

**APPENDIX 5**  
**CONCESSIONS PROGRAM**

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## **APPENDIX 5-A**

### **CONCESSIONS DEVELOPMENT AND MANAGEMENT**

The terms of this Appendix 5-A shall take precedence over the CDMP.

#### **1. Concessions Program Overview**

##### **1.1 Exclusive License**

The Owner hereby grants to Developer an exclusive license to develop, implement and manage a concessions program, and to perform associated Work, within Level 5 of the Terminal and Level 6 of the Terminal, excluding the Non-Competing Activities (the “**Concessions Space**”).

Developer shall have an exclusive license to sub-contract with third party Concessionaires for the operation of concessions under the Concessions Program. The design and construction of the Concessions Space will not be subject to the Owner’s approval.

##### **1.2 Objectives of Concessions Program**

Developer shall conceive, plan, develop, design, implement, furnish and/or construct, integrate, and manage the Concessions Program to achieve the following objectives:

- Ensure the safe, clean, functional, and reliable operations of the Concessions;
- Ensure and verify the quality of the Work respecting the Concessions Program;
- Ensure the activities under the Concession Program do not affect the safety of the Users and minimize the risk of damages to, disturbance of, or destruction of properties of the Airport, the airlines, TSA, and the FAA;
- Promote the highest standards for excellence in customer service in accordance with Good Industry Practice;
- Promote and develop Gross Receipts from the Concessions Program in accordance with Good Industry Practice and strive to maximize the revenue potential of the Terminal;
- Promote a mix of Concessions and competitive, open, fair and transparent access to business opportunities for Concessionaires;
- Diversify and mitigate revenue risk; and
- Promote the continuous improvement of the Concessions Program.

### **1.3 General Concessions Program Requirements**

Developer shall:

- Perform all Concessions-related Work in accordance with Good Industry Practice and the Contract Documents;
- Serve as the master developer to be responsible for the programmatic mix, procurement, and management of Concessions, subject to the terms and requirements of this Appendix 5-A and other applicable provisions of the Contract Documents;
- Enter into Concession Agreements with Concessionaires in accordance with Section 1.4 of this Appendix 5-A;
- Oversee, manage, verify, and report on the performance of the Concessionaires and ensure their compliance with the Concession Agreements, applicable terms of the Contract Documents and the Concessions Plans and Policies;
- Develop, implement, and update as required hereunder, the CDMP, to achieve the objectives and ensure compliance with the requirements set forth in this Appendix 5-A and other applicable provisions of the Contract Documents; and
- Measure and report its performance in fulfilling the responsibilities and obligations set forth in this Appendix 5-A.

### **1.4 Concession Agreements**

#### **1.4.1 Parties to the Concession Agreement**

Developer shall cause each Concessionaire to enter into a Concession Agreement with Developer and to comply with the terms thereof. The Owner will not be a party to any Concession Agreement. Instead, each Concession Agreement must contain, in substance but not in form, certain mandatory (and step-in) terms required by the Owner, as specified in Appendix 5-B. The Owner will review the form of each Concession Agreement to validate its conformity with such requirement pursuant to Section 1.4.2 hereof. The entering into any Concession Agreement by Developer with the Concessionaires will not otherwise be subject to any further review, approval or discretion on the part of the Owner, provided that Developer shall provide at least (x) thirty (30) Business Days' prior written notice to the Owner of any proposed termination of any Concession Agreement as set forth in Section 1.4.5 hereof, and (y) 5 Business Days' prior written notice to the Owner of any proposed Material Amendment (as defined below) to any Concession Agreement pursuant to Section 1.4.6 hereof.

Developer and Affiliates of Developer are expressly prohibited from operating Concessions directly.

As between the Parties, Developer shall be responsible for all acts and omissions of the Concessionaires and all maintenance, repair and operating responsibilities to be performed by Developer or the Concessionaires within the Concessions Space as required under the Contract Documents and the respective Concession Agreements.

Developer shall use its reasonable best efforts to pursue the collection of any amounts due and owing to Developer by Concessionaires under their Concession Agreements.

#### **1.4.2 Owner's Review**

Not less than ten (10) Business Days prior to the execution of any Concession Agreement, Developer shall submit to the Owner a full and complete copy of the proposed form of Concession Agreement for the Owner's review. The Owner's review shall be limited to confirming that the proposed Concession Agreement complies with Section 1.4.4 of this Appendix 5-A.

The Owner shall provide its confirmation or, if any of the Mandatory Provisions (as defined below) set forth in Appendix 5-B are missing (or otherwise the substance thereof has not been appropriately included as contemplated in Section 1.4.2 hereof) from the proposed Concession Agreement, its request for inclusion thereof, in writing, within ten (10) Business Days of receipt of the proposed form of Concession Agreement from Developer. If the Owner does not provide a written answer within such ten (10) Business Days, compliance with the requirements set forth in Section 1.4.4 shall be deemed confirmed and Developer shall execute such Concession Agreement.

#### **1.4.3 Minimum Annual Privilege Fee**

Each Concession Agreement shall set a Minimum Annual Privilege Fee (MAPF), which shall not be lower than:

- (a) For the first year of operations of each Concession Agreement, 75% of the Privilege Fee included in the final agreed business plan proposed by the Concessionaire; and
- (b) For every year thereafter, 85% of actual Privilege Fee in the immediately preceding year.

#### **1.4.4 Form and Substance**

Developer shall ensure that each Concession Agreement includes all of the Mandatory Provisions, on substantially the same terms and substance as set forth in Appendix 5-B of the Agreement. To the extent that Developer seeks a modification of any Mandatory Provision, the same shall be requested in accordance with Appendix 5-B of the Agreement and Section 1.4.6 of this Appendix 5-A. Developer shall exercise reasonable best efforts to enforce the Mandatory Provisions, provided that Developer may exercise commercially reasonable discretion in the enforcement of liquidated damages provisions included in the Mandatory Provisions.

### 1.4.5 Term and Termination

Developer shall develop and comply with the Concessions Term Policy, which shall include the requirements and principles set forth in this Section 1.4.5 and shall be included in the CDMP.

The term of a Concession Agreement shall not to exceed ten (10) years, and shall not include any option periods for renewal or extension of the term, except:

- (a) in accordance with the terms of the Developer Premium Value Concessions Program and solely with respect to Concessionaires who participate in the same;
- (b) if an extension is reasonably necessary to provide uninterrupted service to the traveling public (such as unexpected extension of a solicitation period for proposals for a Concession); or
- (c) as otherwise approved by the Owner.

