

1 BY AUTHORITY

2 ORDINANCE NO. \_\_\_\_\_

COUNCIL BILL NO. \_\_\_\_\_

3 SERIES OF 2011

COMMITTEE OF REFERENCE:

4 BUSINESS, WORKFORCE & SUSTAINABILITY

5 A BILL

6 For an ordinance approving a proposed Fourth Amendment to Agreement between the  
7 City and County of Denver and Way Out West, Inc., concerning a concession at Denver  
8 International Airport.

9  
10 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

11 **Section 1.** The proposed Fourth Amendment to Agreement between the City and County  
12 of Denver and Way Out West, Inc., in the words and figures contained and set forth in that form of  
13 the Agreement filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County  
14 of Denver, on the 28th day of April, 2011, City Clerk's Filing No. 96-1081-D is hereby  
15 approved.

16  
17 COMMITTEE APPROVAL DATE: April 22, 2011

18 MAYOR-COUNCIL DATE: April 26, 2011


19 PASSED BY THE COUNCIL \_\_\_\_\_ 2011

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

21 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_ 2011

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 \_\_\_\_\_ 2011 \_\_\_\_\_ 2011

27 PREPARED BY: George "Skip" Gray, III,  DATE: April 28, 2011

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 W. Broadwell, City Attorney

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

35 DATE: April 28, 2011



**FOURTH AMENDMENT TO AGREEMENT**

**THIS FOURTH AMENDMENT TO 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 acting for and on behalf of the Department of Aviation ("City"), Party of the First Part, and **WAY OUT WEST, INC.**, a Colorado corporation ("Concessionaire"), dba **Way Out West** Party of the Second Part.

**WITNESSETH:**

**WHEREAS**, the Parties hereto entered into an Agreement (AC68001) dated November 14, 1996; a First Amendment dated January 23, 1998; a Second amendment dated January 28, 2003; and a Third Amendment dated July 15, 2003 (collectively the "Original Agreement") for the operation of a concession at Denver International Airport ("Airport"); and

**WHEREAS**, The City is considering changing the design and function of the Jeppesen Terminal at the Airport; and

**WHEREAS**, it is in the best interest of the City and the traveling public to continue to provide services without interruption while the Jeppesen Terminal redesign is being determined; and

**WHEREAS**, the Parties have agreed to change the compensation structure, set a date certain for payment into the Joint Marketing Fund, reconfirm the ACDBE participation for this Agreement, extend the term and set a date and amount for refurbishment of the Concession Space;

**NOW, THEREFORE**, for and in consideration of the premises and other good and valuable consideration, the Parties hereto agree to amend the Original Agreement as follows:

1. Effective as of the date this Fourth Amendment is executed, the term shall be and hereby is enlarged to expire December 31, 2013. Accordingly, Section 4.01 of the Original Agreement hereby is amended by deleting said section entirely and replacing it with the following:

**4.01 TERM**

"Term" shall mean the period commencing at noon on the day and date first above written, which is specified on the Summary Page as the "Effective Date" and expiring at noon on the date specified on the Summary Page as the "Expiration Date," unless sooner terminated pursuant to the provisions of this Agreement or by law. Any provision to the contrary notwithstanding either Party may terminate this Agreement without cause upon six months written notice to the other party.

2. Effective as of November 1, 2010, the compensation structure shall be and hereby is revised to (i) reduce the minimum monthly guarantee ("MMG") to \$6,961.00, (ii) reduce the Percentage Compensation Fee to 12% of Gross Revenue up to a Million Dollars, 14% of a Million Dollars Gross Revenue up to Two Million Dollars and 16% of Gross Revenue over Two Million Dollars, and (iii) provide for a yearly adjustment of the MMG. Accordingly, Section 5.01 of the Original Agreement (Compensation) hereby is amended by deleting said section entirely and replacing it with the following:

96-1081-D

## 5.01 COMPENSATION.

**Covenant to Pay Compensation.** Concessionaire covenants and agrees, in advance, without setoff, deduction, prior notice or abatement, to pay City as compensation for the rights and privileges herein granted by City the greater of (a) a sum equal to Concessionaire's annual Gross Revenues, as herein defined times the percentage shown on the Summary Page for the volume and type of sales, ("Percentage Compensation Fee"), derived by the Concessionaire from its operations under this Agreement, or (b) the MMG, in an amount shown on the Summary Page.

