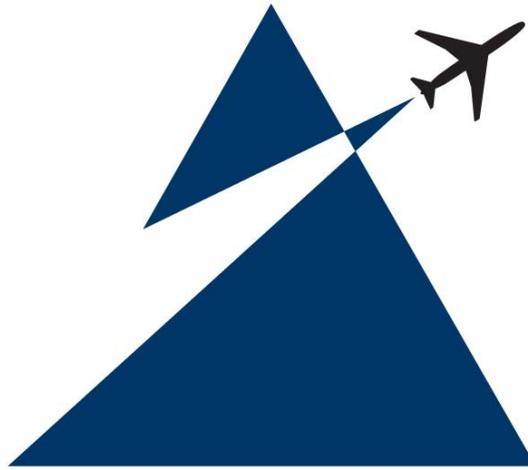


Outagamie County Regional Airport



General Concession Agreement

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GENERAL AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of _____, 2013, by and between OUTAGAMIE COUNTY, a municipal corporation, hereinafter referred to as the “COUNTY” and _____, hereinafter referred to as “CONCESSIONAIRE”

WITNESSETH:

WHEREAS, the County is the owner and operator of the Outagamie County Regional Airport, and airport situated in Outagamie County, Wisconsin (“Airport”); and

WHEREAS, Concessionaire has submitted a Request for Proposal to the County and desires to operate a food and beverage and/or a general retail business at the Airport; and

WHEREAS, the parties hereto desire to enter into a Concession Lease, granting the Concessionaire the use, together with others, a portion of the Airport and its appurtenances and the lease of certain areas of the Airport Terminal Building; and

NOW, THEREFORE, the County deems it advantageous to the operation of its Airport to grant Concessionaire the rights and privileges as herein set forth:

IT IS MUTUALLY AGREED AND UNDERSTOOD BETWEEN THE COUNTY AND THE CONCESSIONAIRE THE FOLLOWING:

1. PREMISES

The County hereby leases to Concessionaire approximately:

<u>Area</u>	<u>Square Footage</u>
First Floor Terminal Building (Restaurant)	4,554
First Floor Terminal Building (Retail)	1,287
Concourse Kiosk Concessional Space (Restaurant and/or Retail)	883

The County hereby grants to the Concessionaire the use of the space shown on Exhibits 1, 2, and 3 attached hereto and made part hereof, which space may be changed or exchanged by the Airport Director at any time for comparable space as determine by the Airport Director. If the change is solely for the benefit of the County, the Airport Director agrees to negotiate reimbursement with Concessionaire for any reasonable expense caused by its relocation.

2. TERM

The term of the Concession Agreement shall be for ten (10) years, commencing on the 1st day of March, 2013, through the 28th day of February, 2023, unless sooner terminated or cancelled as herein provided.

One (1) additional five (5) year option may be executed at the sole discretion of the Airport Director within (90) days of the expiration of the original lease term. The Minimum Annual Guarantee (“MAG”) and percentage of gross receipts payable to the County shall be negotiated at the time of the lease extension.

3. RENT, ACCOUNTING RECORDS, AND SECURITY DEPOSIT

3.1 Monthly Rent and Space Rental

As consideration for the right to occupy the Leased Premises, Concessionaire shall make monthly rent payments (Monthly Rent) to the County for the full Term of the Concession Lease. Monthly Rent shall be the greater of one-twelfth (1/12) of the Minimum Annual Guarantee or Percentage Rent based on Gross Receipts for the subject month or the adjusted amount as required under Subsection 3.1.4.

3.1.1 Minimum Annual Guarantee

The Minimum Annual Guarantee shall be as follows for the first year of the Concession Lease:

FOOD/BEVERAGE

Proposed MAG in Words	
Proposed MAG in Dollars	\$

RETAIL

Proposed MAG in Words	
Proposed MAG in Dollars	\$

For each additional year of the Concession lease the Minimum Annual Guarantee shall be eighty-five percent (85%) of the prior year’s total payments and shall not decrease lower than the initial year’s Minimum Annual Guarantee.

For any payment period of less than one calendar month, the Minimum Annual Guarantee shall be paid on a pro rata basis.

3.1.2 Percentage Rent

UNIT/PRODUCT CATEGORY	RENT AS A PERCENTAGE OF GROSS RECEIPTS
Food/Beverages	%
Alcoholic Beverages	%
Cheese and Sausage	%
Retail	%

3.1.3 Rent for Office and Storage Space

The County shall have the right to charge the then market rate for any additional storage or office space leased at the Airport by the Concessionaire.

3.1.4 Payment of Monthly Rent

On or before the fifteenth (15th) day of each month, Concessionaire shall deliver to the Airport a correct accounting statement in the form prescribed by the County and signed by Concessionaire or Concessionaire’s responsible agent under penalty of perjury. Each such statement shall state;

- i. One twelfth of the Minimum Annual Guarantee effective during the preceding calendar month;
- ii. The amount of Receipts subject to the percentage rent;
- iii. The Percentage Rent due for the previous calendar month for each unit of Leased Premises and the sum thereof;
- iv. The total rent previously paid by Concessionaire for the Lease Year within which the preceding calendar month falls;
- v. The Monthly Rent due for the preceding calendar month, and;
- vi. Any Additional Rent due for the preceding calendar month.

Concurrently with the rendering of each monthly statement, Concessionaire shall pay to the County the greater of the following two amounts:

The total Percentage Rent computed for that portion of the Lease Year ending with and including the last day of the preceding month (item iii above) less total rents previously paid for the Lease Year (Item iv above), or

One twelfth of the Minimum Annual Guarantee rent (Item i above), multiplied by the number of months from the beginning of the Lease Year to and preceding month, less total rents previously paid for the Lease Year (Item iv above).

If the commencement or termination of a payment period falls upon any date other than the first or last day of a calendar month, the applicable payments for said payment period shall be in the same

proportion that the number of days in the payment period bears to the total numbers of days in the month in which the payment period falls.

The County reserves the right to change the form of the monthly statement and to require the submission by Concessionaire of other information pertaining to the Gross Receipts hereunder, and Concessionaire agrees to change the form of its statements to that requested by the County and to provide any such additional information the County may request. County shall have the right, through its representatives and at reasonable times, to inspect, examine, copy, and audit such books and records, including State of Wisconsin sales tax return records. Concessionaire hereby agrees that all such books and records will be made available to the County at the Leased Premises (during the Term of the Concession Agreement) or at Concessionaire's corporate headquarters (after the expiration of this Concession Agreement) for at least three (3) years following the period covered by such books and records.

3.1.5 Place of Payment and Filing

Payments and statements required by this section and any other sections in this Concession Agreement pertaining to payments hereunder shall be delivered to:

Outagamie County Treasurer
410 S. Walnut St.
Appleton, WI 54911

The place of payment and filing may be changed at any time by the County upon ten (10) days' written notice to Concessionaire. Payments may be made by check payable to the Outagamie County Treasurer. Concessionaire assumes all risk of loss if payments are made by mail.

3.2 Definition of Gross Receipts

As used herein, the term "Gross Receipts" shall include all revenues derived from the sale of merchandise, food, beverages, services, advertising, and promotions on or from the Leased Premises and all vending sales, whether delivered on or off Airport, and whether paid for in cash or credit, and regardless of when paid for or not, except as explicitly excluded hereunder. Excluded from Gross Receipts shall be:

- Federal, state, county, local, and municipal sales taxes or other taxes separately and collected from customer
- Receipts from the sale of or the trade-in value of any Trade Fixtures
- Receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers
- Receipts from the sale of uniforms or clothing to Concessionaire's employees where it is required that such uniforms or clothing be worn by said employees.

In the event Concessionaire fails for any reason to charge for or collect the value of any product or service provided hereunder, the amount customarily charged by Concessionaire for such product or service shall be included in the calculation of "Gross Receipts". Further, no deduction shall be made

from Gross Receipts by reason of any credit loss, charge, or deduction that may be incurred by reason of the acceptance or use of credit cards or other credit or charge arrangements.

3.3 Annual Certified Statements and Delinquent Rentals

3.3.1 Annual Certified Statements

No later than sixty (60) days after the end of each Lease Year during the term of the Concession Agreement, Concessionaire shall provide to the County a written annual statement certified by a senior financial officer of Concessionaire stating that in his/her opinion the Monthly Rent payments made by Concessionaire to the County during the preceding year pursuant to this Concession Agreement were made in accordance with the terms of this Concession Agreement. Such statement shall also contain a list of the Gross Receipts, by month, location, and product category, as show on the books and records of Concessionaire, and which were used to compute the Monthly Rent payments made to the County during the period covered by said statement. Concessionaire shall have until ninety (90) days from the end of each Lease Year to propose, in writing, any adjustments to the annual certified statement. No adjustments shall be made until Concessionaire has received approval from the County or its designated representative. Any additional or unpaid rent or fees due for the prior lease year shall be submitted with the annual certified statement.

Any year-end credit due the Concessionaire, after approval of the annual certified statement, shall be taken by the 180th day of the year during which the annual certified statement was submitted. A credit shall be noted in the monthly statement submitted by Concessionaire and the credit shall be deemed as forfeited by Concessionaire with no further obligation by the County.

3.3.2 Delinquent Rent and Fees

Without waiving any other right or action available to the County, in the event any payment due to the County pursuant to this Concession Agreement is not received by the County by the due date, Concessionaire shall pay to the County a late payment fee of one and one-half percent (1 ½%) of the outstanding balance, per month, for such delinquency, payable without notice from the County. Acceptance of such late fees (or any portion of the overdue payment) by the County shall in no event constitute a waiver of Concessionaire's default with respect to such overdue payment, or prevent the County from exercising any of the other rights and remedies granted hereunder.

