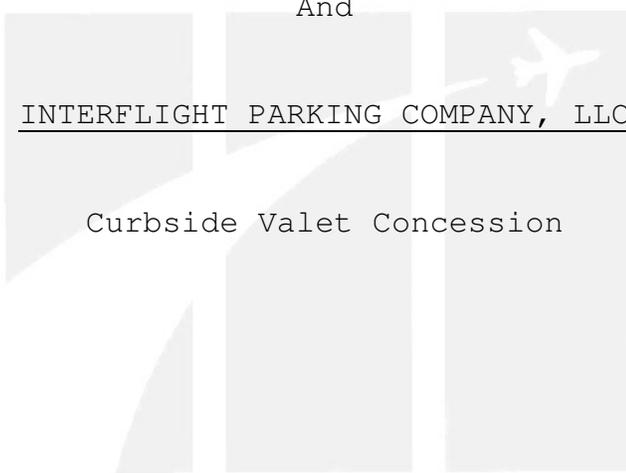


CONCESSION AGREEMENT

Between

MILWAUKEE COUNTY

And



INTERFLIGHT PARKING COMPANY, LLC

Curbside Valet Concession

MILWAUKEE COUNTY
DEPARTMENT OF TRANSPORTATION
AIRPORT DIVISION

General Mitchell International Airport
Milwaukee, Wisconsin

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THIS AGREEMENT, made and entered into this ____ day of _____, 20__, by and between MILWAUKEE COUNTY, a municipal corporation in the State of Wisconsin (hereinafter referred to as "County"), and INTERFLIGHT PARKING COMPANY, LLC, a full service parking company, whose principal office is located at 710 N. Plankinton Avenue, Suite 700 Milwaukee, WI 53203 (hereinafter referred to as "Concessionaire").

W I T N E S S E T H:

THAT, for and in consideration of the rentals and fees to be paid by Concessionaire to County as hereinafter provided and the respective covenants of the parties hereto, it is mutually agreed and understood by and between County and Concessionaire as follows:

1. DEFINITIONS

- A. "Airport" shall mean General Mitchell International Airport owned and operated by Milwaukee County.
- B. "Airport Director" shall mean the Airport Director of General Mitchell International Airport and Lawrence J. Timmerman Airport, or the Airport Director's designee.
- C. "Commencement Date" shall mean the date that this agreement is signed by the County.
- D. "Concessionaire's Proposal" shall mean the proposal to develop and operate a curbside valet concession at the Airport submitted by Concessionaire in response to the County's Request for Proposals, attached hereto as Exhibit C.
- E. "Contract Year" shall mean the twelve-month period commencing on the Commencement Date and each anniversary thereof thereafter.

- F. "County" shall mean Milwaukee County, a municipal corporation, as governed by the Milwaukee County Board of Supervisors and the Milwaukee County Executive.
- G. "County's Request for Proposals" shall mean the Request for Proposals and subsequent addenda, soliciting proposals by qualified concessionaires to develop and operate a curbside valet concession at the Airport, attached hereto as Exhibit B.
- H. Exhibits A through D as referenced in this Agreement are defined and described as follows:
- (1) Exhibit A contains drawings of the Assigned Premises.
 - (2) Exhibit B County's Request for Proposal documents and subsequent addenda.
 - (3) Exhibit C the Concessionaire's Proposal, submitted in response to the County's Request for Proposal.
 - (4) Exhibit D a monthly report entitled "Calculation of Amount Due to Milwaukee County."
- I. "Assigned Premises" shall mean the designated areas of the Airport provided by County to Concessionaire as described in Paragraph 2 hereof and depicted on Exhibit A.
- J. "Terminal Building" shall mean the domestic passenger facilities at the Airport that include the ticketing areas, baggage claim areas, terminal concession level and passenger loading concourses.
- K. "Curbside Valet Parking Service" shall mean a valet parking operation where Airport parking patrons release their vehicles to the total care and custody of the Curbside Valet Parking Concessionaire at the curbside Drop-Off and Pick-up Area located on the departure roadway of the Terminal. The Concessionaire shall also retrieve the vehicles for patrons upon their return to the Airport. As

part of the curbside valet parking concession service, Concessionaire or its approved subcontractor shall offer valet customers at additional charge, car wash and auto detail services.

2. DESCRIPTION OF THE ASSIGNED PREMISES

County hereby grants unto Concessionaire, and Concessionaire hereby receives from County, designated areas and designated locations in the terminal building, curbside location, and garage facility locations/spaces at General Mitchell International Airport, Milwaukee, Wisconsin (the "Assigned Premises"), as shown on Exhibit "A" attached hereto and made a part hereof, subject to the County's Reservation of Rights contained in Paragraph 5.