Termination of any Concession Agreement shall be effected in accordance with the terms thereof. Developer shall provide at least 30 Business Days' prior written notice to the Owner of any termination of a Concession Agreement.

### 1.4.6 Material Amendments

Developer shall provide at least five (5) Business Days' prior written notice to the Owner of any proposed amendment that would (i) affect or modify the economic terms of any Concession Agreement, or (ii) would modify the Mandatory Provisions in substance (each a "**Material Amendment**"). For the avoidance of doubt, the requirement set forth herein is limited to giving notice of any proposed Material Amendment to the Owner, and any such Material Amendment shall not, in any way, be subject to review or approval from the Owner; provided, however, that if any Material Amendment is proposed in respect of the Mandatory Provisions, the Owner shall be entitled to review and confirm that such Material Amendment complies with the terms set forth in Appendix 5-B of the Agreement.

## 2. Concessions Program Development

Developer shall implement the comprehensive strategy for the Concessions Program that addresses the objectives described in Section 1.2 of this Appendix 5-A, as set forth and developed in the CDMP. The strategy shall be based on appropriate considerations of revenue objectives, Concessions mix, programming, use of Brands, concentration of ownership, incentivizing competition and performance, promoting continuous improvement, and satisfying the ACDBE requirements as further detailed in this Section 2, and shall be implemented in accordance with the Concessions Plans and Policies.

## 2.1 Concessions Program Development Supporting Analyses

Developer shall base its strategy for the Concessions Program on substantiated demand and revenue forecasts and other appropriate supporting analyses and assumptions in accordance with Good Industry Practice, and include such forecasts, analyses and assumptions in the CDMP in accordance with Section 3.1 of this Appendix 5-A.

## 2.2 Use of Brands

Developer shall ensure that the Concessions Program includes a mixture of strong local, national, and international Brands.

Developer shall establish and maintain a register of Brands in accordance with the CDMP for use in the Concessions Space generally, which register may be comprised of any Brands other than those which have been expressly prohibited by the City as of the date of the Agreement. Developer shall then work with each Concessionaire to establish a list of permitted Brands for such particular Concessionaire (each, a “**Concessionaire Brand**”) and shall prohibit the use of Brands other than the Concessionaire Brand for such Concessionaire and in the Public Circulation Space unless otherwise approved by Developer.

## 2.3 Concentration of Ownership

To the extent required by then applicable Owner policy, Developer shall develop, implement and maintain a Concentration of Ownership Policy for the Concessions Program that (a) reflects the intent of the concentration of ownership policy of the Owner as described in the Airport Concession Policy as of the Commercial Close Date; (b) encourages competition; and (c) provides opportunities for small businesses.

If in effect, the Concentration of Ownership Policy shall only apply to the Concessions Program and will not be affected by the concourses at the Airport. With respect to the Concessions Program, the concentration of ownership percentage will be determined at Project Substantial Completion and will not apply to the Project Construction Period.

## 2.4 Developer Premium Value Concessions Program

Developer shall develop, implement and continuously improve upon a program to recognize and incentivize Concessionaires and Concessionaire employees for financial, operational and customer service performance (the “**Developer PVC Program**”). The objectives of the Developer PVC Program shall include, at a minimum:

- To encourage and reward high performance and growth in Concession revenues;
- To maintain high standards for the quality of Merchandise and services;
- To encourage and recognize outstanding customer service; and
- To maintain compliance with Concession Agreements.

## 2.5 Concessions Procurement

Developer shall solicit and procure Concessionaires in a manner that is open, fair, and transparent. Developer shall competitively procure at least 70% of the available Concession locations. Such 70% requirement shall apply throughout the operation of Concessions with the initial compliance measurement occurring on the Project Substantial Completion Date. Developer may also directly negotiate with prospective Concessionaires for Concessions that are of strategic benefit to the Concessions Program, so long as the percentage of Concessions procured through direct negotiations does not exceed 30% of the available Concessions (which 30% shall not take into consideration direct negotiation entered into with existing Concessionaires pursuant to the Developer PVC Program).

Developer shall develop, implement and maintain a Concessions Procurement Plan that incorporates the requirements in this Section 2.5 of Appendix 5-A and sets forth a Concessions procurement process that is consistent with the objectives, and comply with the other requirements, set forth in Sections 1 and 2 of this Appendix 5-A.

## **2.6 Continuity of Concessions Operations**

Developer shall manage the transition of each Concession upon expiry of its term, or any earlier termination thereof, to minimize impacts on Users and to optimize Gross Receipts. Without limiting the foregoing, Developer shall ensure that:

- (a) A successor Concessionaire takes possession of the relevant Concession Premises immediately following expiration or termination of the immediately preceding Concession and opens the new Concession for operations thereafter as soon as practicable and in any event within: (i) 100 days for a Retail Concession; (ii) 120 days for an F&B Concession; and (iii) 100 days for a Passenger Services Concession; and
- (b) Each Concession Space is operating at a minimum level of 99% of the applicable Concession Operating Hours, as measured on a monthly basis.

Subject to Section 2.5 above, Developer may successively award competitively-procured Concession Agreements to the same Concessionaire, provided that Developer has complied with the Concessions Procurement Plan.

## **2.7 ACDBE Requirements**

Developer shall comply with the ACDBE requirements set forth in Appendix 5-C of the Agreement. Developer shall develop and implement an ACDBE plan to meet the requirements set forth in Appendix 5-C (as updated from time to time, the “**ACDBE Plan**”). A copy of the initial ACDBE Plan developed by Developer and approved by the Owner is attached as Appendix 5-C-1 of the Agreement.

## **2.8 Concessions Management**

### **2.8.1 Governmental Approvals**

Developer shall ensure that Concessionaires obtain and maintain in effect all Government Approvals required in connection with the performance of their obligations under the Concession Agreements. Developer shall ensure that copies of all required Governmental Approvals are appropriately displayed within the applicable Concessions Space and forwarded to the Owner within five (5) Business Days following its issuance and each renewal.

### **2.8.2 Permitted Uses**

Developer shall develop, maintain and comply with a Prohibited Use Policy that includes, at a minimum:

- A summary of the prohibited uses of different locations within the Concessions Space and Public Circulation Spaces;
- A breakdown of Merchandise prohibited to be offered for sale within each Concession;
- A requirement that Concessions Space shall only be used for the purposes of operating the Concessions in accordance with the Contract Documents and the Concessions Plans and Policies;
- Requirements that the Support Spaces shall only be used for purposes related to the operation of the Concessions, and that no portion of the Concessions and Public Circulation Spaces shall be used to warehouse, stock or store any goods, wares or Merchandise not intended to be offered for sale at or from the Concessions or required in order to maintain the Concession Space in accordance with the requirements set forth herein and in the other Contract Documents; and
- A requirement that any use must comply with all applicable Laws and the Airport Rules and Regulations.