**Adjustment to Minimum Monthly Guarantee.** Starting on the first day of the month after the first full year of this Fourth Amendment to Agreement and for each subsequent year, the MMG will be recalculated to equal 1/12 of 85% of the compensation owed the City for the prior year as computed under this Section 5. Notwithstanding the foregoing, however, the MMG will never be less than the MMG stated on the Summary Page attached to this Fourth Amendment. The City reserves the right to establish a common annual MMG adjustment date for all Concessionaires.

3. Section 5.03 of the Original Agreement hereby is amended by deleting Subsection C (Daily Revenue Program Participation) in its entirety.

4. Section 5.07 of the Original Agreement (Books of Account and Auditing) hereby is amended by deleting said section entirely and replacing it with the following:

### 5.07 BOOKS OF ACCOUNT AND AUDITING

**Annual Statement.** Not later than February 28 of each and every year during the Term hereof, Concessionaire shall furnish to City a true and accurate statement of the total of all Gross Revenues for the preceding calendar year ("Annual Certified Statements" or "Annual Statements") listing the authorized deductions or exclusions in computing the amount of such Gross Revenues and including a breakdown of Gross Revenues on a month-by-month basis.

**Certification of Annual Statements.** Annual Statements may be prepared and certified by either (i) the chief financial officer or the chief executive officer of Concessionaire (stating that the Gross Revenue reported and Compensation paid by Concessionaire during the preceding year was properly reported and calculated, that the monthly Revenue Reports were free of material misstatement and that payment was made in accordance with the terms of this Agreement), or (ii) an independent certified public accountant ("CPA"), who has audited the Gross Revenues in accordance with generally accepted accounting principles for special reports ("Audited Gross Revenue Statement").

**Form of the Annual Statement.** The Annual Statement shall be in a form acceptable to the Manager's Authorized Representative, and shall contain a complete, itemized statement of Concessionaire's: (a) annual total Gross Revenues broken out monthly, as shown on the books and records of Concessionaire, detailed as used to compute any Percentage Compensation Fees during the period covered by the Annual Statement; (b) the total Compensation due under each category; and (c) the total Percentage Compensation Fees paid. Such statement, substantially in the form attached

hereto as **Exhibit I**, shall be furnished for every calendar year in which business was transacted under this Agreement during the whole or any part of the year.

**Bi-Annual Statements.** If Concessionaire elects to have its chief financial officer or chief executive officer certify its Annual Statements, then not later than May 31<sup>st</sup> of every other year during the Term hereof commencing in the year following the first complete calendar year of the term, Concessionaire shall have a CPA prepare and furnish to the City a true and accurate statement ("Bi-Annual Statement") of the total of Gross Revenues for the preceding calendar year along with a letter in substantial conformity with the form applying agreed upon procedures, which is attached hereto as **Exhibit J**.

**Late Statements; If Concessionaire** elects to have its chief financial officer or chief executive officer certify its Annual Statement and its Annual Statement is late or if Concessionaire's Bi-annual Statement is late, then Concessionaire shall submit an Audited Gross Revenue Statement to the City, except that the Manager's authorized representative may modify or waive this requirement in writing upon good cause shown by Concessionaire. Said Audited Gross Revenue Statement shall be due no later than 90 days from the due date of the late Annual Statement or the late Bi-Annual Statement.

**Manager's Discretion.** The above requirements for Annual and Bi-Annual Statements may be modified in the sole discretion of the Manager, if such modification is in the best interest of the City.

**Bookkeeping System.** Concessionaire agrees to establish and maintain a system of bookkeeping satisfactory to the City's Auditor. Such system shall be kept in a manner as to allow each location of the Concessionaire's operations hereunder to be distinguished from all other locations or operations of Concessionaire. Concessionaire shall prepare financial statements in conformity with generally accepted accounting principles, applying certain estimates and informed judgments, as required.

**Financial Accountability.** Concessionaire shall keep and make available upon request true and complete records and accounts of all Gross Revenues and business transacted, including daily bank deposits. The Manager's authorized representative shall have access during normal business hours to such books and records. Concessionaire shall keep and preserve for at least three years after expiration or termination of this Agreement, or until sooner audited by the City, all sales slips, cash register tapes, sales books, bank books or duplicate deposit slips, and all other evidence of Gross Revenues and business transacted for such period.

**Audit of Records.** The City's Auditor, the Manager, and their respective authorized representatives shall have the right at any time to inspect, copy, examine or audit all of the books of account, bank statements, documents, records, returns, papers and files of Concessionaire relating to the Gross Revenues and business transacted to verify compliance with this Agreement. The City may use its own staff to perform audits under this Section, or may engage a duly authorized representative to perform the audit.

