant*.

Respondent shall provide supporting documentation that shows Respondent has communicated its final selection decisions and outcomes to **all Small Businesses **not** chosen to participate in this Lease.*

2. Each Respondent shall complete Form EO2 in accordance with the following instructions.
 - a. Each Respondent shall actively contact Small Businesses for each scope of work or business opportunity selected for Small Business Outreach Efforts (Columns A

CITY OF PHOENIX
Aviation Department

- and C).
- b. Respondent's contacts with Small Businesses should occur well before the Response deadline to afford the firms contacted a reasonable opportunity to prepare a proposal and participate in the Lease.
 - c. Respondent shall ask each firm to indicate the number of its employees (Column A).
 - d. For each ACDBE's, DBE's or Small Business's annual gross receipts, Respondent shall ask the firm to indicate the gross-receipts bracket into which it fits (e.g., less than \$500,000; \$500,000 – \$1 million; \$1 – 2 million; \$2 – 5 million; etc.) rather than requesting an exact figure from the firm (Column A).
 - e. If Respondent does not select a particular Small Business to participate in the Lease, Respondent shall explain the reason why (Column E).
 - f. Respondent shall notify each Small Business contacted whether or not Respondent selected the firm. Respondent shall notify all firms not selected, and Respondent shall state when (date) and how (method) the selection outcome was communicated to each firm (Column F).

B. Form EO2 Supporting Documentation. Each Respondent shall complete and submit supporting documentation of its Outreach Efforts related to Form EO2.

1. Respondent shall submit with Form EO2 all supporting documentation of Respondent's contacts with Small Businesses for each scope of work or business opportunity selected for Small Business Outreach Efforts.
2. This documentation must include: (1) descriptions of scopes of work and business opportunities identified for Small Business participation, and (2) a copy of the actual solicitation sent to Small Businesses. The solicitation may be in the form of a letter, attachment to an e-mail, advertisements in newspapers and trade papers, or written communications with chambers of commerce and/or other organizations.
3. Respondent shall submit documentation that establishes how Respondent communicated its selection decisions and outcomes to each Small Business *not* selected for this Lease. This documentation may be in the form of a letter, e-mail, fax, or a telephone log and must show the name of the person contacted and date.
4. For all of the above documentation, if Respondent uses a blast e-mail or fax format, the documentation submitted must include a copy of the e-mail or fax, and Respondent must disclose all e-mail addresses and fax numbers to which the solicitation or outcome notification was sent and the date and time of the transmission. For telephone contacts, Respondent shall document the date and time of the call and the names of the respective persons representing Respondent and the Small Business.

C. Form EO3. Respondent shall sign and submit Form EO3, which commits Respondent to the City as follows:

1. The firms indicated as "selected" in Form EO2 will participate in the Lease;

**CITY OF PHOENIX
Aviation Department**

2. The Respondent will comply with the Race- and Gender-Neutral post-award requirements as stated in Sections V and VI below;
3. Any and all changes or substitutions will be authorized by the Compliance Specialist before implementation; and
4. The proposed total Small Business participation percentage is true and correct.

Respondent shall ensure that the percentages proposed for Small Business participation on Form EO2 equal the total percentage proposed in Form EO3.

D. Failure to Meet Small Business Outreach Requirements. The Compliance Specialist will determine, in writing, whether Respondent has satisfied all outreach requirements. If the Compliance Specialist determines that Respondent has failed to satisfy the outreach requirements (specified in Sections III and IV, Parts A, B, and C), then the Compliance Specialist may determine that the Response is non-responsive. A non-responsive determination *disqualifies* Respondent from further consideration for the Lease award. The City shall send written notice to Respondent stating the basis for the Compliance Specialist's decision.

E. Administrative Reconsideration. Within seven (7) business days of being informed by the Contract Specialist that the proposer/respondent or awardee/contractor of its nonresponsive or noncompliant status, the firm may request administrative reconsideration. Since the ACDBELO does not have any role in the determination of nonresponsive/noncompliance determination issued by Contract Specialist, the ACDBELO shall serve as the Administrative Reconsideration Officer. The appellant must make this request in writing to the following reconsideration official:

Donald R. Logan, Director
City of Phoenix Equal Opportunity Department
200 West Washington Street, 15th Floor
Phoenix, AZ 85003
Phone: (602) 262-6258
Fax: (602) 534-1785
TTY: (602) 534-1557
Email: Donald.Logan@phoenix.gov

The Administrative Reconsideration/Appeal Hearing Officer will not have played any role in the original determination. As part of this reconsideration, the appellant will have the opportunity to provide written documentation or argument concerning the issue. The appellant will have the opportunity to meet in person with the City's Administrative Reconsideration/Appeal Hearing Officer to discuss the matter. The City will send the appellant a written decision on reconsideration, explaining the basis of the determination, which is final. The result of the reconsideration process is not subject to administrative appeal with the USDOT.

**CITY OF PHOENIX
Aviation Department**

SECTION V POST-AWARD GENERAL REQUIREMENTS

- A. **Subcontracting Commitment.** Promptly after Lease award, the Successful Respondent shall submit to City copies of all executed contracts, purchase orders, subleases, JV agreements, and other arrangements formalizing agreements between Successful Respondent and any Small Businesses.

