

1 BY AUTHORITY

2 ORDINANCE NO. \_\_\_\_\_  
3 SERIES OF 2010

COUNCIL BILL NO. \_\_\_\_\_  
COMMITTEE OF REFERENCE:  
ECONOMIC DEVELOPMENT

5 A BILL

6 For an ordinance approving a proposed Concession Agreement between the City and  
7 County of Denver and Continental Airlines, Inc., related to a food and beverage  
8 concession at Denver International Airport.  
9

10 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

11 **Section 1.** The proposed Concession Agreement between the City and County of Denver and  
12 Continental Airlines, Inc., in the words and figures contained and set forth in that form of the  
13 Concession Agreement, filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and  
14 County of Denver, on the 29th day of July, 2010, City Clerk's Filing No. 10-791 is hereby  
15 approved.  
16

17 COMMITTEE APPROVAL DATE: July 23, 2010

18 MAYOR-COUNCIL DATE: July 27, 2010

19 PASSED BY THE COUNCIL \_\_\_\_\_ 2010

20 \_\_\_\_\_ - PRESIDENT

21 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_ 2010

22 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
23 EX-OFFICIO CLERK OF THE  
24 CITY AND COUNTY OF DENVER  
25

26 NOTICE PUBLISHED IN THE DAILY JOURNAL \_\_\_\_\_ 2010 \_\_\_\_\_ 2010

27 PREPARED BY: Lee Marable; *JR* *for LM* DATE: July 29, 2010

28 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the  
29 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
30 ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to § 3.2.6  
31 of the Charter.  
32

33 David R. Fine, City Attorney

34 BY: \_\_\_\_\_, \_\_\_\_\_ City Attorney

35 DATE: July 29, 2010



## CONCESSION AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, (hereinafter referred to as the "CITY"), Party of the First Part, and CONTINENTAL AIRLINES, INC., a corporation organized and existing under and by virtue of the laws of the State of Delaware and authorized to do business in the State of Colorado (hereinafter referred to as the "CONCESSIONAIRE"), Party of the Second Part;

### WITNESSETH:

WHEREAS, the City owns and operates Denver International Airport, located within and without the City and County of Denver, State of Colorado (which airport is hereinafter called the "Airport"), and has the power to grant rights and privileges with respect thereto; and

WHEREAS, Concessionaire desires to operate a commercial business providing in-flight catering service to various air carriers and selling to them food and beverage products to be packaged and delivered to the said air carriers at the Airport; and

WHEREAS, the City agrees to grant permission to the Concessionaire to offer such in-flight food and beverage services to air carriers at the Airport subject to the following conditions;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the City and Concessionaire do hereby mutually undertake, promise and agree, each for itself and its successors and assigns, as follows:

1. **CONCESSION PERMITTED:** The City hereby grants to the Concessionaire the non-exclusive right and privilege to conduct an in-flight catering service to various air carriers and to prepare, operate, maintain and sell food and beverage services or products for use or consumption in aircraft in flight of any air carrier, or for use and consumption by the public, other than in connection with air transportation, off of the Airport premises.

This Concession Agreement is intended by the parties hereto to cover food and beverages which are delivered by Concessionaire to air carriers upon Airport premises, and also to cover food and beverages prepared or packaged by the Concessionaire in facilities upon the Airport for delivery, use and consumption by the public off of the Airport.

2. **TERM:** The term of this Agreement shall be for a period commencing as of 12:00 Noon, local time, on the date of execution hereof as set forth hereinabove, and shall terminate as of 12:00 Noon, local time, March 1, 2020.

3. **CHARACTER OF SERVICE AND OPERATION:** Concessionaire may provide to air carriers upon the Airport and to the public off of the Airport food and beverage services, including processing, preparation and distribution of food and beverage or equipment, materials, storage and maintenance of equipment and materials used for packaging or

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distribution of food and beverages.

All operations performed hereunder and all equipment and materials furnished, used or maintained shall meet requirements of applicable laws and good practices for public health and safety. All services and operations performed hereunder, including the driving of vehicles, shall be performed by persons who are fully qualified, experienced and licensed as the nature of their duties requires.