**Audit Request.** Concessionaire, upon written request, shall make all such documents available for examination within the Denver metropolitan area;

or shall pay in full, in advance, travel and related expenses of a City representative to travel to any location outside the Denver area for such examination. Following the travel, expenses shall be reconciled, and any difference between the advance payment and the actual expenses shall be paid by or refunded to Concessionaire as appropriate. Such documents shall be available to the City representative within 14 calendar days of the date of the written request.

**Audit Delay.** The Parties agree that, after execution of this Agreement, any delay in furnishing such records to the City will cause damages to the City, which the Parties agree are liquidated in the amount of \$350.00 per day for each day the records are unavailable beyond the date of the City's request.

**Understated Revenues.** If City determines after an audit for any year that the Gross Revenues and business transacted shown by Concessionaire's statement for such year were understated, Concessionaire shall pay the amount of the deficiency plus interest at the Past Due Interest Rate. If an audit reveals that Concessionaire has understated its Gross Revenues by more than 1% in two of any six months of an audited period (a period of no more than twelve months prior to the date of the audit), the entire expense of the audit shall be borne by Concessionaire; and Concessionaire shall pay the cost of the audit within 30 calendar days of the City's invoice. In addition, for the most current year in which gross revenues were understated, Concessionaire shall have a CPA prepare and submit to the City an Audited Gross Revenue Statement.

**Time for Performing an Audit.** Books and records shall be kept for a period of three (3) years after expiration or termination of this Agreement. The City's right to perform an audit of any Annual or Bi-Annual Statement shall expire three years after Concessionaire's statement for that year has been delivered to the City.

**City's Sales Taxes.** Concessionaire agrees that the Manager, the Auditor, and their authorized representatives, may inspect any documents, returns, data or reports filed pursuant to Chapter 53 of the Denver Revised Municipal Code by Concessionaire with the City's Manager of Revenue and any related reports, documents, data or other information generated by the City's Manager of Revenue or employees under the control of such Manager of Revenue in connection with any investigation or audit of Concessionaire by the City's Department of Revenue. Concessionaire authorizes and permits the inspection of such documents, data, returns, reports and information by the Manager, the Auditor and their authorized representatives, and, further, waives any claim of confidentiality that it may have in connection with such inspection of documents, returns, data, reports and information.

5. Effective as of the date this Fourth Amendment is executed, the Parties hereby re-confirm that Concessionaire's ACDBE requirement is and shall be 100%. Accordingly, Section 6.06 of the Original Agreement (Compliance with All Laws and Regulations) hereby is amended by adding the following provisions:

**ACDBE Obligation.** This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the

award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. Concessionaire agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters into and causes those businesses to similarly include the statements in further agreements. Concessionaire further agrees that it shall comply with all Disadvantaged Business Enterprise (DBE) and/or Airport Concession Disadvantaged Business Enterprise (ACDBE) regulations of the U.S. Department of Transportation as they may be adopted or amended from time to time prior to or during the Term.

**ACDBE Program.** As a condition of eligibility for FAA financial assistance, the City, through its Division of Small Business Opportunity (DSBO) has developed and implemented an ACDBE Program for Denver International Airport in accordance with DOT's Final Rule 49 CFR Part 23. The Director of DSBO has been delegated as the ACDBE Liaison Officer and in that capacity; the Director of DSBO is responsible for implementing all aspects of the ACDBE program. The DSBO may also establish ACDBE concession specific goals as a percent of annual gross receipts to be undertaken by the Concessionaire under this Agreement. The applicable ACDBE goal on this concession Agreement is stated on the Summary Page as a percentage of the total gross dollar value of this concession.

**Good Faith Efforts.** Concessionaire has previously represented that it is qualified as an ACDBE under 49 CFR Part 23 of the regulations of the U.S. Department of Transportation and covenants to remain so throughout the term of this Agreement. (Concessionaire's representation shall be referred to hereafter as "Concessionaire's ACDBE Compliance Plan." Concessionaire's status as a certified ACDBE constitutes 100% ACDBE participation and satisfies all ACDBE obligation of this Agreement. Should Concessionaire fail to maintain the specific ACDBE goal initially approved throughout the life of this Agreement, Concessionaire will be required to submit documentation demonstrating that it has made a good faith effort, as defined in the City and County of Denver's required and approved ACDBE Concession Program (available upon request), to maintain its commitment to meet the applicable ACDBE goal. Any such change to Concessionaire's ACDBE Compliance Plan shall be submitted to the DSBO for review and approval (with a copy submitted to the Manager's authorized representative). Concessionaire agrees to notify the DSBO Director immediately, in writing, providing documentation of the necessity for the change.