3.4 Audit

Concessionaire shall maintain an internal control structure designed to provide reasonable assurance that assets are safeguarded from loss or unauthorized use, that transactions are executed in accordance with management's County Board, and that the financial records are reliable for the purposes of preparing financial statements. Concessionaire shall prepare financial statements in conformity with generally accepted accounting principles, applying certain estimates and informed judgments as required. The internal control structure shall be supported by the selection, training, and development of qualified personnel, by an appropriate segregation of duties, and by the dissemination of written policies and procedures. The County reserves the right to audit Concessionaire's books and records at any time for the purpose of verifying the Gross Receipts and Percentage Rent calculation hereunder for

any period within three (3) years prior to such audit. If, as a result of such audit, it is established that Concessionaire has understated the Gross Receipts received from all operations at the Leased Premises by three percent (3%) or more (after the deductions and exclusions herein), the entire expense of said audit shall be borne by Concessionaire. Any additional Percentage Rent due shall forthwith be paid by Concessionaire to the County with interest thereon at one and one-half (1 ½%) per month from the date such additional Percentage Rent became due.

3.5 Security Deposit

New Concessionaires shall pay a security deposit equal to the first month's rent prior to the commencement of this Agreement. If the Concessionaire is a successful proposer for a consecutive term, the security deposit will be refunded without payment of interest or other increment for its use to Concessionaire. If Concessionaire defaults in any such obligation to the County or damages the Premises, the County as its discretion, may apply said deposit, or part thereof, to compensate the county for any loss, damage or expense sustained due to such default or damage. Any such application by Concessionaire of such deposit to compensate the County for any loss, damage or expense sustained due to such default or damage shall be in addition to and not in lieu of any other remedies or rights the County may have under this Agreement, contract, or at law upon such default or damage by Concessionaire. Upon the County's request, Concessionaire shall immediately remit to the County sufficient moneys to restore said sum so applied to the original sum deposited credit. Concessionaire's failure to do so within five (5) days after receipt of a written demand therefore shall be a default under the Agreement and Concessionaire shall cease use of the County's facility immediately.

After termination of this Agreement, the balance of any such security deposit, minus deductions for damage to the Premises, if any, shall be returned to Concessionaire within 45 days.

4. RIGHTS, OBLIGATIONS AND RESTRICTIONS OF CONCESSIONAIRE

Subject to the terms and conditions hereinafter set forth, Concessionaire is hereby given the following rights and privileges during the term of this Concession Agreement:

4.1 Merchandise

Concessionaire shall sell retail merchandise, gifts, magazines and sundries and/or operate restaurant/snack bar locations to serve food and beverages, including alcohol, to passengers, employees, and the general public in accordance with the terms and conditions contained herein. Concessionaire will exercise best efforts to carry merchandise and/or serve food/beverage items requested by the County.

4.2 Proposal Incorporated by Reference

Concessionaire will employ all operational themes, concepts, and National and Local Brands as are contained in Concessionaire's Proposal dated _____.

4.3 Signs

Concessionaire shall install and maintain appropriate signs in or upon the Leased Premises, provided that the location, design, installation and maintenance, including re-lamping of all signs shall be subject to the prior written approval of the Airport Director. Paper signs, either computer-generated or hand-written, shall not be posted in the Leased Premises, or outside the Leased Premises, at any time.

4.4 Employee Parking

Parking for the Concessionaire's employees shall be provided by the County on a space-available basis in the employee parking area in common with employees of other operators and tenants at the Airport. A reasonable charge will be imposed for the privilege of utilizing these parking facilities. One free parking stall shall be provided for the use of the Retail and/or Restaurant Manager in close proximity to the Airport Terminal. In the event the Terminal building is expanded, the County reserves the right to relocate the Manager's parking stall. This stall is for the use of the Retail and/or Restaurant Manager or Assistant Manager only and may not be assigned to other employees.

4.5 Construction

After receiving the Delivery of the Premises Notice, Concessionaire shall immediately commence construction of improvements on the Leased Premises for use in its operations in accordance with the plans and construction schedule approved, in writing, by the Airport Director.

4.6 Public Areas

Subject to all applicable airport, federal, state and local laws, rules, regulations and policies, Concessionaire shall have the right to use the Public Areas for the uses for which those Public Areas are designed. Concessionaire rights under this Section shall include the right of ingress and egress to and from the Leased Premises. The County reserves the right to modify or relocate the Public Areas at any time and in any way it deems appropriate, including, but not limited to, reconfiguration of the Public Areas, expansion or contraction of the Public Areas, or changing access point to and from the Public Areas.

4.7 Covenants, Conditions and Restrictions

This Concession Agreement is subject to any and all covenants, conditions, restrictions, easements, mortgages, deeds of trust, ground leases, rights of way, FAA or any successor federal agency's restrictions or regulations, and any other matters of record pertaining to the Airport.

4.8 Compliance with Laws

Concessionaire shall abide by all applicable federal, state and local laws, rules, regulations and policies, including Airport Rules and Regulations.

4.9 Business Licenses

Concessionaire shall maintain, in current status, all federal, state and local licenses and permits necessary or required by law for Concessionaire's operations under this Concession Agreement.

4.10 Restrictions on Uses and Privileges

4.10.1 Use of Leased Premises

The Leased Premises shall be used only for the purpose expressly specified in this Concession Agreement. Concessionaire shall not at any time during the term hereof vacate the Leased Premises without the prior written consent of the County.

4.10.2 Other Concessionaire's Rights

The rights granted are non-exclusive and the County shall retain the right to grant privileges under separate agreements for retail, food/beverage service and consumer services concessions, and vending services at the Airport. At any time during the term of this Concession Agreement, the County shall have the right, in its sole discretion, to lease new or additional space in the Airport to other concessionaires under a separate agreement.

4.10.3 Vending

In addition to the use of the assigned area(s), Concessionaire shall have the non-exclusive right to install and maintain, at its own expense, such food, soft drinks, or coffee dispensing vending machines within the public areas of the Terminal as may be authorized or reasonable required by County. The location, number and type of such machines authorized or required, as well as the goods to be sold there from, shall be subject to prior approval of the Airport Director, which may be rescinded or modified, in whole or part, at any time, at County's reasonable discretion.

4.10.4 Coin-Operated Amusement

Concessionaire shall not install amusement machines or ATM's in or upon the Retail and/or Food/Beverage Leased Premises.

5. RIGHTS AND PRIVILEGES OF THE COUNTY

5.1 Rules and Regulations

The County shall have the right to enforce, and adopt from time to time, reasonable rules and regulations, which Concessionaire agrees to observe and obey, with respect to the use of the Airport, and appurtenances, provided that such rules and regulations shall not be inconsistent with safety, current rules and regulations of the Federal Aviation Administration (FAA) and the Transportation Security Administration (TSA), and any future changes prescribed from time to time by the FAA, TSA, or any other successor Federal agency.

5.2 Official Representative

The Director or his or her designated representative is hereby designated as the official representative for the County for the enforcement of all provisions in this Concession Lease with full power to represent the County with dealings with Concessionaire in connection with rights herein granted.

5.3 Concession Lease Actions

All actions relating to policy determination, modification of this Concession Lease, termination of this Concession Lease, and any similar matters affecting the terms of this Concession Lease shall emanate from the County.

5.4 Right to Enter Leased Premises

The Airport Director or his or her designated representative may enter upon the Leased Premises, now or hereafter leased to Concessionaire hereunder, at any reasonable time, for any purpose necessary, incidental to, or connected with, the performance of its obligations hereunder, or in the exercise of its governmental functions.

5.5 The Airport's Right to Develop

The County reserves the rights to further develop or improve the airfield and public areas, including the terminal building and ramp space, as it sees fit, regardless of the desires or views of Concessionaire, and without interference or hindrance.

5.6 Aircraft Noise

The County hereby reserves for the use and benefit of the public, the right of aircraft to fly in the airspace overlying the land herein leased, together with the right of said aircraft to cause such noise as may be inherent in the operation of aircraft landing at, taking off from, or operating on or in the vicinity of the Outagamie County Regional Airport and the Terminal, and the right to pursue all operations of the Outagamie County Regional Airport.

5.7 Aerial Approach Rights

The County reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Concessionaire from erecting, or permitting to be erected, any building or other structure on the Airport, which, in the opinion of the County, would limit the usefulness of the Airport, or constitute a hazard to aircraft.

5.8 Right to Make Modifications

The County may from time to time increase or decrease the size or capacity of any such public aircraft facilities or common use portion of the Airport or make alterations thereto or reconstruct or relocate them or modify the design and type of construction thereof or close them or any portions of them, either temporarily or permanently, provided notice is given to Concessionaire.

5.9 Renegotiations

This Concession Lease at any time may be reopened for renegotiation on good faith if Federal Aviation Administration (FAA) Airport Certification or Transportation Security Administration's Security Requirements, FAR Parts 139 and TSR 1542 respectively, result in major expenditures to the County due to Concessionaire's tenancy in the Airport. If said renegotiation is desired, written notice must be given to Concessionaire sixty (60) days prior to such renegotiations.

5.10 The Airport's Right to Relocate Leased Premises

The County reserves the right to relocate the Leased Premises to similar space should that be necessary, for Terminal area remodeling or expansion. Reasonable costs associated with the moving or reinstallation of Concessionaire's equipment, Leasehold Improvements, and Trade fixtures would be negotiated.

6. CAPITAL INVESTMENT

6.1 Initial Investment

As a valuable consideration for the County Board's entering into this Concession Agreement, Concessionaire shall finance the construction, furnishing and equipping of the existing Leased Premises in accordance with the provisions of Section 7 and shall expend in said construction, furnishing, and equipping including Leasehold Improvements and Trade Fixtures, but not including inventory, office equipment, furnishings, workings capital, small wares, and start-up costs.