### **2.8.3 Concessions Promotion Program**

Developer shall develop, implement and maintain a Concessions Promotion Program which shall include, at a minimum:

- Promotions, advertising and marketing activities designed to promote the Terminal; and
- Concessions Training Program.

Developer shall establish and manage a marketing fund (the “**Developer Marketing Fund**”) to support the Concessionaires and the Concessions Promotions Program.



Concessionaires will be required to make certain contributions to the Development Marketing Fund based on their respective volumes of sales as will be set forth in each Concession Agreement.

The Concessions Promotion Program and the structure of the Developer Marketing Fund shall comply with this Agreement.

Developer shall coordinate with the Owner to ensure that Developer's marketing activity through the Developer Marketing Fund is in coordination and collaboration with the Owner's marketing activity through the Owner's Joint Marketing Fund; provided, however, that Developer shall not be required to coordinate marketing activities that could adversely affect Developer's operation or revenue.

#### **2.8.4 Advertised Sales or Promotions**

Developer shall not, and shall ensure that Concessionaires do not, participate in or post any type of sign related to liquidations, going out of business, moving sales or closeouts of particular Merchandise or services.

Developer shall take reasonable measures to ensure that all corporate advertisements for its Concessionaires that list multiple locations will list the Airport as a participating location of the promotion or sales, unless Developer has been granted prior written approval from Owner to be exempted from such promotion.

#### **2.8.5 Staffing and Resourcing**

Developer shall hire, train, supervise, and deploy a sufficient number of Developer staff with the requisite skills to meet the requirements of this Appendix 5-A in accordance with Good Industry Practice and the Concessions Plans and Policies.

Developer shall include in the CDMP an organizational chart of Developer's Concessions-related key personnel, including detailed descriptions of each key position and corresponding core competencies.

Developer shall cause each Concessionaire to hire, train, supervise, and deploy a sufficient number of staff with the requisite skills to service customers in a timely and efficient manner and meet the requirements of the Concession Agreements.

Developer shall ensure that all of its staff and all Concessionaire staff engaged in the operation of the Concessions comply with the applicable rules and procedures set forth in the Contract Documents and the Concessions Plans and Policies.

#### **2.8.6 Training Program**

Developer shall develop a training program for Concessionaires' employees conducting work within the Concessions Space (the "**Concessions Training Program**"). The Concessions Training Program shall allow for tailored training of different roles, but will require completion of a core training component that includes, at a minimum:

- Customer service training as required to support implementation of the CDMP;
- The requirements of health and sanitary regulations adopted by the Owner, the State of Colorado, and any other Governmental Entity with jurisdiction;
- The Owner's requirements for emergency management training (such as fire safety, tornado warnings, emergency egress drills);
- The applicable sections of the Environmental Management Plan; and
- All applicable Laws in the conduct of its operations under the Agreement, including TSA regulations regarding products or procedures.

Developer shall include in the CDMP, at a minimum, the structure of the Concessions Training Program and an outline of the course content.

### **2.8.7 Merchandise**

Developer shall ensure that Concessionaires keep in stock, and have ready for sale at all times, a sufficient supply and variety of Merchandise.

Developer shall develop and implement creative merchandising techniques in line with Good Industry Practice to maximize User satisfaction and Gross Receipts.

Prices for all Merchandise shall be displayed and visible to all Users. All Merchandise sold or kept for sale shall be of high quality and wholesome, and must conform to the fullest extent with all applicable food and drug laws, ordinances and regulations, as well as the CDMP.

Developer's printed signage and price lists shall include the appropriate use of descriptive terminology that accurately and truthfully describes the Merchandise being offered.

If any Merchandise offered for sale in the Concessions Space does not comply with the applicable requirements set forth in the CDMP, the Owner may direct Developer in writing to modify or withdraw such Merchandise offered for sale, or to modify or withdraw menus, signage and product displays, as applicable, to cure the noncompliance. Upon receipt from the Owner of any such direction, Developer shall cause the relevant Concessionaire to comply with such direction within 24 hours.

### **2.8.8 Pricing**

Developer shall develop and implement a Pricing Policy, which shall include, at a minimum, the following:

- The principles by which the Pricing Policy shall be applied to each major and minor segment of Merchandise;
- The method for establishing the Street Price for all Merchandise;
- The requirement that prices for all Merchandise shall be displayed and visible to all passengers;
- The requirement that Concessionaires' printed signage and price lists shall include the appropriate use of descriptive terminology that accurately and truthfully describes the Merchandise being offered;
- The requirement that, if any Merchandise offered for sale does not comply with the terms set forth in the Pricing Policy, Developer will direct the Concessionaire to modify or withdraw such Merchandise, or to modify or withdraw menus, signage and product displays, as applicable, to cure the noncompliance, and Concessionaire must comply with such direction within 24 hours.
- The requirement that no Merchandise shall be priced in excess of Street Price plus ten percent (10%);
- The requirement that Merchandise with a pre-printed MSRP (such as newspapers, books, or periodicals, among others) shall not be priced in excess of the preprinted MSRP;
- The requirement that Merchandise with a manufacturer's pre-marked package price must be sold for the pre-marked package price;
- The employee discount policy;
- The requirement that pricing shall be reviewed at least every 12 months, with the pricing review to include, at a minimum, price benchmarking against Street Price of the top twenty-five percent (25%) of Merchandise sold (identified by using Gross Receipts); and
- The requirement that Developer shall not permit Concessionaires to increase prices of any Merchandise more than once in any 12-month period, other than in the event that a sale or promotion is discontinued, in which case, the other requirements on pricing shall apply.

Developer shall offer a ten percent (10%) discount on all food and non-alcoholic beverages purchased by Owner employees and employees of airlines operating at the Airport who have been issued appropriate identification and present such identification at the time of purchase. The discount shall be based on normal non-sale or non-promotional prices. No discount shall be given on products with a manufacturer's pre-marked package price.

Developer shall develop and implement a plan for establishing, measuring and enforcing compliance with the Pricing Policy.

If any price being charged by a Concessionaire for Merchandise exceeds the amounts or benchmarks established in the Pricing Policy, the Owner will notify Developer and provide an explanation or justification in writing of such situation, and Developer shall cause the Concessionaire to change the price for such Merchandise as soon as reasonably practicable and in any event not later than three (3) days following Developer's receipt of the Owner's notice.