The Concessionaire agrees that it shall not prepare or store any of its products or materials upon the Airport and shall not store or park any vehicle upon the Airport except at such points as may be authorized in writing by the Manager of Aviation or his authorized representative.

The Concessionaire further agrees that all charges it makes for the services and operations hereunder shall be reasonable and shall be comparable to charges for similar services and operations in the Denver area.

4. **COMPENSATION:** The Concessionaire covenants and agrees to pay to the City, at the Office of the Manager of Aviation at the Airport on or before the 10th day of the second month and each succeeding month of the term hereof and the 10th day of the month following the term hereof, seven percent (7%) of the Concessionaire's gross receipts from its operations of delivering food and beverages on-airport, five percent (5%) of the Concessionaire's gross receipts from its sales of food and beverage off-airport and fifteen percent (15%) of Concessionaire's gross receipts from its sales of alcoholic beverages hereunder for each preceding calendar month, excluding gross receipts from its operations of delivering food, beverage and alcoholic beverage items prepared for or furnished by the Concessionaire to Continental Airlines, Inc., or any other air carrier under contract with Continental Airlines, Inc. to provide air transportation services using aircraft with essentially the same livery as Continental Airlines, Inc.; and carrying Continental's passengers. An itemized statement in a form approved by the City's Manager of Aviation showing the gross receipts of Concessionaire for the preceding calendar month shall in each case accompany the said payment.

As used herein, the term "gross receipts" shall mean all billings and receipts from sales of food, beverages and charges for services and operations permitted hereunder whether they are directly or indirectly billed or collected and whether for cash or credit, regardless of collection, and whether for retail or wholesale. Gross receipts shall include all such goods or services delivered from or at the Airport whether placed by telephone, in person or by mail, regardless of the point where the order was actually made.

There shall be allowed as a reduction from gross receipts, when properly recorded and accounted for, bona fide returns for credit, sales taxes collected for remittance to the State or City, and Federal excise taxes collected that must be separately stated and collected from the airline. There shall not be allowed any deductions from gross receipts for bad debts, loss from theft, or any deductions except as outlined above.

Immediately upon Concessionaire's receipt of monies from the sales of articles or services which Concessionaire is authorized to sell by the terms of this Agreement, the percentages of said monies belonging to the City under the terms of this Agreement shall immediately be vested in and become the property of the City, and Concessionaire shall be responsible as trustee for said monies until the same are delivered to the City.

Any check given to the City shall be received by it subject to collection, and the Concessionaire agrees to pay any charge incurred by the City for such collection. Any payments not made to the City when due shall accrue interest at the rate of 18% per annum from such due date.

It is understood and agreed by the Concessionaire that the City may at any time during the term hereof, and in the absolute discretion of the City's Manager of Aviation, reestablish the percent of the gross receipts to be paid to the City as compensation hereunder, provided only that at least thirty days written notice shall be given to the Concessionaire before a new rate goes into effect, and that said new rate shall be no higher than the highest rate being paid by any other independent concessionaire providing similar catering services to one or more airlines at the Airport.

**5. BOOKS OF ACCOUNT AND AUDITING:** Concessionaire shall keep within the City and County of Denver true and complete records and accounts of all gross revenues and business transacted, including daily bank deposits, and annually not later than the last day of February of each year of the term hereof, Concessionaire shall furnish to the City a true and accurate statement for the preceding year of all such revenue and business transacted during such preceding year, or such portion of the preceding year during which this contract was in effect, showing the authorized deductions or exclusions in computing the amount of such gross revenue and business transactions, which statement shall be prepared and certified by an independent certified public accountant to be true and correct.

Concessionaire agrees to establish and maintain a system of bookkeeping satisfactory to the City's Auditor, which system shall be kept in such manner as to allow the Concessionaire's Airport operations to be distinguished from all other operations of the Concessionaire, and to allow gross revenues from food, beverage and alcoholic beverage items prepared for or furnished to Continental Airlines, Inc. to be distinguished from all other gross revenues of the Concessionaire hereunder.