6.2 Future Investment

Concessionaire is aware that the Airport's Master Plan significantly changes the footprint of the existing Retail and Food and Beverage Space. Concessionaire agrees that at such time the Airport plans the terminal renovation project, Concessionaire will negotiate the investment required to be expended for capital and facility improvement.

7. IMPROVEMENTS TO ASSIGNED AREA

Concessionaire shall, at its own expense, perform necessary improvements and furnishings to the Assigned Area sufficient to provide the level of quality in appearance and service satisfactory to the County.

7.1 Alterations, Additions or Replacement

Preliminary plans and specifications for proposed improvements to the Assigned Area shall be submitted, by the Concessionaire to the Airport Director within 10 days after the execution of this Concessionaire Agreement. Within 14 days after receipt of preliminary plans and specifications, the County shall either approve or disapprove of same. County reserves the right to require Concessionaire to resubmit designs and layout proposals until they meet with the County's approval.

Within sixty (60) days of the approval of the final plans and specifications, Concessionaire shall complete all improvements to the Assigned Area as approved in writing by the County, pursuant to this subject 5.

Construction plans shall include the removal of any currently existing fixtures and furnishings at the assigned area not utilized.

All fixed improvements, equipment and interior design and décor installed by the Concessionaire, its agents, or contractor, including the plans and specifications, shall conform to all applicable Federal, State and local statutes, ordinances, building codes, and rules and regulations. The approval given by

the County shall not constitute a representation or warranty as to such conformity; responsibility for compliance at all times shall remain with Concessionaire.

All improvements, additions, and alterations made to the Assigned Area by the Concessionaire, shall be and remain the property of the Concessionaire until the expiration of the term of this Concession Agreement, as set forth in subject 2 hereof, or upon termination of this Concession Agreement (whether by mutual revision, cancellation, forfeiture or otherwise), whichever first occurs, at which time the said improvements become the property of the County.

8. MAINTENANCE OF LEASED PREMISES

8.1 Airport Maintenance Obligations

8.1.1 General Maintenance and Operation

The County agrees that it will with reasonable diligence maintain, operate, and keep in good repair the Terminal, including all appurtenances, facilities and services now or hereafter connected therewith.

8.1.2 Structural Maintenance

The County shall provide or cause to be provided structural maintenance of the Terminal and shall provide or cause to be provided the washing of the exterior of all windows, if any, in the Leased Premises at periodic intervals, but not less than two (2) times per year.

8.1.3 Maintain Access

The County shall throughout the term of this Concession Agreement maintain all airport-owned roads on the Airport keeping access to the Terminal in good and adequate condition for use by cars and trucks and shall maintain free and uninterrupted access to the Terminal over said roads at all times (unless security or construction conditions dictate otherwise). The County reserves the right to restrict access to the Terminal for deliveries during peak activity periods by giving ten (10) days notice of such restrictions.

8.2 Concessionaire's Maintenance Obligations

8.2.1 Concessionaire's General Obligations

Except for maintenance of the Terminals' Public Areas, as provided in subsection 8.1, Concessionaire shall be obligated, without cost to the County, to maintain the Leased Premises and every part thereof in good appearance, repair, and safe condition. Concessionaire shall maintain and repair all Leasehold Improvements on the Leased Premises and all furnishing, fixtures, and equipment therein, whether installed by Concessionaire or by others, including repainting or redecorating as necessary, and replacing or repairing worn carpet, tile, fixtures, or furnishings. Concessionaire's responsibilities include the maintenance, repair and replacement of all utility lines and connections, wiring, communication cables, fire alarm systems and protection devices, panels, and associated parts and equipment located within or exclusively serving the Leased Premises. All such maintenance and repairs shall be of quality equal to

the original in materials and workmanship and all work, including paint colors, shall be subject to the prior written approval of the Airport Director.

8.2.2 Preventive and Routine Maintenance Programs

Upon the execution of this Concession Agreement, Concessionaire shall establish a preventive and routine maintenance program to maintain the Leased Premises in like-new condition, the provisions of which shall be subject to the approval of and periodic review by the Airport Director or his/her designated representative. Concessionaire shall in January of each lease year, provide the Airport Director or his/her designated representative a written schedule of the Concessionaire's cleaning and maintenance program.

8.2.3 The Airport Director Sole Judge of Maintenance

The Airport Director or his/her designated representative shall be the sole judge of the quality of maintenance. The Airport Director or designee may during Concessionaire's working hours and without notice, enter upon the Leased Premises to determine if satisfactory maintenance is being performed. If it is determined that such maintenance is not satisfactory, the Airport Director or designee shall so notify the Concessionaire in writing. If such maintenance is not performed to the Airport Director or designee's standards by Concessionaire within seven (7) days after receipt of written notice, the Airport Director or designee shall have the right to enter upon the Leased Premises and perform the maintenance thereof and Concessionaire agrees to promptly reimburse the County for the cost thereof, plus twenty percent (20%) for administrative overhead.

8.2.4 Routine Refurbishment

On or about the commencement of each calendar year, representatives of the County and Concessionaire shall tour the Leased Premises and jointly agree upon what, if any routine refurbishment is required to maintain the Leased Premises in first-class condition, and Concessionaire shall, within sixty (60) days, undertake such refurbishment at its sole cost and expense. If Concessionaire and County cannot jointly agree upon the type and extent of refurbishment, the County may at its sole discretion determine the refurbishment required. For purposes of this paragraph, "refurbishment" shall mean the repainting or redecoration of Concession space within the Leased Premises, including the replacement or repair of worn carpet, tile, furnishings, fixtures, finishes or equipment.

8.2.5 Hazardous Conditions

Upon discovery, Concessionaire shall immediately give verbal notice to the Airport Director or designee of any hazardous or potentially hazardous condition in the Leased Premises or in the Terminal. Any hazardous or potentially hazardous condition in the Lease Premises shall be corrected immediately upon receipt of verbal notice from the Airport Director or designee. At the direction of the Airport Director or designee, Concessionaire shall close the Leased Premises until such hazardous or potentially hazardous condition is removed.

8.2.6 Maintenance Personnel and Program

Concessionaire agrees to employ sufficient personnel and provide the necessary equipment to keep the Leased Premises and all furnishings, fixtures, and equipment clean, neat, safe, sanitary, and in good working condition at all times.

8.2.7 Health and Sanitary Regulations

Concessionaire shall comply with all health and sanitary regulations adopted by all applicable governing bodies and all rules and regulations promulgated by the County. Concessionaire shall give access for inspection purposes to any duly authorized representative of such governing bodies and to the Airport Director or designee. Concessionaire shall provide the County with copies of all inspection reports, within forty-eight (48) hours of receipt by Concessionaire. For reports requiring corrective action, Concessionaire shall provide the County with invoices showing what remedies were applied, as well as any follow-up inspection reports, within seventy-two (72) hours of citation. If at any time, customers complain to Concessionaire of evidence of food-borne illnesses, such as food poisoning, claiming Concessionaire's establishment as the source of the illness, whether Concessionaire acknowledges the complaint to be valid or not, Concessionaire agrees to notify the County within twenty-four (24) hours of receipt of such complaint.

8.2.8 Trash, Recycling and Refuse

Outagamie County is committed to ongoing sustainability efforts and Concessionaire agrees to recycle all items listed as recyclable on the Outagamie County Landfill website <http://www.outagamie.org/index.aspx?page=916>. Concessionaire shall provide a complete and proper arrangement for the satisfactory and sanitary handling of all trash, recycling and other refuse caused as a result of the operation of the Leased Premises and shall provide for its timely removal and placement in the dumpster pre-approved by the County. In transporting trash, recycling and refuse from the Leased Premises, Concessionaire shall use only carts, vehicles, or conveyances that are leak proof and equipped with wheels made of rubber, suitable for operating on carpets and tile without damage thereto. Such disposal shall take place during hours as may be approved by the County. Trash, recycling or debris shall not be allowed to accumulate or be stored on any portion of the Lease Premises.

8.2.9 Cleaning and Janitorial Service

Concessionaire shall at all times maintain the Leased Premises, all equipment and materials used by Concessionaire in a clean and sanitary condition, including, but not limited to, keeping them free of rubbish, dirt, insects, rodents and vermin in accordance with the policies set by the County Board as well as all laws, statutes, ordinances and regulation set by the local and regional governmental agencies. All cooking equipment, refrigeration, freezer, storage units, grease traps, drains, and piping shall be constructed to facilitate the necessary cleaning and sterilization. Concessionaire shall maintain trash receptacles, as required, in the leased premises. Concessionaire shall maintain the leased premises areas, keeping it free of rubbish and dirt, as required.

8.2.10 Damage Caused to Terminal or Airport Property

Any damage caused to the Terminal, Airport or any Terminal or Airport Property or operations or the property of any other tenant, person, or entity caused by Concessionaire, or as a result of the operations

of Concessionaire, shall be the responsibility of Concessionaire and Concessionaire shall reimburse the County for any such damage paid for by the County within thirty (30) days of billing by the County. Any sums so paid by the County shall include interest thereon at one and one-half percent (1 ½%) per month from the date paid by the County until the County has been fully repaid.

8.3 Damage to Leased Premises

If the building erected by the County shall be damaged by fire, flood, lightning, windstorm or other force of the elements or by the public enemy or from any other cause not brought about by Concessionaire, so as to adversely affect Concessionaire's operations under this Concession Agreement then the following shall apply.