**ACDBE Requirements are Material.** Concessionaire acknowledges that any action or failure to act by it that violates the ACDBE requirements of this Agreement constitutes a material breach of this Agreement, which shall entitle the City to exercise all of its rights at law or equity for such material breach.

6. To comply with Concessionaire's Term Extension Renovation obligations (hereafter referred to as Concessionaire's "Mid-Term Refurbishment" of the Concession Space), the Original Agreement is further amended to reflect that Concessionaire has agreed to the following: Effective as of the date this Fourth Amendment is executed, Concessionaire's Mid-Term Refurbishment requirement shall be no less than \$28,000 and shall be completed no later than March 31, 2011. Accordingly, Section 6.15 of the Original Agreement (Renovation of Concession Space) hereby is amended by adding the following provisions, which shall be used

to govern refurbishment of the Concession Space after the date this Fourth Amendment is executed.

### **MID-TERM REFURBISHMENT OF CONCESSION SPACE**

**Aesthetic Refurbishment.** Concessionaire agrees to refurbish the space in an amount not less than the mid-term refurbishment amount stated on the Summary Page. Of this, an amount consisting of no less than 15% shall be allocated to aesthetic refurbishment, defined as replacement of all parts of the premises visible to, used by, and/or provision for enhanced service to the public including but not limited to new store design, new signage, replacement furniture, flooring, painting, new color schemes, finishes, fixtures, furnishings, lighting, ceiling, repairing, replacing, millwork as necessary, replacing baseboard as necessary, professionally deep cleaning the Concession Space, refurbish and condition by equipment, replacing carpet, painting as necessary, cleaning air supply return vent's and replacing lighting fixtures as necessary, clean or replace sprinkler, replace scratched glass tops, illuminate store front signage, new feature displays for addition of contemporary western apparel and accessories, custom window units to create 3 compelling displays for Western and Colorado made products, and a series of Colorado/Western themed display items designed to fill the 40" area above the cabinetry running across the perimeter of the store. Life safety and health code upgrades are not considered aesthetic refurbishment.

**Refurbishment Deadline and Investment.** At a time commencing no earlier than 180 days before and no later than the Refurbishment Completion Date specified on the Summary Page, Concessionaire, at its sole cost and expense, shall have completed all design and aesthetic refurbishments approved by the Manager, shall have updated and completed all repairs/refurbishments necessary to comply with current applicable life safety and health code requirements and shall have completed renovating and refurbishing the Concession Improvements in the Concession Space required by the Manager at a minimum investment specified in the Summary Page, in March 2011 dollars, subject to reasonable escalation according to the Engineering News Record Building Cost Index for the Denver, Colorado area ("Refurbishment Minimum Investment"). The Refurbishment Minimum Investment shall not include financial costs, interest, inventory, pre-opening expenses, loss of revenue related to construction or intra-company charges related to construction, but may include architectural and engineering charges not exceeding 15% of the total Refurbishment Minimum Investment.

**Refurbishment Investment Documentation.** Within 90 days of completion of the renovations, Concessionaire shall file with the Manager a statement certified by its architect setting forth the total renovation costs, with appropriate detail itemizing the elements of decorations, furnishings, fixtures, and equipment. At City's request, Concessionaire shall also submit copies of invoices supporting such costs. If the total cost of the Concessionaire's renovation investment is less than the Minimum Refurbishment Investment, the difference between such total cost and the Minimum Refurbishment Investment for renovating the Concession Space, shall be paid to City within 30 days after written notice from City to Concessionaire.



**Design Plans due in Advance.** Concessionaire shall provide design plans and specifications of the proposed renovations of the Concession Improvements for the approval of the Manager's authorized representative no later than one (1) year prior to the Refurbishment Completion Date, or such lesser time as is agreed to in writing by the Manager's authorized representative. The renovations shall be constructed in accordance with the requirements of this Section 6.15.