Concessionaire agrees to give to the City's authorized representatives access during reasonable hours to such books and records. The Concessionaire agrees that it will keep and preserve for at least three years, or until sooner audited by the City, all sales slips, cash register tapes, sales books, bank books, or duplicate deposit slips and other evidence of gross revenue and business transacted for such period.

The City's Auditor and Manager of Aviation and their respective authorized representatives shall have the right at any time and from time to time to audit all of the books of account, bank statements, documents, records, returns, papers and files of Concessionaire relating

to its gross revenues and business transacted, and the Concessionaire, upon request by either, shall make all such matters available for such examination at the premises.

If the City shall make or have made such an audit for any year and the gross revenue and business transacted shown by the Concessionaire's statement for such year should be found to be understated by more than one percent, Concessionaire shall pay to the City the cost of such audit and the amount of any deficiency plus interest thereon at the rate of 21% per annum. The City's right to have such an audit made with respect to any year shall expire three years after Concessionaire's statement for any year shall have been delivered to the City.

Concessionaire agrees that the City's Manager of Aviation and Auditor and their authorized representatives may inspect any sales tax return or report and accompanying schedules and data which Concessionaire may file with the City pursuant to its City Retail Sales Tax Article and the Concessionaire waives any claim of confidentiality which it may have in connection therewith.

6. **NOTICES:** All notices required to be given to the City hereunder shall be given by certified mail, return receipt requested, addressed to the Manager of Aviation, Denver International Airport, Denver, Colorado 80249; notices required to be given to the Concessionaire hereunder shall be served personally or sent by certified mail, return receipt requested, addressed to the Concessionaire at

Continental Airlines, Inc.  
Suite 3333E HQSPF  
1600 Smith Street  
Houston, TX 77002  
Attn: Neil Maxfield

provided, however, that either party hereto may designate in writing from time to time the address of substitute or supplementary persons to receive such notices. The effective date of service of any such notice shall be the date such notice is mailed or delivered to the Concessionaire or Manager as aforesaid.

7. **COMPLIANCE WITH ALL LAWS AND REGULATIONS:** The Concessionaire agrees that its operations hereunder will be conducted so as to comply with the laws of the United States and the State of Colorado and the Ordinances and Charter of the City and County of Denver, including all applicable laws, rules and regulations dealing with public health, and it further agrees that its operations hereunder will be conducted in accordance with all general rules and regulations adopted by the City or its Manager of Aviation for the management, operation and control of Denver International Airport, either promulgated by the City or by said Manager on its or his own initiative or by or in compliance with regulations or actions of any federal agency authorized to regulate interstate flights to and from said Airport. The Concessionaire further agrees to submit any report or reports or information regarding its operations hereunder that the City's Manager of Aviation or his authorized representative may request.

8. **TAXES, LICENSES:** The Concessionaire covenants and agrees to pay promptly all taxes, excises, license fees and permit fees of whatever nature applicable to its operations hereunder, and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business or the operation of equipment, and further agrees not to permit any of said taxes, excises or license fees to become delinquent.

9. **INDEMNITY AND INSURANCE:** The Concessionaire hereby agrees to release and to indemnify and save harmless the City, its officers, agents and employees from and against any and all loss of or damage to property, or injuries to or death of any person or persons, including property and employees or agents of the City, and shall defend, indemnify and save harmless the City, its officers, agents and employees from any and all claims, damages, suits, costs, expenses, liability, actions or proceedings of any kind or nature whatsoever, including Workmen's Compensation claims, of or by anyone whomsoever in any way relating to or arising out of, directly or indirectly, its operations in connection herewith, or its use or occupancy of any portion of Denver International Airport, and including acts and omissions of Concessionaire's officers, employees, representatives, suppliers, invitees, contractors and agents; provided, however, that the Concessionaire need not release, indemnify or save harmless the City, its officers, agents and employees from damages resulting from the sole negligence of the City's officers, agents and employees. The minimum insurance requirements prescribed herein shall not be deemed to limit or define the obligations of the Concessionaire hereunder.