- If the building or space is not rendered untenable, the damage shall be promptly repaired with due diligence by the County at its own cost and expense; and Concessionaire shall continue its operations with such reasonable accommodations as require by the circumstances.
- If any of the building or space is rendered untenable but capable of being repaired and made tenable within a period of thirty (30) days, the County shall repair the damage with due diligence at its own cost and expense, and Concessionaire shall immediately resume its operations upon completion of repairs.
- If within three (3) months after the building or space is completely destroyed or so damaged as to be untenable, the building or space shall not have been substantially restored, then Concessionaire may by written notice to the County cancel this Concession Agreement in its entirety and such cancellation shall relate back to the date of the damage or destruction.
- Nothing in this Section shall apply to damages caused by the wrongful act or negligence for which Concessionaire is legally liable. In that even, Concessionaire shall, at its own cost and expense, repair all such damages, and there shall be no reduction or abatement in rent.

The County shall notify Concessionaire within sixty (60) days of the occurrence of such casualty whether it intends to repair or reconstruct the damaged Leased Premises. If the County elects to repair or reconstruct, it shall do so with due diligence and at its own cost and expense, unless such damage was caused by the negligence of the Concessionaire, its officials, employees, or agents, in which case it shall be the responsibility of the Concessionaire to pay all loss, damage, and costs not covered by Concessionaires insurance proceeds. Should the County elect not to repair or reconstruct the Leased Premises, this Concession Agreement shall terminate on the date of notification by the County as specified in this paragraph for the untenable portions of the Concessionaire's Leased Premises. In such even, the County agrees to use its best efforts to obtain adequate substitute space for Concessionaire.

9. OPERATION AND LEASED PREMISES

9.1 Continuity of Operation

The Concessionaire acknowledges that its continued occupancy of the Leased Premises and the regular conduct of its business therein, are of utmost importance to the County in the providing of services to passengers, employees, tenants and other concessionaires on the Airport and in the maintenance of the quality and character of services available at the Airport. Concessionaire therefore covenants and agrees that it will, throughout the terms of this Concession Agreement, continuously occupy and use the entire Leased Premises for the purposes permitted under this Concession Agreement. In this regard, Concessionaire shall maintain a stock of goods and merchandise and a staff of employees adequate to assure the successful operation of the Concessionaire’s business. Concessionaire shall conduct its business during all usual days and hours of other concessionaires in the Airport, 7 days per week, unless the County has previously approved alternate hours of operation in writing. Approval of such alternate hours of operation shall be granted or withheld by the Airport Director in his or her sole discretion.

Restaurant Concessionaire shall obtain a non-transferrable liquor license in accordance with

Concessionaire acknowledges that the County is executing this Concession Agreement in reliance upon these covenants and that these covenants are a material element of this consideration inducing the County to execute this Concession Agreement. Concessionaire agrees and recognizes that the damage to the County resulting from Concessionaire’s breach of any provision in this section 9 will be substantial, and will be impossible to accurately measure. Concessionaire therefore agrees that in the event of a breach or threatened breach of any of the covenants in this Section 9 in addition to all of County’s other rights and remedies under this Concession Agreement, at law or in equity or otherwise, the County shall have: the right of injunction to preserve Concessionaire’s occupancy or use, or the transfer of the License as required by this Section 9.

9.2 Hours of Operation

The minimum hours of operation shall be as follows:

Leased Premises	Minimum Hours of Operation
1 st Floor Terminal Building (Restaurant)	
1 st Floor Terminal Building (Retail)	
Concourse Kiosk (Restaurant and/or Retail)	

Concessionaire shall conduct its business during as noted hours, seven (7) days per week, three-hundred and sixty-five (365) days per year unless the Airport Direct has previously approved alternate hours of operation in writing at his or her sole discretion.

Concessionaire shall require the Concourse Kiosk to remain open until the last flight of the day has departed to accommodate for delays in flight as may happen from time to time.

9.3 Delivery of Goods

Concessionaire shall arrange and be responsible for the timely delivery of all goods, stock, fixtures, and supplies to and from the Leased Premises, at such times, at such on-airport location(s), and by such on-airport routes as approved in writing by the Airport Director. Rubber-tired dollies or a transport apparatus must be used to deliver goods. Any damage incurred to the Terminal architecture, furniture, fixtures, or infrastructure during product distribution must be replaced or repaired to the County's satisfaction at the Concessionaire's expense. Delivery of goods to the Leased Premises should be scheduled during non-peak hours.

9.4 Cash and Record Handling Requirements

9.4.1 General

Concessionaire shall at all times maintain cash and record handling systems on a cash basis in accordance with generally accepted accounting principles.

9.4.2 Fidelity or Employee Dishonesty Bonds

Concessionaire shall maintain fidelity or employee dishonesty bonds in amounts standard within the airport concession industry on its employees engaged in activities under this Concession Agreement.

9.4.3 Shopping Service and Surveys

The County shall have the right at its own expense to monitor and test all of Concessionaire's services by a shopping service selected by the County and enter the Leased Premises to conduct surveys that may or may not pertain to Concessionaire's business.

9.4.4 Failure to Use Required Procedures and Systems

Where customer sales have not been recorded because of failure by Concessionaire to comply with Subsection 10.3 Pricing Policy, or for any other reason, Concessionaire shall pay to the County the amount that would have been due the County, plus one and one-half percent (1.5%) for each month that sales were not recorded. The County shall have the right to make, through a qualified shopping service, a reasonable estimate of the losses.

9.5 Utilities

9.5.1 Heat and Air Conditioning

The County shall provide heat and air-conditioning to the Terminal in which the Lease Premises are located to keep the Leased Premises at reasonable temperatures for the conduct of Concessionaire's activities. Temperatures in the Leased Premises shall be comparable to temperatures within the Terminal. If Concessionaire requires additional capacity or adjustments to the heating and air-conditioning system, beyond the capacities provided by the County, such additional improvements or services shall be subject to the prior written approval of the County, and any such approved improvements or services shall be made at Concessionaire's expense.

9.5.2 Electricity, Telephone, Water and Sewer

The Concessionaire shall pay the cost of all electricity, telephone and water and sewer charges including repair, replacement and installation charges related to its Leased Premises. Concessionaire shall provide hot water heating equipment, and any water conditioning equipment it may deem necessary.

9.5.3 Interruptions to Utility Service

The County shall not be liable for any interruptions to the utility services provided in the Terminal and to the Leased Premises.

10. QUALITY AND CHARACTER OF SERVICE

10.1 Merchandising (or Menu) Plan

Concessionaire shall upon written demand from the Airport Director cease selling any item that the Airport Director shall determine is objectionable for sale or display in the Terminal and immediately remove such item from its inventory (or menu) and not thereafter offer such item for sale in the Terminal. Upon prior written approval from the Airport Direct, Concessionaire may from time to time add or delete items from its merchandise (or menu) offerings.

10.2 Quality of Merchandise (or Menu)

Concessionaire shall offer for sale only high-quality products and those that is safe, fresh, and free of adulteration, sanitary, properly labeled, and as advertised. Upon written notice to Concessionaire by the Airport Director of any violation of this provision, Concessionaire shall forthwith correct the condition objected to within three (3) days after receipt of such notice.

10.3 Pricing Policy

Concessionaire shall comply with the following “Street Pricing Plus Policy” for the retail and/or food/beverage service concessions at the Airport:

10.3.1 Retail

The prices for retail products sold at the Airport may exceed by no more than 10% the average price charged in comparable or similar outlets in the Greater Fox Cities Area for like size and quality products. All printed material shall be priced as listed on the inside or outside of the cover.

10.3.2 Food and Beverage

The prices for food and beverage products sold in the Terminal may exceed by no more than 10% the average price charged in comparable restaurants within the Greater Fox Cities Area for like size and quality products.

For each retail, food and beverage item sold in the Leased Premises, Concessionaire shall provide the Airport Director with the names of three (3) retail or restaurant outlets in the Greater Fox Cities area that sell the item and are comparable in concept, size and quality to the Leased Premises in the Terminal. These outlets must be approved in advance in writing by the Airport Director. The comparable outlets must be valid comparables and will be used as the basis for price comparisons

during the term of the Concession Agreement to determine compliance with the Street Pricing Plus Policy. Acceptable outlets exclude hotel gift stores, amusement parks, stadiums, arenas, and zoos. If Concessionaire owns and/or operates a similar business selling like products to the public or there are outlets of the same brand in the Greater Fox Cities Area, then prices at the Leased Premises may exceed by not more than 10% the prices charges at the non-airport location(s).

During the term of this Concession Agreement, Concessionaire shall at least annually provide documentation to the Airport Director comparing the prices it charges in the Terminal with the prices charged by the designated comparable outlets to establish Concessionaire's compliance with the Street Pricing Plus Policy. The items used in the foregoing price comparisons shall be the fifteen (15) items sold by Concessionaire having the highest dollar sales volume and another fifteen (15) items selected as having the highest number of units sold.

In the event it is determined by the Airport Director that the Concessionaire is not in compliance with the Street Pricing Plus Policy, the Airport Director shall give the Concessionaire written notice thereof. If the Concessionaire does not make appropriate adjustments to comply with the Street Pricing Plus Policy within three (3) days of such notice of non-compliance, sanctions may be imposed or the Concessionaire shall be deemed to be in material breach of the Concession Lease and the Concession Lease shall be subject to termination.

Prior to introducing new products at any time during the Term of the Concession Agreement, Concessionaire must submit prices and appropriate comparisons to the Airport Director for review and written approval.

10.4 Adult Materials

Any adult materials and magazines are strictly prohibited and shall not be for sale on Leased Premises. In the event it is determined that prohibited items are found for sale on Leased Premises, Concessionaire shall immediately remove from the Leased Premises all such prohibited adult materials and magazines.