7. Effective as of January 1, 2011 Concessionaire agrees that it shall commence to make monthly payments of 1% of the Concessionaire's Gross Revenue into the Joint Marketing Fund. Accordingly, Section 11.01 of the Original Agreement (Advertising and Public Displays) hereby is amended by adding the following paragraph:

**Joint Marketing Fund.** The City shall provide or cause to be provided a central marketing and promotional fund which, in the City's sole judgment, will serve to promote overall service, retail and food and beverage concessions at the Airport. The fund shall be known as the "Joint Marketing Fund." Beginning January 1, 2011, Concessionaire shall contribute during each month, as Concessionaire's share of the Joint Marketing Fund, an amount equal to the percentage of monthly Gross Revenues of Concessionaire stated on the Summary Page. This amount is payable to the City by the 10th day following the end of each calendar month. If Concessionaire is unable to calculate actual Gross Revenues in time to make the required payment to the Joint Marketing Fund, the payment may be made based on an estimate of Gross Revenues. Any and all such estimated payments shall be adjusted as of the end of each six (6) month period of each year. Within 30 days of the end of each six (6) month period, Concessionaire shall send a report to the City reconciling estimated and actual Gross Revenues and showing any over or underpayments to the Joint Marketing Fund. A check for any underpayments must accompany the reconciliation. All overpayments will be credited to the next payment(s) due to Concessionaire within 30 days of the Agreement termination date. The City shall not be obligated to expend more for promotions and advertising than is actually collected from Concessionaires. Any promotional services and personnel so provided shall be under the exclusive control and supervision of the City. The City reserves the right at any time to terminate the Joint Marketing Fund and thereafter to provide central marketing and promotional services until the remaining funds are exhausted.

8. The Summary Page appended to the Original Agreement is hereby amended by deleting the said Summary Page in its entirety and substituting in its place the attached Summary Page, which has been revised to conform the Term, MMG, Percentage Compensation Fee, the Mid Term Refurbishment deadline and the Joint Marketing requirement to the foregoing Paragraphs.

9. Except as provided herein, all of the provisions, terms and conditions of the Original Agreement shall remain in full force and effect as if fully set forth herein.

10. This Fourth Amendment to Agreement is expressly subject to and shall not be or become effective or binding on the City until it is approved by the City Council and fully executed by all signatories of the City and County of Denver.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have caused this Fourth Amendment to Agreement to be executed as of the day and year first above written.

ATTEST:

CITY AND COUNTY OF DENVER

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

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

RECOMMENDED AND APPROVED:

APPROVED AS TO FORM:

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

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

REGISTERED AND COUNTERSIGNED:

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

By \_\_\_\_\_  
Manager of Finance

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

Contract Control Number AC68001(4)

PARTY OF THE FIRST PART

ATTEST:

WAY OUT WEST, INC.

By: \_\_\_\_\_  
\_\_\_\_\_  
(Title)

By: \_\_\_\_\_  
Title: CEO

PARTY OF THE SECOND PART

**STANDARD RETAIL CONCESSION AGREEMENT  
DENVER INTERNATIONAL AIRPORT  
SUMMARY PAGE  
WAY OUT WEST**

This Summary Page, consisting of three pages, is this \_\_\_\_\_ day of \_\_\_\_\_, 2010 attached to and made a part of that certain Agreement dated November 14, 1996, as amended, between the City and County of Denver and the Concessionaire listed below.

**CONCESSIONAIRE: Name**

Address for Notice

City, State and Zip

Contact

Trade Name

State of Incorporation

Way Out West, Inc.  
5001 Ellison NE  
Albuquerque, NM  
John Avila  
Way Out West  
Colorado

**CONCESSION LOCATION and RENT (Initial)**

Loca. Num.	Concourse /Terminal	Address	Square Feet	MAG Effective Sept. 1, 2010	MMG Effective Sept 1, 2010	Gates Related to Hours of Operation
N/A	Jeppesen Terminal, Level 5	W3-N24-2	1591.0	N/A	\$6,961.00	N/A

**PERCENTAGE RENT**

(Effective November 1, 2010)

12%= up to \$1 Million  
14%= \$1 Million to \$2 Million  
16%= over \$2 Million

**PERFORMANCE SURETY AMOUNT:**

(Effective November 1, 2010)

\$ 41,766.00 or as provided in Section 9.03.

**MARKETING ASSESMENT**

(Effective January 1, 2011)

1% of Gross Revenues as provided in Section 11.01


**STORAGE SPACE LEASE:**

No.