The Concessionaire further agrees to secure and deliver to the City's Manager of Aviation at the time of execution of this Agreement a comprehensive liability insurance policy written on an occurrence basis, including public liability and property damage in form and company acceptable to and approved by said Manager, covering automobile liability, including liability for operations conducted from loading and unloading a vehicle and covering places and locations and operations hereunder and products sold or dispensed, in amounts of not less than \$200,000,000.00 for bodily injury, death and property damage, plus coverage for automobile liability for airside access, for bodily injury, death and property damage, with a combined single limit in an amount of not less than \$10,000,000.

The City shall not be named as an insured in any insurance policy required hereunder, but said policy shall contain a provision covering Concessionaire's contractual liability to the City.

The original or a certified copy of each of the above policy or policies, plus a certificate evidencing the existence of each of them, all in such form as the Manager of Aviation may require, shall be delivered to the Manager upon the execution of this Agreement. Each such policy or certificate shall contain a valid provision or endorsement stating "This policy will not be cancelled or materially changed or altered without first giving thirty days prior written notice thereof to the Manager of Aviation, Denver International Airport, Denver, Colorado 80249, sent by certified mail, return receipt requested."

A renewal policy and certificate, as above provided, shall be delivered to the City's Manager of Aviation at least fifteen days prior to the policy's expiration date except for any policy expiring on the expiration date of this Agreement or thereafter. However, if the Concessionaire has previously provided to the City insurance with the coverage or a part of the coverage as provided above, the evidence of insurance required herein may be accomplished by furnishing the required current certificates of insurance and endorsements to the said previously supplied policy as will evidence the additional coverages herein required, including contractual liability coverage.

10. **COMPENSATION INSURANCE:** The Concessionaire further covenants and agrees at all times to maintain adequate Workmen's Compensation Insurance (including occupational disease hazards) with an authorized insurance company, or through the Colorado State Compensation Insurance Fund, or through an authorized self- insurance plan approved by the State of Colorado, insuring the payment of compensation to all of its employees. The Concessionaire agrees to provide the Manager certificates in number as required satisfactorily evidencing the existence of said Workmen's Compensation Insurance coverage; and, if required by said Manager, a certified copy of any such policy.

11. **RIGHT OF INSPECTION:** The City's Manager of Aviation and his duly authorized representatives shall have at any and all times the full and unrestricted right to inspect any of the vehicles, equipment or utensils used by the Concessionaire, and the right to do any and all things with reference thereto which the City is obligated to do as set forth herein, or which may be deemed necessary for the proper conduct and operation of Denver International Airport, or which may be necessary or proper in the exercise of the City's police power.

12. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, the Concessionaire agrees not to fail or refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Concessionaire further agrees to insert the foregoing provision in all subcontracts hereunder.

13. **AGREEMENT SUBORDINATE TO AGREEMENTS WITH UNITED STATES:** This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for airport purposes and the expenditure of federal funds for the extension, expansion or development of Denver International Airport. The provisions of the attached Appendices Nos. 1, 2, 3, and 10 are incorporated herein by reference.

14. **PATENTS AND TRADEMARKS:** The Concessionaire represents that it is the owner of or fully authorized to use any and all services, processes, machines, equipment,



articles, marks, names or slogans used by it in its operations under or in anywise connected with this Agreement. The Concessionaire agrees to save and hold the City, its officers, employees, agents and representatives free and harmless of and from any loss, liability, cost, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright or arising from any alleged or actual unfair competition or other similar claim arising out of the operations of the Concessionaire under or in any way connected with this Agreement.

15. **ASSIGNMENT**: The Concessionaire shall not assign, sublet or transfer this Agreement, in whole or in part, without the prior written consent of the City's Manager of Aviation. Any attempt by the Concessionaire to assign, sublet or in any way transfer any interest or right granted to it hereunder without the prior written consent of the Manager shall automatically terminate this Agreement and all rights of the Concessionaire hereunder. Such consent may be granted or denied at the sole and absolute discretion of said Manager.