10.5 The Airport Directors Right to Object

The Airport Director or his/her designee shall have the right to raise reasonable objections to the appearance or condition of the Leased Premises, the quality and quantity of merchandise, the character of service personnel, and to require any designated representative to be remedied by Concessionaire.

10.6 Nondiscriminatory Services Requirement

Concessionaire shall provide all services authorized hereunder to its customers and patrons upon a fair, equal and nondiscriminatory basis and charge fair, reasonable and nondiscriminatory prices; provided, however, that Concessionaire may make or give such reasonable and nondiscriminatory discounts, rebates, or other similar price reductions as it may desire to its employees and other airport employees.

10.7 Type of Operation

Concessionaire shall maintain and operate the Leased Premises granted hereunder in an orderly, proper and first-class manner, which, in the sole judgment of the Airport Director does not annoy, disturb, or offend others at the Airport.

10.8 Replacement and Refunds

Concessionaire shall without any additional charge to the purchaser, exchange any product determined by said purchaser to be unsatisfactory, flawed, defective, or of poor quality or shall provide a full refund of the purchase price, within forty-eight (48) hours of receipt of such complaint.

10.9 Credit and Debit Cards and Travelers Checks

At all times during the term of this Concession Agreement, Concessionaire shall accept as payment for goods and services travelers checks and at least three major, nationally recognized credit or debit cards, at least two of which must be American Express, MasterCard or VISA.

10.10 Services to the General Public

Concessionaire shall without charge provide services such as making change, giving directions, and providing general information to the public. Concessionaire shall strive to ensure that all of its employees know the layout of the Terminal and have the ability to provide passengers and visitors with information regarding the locations of Airport services.

10.11 Additional Compliance

Concessionaire shall comply with all applicable governmental laws, ordinances, and regulations in the conduct of its operations under this Concession Agreement.

10.12 Personnel

10.12.1 General

Concessionaire shall maintain a sufficient number of properly trained personnel to ensure that all customers of Concessionaire receive prompt and courteous service at all times. All such personnel, while on or about the Leased Premises, shall be polite, clean, appropriately attired, and neat in appearance. Employees of Concessionaire shall wear appropriate nametags, subject to the approval of the Airport Director and employees performing similar jobs shall have a similar dress code or wear similar uniforms, which shall be clean and pressed. Employees of Concessionaire shall also wear/display their Airport-issued security badges as required. The Airport Director shall have the right to object to the demeanor, conduct and appearance of any employee of Concessionaire, or any of its invitees or those doing business with it, whereupon Concessionaire shall take all steps necessary to remedy the cause of the objection.

10.12.2 Manager

The management, maintenance, and operation of the Leased Premises shall be at all times during the term hereof under the supervision and direction of an active, qualified, competent and experienced manager, who shall at all times be authorized to represent and act for Concessionaire. Concessionaire shall cause such manager to be assigned a duty station or office in the Leased Premises at which he/she

shall be available during normal business hours, and Concessionaire will at all times during the absence of such manager assign, or cause to be assigned a qualified subordinate to assume and be directly responsible for the carrying out of his/her duties. A local representative of the Concessionaire shall be available by telephone twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year in case of an emergency. The contact information for this representative shall be on record with the Airport at all times.

10.13 Customer Receipts

Concessionaire shall provide receipts for all purchases to customers that state, at a minimum, the name of the airport, the date of the sales transaction, the trade name and telephone number of the business operated in the Leased Premises, and all detailed sales transaction information, including taxes charged.

11. INDEMNITY AND INSURANCE REQUIREMENTS

11.1 General Indemnification

11.1.1 General Indemnity

The Concessionaire shall indemnify, hold harmless and defend the County, their elected and appointed officials, agents, employees and representatives from and against any and all claims and actions, demands, damages, civil penalties, charges, judgments, losses, liabilities of any character or kind and other legal actions and proceedings of whatever nature, including reasonable attorney's fees (including fees to establish the right to indemnification) resulting from, arising out of, related to, or caused by Concessionaire's or Concessionaire's sub lessees conduct of business or from any activity or other things done, permitted, or suffered by Concessionaire in, or about the Leased Premises, and/or Airport or other act of failure to act, excluding only claims or actions arising out of the sole negligence of the County, their elected and appointed officials, agents and employees, provided that the County shall give the Concessionaire prompt and reasonable notice of any such claim or actions made or filed against it.

11.1.2 Damages from Airport Operations

Concessionaire hereby agrees to release and hold harmless the County, their elected and appointed officials, agents and employees, from any damages to the Concessionaire caused by noise, vibrations, fumes, dust, fuel particles and all other effects that may be caused by the operation of aircraft landing at or taking off from, or operating at or on the Airport; and the Concessionaire does hereby fully waive, remise and releases any right or cause of action that it may now have or that it may have in the future against the County, their successors and assigns, due to such noise, vibrations, fumes, dust, fuel particles, and all other effects that may be caused or may have been caused by the operations at or in the Terminal and/or on the Airport. The above exception shall not limit a cause of action against other persons or entities, including licensees, concessionaires or aircraft operators.

11.1.3 Loss of Equipment

Concessionaire further agrees to hold the County, their agents, officials and employees free and harmless for any claims arising out of the damage, destruction or loss of any or all of Concessionaire's

equipment, excluding any claims arising out of the sole negligence of the County, their elected officials, agents and employees.

11.2 The County's Right to Recover Damages

Subject to Section 12.1, Concessionaire agrees to reimburse the County for any and all damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, and expert fees), fines, environmental costs and/or penalties (collectively "Costs") that may be imposed upon, incurred or suffered by the County and which, in whole or in part, arise from any of the following, except to the extent resulting from the sole negligent acts of the County, their elected and appointed officials, agents, and employees: (a) any act or omission of Concessionaire; (b) any use, occupation, management or control of the Leased Premises by Concessionaire, whether or not due to Concessionaire's own act or omission and whether or not occurring on the Leased Premises; (c) any condition created in or about the Leased Premises by any party (other than the County, their elected and appointed officials, agents, and employees), including any accident, injury or damage occurring on or about the Leased Premises after the date on which Concessionaire takes possession of the Leased Premises for build-out; and (d) any breach, violation or nonperformance of any of Concessionaire's obligations under this Concession Lease. For purposes of this Section, "Concessionaire" shall be deemed to include Concessionaire and Concessionaire's partners, officers, directors, employees, agents, sub lessees, affiliates, and contractors.

11.3 Insurance Requirements

Insurance requirements set forth below do not in any way limit the amount or scope of liability of Concessionaire under this Concession Lease. The amounts listed indicate only the minimum amounts of insurance coverage that the County is willing to accept to help insure full performance of all terms and conditions of this Concession Lease. All insurance required by Concessionaire under this Concession Lease shall meet the following minimum requirements.

11.4 Certificates: 30 Day Cancellation

On or before the execution of this Concession Lease, Concessionaire shall provide the County with certificates of insurance establishing the existence of all insurance policies required under this Section. Thereafter, the insurance policies shall not be subject to cancellation or change except after notice to the County by registered mail at least thirty (30) days' prior to the expiration date, cancellation, or material change of any insurance policy. No insurance policy may be canceled without at least thirty (30) days' prior written notice being given to the County. Where any policy(ies) has (have) normal expirations during the term of this Concession Lease, written evidence of renewal shall be furnished to the County at least thirty (30) days prior to such expiration. Upon written request by the County, Concessionaire shall permit the County to inspect the originals of all applicable policies. Insurance must be maintained without any lapse in coverage during the entire Lease Term. Insurance canceled without the County's consent shall be deemed an immediate event of default under this Concession Lease. The County shall also be given certified copies of Concessionaire's policies of insurance, upon request. Failure of the County to demand such certificate or other evidence of full compliance with these insurance requirements, or failure of the County to identify a deficiency from the evidence provided, shall not be construed as a waiver of Concessionaire's obligations to maintain the insurance required by this Concession Lease.

11.5 Additional Insured; Separation of Insureds

The County, their elected and appointed officials, agents, and employees shall be named as an additional insured with respect to the Concessionaire's use of the Airport, Terminal, and the Leased Premises that are the subject of this Concession Lease in each general liability policy and as an additional insured and loss payee in each property insurance policy. Such insurance shall provide cross-liability coverage equivalent to the standard Separation of Insureds clause published by the Insurance Services Offices ("ISO") or a successor organization. Concessionaire shall supply the County with certification from the insurance carrier that the County, their elected and appointed officials, agents, and employees are so named.

11.6 Primary Coverage

The required policies shall provide that the coverage is primary, and will not require any contribution from any insurance or self-insurance carried by the County.

11.7 Company Ratings

Policies of insurance must be placed with companies or underwriters authorized to issue insurance in the State of Wisconsin that carry an A.M. Best rating of "A –" or better or equivalent.

11.7.1 Deductibles and Retentions

Any deductible or self-insured retention exceeding fifteen percent (15%) of the per-occurrence or per-accident limit of a required policy is subject to approval by the County.

11.8 Required Insurance

At all times during this Concession Lease, Concessionaire shall provide and maintain in full force and affect the following types of coverage:

11.8.1 General Liability Insurance

The insurance policy(ies) shall be the standard comprehensive general liability insurance coverage to cover all operations of the Concessionaire and shall include, but not by way of limitation, bodily injury, property damage, products liability, automobile, including owned, non-owned, leased and hired, and contractual coverage, including the obligations pursuant to this Section 12. INDEMNITY AND INSURANCE REQUIREMENTS, herein. Concessionaire shall maintain an operations, independent contractors, products-completed operations, bodily injury and advertising injury, and liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the Lease Premises or occasioned by reason of the operations of Concessionaire. Such coverage shall be written on an occurrence form and with such insurers acceptable to the County in an amount of not less than ONE MILLION DOLLARS (\$1,000,000.00), combined single limit or split limits equal to and not less than ONE MILLION DOLLARS (\$1,000,000.00), for bodily injury and property damage with respect to each occurrence, such limits subject to adjustment by the County during the term of this Concession Lease.