**PERMITTED USE:**

Operation of a high-quality concession at DIA, offering for sale the following Products:

Retail sale of Native-American hand-crafted jewelry; Native-American and traditional western-themed gifts, arts and crafts, paper goods, music (tapes and CD's), books (to not to exceed 5% of total floor/wall display space), t-shirts, apparel, and accessories.

  
Concessionaire's Initials

Native-American and traditional western-themed accessories. Native-American and traditional western-themed children's gifts, souvenirs, apparel, educational kits and toys, and similarly-themed food items including buffalo meat/products. All Jewelry must be traditional Western and Native-American themed.

Concession Category

Specialty Retail

Concept type(s)

Jewelry and Gifts

Brand

N/A

Express Restrictions:

Restricted sales: Contemporary jewelry, Colorado contemporary gifts or food items.

**HOURS OF OPERATION:**

Not less than 16 hours each day, seven days per week

**REQUIRED OPENING DATE:**

N/A

**TERM:**

Effective Date:

11/14/1996

Expiration Date:

12/31/2013

**REQUIRED MINIMUM INVESTMENT:**

\$198,875

**TERM EXTENSION RENOVATION OBLIGATIONS:**

Midterm Refurbishment Investment  
Midterm Refurbishment Deadline

\$28,000.00

3/31/2011

**ACDBE GOALS:**

100%

**INSURANCE POLICY AMOUNTS:**

Comprehensive General Liability:

\$1,000,000 each occurrence, \$2,000,000 each occurrence if alcohol is sold

General Aggregate Limit

\$2,000,000

Operations Aggregate Limit

\$1,000,000

Personal & Advertising Injury

\$1,000,000

Fire Damage Legal – Any one Fire

\$300,000

Business Auto Liability

\$1,000,000 non-airside; \$10,000,000 airside Combined Single Limit

Workers Compensation:


Statutory requirements

Umbrella Liability – Area Access

\$1,000,000 (non-airside), \$10,000,000 (airside)

Alcohol Liability:

N/A

  
Concessionaire's Initials

3/25/2011

**DESCRIPTION OF EXHIBITS AND ADDENDA:**

Exhibit A	Concession Space Plan and Terminal Market Place Area
Exhibit B	Disadvantaged Business Enterprise Participation
Exhibit C	Insurance Certificate
Exhibit I	Independent Auditor's Report
Exhibit J	Independent Accountant's Report On Applying Agreed-Upon Procedures
Exhibit X	Provisions for Design and Construction of Improvements
Appendix 1	Standard Federal Assurances
Appendix 2	Standard Federal Assurances, Nondiscrimination
Appendix 3	Nondiscrimination in Airport Employment Opportunities

**EXHIBIT I**  
**INDEPENDENT AUDITOR'S REPORT**

We have audited the accompanying schedule of revenues (as defined in the lease agreement dated March 4, 20XX, between ABC Inc., as lessee, and Denver International Airport, as lessor) of ABC Inc. at its Denver International Airport store, for the year ended December 31, 20X2. This schedule is the responsibility of ABC Inc.'s management. Our responsibility is to express an opinion on this schedule based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the schedule of gross sales is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the schedule of gross sales. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall schedule presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the schedule of revenues referred to above presents fairly, in all material respects, the gross revenue of ABC Inc. at its Denver International Airport store, for the year ended December 31, 20X2, as defined in the lease agreement referred to in the first paragraph.

This report is intended solely for the information and use of the boards of directors and managements of ABC Inc. and Denver International Airport and is not intended to be and should not be used by anyone other than these specified parties.

[Signature]

[Date]

**EXHIBIT J**  
**INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES**

To the Management of ABC Inc. and Denver International Airport:

We have performed the procedures enumerated below, which were agreed to by the Management of ABC Inc. and Denver International Airport, solely to assist you in evaluating the accompanying Statement of Revenues for the year ended December 31, 20X1. ABC Inc.'s management is responsible for the statement of revenues. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and associated findings are as follows:

Agree the revenue for each of the months in the year ended December 31, 20X1 as listed on the statement of revenues to the ABC Inc. general ledger.

For the months of April and September 20X1, agree the total revenues to the underlying cash register receipts.

For a sample of 10 days within the months selected above, agree the underlying cash receipts to bank deposit slips and bank statements.

For the two months selected above, agree the sales tax amounts from the schedule of revenue into the sales tax returns as filed.

We were not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on the accompanying Statement of Revenues of ABC Inc. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the managements of ABC Inc. and Denver International Airport and is not intended to be and should not be used by anyone other than these specified parties.

[Signature]

[Date]