### **2.8.9 Customer Service**

Developer shall provide, and shall cause Concessionaires to provide, a high standard of customer service in accordance with Good Industry Practice. Developer shall develop, implement and, improve, as necessary, a process for measuring and monitoring customer service performance and customer satisfaction. Developer shall measure customer service performance and customer satisfaction and shall apply its customer service training initiatives with the objective of continuously improving its customer service performance and that of Concessionaires. Developer shall also develop, implement and manage a Concession performance recognition program to recognize and highlight top performing Concessions and employees.

Developer shall respond to, and adequately address all oral customer complaints promptly. Developer shall respond to all written customer complaints (including those referred to Developer by the Owner) promptly, but in any case within four (4) Calendar Days. Developer shall deliver to the Owner a written copy of Developer's response to any written complaint within the four (4) Calendar Days period, along with a description of the measures taken to adequately address the complaint and reduce the likelihood of similar future complaints.

## **2.9 Concessions Operations**

### **2.9.1 Store Hours**

Developer shall ensure that each Concession is open for business, without interruption, during the Store Hours at a minimum, except as provided below, and that such Concession is providing all Merchandise as required during such time.

Developer shall ensure at any given time, that at least one Convenience Concession and at least one F&B Concession is open for business in the Landside Area of the Concessions Space, with this requirement to apply 24 hours a day, seven days a week 365 days per year.

Developer may, at Developer's discretion, set different and unique opening and closing times for different Concessions, provided that each Concession is open for business during the Store Hours for not less than 16 hours per day and in accordance with the other requirements of this Section 2.8.1 (the "**Concession Operating Hours**"). Developer shall prominently post

Concession Operating Hours for each Concession and in a format approved by the Owner. Concessions shall be open for business, at a minimum, for their respective Concession Operating Hours.

Developer shall ensure Concessions remain open beyond Store Hours for certain events including the following:

1. In the event of one or more delayed domestic flights, Developer shall ensure that at least 1 F&B unit and 1 Convenience store remains open, including beyond the then current Store Hours, until thirty (30) minutes after the delayed inbound flight arrives at its respective gate. In the event of one or more delayed international inbound flights, Developer shall ensure that at least 1 F&B unit and 1 Convenience store accessible by such international inbound delayed Users remains open, including beyond the then current Store Hours, until 75 minutes after the delayed inbound flight arrives at its respective gate.
2. In the event of one or more delayed outbound flights, Developer shall ensure that at least 1 F&B unit and 1 Convenience store of the airside required to serve the needs of outbound delayed Users, remains open, including beyond the then current Store Hours, until 45 minutes before the last delayed outbound flight departs.
3. In the event of an Emergency, Developer shall ensure that the portion of the Concession required to serve the needs of Users remains open for business and provide all Merchandise and services as required, including beyond the then current Store Hours, until the Emergency ceases as reasonably determined by the Owner.

### **2.9.2 Materials Handling**

Developer shall coordinate movement of Merchandise to and from the Airport Office Building (AOB) loading dock operations and storage areas (as required) in coordination with the Airport operations.

Developer shall make, and shall cause the Concessionaires to make, all planned deliveries in such manner as specified by Airport Rules and Regulations and at such times and locations as the Owner may reasonably approve in writing.

Emergency deliveries may be made at other times subject to prior arrangements with the Owner.

### **2.9.3 Sustainability**

Developer shall comply, and shall cause the Concessionaires to comply, with the Sustainability Policy. Developer shall coordinate its sustainability activities with the Owner to realize increased sustainability value for both Parties.

## **2.9.4 Operating Procedures and Standards**

The occupancy and use by Developer and the Concessionaires of the Concession Space and the rights herein conferred upon Developer shall be conditioned upon and subject to the CDMP and Airport Rules and Regulations; provided, however, that in the event that any amendments or supplements are made to the Airport Rules and Regulations after the Developer Execution Date which are not consistent with the then applicable CDMP, no such changes shall apply to any existing Concessionaires or Concession Agreements until the next biannual update to the CDMP, at which time and Developer and the Owner shall negotiate in good faith and amend the CDMP as necessary to comply with the Airport Rules and Regulations, as amended or supplemented, provided that such modifications, changes or supplements to the Airport Rules and Regulations are not applied in a discriminatory fashion to Developer.

Developer shall provide, and shall cause the Concessionaires to provide, access to any duly authorized representatives of Governmental Entities with jurisdiction under applicable health and safety Laws for inspection purposes. Developer shall provide, and shall cause the Concessionaires to provide, the Owner with copies of all inspection reports by such Governmental Entities within 48 hours of receipt. This paragraph does not require Developer or the Concessionaires to waive any applicable attorney-client or attorney work product privileges.

## **2.9.5 Point of Sale Terminals**

Developer shall cause the Concessionaires to install a Point of Sale (POS) terminal to accurately record all business transactions occurring in each Concession for accounting, reporting and auditing purposes as set forth herein.

All POS terminals shall have, at a minimum, the following features:

- Multiple segregated category addresses to allow for accurate and complete reporting of Gross Receipts by various Merchandise categories;
- The capability of recording transactions by sequential control number to an audit tape or computer file;
- The capability of recording any discounts that are applied to a transaction;
- The capability of printing a transaction history to tape or computer file by category of Merchandise, time of day, day, month, and year by category;
- The capability of printing customer receipts showing the transaction amount, the amount tendered, the amount of change due to the User, and the time and date of the transaction, and the Concessionaire's contact information including name, phone number and email address for any User concerns, complaints or questions;

- A fee display of sufficient size and legibility that is placed in a location visible to the User during a transaction; and
- A secure transaction audit tape or ASCII transaction file on a removable storage device.

Developer shall ensure that POS terminals comply at all times with the requirements set forth herein and, if necessary to allow for a customer experience that meets or exceeds Good Industry Practice and the customer service standards set forth in the CDMP, that they are refreshed and modernized by the relevant Concessionaires whenever refurbishments are required under their relevant Concession Agreements.

### **2.9.6 Cash Handling and Credit Card Requirements**

Developer shall cause the Concessionaires to develop and at all times observe cash-handling and record-handling procedures in accordance with sound accounting and financial control practices and as necessary to provide timely and accurate reports to the Owner.

The Owner shall be entitled to monitor and test all procedures and controls of Developer and the Concessionaires. If Developer's procedures are not in compliance with the performance requirements set forth in the CDMP, the Owner shall be entitled to require Developer to make changes to its procedures in order to satisfy such performance requirements.