11.8.2 Liquor Liability Insurance

Such coverage shall include all facilities serving alcohol beverages on the Airport in an amount of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence.

11.8.3 Fire and Property Insurance

Upon completion of construction, Concessionaire shall procure and maintain policies of insurance at its own expense, insuring the Leased Premises and improvements thereon against all perils of direct physical loss, excluding earthquake and flood. The insurance coverage shall be for not less than one hundred percent (100%) of the full replacement value of said Leased Premises and improvements with an agreed amount clause and a reasonable and customary deductible on said Leased Premises and improvements. Such amount is subject to final by the County. The Concessionaire shall furnish to the County evidence that such coverage has been procured and is being maintained in full force and effect. The County maintains property insurance that covers the Terminal, but will not cover any improvements made by Concessionaire to the Leased Premises.

11.8.4 Workers' Compensation Insurance

Concessionaire shall maintain in force Workers' Compensation insurance for all of Concessionaire's employees in accordance with all requirements of Wisconsin law. Concessionaire shall also maintain employers' liability coverage in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident and ONE MILLION DOLLARS (\$1,000,000.00) per employee for disease. In lieu of such insurance, Concessionaire may maintain a self-insurance program meeting the requirements of the State of Wisconsin and a policy of excess workers' compensation and employer's liability insurance.

11.8.5 Builder's Risk Insurance

During any construction activity, Concessionaire shall obtain and maintain for the benefit of the parties to the Concession Lease, as their interest may appear, "special peril" Builder's Risk insurance equal to one hundred percent (100%) of the value of the project. Coverage shall also include: (a) form work in place; (b) form lumber on site; (c) temporary structures; (d) equipment; and (e) supplies related to the work while at the site. IN the event Concessionaire fails to maintain such insurance, the County may, at its option, arrange therefore, and any premium incurred shall be reimbursed by Concessionaire to the County upon demand.

11.8.6 Business Interruption

Concessionaire shall maintain gross earnings and extra expense insurance that shall include coverage for all rent due in accordance with Section 4 of this Concession Lease for a minimum of six (6) month period. The proceeds of such insurance shall be used first to continue rent payments to the County.

11.8.7 Construction Payment and Performance Bonds

Prior to any commencement of any construction, alteration, or repair hereunder by Concessionaire that exceeds Ten Thousand Dollars (\$10,000.00) in cost, Concessionaire shall furnish to the County, at Concessionaire's sole cost, a performance bond and a payment bond issued by a surety Concessionaire licensed to transact business in the State of Wisconsin and approved by the County, in a form approved by the County. The penal amount of each bond shall not be less than one hundred percent (100%) of

the total cost of the contract or contracts for the construction, alteration, or repair. In the event that such contract(s) involve alteration or work on or to the County's facilities, the performance and payment bonds shall be posted regardless of the dollar value of the work. The payment bond required by this Section shall guarantee the prompt payment to all persons supplying labor, materials, provisions, supplies, and equipment used directly or indirectly by any contractor, subcontractor(s), and suppliers doing work provided for in the above-mentioned construction contract, and the performance bond shall guarantee the full performance of the work.

11.9 Waiver of Subrogation

Concessionaire and the County waive any right of action that they and/or their insurance carriers might have against each other (including their respective employees, officers, commissioners, or agents) or against other tenants of the Terminal or Airport for any loss, cost, damage, or expense ("Collectively Loss") to the extent that such loss or damage is covered by any property insurance policy or policies maintained or required to be maintained pursuant to this Concession Lease and to the extent that such proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the loss. Concessionaire also waives any right of action it and/or its insurance carrier might have against the County (including their elected and appointed officials, agents, and employees) for any loss to the extent such loss is a property loss covered under any applicable automobile liability policy or policies required by this Concession Lease. If any of Concessionaire's property or automobile insurance policies does not allow the insured to waive the insurer's rights of subrogation prior to a loss, Concessionaire shall cause it to be endorsed with a waiver of subrogation that allows the waivers of subrogation required by this Section 12.9.

11.10 Concessionaire's Risk

Concessionaire shall be responsible for obtaining any insurance it deems necessary to cover its own risks. In no event shall the County be liable for any: (a) business interruption or other consequential loss sustained by Concessionaire; (b) damage to, or loss of Concessionaire's property of any kind; or (c) damage to, or loss of, an automobile, whether or not such loss is insured, even if such loss is caused by the negligence of the County.

11.11 Periodic Review

The County shall have the right to periodically review the types, limits, and terms of insurance coverage. In the event the County determines that such types, limits, and/or terms should be changed, the County will give Concessionaire a minimum of thirty (30) days' notice of such determination and Concessionaire shall modify its coverage to comply with the new insurance requirements of the County. Concessionaire shall also provide The County with proof of such compliance by giving the County an updated certificate of insurance within fifteen (15) days.

11.12 Survival of Indemnities

The indemnity agreements set forth in this Section shall survive the expiration or earlier termination of the Concession Lease and be fully enforceable thereafter.

12. CANCELLATION

12.1 Cancellation by Concessionaire

In addition to all other remedies available to the Concessionaire under this Concession Lease, this Concession Lease shall be subject to cancellation by Concessionaire should any one or more of the following occur:

- The permanent abandonment of the Terminal or Airport
- The issuance of any order, rule or regulation by the Federal Aviation Administration or its successor federal agency, or the issuance by any court of competent jurisdiction of an injunction, materially restricting for a period of at least ninety (90) days, the use of the Terminal or Airport for scheduled air transportation.
- The breach by the County of any covenants, terms or conditions of this Concession Lease to be kept, performed and observed by the County and the failure to remedy such breach for a period of sixty (60) days after written notice from Concessionaire of the existence of such breach.
- The assumption of the United States Government, or any authorized agent of the same, of the operations, control or use of the Terminal or Airport and its facilities in such manner as to substantially restrict the Concessionaire from conducting its business, if such restriction be continued for a period of ninety (90) continuous days or more.
- The occurrence of any event of events beyond the reasonable controls of Concessionaire, including, but not limited to, any act of God or other supervening event that precludes the Concessionaire from the use of the property for the purposes enumerated herein, or from the use of airport facilities.

12.2 Cancellation by the Airport

In addition to any conditions as specified herein and all other remedies available to the County, this Concession Lease shall be subject to cancellation by the County should any one or more of the following occur:

- If the Concessionaire shall file a voluntary petition in bankruptcy, or proceeding in bankruptcy shall be instituted against the Concessionaire and the Concessionaire is thereafter adjudicated bankrupt pursuant to such proceedings, or if a court shall take jurisdiction of the Concessionaire and its assets pursuant to proceedings brought under the provisions of any Federal reorganization or Bankruptcy Act, or if a receiver for the Concessionaire's assets is appointed, or if the Concessionaire shall be divested of its rights, powers and privileges under this Concession Lease by other operation of law.
- If the Concessionaire shall fail to perform, keep and observe any of the applicable covenants and conditions contained in this Concession Lease, provided that upon the happening of any contingency recited in this Section, the Concessionaire shall be given written notice to correct or cure such default, failure to perform or breach. In the case of default, the County shall notify any lenders holding an interest in the Leasehold Improvements in accordance with any consent form executed by the County. If, within thirty (30) days from the date of such notice, the

default, breach, or complaint shall not have been corrected in a manner satisfactory to the County, then and in such event the County shall have the right to declare this Concession Lease terminated. The County does, however, reserve the right to extend the time period to correct the default, if in its opinion, due diligence is shown by the Concessionaire in curing the default.

- If under any of the foregoing provisions of this Section, the County shall have the right to reenter and take possession of the Premises, the County may enter and eject the Concessionaire and those claiming through or under it and remove its property and effects (using reasonable force, if necessary), without being guilty of any manner of trespass; without any liability therefore, without prejudice to any remedies of the County in the event of default by the Concessionaire, and without liability for any interruption of the conduct of the affairs of the Concessionaire or those claiming through or under it.

12.3 Termination and Reletting

Should there occur an early termination of this Concession Lease pursuant to this Section, the County shall have the right to reenter the Leased Premises, make repairs as necessary, and enter into another lease for the Leased Premises and privileges, or any part thereof, for the remainder of the term hereof.

12.4 Notice of Termination

If any of the events enumerated in Subsections 13.1 and 13.2 shall occur and after due notice the defaulting party has failed to cure or correct same, the complaining party may, at any time thereafter during the continuance of said default, terminate this Concession Lease by notice in writing, such cancellation and termination to be effective upon the date specified in such notice.

13. NONWAIVER OF RIGHTS

Continued performance by either party hereto pursuant to the terms of this Concession Lease after a default of any of the terms, covenants, and conditions herein contained to be performed, kept, or observed by the other party hereto shall not be deemed a waiver of any right to cancel this Concession Lease for any subsequent default; and no waiver of any such default shall be construed or act as a waiver of any subsequent default. Furthermore, the Director of his or her designed representative cannot waive terms or rights on behalf of the County.

14. SURRENDER OF POSSESSION

Concessionaire shall, upon termination of this Concession Lease, quit and deliver up the Leased Premises and privileges to the County peaceably and quietly, with the Leased Premises being in as good order and condition as the same now are or may be hereafter improved by Concessionaire or the County, reasonable use and wear thereof excepted. In addition to any lien provided by Wisconsin law, the County shall have a specific lien on all property of Concessionaire, and related equipment on the Leased Premises as security for nonpayment. Concessionaire shall have the right to remove all of its and

equipment installed or placed by it at its own expense, in, on or about the Leased Premises; subject however, to any valid lien that the County may have thereon for unpaid charges or fees.