16. **AGREEMENT BINDING**: This Agreement, subject to the provisions of paragraph 15, "Assignment" hereof, shall be binding on and extend to the heirs, personal representatives, successors and assigns of the respective parties hereto.

17. **PARAGRAPH HEADINGS**: Paragraph headings contained herein are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

18. **MASTER PLAN**: The Concessionaire agrees that no liability shall attach to the City, its officers, agents and employees by reason of any efforts or action toward implementation of any present or future master plan for Denver International Airport, and for and in consideration of the rights and privileges herein granted, Concessionaire waives any right to claim damages or other consideration arising therefrom.

19. **INCONVENIENCES DURING CONSTRUCTION**: The Concessionaire recognizes that from time to time during the term of this Agreement, it will be necessary for the City to initiate and carry forward extensive programs of construction, reconstruction, expansion, relocation, maintenance and repair in order that Denver International Airport and its facilities may be suitable for the volume and character of air traffic and flight activity which will require accommodation, and that such construction, reconstruction, expansion, relocation, maintenance and repair may inconvenience the Concessionaire in its operation at said Airport. The Concessionaire agrees that no liability shall attach to the City, its officers, agents, employees, contractors, subcontractors and representatives by way of such inconveniences, and for and in further consideration of the premises, the Concessionaire waives any right to claim damages or other consideration therefor.

20. **PREVENTION OF LIENS**: The Concessionaire covenants and agrees not to permit any mechanic's or materialman's or any other lien to become attached or be foreclosed by reason of any work or labor performed or materials furnished by any mechanic or materialman. Concessionaire agrees to furnish the City's Manager of Aviation, upon request,

duplicate receipts or other satisfactory evidence showing the prompt payment by it of Social Security, unemployment compensation and Workmen's Compensation Insurance, all required licenses and all taxes. The Concessionaire further covenants and agrees to pay promptly when due all bills, debts and obligations incurred by it in connection with its operation of said concession on the Airport, and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed against its machines or equipment or the proceeds therefrom which will in any way impair the rights of the City under this Agreement.

21. **WAIVERS**: No waiver of default by the City of any of the terms, covenants or conditions hereof to be performed, kept and observed by the Concessionaire shall be construed as, or operate as, a waiver by the City of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the Concessionaire.

22. **AGREEMENT MADE IN COLORADO**: This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado.

23. **BOND ORDINANCES**: This Agreement is in all respects subject and subordinate to any and all City bond ordinances applicable to Denver International Airport and to any other bond ordinances which should amend, supplement or replace such bond ordinances.

24. **NO PERSONAL LIABILITY**: No director, officer or employee of either party shall be held personally liable under this Agreement or because of its execution or attempted execution.

25. **NOT PARTNERSHIP**: Notwithstanding the provision herein contained for the payment by the Concessionaire to the City of sums based upon a percentage of gross revenues as above provided, it is expressly understood and agreed that the City shall not be construed or held to be a partner, associate or joint venturer of the Concessionaire in the conduct of its business, but the Concessionaire shall at all times have the status of an independent contractor, without the right or authority to impose tort or contractual liability upon the City.

26. **PERFORMANCE BOND**: The Concessionaire shall deliver to the City upon the execution of this Agreement and will at all times during the term hereof, including any extension hereof, maintain in effect a valid bond in the amount of three months of compensation payable to the City and County of Denver hereunder, with surety acceptable to and approved by the city's Manager of Aviation, which bond shall be conditioned upon the Concessionaire fully and faithfully performing and carrying out the terms and provisions of this Agreement.

Notwithstanding the foregoing, if at any time during the term hereof the Manager in his absolute discretion deems the amount of the surety insufficient to properly protect the City from loss hereunder, the Concessionaire agrees that it will after receipt of notice increase the same to an amount required by said Manager.