Developer shall at all times comply with the most recent Payment Card Industry Data Security Standard requirements. Developer shall provide an independent CPA certification annually that Developer's operations are compliant with Payment Card Industry Data Security Standards. The Owner reserves the right to receive reports required by the Payment Card Industry Security Standards Council.

## **2.10 O&M Services for the Concessions Space**

### **2.10.1 O&M Services**

Developer shall perform, or shall cause to be performed, the O&M Services within the Concessions Space in accordance with the requirements of Section III of the Technical Requirements and the O&M Plan.

Developer shall ensure that the Concessions Space is well lit and neatly presented and that both the Concessions Space and all FF&E (including food preparation equipment) are maintained in a clean, neat, safe, tidy and sanitary condition, free from trash and clutter, and in good working order at all times.

Developer shall comply with any Owner waste diversion programs, including recycling, composting, or other programs for removal and disposal of all trash, waste and other refuse from the Concessions Space and Public Circulation Spaces. Developer shall use

designated locations, containers and transport routes for trash, waste and refuse removal and disposal. Developer shall ensure that storage, transportation, and disposal of all trash, waste, and other refuse does not damage or harm any structures or infrastructure at the Airport.

Developer shall correct any hazardous or potentially hazardous condition in the Concessions Space immediately, whether identified by Developer or upon receipt of a verbal or written notice from Owner. At the reasonable request of the Owner in case a hazardous or potentially hazardous condition exists, Developer shall close the Concessions Space or affected portion thereof until the hazardous or potentially hazardous condition is corrected.

## **2.10.2 Owner Inspections and Remedies**

The Owner or its representative may at any time, without notice, enter any Concession to inspect the condition of the Concessions Space and any FF&E (including food preparation equipment).

If the Owner determines, in its good faith discretion, that conditions pose a risk to the safety, health, environment, or welfare of the Concessionaire's employees or Users, and/or that the conditions pose a risk to the operation and integrity of the Airport facilities, the Owner will provide written notice thereof to Developer. As soon as reasonably practicable and in any event within four (4) days following receipt of any such notice, Developer shall provide a written response to the Owner with a proposed remedial plan and estimated time to implement same, and shall, as soon as reasonably practicable, perform the cleaning, maintenance, repairs, or other measures necessary to correct such conditions.

If the Owner provides such written notice to Developer, but Developer does not provide a written response within six (6) days or Developer does not perform the measures in a manner consistent with Good Industry Practice, the Owner reserves the right to perform, at Developer's cost, such cleaning, maintenance, repairs or other measures as are reasonably necessary on Developer's behalf to reduce the risk to an acceptable level.

In the event that a need for an Emergency Repair is identified by Developer or in written or oral notice by the Owner to Developer, Developer shall provide a written response to the notice within four (4) days following receipt of any such notice, and shall, as soon as possible, perform the cleaning, maintenance, repairs, or other measures necessary to reduce the risk to an acceptable level. The Owner reserves the right to perform, at Developer's cost, the Emergency Repair on Developer's behalf. In the event that an Emergency Repair occurs outside of a Concession's Store Hours but requires access to that Concession, the Owner reserves the right to enter the Concession Premises in order to perform the Emergency Repair on Developer's behalf.

Developer shall reimburse the Owner for any costs incurred by the Owner in performing cleaning, maintenance, repairs or Emergency Repairs on behalf of Developer under this Section 2.10.2 of Appendix 5-A, plus an administrative fee of fifteen percent (15%) thereof, within 5 Business Days of receipt of an invoice for same.



All cleaning, maintenance, repairs or other measures and Emergency Repairs that require shutdown of any Airport system or Utility require the prior written approval of the Owner.

### **2.10.3 Refurbishment**

Developer shall cause the Concessionaires to plan for and undertake periodic refurbishment of the tenant finishes for the applicable Concession Premises to ensure the presentation and functioning of the space allows for consistent delivery of Developer's financial, customer service and operational performance requirements over the Concessions Operating Period. Developer shall cause the Concessionaires to coordinate refurbishment Work with the Owner to minimize impacts on Users and maximize revenues in accordance with the Technical Requirements.

## **3. Concessions Development and Management Plan**

### **3.1 General Requirements**

Developer shall develop, submit to the Owner for its reasonable approval, implement, and update, as required hereunder, the Concessions Development and Management Plan.

The CDMP shall include, at a minimum, all of the following:

- Concessions development strategy, containing Developer's plan for fulfilling the responsibilities set forth in Section 2.1 of this Appendix 5-A, and including, at a minimum:
  - The following Concessions Program supporting analyses (the "**Concessions Program Supporting Analyses**"):
    - A demand analysis, including at a minimum analysis of enplanement origins and destinations and benchmarking analysis with other airports, identifying:
      - the types and high-level need for the Merchandise and services;
      - the space required for Concessions (measured in square feet); and
      - the factors driving the demand for the Concessions' Merchandise;
  - A market analysis including a segmentation of the market by major segments (including at a minimum, food and beverage, retail, duty free, and services) and minor sub-segments:
    - for F&B, sub-segments shall include, at a minimum: full service dining; casual dining with bar; casual dining; bar; quick service; and quick service with bar/alcohol;

- for Retail, sub-segments shall include, at a minimum: branded specialty retail; and news and convenience;
- for Passenger Services, sub-segments shall include, at a minimum: personal care services; shoe shine; financial services;
- A pricing analysis methodology; provided, that, as soon as Developer obtains the necessary information from each Concessionaire, Developer shall carry out a pricing analysis consistent with such methodology, identifying and substantiating the Street Price for all Merchandise proposed to be offered for sale by each relevant Concessionaire in the Concessions Space and the proposed pricing by Developer consistent with the objectives of the Concessions Program under Section 1.2 of this Appendix 5-A and will promptly share with the Owner the results of such analysis and update the CDMP to reflect such updated analysis;
- An illustrative analysis of prospective categories of tenants and Brand mix necessary to satisfy the objectives of the Concessions Program under Section 1.2 of this Appendix 5-A and satisfy the demand identified, along with a range of expected performance and productivity by category of tenants or brands (sales per square foot, or \$/SF). Such analysis shall be updated in the CDMP and delivered to the Owner once Developer has concluded negotiations with Concessionaires and shall contain an analysis of tenants and Brand mix necessary to satisfy the objectives of the Concessions Program under Section 1.2 of this Appendix 5-A and satisfy the demand identified, along with a range of expected performance and productivity (sales per square foot, or \$/SF);
- A supporting analysis that presents the detailed back-up information and assumptions for Concessions Revenue, respectively, including the following metrics:
  - Square footage assumptions of the revenue program;
  - Tenant mix (food and beverage, duty free, news, gift and specialty retail, office, other);
  - Gross Receipts by tenant mix;
  - Minimum Concession rents per square foot by tenant mix;
  - Concession rents as a percentage of gross retail sales by tenant mix;
  - Tenant improvement reimbursement revenues;
  - Range of Retail Concession contract length by tenant mix;
  - Retail Concessions branding percentages (non-branded, local/regional brands, national/international brands);
  - Other revenue sources (such as, sponsorships, advertising, vending, services); and