15. ASSIGNMENT, SUBLETTING, AND SURRENDER

Except as otherwise provided herein, Concessionaire shall not at any time sublet any part of the Leased Premises or assign or convey this Concession Lease, or any part thereof, without the prior written consent of the County, which consent shall be granted or denied in the sole and absolute discretion of the County. Any such attempted assignment without approval by the County shall be null and void. In the event the County consents in writing to an assignment, any permitted assignment shall be subject to the same conditions, obligations, and terms as set forth herein and Concessionaire shall remain primarily liable to the County for fulfilling all obligations, terms and conditions of this Concession Lease and fully responsible for the observance by its assignees of the terms and covenants contained in this Concession Lease.

16. TAXES AND LICENSES

Concessionaire shall pay all taxes of whatever character and intangible taxes that may be levied or charged upon the Leased Premises, Leasehold Improvements, or operations hereunder and upon Concessionaire's rights to sue the Leased Premises. Concessionaire shall pay any and all taxes, including sales taxes, on its occupancy or use of the Leased Premises whether such taxes are assessed against Concessionaire or the County. Concessionaire shall obtain and pay for all licenses or permits necessary or required by law for the construction of improvements, the installation of equipment and furnishings, and any other licenses necessary for the conduct of its operations hereunder.

17. INSPECTION OF LEASED PREMISES

The Airport Director or its duly authorized representatives, or agents, and other persons for it, may enter upon said Leased Premises at any and all reasonable times during the term of this Concession Lease for the purpose and conditions hereof or for any other purpose incidental to the rights of the County.

18. HOLDING OVER

Should Concessionaire hold over in the Leased Premises after this Concession Lease has been terminated in any manner, Concessionaire shall continue such holding over only at sufferance to the County. In the event of such holding over, the County shall be entitled to collect from Concessionaire, double the amount of the monthly prorated share of the Minimum Annual Guarantee each month or portion thereof during the holdover period. All other terms and conditions in such holdover shall be the same as herein provided.

19. QUIET ENJOYMENT

The County agrees that Concessionaire, upon payment of the fees and charges and all other payments to be paid by Concessionaire under the terms of this Concession Lease, and upon observing and keeping the agreements and covenants of this Concession Lease on the part of the Concessionaire to be observed and kept, shall lawfully and quietly hold, occupy, and enjoy the Leased Premises during the term of this Concession Lease.

20. NONDISCRIMINATION

To the extent required by law, Concessionaire, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:

- No person, on the grounds of race, color, religion, sex, age, marital status, handicap or national origin, shall be unreasonably excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in Concessionaire's personnel policies and practices or in the use or operation of Concessionaire's services or facilities.
- Concessionaire agrees that in the construction of any improvements on, over, or under Terminal or Airport land and the furnishing of services thereon, no person, on the grounds of race, color, religion, sex, marital status, handicap, age or national origin, shall be unreasonably excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- Concessionaire, shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- It is the policy of the Department of Transportation that minority business enterprises as defined in 49 CFR Part 23, i.e., firms owned and controlled by minorities, firms owned and controlled by women, and firms owned and controlled by financially disadvantaged persons, shall have the maximum opportunity to participate in the performance of leases as defined in 49 CFR Section 23.5. Consequently, this Concession Lease is subject to 49 CFR Part 23, as applicable.
- This Concession Lease is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, subpart F. 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 lease agreement covered by 49 CFR Part 23, subpart F.
- The Lessee agrees for itself and its subcontractors not to discriminate against any employee or applicant for employment, with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight or marital status or because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of this covenant shall be regarded as a material breach of this agreement.

- Concessionaire agrees to include the above statement in any subsequent agreements that it enters and cause those businesses to similarly include the statements in further agreements.
- Concessionaire hereby assures that no person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of any contract, including leases, covered by 49 CFR Part 23 on the grounds of race, color, national origin or sex.
- Concessionaire hereby assures that it will include the above clauses in all subleases, if any, and cause any sub lessees to similarly include clauses in further subleases.

21. NO LIEN

Concessionaire shall pay for all labor done, professional services, or materials furnished in the repair, replacement, development, or improvement of the Leased Premises by Concessionaire, and shall keep the Leased Premises and Concessionaire’s possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Concessionaire’s act or omission.

22. LIQUIDATED DAMAGES FOR CERTAIN LEASE VIOLATIONS

Concessionaire’s failure to adhere to the operation requirements set forth in this Concession Lease is reasonably anticipated to result in significant inconvenience to the public, adversely affect the overall retail business of the Terminal, and reduce the amount of rent to be paid to the County. The parties agree that the precise measure of damages to the County from such breaches is uncertain. Accordingly, the County may impose liquidated damages of up to \$100 for each violation of Operating Hours, Service Standards, Employee Standards, Price and Quality Standards, Sign and Lease Line Violations, Sanitation, Hygiene, Cleanliness, Waste Disposal and Recycling, or Delivery and Vendor Access. Concessionaire hereby agrees that imposition of the liquidated damages is fair and reasonable, and Concessionaire agrees to pay immediately upon demand by the County. If not immediately paid, the same shall be added as Additional Rent and enforced in the same manner as non-payment of rent. Failure to exercise the option to impose said liquidated damages does not operate as a waiver to subsequent violations.

23. WAIVERS

Election by the County not to enforce any of the terms, covenants, or conditions contained in the Concession Lease shall in no event operate as a waiver or preclude the County from thereafter enforcing such terms, covenants, or conditions.

24. NOTICES

All notices provided for herein shall be in writing. Any notice permitted or required to be served upon Concessionaire under this Concession Lease shall be served upon it at:

Concessionaire Name _____
Street Address _____

City, State, Zip _____

Any notice permitted or required to be served upon the County under this Concession Lease shall be served in care of the Director or his or her designated representative at:

Outagamie County Regional Airport
W6390 Challenger Drive, Suite 201
Appleton, WI 54914

Either party may change the address for service under this Concession Lease by giving the other party written notice thereof. Any notice served by mail shall be by certified mail, return receipt requested, or by a recognized overnight courier service that requires receipt of signature upon delivery.

25. WAIVER OF CLAIMS

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

26. GOVERNMENT RESERVATIONS AND RESTRICTIONS

The Leased Premises being leased and rights granted by this Concession Leases shall be subject to all enforced reservations and restrictions, including but not limited to, the following:

- It is understood and agreed to by the Concessionaire that nothing herein contained shall be construed to grant or authorize the granting of any exclusive right forbidden by the Airport Development Act, 49 U.S.C., 47101, et seq., and Section 308 of the Federal Aviation Act of 1958 and as amended.
- During a time of war or national emergency, the Aeronautics Board shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use and, if such Concession Lease is executed, the provisions of this Concession Lease insofar as they are inconsistent with the provisions of the agreement or lease with the Government, shall be suspended.
- This Concession Lease shall be subject to the terms of any sponsor's assurances and agreements now required or imposed in the future, between the County and the Federal Aviation Administration or any successor Federal agency.
- This Concession Lease shall be subordinate to the provisions of any existing or future agreement between the United States Government and the County relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development Program, and as the

program may be amended, or any other federal act, deed, grant agreement or program affecting the operation, maintenance of the Airport now or in the future; provided however, that the County shall, to the extent permitted by law, use its best efforts to cause any such agreements to include provisions protecting and preserving the rights of Concessionaire in and to the Leased Premises and improvements thereon.

27. CONCESSION LEASE SUBORDINATE OT BOND ORDINANCE

This Concession Lease and all rights of the Concessionaire hereunder are expressly subordinated and subject to the lien and provisions of any pledge or assignment made by the County to secure any bonds authorized by law to be issued for the development or improvement of the Airport, and the County and the Concessionaire agree that the holders of the said bonds shall possess, enjoy and may exercise all rights of the County hereunder to the extent such possession, enjoyment and exercise are necessary to ensure compliance by Concessionaire and the County with the terms and provisions of the bond covenant.

28. LEGAL CLAIMS AND ATTORNEY FEES

28.1 Legal Claims

Each party hereto shall promptly report to the other any claim or suit against it arising out of or in connection with the Concessionaire's operation in the Airport. The County and Concessionaire shall each have the right to compromise and defend the same to the extent of its own interest; provided the defense of the same has not been tendered and accepted by the other party. The Concessionaire is an independent contractor in every respect, and not the agent of the County.

28.2 Attorney Fees and Court Costs

If any legal action is instituted by the parties hereto to enforce this Concession Lease, or any part thereof, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs. Any such legal action shall be commenced and maintained in the City of Appleton, Wisconsin, regardless of Concessionaire's residence or place of business.

29. PUBLIC PROTECTION

The Airport Director shall provide, or cause to be provided, during the Term of this Concession Lease, all proper and appropriate public fire and police protection similar to that afforded to other Airport tenants or licensees in the Airport, and it will issue and enforce rules and regulations with respect thereto for all portions of the Airport. Concessionaire shall comply with the Airport Security Plan and shall have the right, but shall not be obligated, to provide such additional or supplemental public protection as it may desire, but such right, whether or not exercised by Concessionaire, shall not in any way be construed to limit or reduce the obligations of the County hereunder.

30. CONCESSION LEASE SUBORDINATE TO AGREEMENTS WITH THE UNITED STATES

This Concession Lease is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future agreements between the County and the United States, the execution of which has been or may be required as a condition precedent to the transfer of feral rights or property to the County for Airport purposes, and the expenditure of federal funds for the extension, expansion, or development of the Outagamie County Regional Airport. Should the effect f such agreement with the United States government be to take any of the property under lease or substantially destroy the commercial value of such improvements, the County shall terminate this Concession Lease.