27. **SECURITY**: The Concessionaire shall cause its officers, agents and employees to comply with any and all existing and future security regulations adopted by the City pursuant to Part 107, Federal Air Regulations of the Federal Aviation Administration, as they may be amended from time to time.

28. **THIRD PARTIES**: This Agreement does not and shall not be deemed or construed to confer upon or grant to any third party or parties any right to claim damages or to bring any suit, action or other proceeding against either the City or the Concessionaire because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein contained.

29. **DISPUTES**: Disputes arising under or related to this Agreement shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in Section 56-106, Subsections (b) through (f), Revised Municipal Code of City and County of Denver, or any substantially similar successor ordinance of the City. The parties hereto agree that the Manager's determination resulting from said administrative hearing shall be final, subject only to Concessionaire's right to appeal the determination under Colorado Rule of Civil Procedure 106.

30. **ENTIRE AGREEMENT**: The parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications, unless expressly reserved to the Manager herein, shall be valid unless executed by an instrument in writing by all the parties with the same formality as this Agreement.

31. **FINAL APPROVAL**: This Agreement is expressly subject to and shall not be or become effective or binding on the City, until approved by the Denver City Council and fully executed by all signatories of the City and County of Denver.

[END OF PAGE]

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

**CITY AND COUNTY OF DENVER**

ATTEST:

\_\_\_\_\_  
STEPHANIE Y. O'MALLEY, Clerk and Recorder, Ex-officio Clerk of the City and County of Denver

By \_\_\_\_\_  
Mayor

RECOMMENDED AND APPROVED:

By  \_\_\_\_\_  
Manager of Aviation

APPROVED AS TO FORM:

DAVID R. FINE, City Attorney for the City and County of Denver

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_  
Assistant City Attorney


By \_\_\_\_\_  
Manager of Finance  
Contract Control No. RC 9A005

By \_\_\_\_\_  
Auditor

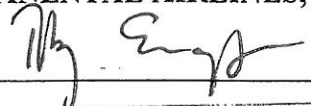
**"CITY"**

PARTY OF THE FIRST PART

ATTEST:

By:  \_\_\_\_\_  
Title: St. Manager, Co-op. Real Estate

**CONTINENTAL AIRLINES, INC.**

By:  \_\_\_\_\_  
Title: Toby Enqvist Emp. #96158  
Staff Vice President  
Global Real Estate  
**"CONCESSIONAIRE"**  
Continental Airlines, Inc

PARTY OF THE SECOND PART

## APPENDIX 1

### STANDARD FEDERAL ASSURANCES

NOTE: As used below the term "contractor" shall mean and include the "Party of the Second Part," and the term "sponsor" shall mean the "City".

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

1. **Compliance with Regulations.** The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination.** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports.** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor of the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to the contractor under the contract until the contractor complies, and/or

b. Cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions. The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## APPENDIX NO. 2

### STANDARD FEDERAL ASSURANCES

NOTE: As used below, the term "DOT" means the United States Department of Transportation.

1. The Party of the Second Part for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Party of the Second Part shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

2. The Party of the Second Part for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land: (1) that no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Party of the Second Part shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

### APPENDIX NO. 3

#### NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES

The Party of the Second Part assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the Party of the Second Part or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide or is in the form of personal property or real property or an interest therein or structures or improvements thereon. In these cases, this Provision obligates the Party of the Second Part or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

**It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or handicap in public services and employment opportunities.**



## APPENDIX NO. 10

### DISADVANTAGED BUSINESS ENTERPRISES - REQUIRED STATEMENTS

Policy. It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the ACDBE requirements of 49 CFR Part 23 apply to this agreement.

ACDBE Obligation. The recipient or its contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, sex, creed or national origin in the award and performance of DOT-assisted contracts.

49 CFR 23.5 defines a DOT-assisted contract as "any contract or modification of a contract between a recipient and a contractor which is paid for in whole or in part with DOT financial assistance or any contract or modification of a contract between a recipient and a lessee." "Contractor" means ... "and includes lessees." The City is the "recipient."