- Any other inputs used in the revenue projections;
- A pro forma Gross Receipts and revenue forecast broken down by major market segments and minor sub-segments and including, at a minimum, Gross Receipts and productivity ranges (measured in Gross Receipts per square foot).
- Revenue Forecast, in accordance with Section 3.2 of this Appendix 5-A:
  - An illustrative list of Brands to be established in the Concession Space; provided that once Developer concludes negotiations with Concessionaires, it shall provide the Owner with the list of Developer proposed Brands and register of Concessionaire Brands, in accordance with Section 2.2 of this Appendix 5-A, and update the CDMP to reflect the such information;
  - Concessions Layout Plan;
  - Developer's Concentration of Ownership Policy, in accordance with Section 2.3 of this Appendix 5-A; and
  - Developer PVC Program, in accordance with Section 2.4 of this Appendix 5-A.
- With respect to Concession Agreements, set forth: (a) the MAPF rate specified in Section 1.4.3(b) of this Appendix 5-A; and (b) the percentage bands for the Percentage Fee Rate;
- Concessions Procurement Plan, in accordance with Section 2.5 of this Appendix 5-A;
- ACDBE Plan, in accordance with Section 2.7 of this Appendix 5-A;
- Concessions Management, Operations and Maintenance Plan, containing Developer's plan for fulfilling the responsibilities set forth in Sections 2.8, 2.9 and 2.10 of this Appendix 5-A, and including, at a minimum:
  - Permitted Use Policy, in accordance with Section 2.8.2 of this Appendix 5-A;
  - Concessions Promotion Program, in accordance with Section 2.8.3 of this Appendix 5-A;
  - Developer's organizational chart of Concessions-related key personnel, in accordance with Section 2.8.5 of this Appendix 5-A;
  - Structure of the Concessions Training Program and an outline of the course content, in accordance with Section 2.8.6 of this Appendix 5-A;
  - Merchandising techniques, in accordance with Section 2.8.7 of this Appendix 5-A;
  - Pricing Policy, in accordance with Section 2.8.8 of this Appendix 5-A;

- Customer service and Concession performance recognition programs, in accordance with Section 2.8.9 of this Appendix 5-A;
- A description of the process for measuring and monitoring customer service performance and customer satisfaction, and the Concession performance recognition program, in accordance with Section 2.8.9 of Appendix 5-A;
- The current Store Hours and a register of Concession Operating Hours by Concession, in accordance with Section 2.9.1 of this Appendix 5-A;
- Procedures for cash-handling and record-handling, in accordance with Section 2.9.6 of this Appendix 5-A; and
- Refurbishment plan, in accordance with Section 2.10.3 of this Appendix 5-A;
- Proposed templates to be used in fulfilling each financial reporting obligation under Section 4.2 of this Appendix 5-A.

Developer submitted to the Owner, and the Owner approved, an initial CDMP, a copy of which is attached as Appendix 5-A-1 to the Agreement.

Unless otherwise expressly stated herein, Developer shall update the CDMP, including all Concessions Plans and Policies included or referenced therein, at least every two years throughout the Term, or more frequently as may be agreed to by the Parties. Developer shall prepare and submit to the Owner for its approval an updated draft of the CDMP, commencing on the second anniversary of Financial Close and thereafter on each second anniversary thereof, or more frequently as the Parties may agree in writing.

The Owner will provide comments to, and/or provide its reasonable approval (in whole or in part) of, the CDMP (or any section thereof as provided herein) within 45 days after receiving a complete and conforming draft in accordance with this Section 3. The approved updated CDMP, or approved portion thereof, as the case may be, shall go into effect on January 1 of the immediately following calendar year.

Developer shall implement all the provisions of the approved CDMP. If a submitted CDMP is not approved in whole, Developer shall continue to implement the existing approved CDMP at that time.

If, at any time between updates of the CDMP, Developer proposes to change the actual or contemplated use, or the limits of the space used, within the Concessions Space as reflected in the then current Concessions Layout Plan, Developer shall promptly prepare and submit to the Owner an updated Concessions Layout Plan reflecting such changes.

### 3.2 Revenue Forecast

Developer shall develop and include in the CDMP, and each update thereof, forecasts and analyses with respect to Concessions Revenues (the “**Revenue Forecast**”) in accordance with this Section 3.2. The Revenue Forecast shall be developed in detail for a 36-month horizon, and at a summary level for a 10-year horizon. At a minimum, the Revenue Forecast shall include the following metrics, broken down by Concession type:

(a) Financial:

- Gross Receipts: total and per major category
- Gross Receipts per enplaned passenger: total and per major category
- Gross Receipts per originating passenger: total and per major category
- Gross Receipts per square foot: total and per major category
- Revenue: provide the higher of Minimum Annual Privilege Fee or Privilege Fee
- Revenue Share: amount paid to Owner
- Effective percentage rent by category.

(b) Operational:

- Number of vacant days assumed in the Revenue Forecast for the 36-month horizon; provided, that Developer shall not be required to include the assumed number of vacant days in the first version of the CDMP; and
- ACDBE participation; established goal for ACDBE participation; provided, that Developer shall not be required to include ACDBE participation information in the first version of the CDMP.

The Owner will provide 36-month passenger forecasts to Developer as Reference Documents on a monthly basis. For the avoidance of doubt the forecast shall be for information purposes only.

### 4. Monitoring, Reporting and Auditing

Developer shall undertake all monitoring, reporting and audit activities set forth in this Section 4, along with any other monitoring, reporting and audit activities consistent with Good Industry Practice.

Developer shall develop and implement its accounting, reporting and audit systems in accordance with the CDMP and so as to accurately monitor and report on the Gross Receipts paid or payable.

## 4.1 Record Keeping

Developer shall comply, and shall cause each Concessionaire to comply, with the Owner's requirements for reporting, accounting, record keeping, and audits as set forth herein.