31. AIRPORT SECURITY

31.1 Compliance and Responsibility for Fines and Forfeitures

Concessionaire recognizes its obligations for security on said Airport and in the Terminal as prescribed by 49 CFR Part 1542, and agrees to employ such measures as are necessary to prevent or deter the unauthorized access of persons or vehicles into the secure area of the Terminal and Airport.

Concessionaire shall comply with Transportation Security Regulation Part 1542 (Airport Security) and Terminal and Airport security policies as presently outlined in its Airport Security Plan, as such Plan may be amended from time to time. Concessionaire shall pay any forfeitures or fines levied upon it, The County, through enforcement of Transportation Security Regulation Part 1542, or any other applicable federal, state or local regulation, due to the acts or omissions of Concessionaire, its employees, agents, suppliers, invitees or guest and for any attorney fees or related costs paid by the County as a result of any such violation.

31.2 Security Identification

Concessionaire shall abide by rules and regulations adopted by the County in carrying out the County's obligations under Aviation Security Regulations and Directives for the proper identification of persons and vehicles entering the aircraft operations area and other security measures as the County deems necessary form time to time. Concessionaire shall obtain Outagamie County Regional Airport identification/access badges for all personnel working in the applicant/Concessionaire. The cost may be amended by the County from time to time. The Concessionaire agrees to require all employees to wear Security Identification badges at all times while working in the restricted/sterile areas. The Concessionaire shall be responsible for the prompt recovery of Terminal keys and security identification/access badges from all employees upon termination cancellation, or expiration of this Concession Lease, or the termination, either voluntary or involuntary, of any employee. Pursuant to applicable federal regulations, Concessionaire shall conduct an annual self-audit of Terminal and airfield access media, such as keys and access cards, used by Concessionaire, its employees, agents, suppliers, invitees, sub lessees or guest. Concessionaire shall provide the County with a written report of said audits and shall replace, reset or re-key, as appropriate, all affected Terminal area access locks or devices whenever missing, lost, or stolen access media exceed five (5) percent of the access media issued for the affected lock or device.

31.3 Fines

Concessionaire will comply with rules, practices, security restrictions and regulations as set forth by the County or any agency having jurisdiction at the Airport. Any fines assessed against the County as a result of the Concessionaire's failure to comply with the provisions of this paragraph or other intentional or negligent acts or omissions of Concessionaire, its employees or agents will be paid promptly, upon demand, to the County by the Concessionaire.

31.4 Employee Clearance

All employees assigned by the Concessionaire shall be physically able to do their assigned work. The Airport Director shall have complete control over granting, denying, withholding or terminating security clearance for said employees. Clearance is required for all employees working in restricted/sterile areas upon being hired or assigned to the Airport. The Selected Proposers shall not permit any employee to begin work in the restricted/sterile areas until the Airport Administration clears the employee through the mandated 10-year fingerprint based Criminal History background check, as well as, all other background checks, and issues the necessary documents and ID/access badge.

32. AIRPORT DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

- Concessionaire agrees that 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 paragraph (1) any subsequent concession agreement or contract covered by 49 CFR Part 23.
- Concessionaire shall comply with Outagamie County's approved Airport Concession Disadvantaged Business Enterprise (ACDBE) program submitted in compliance with all requirements imposed by or pursuant to the U.S. Department of Transportation's ACDBE regulations as enacted in Title 49, Code of Federal Regulations, Part 23, and the U.S. Department of Transportation's regulations Title 49 Code of Federal Regulations, Part 21 Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- Concessionaire shall complete the ACDBE Utilization Form in Attachment "A" and submit the form to the Airport Director by March 1, 2013. Concessionaire agrees that it will expend one percent (1%) of the annual gross receipts with certified ACDBEs.
- Concessionaire shall make a good faith effort to adhere to the ACDBE Utilization Form which assures that one percent (1%) of the gross receipts derived from the operation of its

business at the Airport be attributed to ACDBEs certified by the Wisconsin Unified Certification Program and recognized by Outagamie County, throughout the concession term. If Concessionaire is unable to meet the assigned ACDBE goal of one percent (1%) Concessionaire must complete and submit the Good Faith Efforts Waiver Request Form in Attachment “B”.

- Any change to the ACDBE Utilization Form is subject to the Airport Director’s approval. In the event Concessionaire desires to terminate the participation of the ACDBE firm for non-performance, Concessionaire shall get written approval from the Airport Director. Concessionaire may be required to find a substitute ACDBE to replace the ACDBE firm’s participation.
- If Concessionaire fails to achieve and maintain the level of certified ACDBE participation stated in this Agreement, Concessionaire shall provide documentation to the Airport Director demonstrating that it made good faith efforts in its attempt to continue meeting the required level of ACDBE participation. If Concessionaire fails to reflect a good faith effort to achieve and maintain the level of certified ACDBE participation stated herein throughout the term of this Agreement, Outagamie County may consider this as a material breach of the Agreement and may terminate the Agreement in accordance with Section 12.2 of this Agreement.
- Airport shall notify Concessionaire in the event that new regulations are issued by the U.S. Department of Transportation (DOT) implementing Section 511 (h) of the Airport and Airway Improvement Act (AAIA) of 1982, as amended. Following such notification, Concessionaire shall be required to continue to meet the ACDBE goal set for this Agreement or to initiate all necessary and reasonable steps to achieve and/or maintain the newly established ACDBE goal throughout the remaining term of this Agreement. ACDBE participation may be in the form of any legal arrangement meeting the eligibility standards in 49 CFR Part 23, as currently stated or amended, and shall be counted toward the goal as set forth in those regulations.
- Concessionaire shall comply with appropriate provisions of 49 CFR Part 23 and shall submit a report bi-annually showing ACDBE participation. The report showing ACDBE participation for the first and second quarters of the year shall be due July 31, and the participation achieved in the third and fourth quarters shall be due on January 31. Such reports will be submitted for every year of the term of this Agreement.

33. GENERAL PROVISION

33.1 Amendment

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

33.2 Sales and Dignified Use

No public or private auction, “fire”, “going out of business,” bankruptcy or similar types of sales shall be conducted in or form the Leased Premises. The Leased Premises shall not be used except in a dignified and ethical manner consistent with the general high standards of concession operations in the Terminal.

33.3 The Airport Director Consent or Action

In the event this Concession Lease is silent as to the standard for any consent, approval, determination, or similar discretionary action, the standard shall be at the sole and unfettered discretion of the Airport Director, rather than any implied standard of good faith, fairness or reasonableness. Wherever this Concession Lease requires the Airport Director’s consent or approval or permits the Airport Director to act, such consent, approval or action may be given or performed by the Director or his or her designated representative. If Concessionaire requests the County’s consent or approval pursuant to any provision of the Concession Lease and the County fails or refuses to give such consent, Concessionaire shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable.

33.4 Interpretation of Concession Lease

This Concession Lease is the result of arms length negotiations between the Airport Director and Concessionaire and shall not be construed against the County by reason of its preparation of this Concession Lease.

33.5 Entire Agreement

It is understood and agreed that is Concession Lease (including all Exhibits and other documents incorporated by reference) contains the entire agreement between the County and Concessionaire as to this Concession Lease. It is further understood and agreed by Concessionaire that the County and the County’s agents and employees have made no representations or promises with respect to this Concession Lease or the making or entry into this Concession Lease, except as in this Concession Lease expressly set forth, and that no claim or liability or cause for termination shall be asserted by Concessionaire against the County for, and the County shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Concession Lease. Any other written or oral agreement with the County is expressly waived by Concessionaire.

33.6 Capacity to Execute

The County and Concessionaire each warrant, and represent to each other that this Concession Lease constitutes their legal, valid and binding obligation. The individuals executing this Concession Lease personally warrant that they have full County to execute this Concession Lease on behalf of the entity for whom they purport to be acting.

34. TERMS AND BINDING UPON SUCCESSORS

All the terms, conditions, and covenants of this Concession Lease shall inure to the benefit of and be biding upon the successors and assigns of the parties hereto. The provisions of this section shall not be deemed as a waiver of any of the conditions against assignment herein before set forth.

35. TIME OF ESSENCE

Time is expressed to be of the essence of this Concession Lease.

36. AGREEMENT MADE IN WISCONSIN

This Concession Lease has been made in and shall be construed in accordance with the laws of the State of Wisconsin, with venue of any judicial proceedings arising hereunder in the Court of Outagamie County. All duties, obligations, and liabilities of the County and Concessionaire with respect to the Leased Premises are expressly set forth herein and this Concession Lease can be amended only in writing and agreed to by both parties.

37. HEADINGS

The headings contained herein, including the Table of Contents, are for convenience of reference and are not intended to define or limit the scope of any provisions of this Concession Lease.

38. CONTRACT DOCUMENTS

The Request for Proposals published in connection herewith and the Concessionaire’s Proposal shall all form a part of the Concession Lease between the parties hereto. In the event of a conflict between the terms and conditions of this Concession Lease and any of said documents, the terms and conditions of this Concession Lease shall take precedence.

IN WITNESS WHERE OF, the parties hereto have caused this instrument to be executed as of the dates set forth below.

OUTAGAMIE COUNTY

By: _____
Thomas M. Nelson
County Executive

By: _____

By: _____
Judith Schuette
County Board Chair

By: _____

By: _____
Lori O’Bright
County Clerk

APPROVED AS TO FORM:

By: _____

Joseph P. Guidote, Jr.
Corporation Counsel