The Successful Respondent shall not reduce the amount, alter the scope of work, or terminate the Subcontractor without the Compliance Specialist's prior written approval. Any request to alter a Small Business Subcontract must be submitted in writing to the Equal Opportunity Department before any change is made. If the Successful Respondent fails to do so, the City may declare the Successful Respondent in breach of the Lease.

- B. **Post-Award Relief from DBE Requirements.** After Lease award, the City will not grant relief from the proposed ACDBE, DBE or Small Business utilization except in extraordinary circumstances. The Successful Respondent's request to modify ACDBE, DBE or Small Business participation must be in writing to the Compliance Specialist, who has final discretion and authority to determine if the request should be granted.

The Successful Respondent's waiver request must contain the amount of relief being sought, evidence demonstrating why the relief is necessary, and any additional relevant information the Compliance Specialist should consider. The Successful Respondent shall include with the request all documentation of its attempts to subcontract with Small Businesses and any other action taken to locate and solicit a replacement Small Business.

If an approved ACDBE or DBE allows its ACDBE or DBE status to expire or its ACDBE or DBE certification is removed during the course of the subcontract, the City will consider all work performed by the ACDBE or DBE under the original contract to count as ACDBE or DBE participation. No increased scopes of work negotiated after expiration or revocation of the ACDBE's or DBE's certification may be counted. Likewise, any work performed under a Lease extension granted by the City may not be counted as ACDBE or DBE participation.

- C. **Substitutions.** If a Small Business was approved by the City, but the firm subsequently loses its Small Business status before execution of a contract, the Compliance Specialist will consider whether or not the Successful Respondent has exercised diligent and good-faith efforts to find another Small Business as a replacement. The Successful Respondent shall notify the Equal Opportunity Department in writing of the necessity to substitute a Small Business and provide specific reason(s) for the substitution or replacement. Actual substitution or replacement of a Small Business may not occur before the Compliance Specialist's written approval has been obtained.

SECTION VI. RECORDS & REPORTING REQUIREMENTS

- A. **Records.** During performance of the Lease, the Successful Respondent shall keep all records necessary to document ACDBE, DBE and Small Business participation. The Successful Respondent shall provide the records to the City within 72 hours of the City's

**CITY OF PHOENIX
Aviation Department**

request and at final completion of the Lease. The City will prescribe the form, manner, and content of reports. The required records include:

1. A complete listing of all Subcontractors and suppliers on the project;
2. Each Subcontractor's and supplier's scope performed;
3. The dollar value of all subcontracting work, services, and procurement;
4. Copies of all executed Subcontracts, purchase orders, and invoices;
5. Total operating expenses and total costs of goods sales; and
6. Copies of all payment documentation.

B. Reports. The Successful Respondent shall be required to track and report all Small Business participation that occurs as a result of a contract, procurements, purchase orders, subleases, JV, goods/services or other arrangements involving sub-tier participation. Such documentation must be entered monthly into the internet based reporting program Business2Government (B2G) System at www.phoenix.diversitycompliance.com .

C. Annual Submittals of Small Business Participation Plan. As a matter of compliance, the Successful Respondent must submit a **Small Business Participation Plan** and the associated **Supporting Documentation**, on an annual basis by the anniversary date of contract award. The Successful Respondent is required to maintain a **Small Business Participation Plan** and document its ongoing efforts to foster small business participation throughout the life of this Contract. The Successful Respondent is required to conduct a shortfall analysis and develop a corrective action plan in the event the Successful Respondent is unable to achieve its Small Business Participation Commitment.

1. Failure to Foster Small Business Participation

The Compliance Specialist will determine whether Successful Respondent has satisfied all outreach activities in the development of the **Small Business Participation Plan**. If the Compliance Specialist determines that Successful Respondent has failed to satisfy the **Small Business Participation Plan** requirements as specified in this clause, then the Compliance Specialist may determine that the Successful Respondent is not compliant. The City shall send a written notice to the Successful Respondent stating the basis for the Compliance Specialist's decision. The Successful Respondent has seven (7) business days to cure the deficiency. If Successful Respondent fails to submit the required forms and supporting documentation by the due dates, the City may formally deem the Successful Respondent noncompliant, in default of the Lease and not in good standing with the City of Phoenix.

D. Counting of Small Business Participation:

1. In instances where Small Business participation occurs as the result of a JV arrangement with a Respondent, the Successful Respondent is required to complete JV documentation, and cooperate and participate in a review of the participation of the JV partners at least once a year. The review will determine the percentage of participation that will be counted for Small Businesses and the participation of ACDBE

CITY OF PHOENIX
Aviation Department

firms to be reported to the Federal Aviation Administration each year of the Lease.

2. If an approved ACDBE allows its ACDBE status to expire or its ACDBE certification is removed during the course of the subcontract, the City will consider all work performed by the ACDBE under the original contract to count as ACDBE participation. No increased scopes of work negotiated after expiration or revocation of the ACDBE's certification may be counted. Likewise, any work performed under a Lease extension granted by the City may not be counted as ACDBE participation.

**CITY OF PHOENIX
Aviation Department**

**EXHIBIT 11
OPERATIONS PLAN**

To be added prior to Lease execution

**CITY OF PHOENIX
Aviation Department**

**EXHIBIT 12
RESPONDENT'S PLAN (Response Submittal)**

Modified, if requested by Lessor. Will be added prior to Lease execution.