Developer shall prepare and maintain, in accordance with Generally Accepted Accounting Principles (GAAP), complete and accurate books and records that include all financial transactions in the performance of its obligations under the Concession Agreements. Developer's system of accounts shall allow each Concession to be distinguished from all other Concessions and distinguish each individual source of non-Concessions Revenue. Developer shall maintain source documents sufficient to support its books, records, and reports.

## 4.2 Reporting Requirements

### 4.2.1 Financial Reporting

At a minimum, Developer shall report on the following financial metrics:

- Daily Gross Receipts. Upon request of the Owner, Developer shall report daily Gross Receipts by Concession for a term of up to one month, in a format requested by the Owner. Gross Receipts for a given date shall be provided no later than four (4) days following that date.
- Monthly Concession Report. No later than twenty (20) days after the end of each month, Developer shall deliver to the Owner a Certified Monthly Concession Report, stating actual performance versus forecasted performance for all Revenue Forecast metrics set forth in Section 3.2 of this Appendix 5-A (with any and all sales of alcoholic beverages separately identified) for said month and the 11 months prior by Concessionaire and Concession type. In addition, the following performance metrics should be provided for said month and the 11 months prior by Concessionaire and Concession type:

#### (a) Financial

- Capture rate: transactions per originating passenger
- MAPF Months: performance against established threshold for total number, or percentage, of months MAPF has been paid

#### (b) Operational

- Store Hours and Concession Operating Hours: performance against planned total store hours and Concessionaire Operating Hours
- Space Planning: space that is in the planning/approval process (number of calendar days and square footage) planned threshold

- Planning Time: performance against threshold for time taken for concessionaires to develop space plans
- Audit: performance against established threshold for average monthly mystery shopper score

(c) Customer Service

- Complaints: performance against established goal for maximum monthly complaints received about program and tenants
- Time to respond to complaints: performance against established goal to time to respond to complaints

The Owner shall provide timely records of passenger enplanements to allow Developer to calculate metrics per enplanement and shall also provide, to the extent available, user dwell time statistics.

- Quarterly Income Statements. No later than forty (40) days after the end of each calendar quarter during the Term, excluding the fourth quarter, Developer shall deliver to the Owner a Quarterly Income Statement signed by Developer's Chief Financial Officer (or other applicable officer with equivalent responsibilities) for each Concession, as well as for the total consolidated Income Statement for all Concessions within the Concessions Space. The Quarterly Income Statements include current monthly sales compared to historical sales from the prior year; current receipt numbers compared to historical receipt numbers from the prior year (subject to Section 4.2.5, to the extent provided by the Concessionaires in accordance with the relevant Concession Agreements); year-to-date rolling monthly sales and receipt numbers compared to rolling historical sales and receipt numbers with subtotals; ACDBE sales compared to sales from the prior year; percentage of sales generated by ACDBE operators, and fees paid to Developer's ACDBE firm(s) for the year-to-date.
- Monthly Revenue Forecast. No later than twenty (20) days after the end of each calendar month, and reflecting to date performance, Developer shall submit an updated Revenue Forecast for a forecast horizon of the next 36 months in the format set forth in Section 3.2 of this Appendix 5-A. The Owner shall provide timely forecasts of passenger enplanements to allow Developer to calculate metrics per enplanement.

**4.2.2 Customer Service Reporting**

Developer shall report on customer service performance on a quarterly basis, in the applicable format specified in the CDMP and consistent with Good Industry Practice. Reporting shall, at a minimum, monitor and track customer service performance metrics consistent with Section 3.10 of Appendix 9 of the Agreement. Developer shall compile and submit to the Owner an annual customer service report no later than 45 days after the end of each year of operation and covering the period since the prior annual customer service report.

### 4.2.3 Operations Reporting

Developer shall report on operations performance on a quarterly basis, in the applicable format specified in the CDMP.

Reporting shall, at a minimum, monitor and track customer service performance metrics consistent with Section 3.11 of Appendix 9 of the Agreement. Developer shall compile and submit to the Owner an annual operations report no later than 60 days prior to the end of each year of operation and covering the period since the prior annual operations report.

### 4.2.4 Other Reports

Developer shall submit to the Owner all financial and operational data and reports reasonably requested by the Owner in a timely fashion. This requirement is distinct from the audit requirements set forth in Section 4.3 of this Appendix 5-A.

### 4.2.5 Collection of Required Information from Concessionaires

Developer shall use its reasonable best efforts to obtain any missing or omitted data or other information required from Concessionaires in order for Developer to comply with its reporting obligations under this Section 4.2.

## 4.3 Audits

### 4.3.1 Annual Audit

No later than March 31 after the end of each year of operation, Developer shall provide to the Owner an Annual Report prepared by an Independent CPA. There may be no limitation on the scope of the engagement that would preclude the Independent CPA from expressing an unqualified opinion as to the correctness and completeness of the reported Gross Receipts. The engagement will include a schedule of Gross Receipts ("**Schedule of Gross Receipts**") for each month of Developer's operations in the Contract Year, prepared in accordance with the comprehensive basis of accounting defined herein and reported in a format acceptable to the Owner. The engagement will be conducted in accordance with Generally Accepted Auditing Standards and shall include an opinion from the Independent CPA on whether the Schedule of Gross Receipts and all other fees or charges payable under this Agreement have been completely and accurately presented, calculated, reported and paid according to the terms of the Development Agreement. The Owner reserves the right to reject Developer's choice of Independent CPA, where in the Owner's reasonable view the Independent CPA does not have the appropriate standing, reputation, or independence from Developer.



The Annual Report shall include the annual customer service reporting described in Section 4.2.2 of this Appendix 5-A and the annual operations report described in Section 4.2.3 of this Appendix 5-A.

The Owner reserves the right to challenge any findings or conclusions of the Annual Report if it believes an error may have occurred. In such event, Owner may conduct its own audit or may require production of the supporting documentation used to reach the finding or conclusion in question. The resolution by Owner of any such dispute will be final, and the Dispute Resolution Procedures shall not apply.

#### **4.3.2 Financial Audit**

Notwithstanding Developer's requirement to submit the Annual Report set forth herein and without limiting the Owner's rights under Section 23.2 of the Agreement, the Owner, or its representative, will have the right through the expiration of the period specified in Section 23.1.2.2 of the Agreement, to review all books, records, and contracts of Developer, requested by the Owner's representatives to substantiate the accuracy of reported Gross Receipts and Developer's compliance with other provisions of the agreement. This includes financial statements, general ledgers, sales journals, daily or periodic summary reports, inventory and purchasing records, cash register or computer terminal tapes or reports, bank deposit slips, bank statements, cancelled checks, tax reports/returns filed with state or federal entities, discount or rebate/allowance contracts, records of refunds or voids, and joint venture or partnership contracts. Such right of examination shall include cooperation by Developer personnel (including cooperation in sending confirmations to Concessionaires, Developer's suppliers or others, assisting the Owner in obtaining from governmental entities official copies of tax reports/returns, and disclosing all bank or other accounts into which Gross Receipts are deposited) as reasonably considered necessary by the Owner, or its representative, to complete the engagement. There may be no limitation in the scope of the engagement that would hinder the Owner in testing the accuracy and completeness of the reported Gross Receipts. Developer waives any claim of confidentiality that it may have in connection with such books, records, and contracts for the sole purpose of allowing the Owner to use said documents in the course of an engagement. If the Owner requests and Developer fails to furnish any records in a timely manner, the Owner reserves the right to, in addition to all other remedies available hereunder, at law, or in equity, have an independent forensic accounting firm attempt to reconstruct the missing records. Developer shall reimburse the Owner for the reasonable cost associated with reconstructing any missing records, including the cost of the independent forensic accounting firm, attorney's fees and litigation expenses incurred.

Developer shall audit Concessionaires, as it deems necessary, but in any case no less than bi-annually, and shall provide to the Owner the results of the bi-annual audits.

The Owner, the FAA and their respective representatives shall be entitled to initiate and perform audits, inspections, or attestation engagements. Developer shall include in each Concession Agreement the same rights for Developer to initiate and perform audits, inspections, or attestation engagements under the Concession Agreement and an obligation for the Concessionaire to cause its sub-concessionaires of any tier to include the corresponding rights in the sub-concession agreements.

### **4.3.3 Performance Audits**

The Owner shall have the right to raise objections to any aspect of Developer's performance of its obligations under this Appendix 5-A, if such performance fails to comply in any material respect with the terms hereof or of the Agreement, including the condition of any part of the Concessions Space, the quality and quantity of Merchandise, the character of the customer service, the hours of operation, the sustainability practices of Developer, the appearance and performance of service personnel, the wait time for food and beverage service, the responsiveness to User complaints, and the safety practices of Developer including the cleanliness of food preparation areas and food handling practices therein. The exercise of the Owner's rights hereunder shall be subject to the Agreement and to Developer's rights and remedies thereunder. At Developer's request, the Owner shall submit such objections in writing and provide Developer an opportunity to promptly reply to and address the objections. The Owner reserves the right to conduct periodic performance audits of the Concessions Space and Concessions operations and to assess whether the management, operations, maintenance, safety, sustainability and other performance standards described in this Appendix 5-A, the Concessions Plans and Policies and the other applicable provisions of the Contract Documents are being met by Developer and Concessionaires. Developer shall cooperate, and shall cause the Concessionaires to cooperate, with all such performance audits conducted by the Owner or its representative, and shall provide management, operations and maintenance data or reports, customer service data or reports, or other information requested by the Owner to conduct its performance audit.

Developer shall conduct performance audits on Concessionaires, as it deems necessary, but in any case no less than bi-annually, and shall provide to the Owner the results of such bi-annual audits.

## **5. Concessions Revenue Performance**

### **5.1 Accrued Noncompliance Points and Noncompliance Instances**

Independent of Sections 5.2 and 5.3 of this Appendix 5-A, Noncompliance Points and Noncompliance Instances shall be assessed against Developer in respect of any of the matters contemplated in Appendix 9 of the Agreement arising from Concessions operations to the extent contemplated in such Appendix 9 and the Agreement and will accrue toward the Increased Oversight Threshold and Persistent Developer Noncompliance thresholds.

### **5.2 Minor Shortfall**

If, at any time following the Project Substantial Completion Date, actual total Concessions Revenues are less than the Revenue Forecast then reflected in the current CDMP in an amount between ten percent (10%) and twenty percent (20%) for a period of six (6) consecutive months for any reason, the Parties shall meet to identify the reasons for such shortfall and Developer shall inform the Owner about any remedial

measures necessary or desirable (as determined by Developer in its reasonable discretion based on such discussions) that could potentially make the Concessions Revenue performance going forward to be consistent with or greater than the Revenue Forecast (taking into account the reasons attributed to any such shortfall and the ability of Developer to remedy the same).

### **5.3 Material Shortfall**

If, at any time following the Project Substantial Completion Date, actual total Concessions Revenues are less than the Revenue Forecast reflected in the then current CDMP by more than twenty percent (20%) for a period of twelve (12) consecutive months and such shortfall has been caused by the actions, omissions, decisions or policies of Developer (a “**Developer Caused Material Shortfall**”):

- (a) Developer shall submit a remedial plan identifying the reasons for such Developer Caused Material Shortfall and setting forth remedial measures to be taken by Developer to address such Developer Caused Material Shortfall, including a proposed schedule for the implementation of the remedial plan within thirty (30) days (the “**Developer Concessions Remedial Plan**”); and
- (b) If the Developer Caused Material Shortfall is not remedied following the implementation of the Developer Concessions Remedial Plan within twelve (12) months following the implementation of the Developer Concessions Remedial Plan, or if Developer fails to implement the Developer Concessions Remedial Plan, the Owner and Developer will issue an RFP to at least three consultants (to be agreed upon by both the Owner and Developer) to provide recommendations to the Owner and Developer for a remedial plan to address the Developer Caused Material Shortfall. The consultant will be selected among those three based on two criteria of equal weight: (1) consultant experience; and (2) fees and costs charged for its advice (which shall in no case exceed the amount of \$100,000, adjusted by CPI). The consultant will be selected by mutual agreement of the Owner and Developer, taking into account the requirements contemplated in the immediately preceding sentence and will be paid by Developer up to a maximum amount of \$100,000, and any fees and expenses in excess of \$100,000 shall be borne by the Owner. The Parties will cause the consultant to provide recommendations for a remedial plan, and the final remedial plan may incorporate some, all or none of the consultant’s recommendations, at the Owner’s sole discretion, so long as such remedial plan is reasonably expected to remediate the Developer Caused Material Shortfall, does not present any risk of negatively impacting Concession Revenues, does not require Developer to incur additional capital expenditures, and does not require Developer to incur operational costs that are commercially unreasonable (the “**Concessions Remedial Plan**”). The Concessions Remedial Plan shall

remain in place solely for so long as absolutely necessary to remediate the Developer Caused Material Shortfall or, if shorter, twelve (12) months following the implementation thereof.

**APPENDIX 5-A-1**

**INITIAL CONCESSIONS DEVELOPMENT AND MANAGEMENT PLAN**

(See attached.)