3. TERM OF AGREEMENT

- A. Subject to earlier termination as hereinafter provided, the Agreement term shall be effective and commence on the date that this agreement is signed by the County.
- B. The Agreement Term will expire three (3) years after the Commencement Date on _____. At its sole discretion, the County reserves the option to extend the term for up to two additional periods of one year each.
- C. The Agreement may be terminated for convenience by either party for any reason, and without cause, upon ninety (90) days written notice.

4. USES, PRIVILEGES GRANTED TO AND RESTRICTIONS UPON CONCESSIONAIRE

Subject to the terms and conditions hereinafter contained, County grants to Concessionaire the following rights and privileges:

- A. Concessionaire shall have the exclusive right, privilege, and obligation to operate the curbside valet concession specified herein and shall conduct only those operations and provide only those services described in Exhibit C in accordance with the provision of this Agreement. All services shall be provided in accordance with Concessionaire's proposal, as approved by the County, attached hereto as Exhibit C and by this reference made a part hereof. Concessionaire shall not use the Assigned Premises for any other purposes.
- B. It is expressly understood and agreed that all of Concessionaire's activities shall be restricted to designated areas within its Assigned Premises.
- C. Concessionaire shall have the right, subject to applicable federal, state, and local laws, ordinances, and codes, and the regulations governing the use of the Airport, for Concessionaire, its officers, employees, agents, servants, patrons, and invitees, and its suppliers of service and furnishers of materials, to have ingress to and egress from the Airport and Concessionaire's Assigned Premises. Notwithstanding the foregoing, the County, through the Airport Director, reserves the right to promulgate from time to time rules and regulations concerning the operation of the Airport including, but not limited to, procedures for the delivery of merchandise to the Airport and the Assigned Premises.
- D. Concessionaire shall have the right to install, operate, and maintain signs inside and outside the Assigned Premises for the purpose of identifying the Concessionaire. The number, size, location, general type, and design of said signs and the method of installation shall be subject to

the written approval of the Airport Director prior to the installation thereof. All signage, both inside and outside Concessionaire's locations must be professionally produced. Handwritten signs will not be permitted.

- E. Concessionaire shall establish rates for the curbside valet parking program. The curbside valet parking rates are not effective until approved by the Airport Director to include any modifications to the rates during the term of this Agreement. At no time, will the curbside valet rates be lower than the short-term garage rates unless approved in writing by the Airport Director.

5. RIGHTS AND PRIVILEGES RESERVED BY COUNTY

- A. The Airport Director shall have the right, at all times, to notify Concessionaire, in writing, of any objections to the condition of the designated Assigned Premise and commercially reasonable objections to the prices charged, or the quality of the services rendered, and to require that all objections be remedied within a reasonable period of time.
- B. County reserves the right to add parking areas and to construct additional sites to accommodate vehicular parking at the Airport to be operated by Concessionaire, or to withdraw, close, cancel, discontinue, relocate or terminate operation by Concessionaire of any part of or all of the parking areas designated on Exhibit A or any additional parking areas hereafter made available. Such right may be exercised by County at any time or from time to time during the term of this Agreement by giving Concessionaire thirty (30) days prior written notice from Airport Director. Concessionaire agrees to operate any additional parking

areas which may, from time to time, be added by County, and such operation shall be in accordance with the terms, conditions and covenants of this Agreement. In the event County withdraws, closes, cancels, discontinues, relocates or terminates operation by Concessionaire of any of the parking areas, Concessionaire shall continue to operate those parking areas which remain open in accordance with terms, conditions and covenants of this Agreement.

- C. During a time of war or national emergency, County shall have the right to lease the Airport or any part thereof to the United States Government for military or naval use; and, if any such lease is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended, including the payment by Concessionaire of all Privilege Fees due to the County for said period.
- D. County, through the Airport Director, shall have the right, at any and all reasonable hours, to enter upon the Assigned Premises for the purposes and to the extent necessary to make necessary repairs to protect County's rights and interests, to provide for periodic inspection of said premises from the standpoint of safety and health, and to review Concessionaire's compliance with the terms of this Agreement.

6. CONSTRUCTION AND ALTERATION OF FACILITIES

A. Minimum Investment Requirement

Concessionaire agrees to expend no less than Fifty Thousand and No/100 Dollars (\$50,000.00) to install, renovate, construct, furnish and equip, at its sole cost, pursuant to

County's Request for Proposal and Concessionaire's Proposal, the Assigned Premises. Written approval by the Airport Director of all plans and specifications for said installations, renovation and refinishing must be obtained prior to commencement of construction, as further described in Paragraph 6. C.

B. Improvements

- (1) In fulfillment of Concessionaire's obligation described in Paragraph 6. A., Minimum Investment Requirement, Concessionaire shall, at its sole cost, provide and maintain a first-class curbside valet operation hereunder, and shall provide all improvements, alterations, repairs, and trade fixtures necessary for the customary operation of such a concession, including, but not limited to, pick-up and drop-off booth(s), a revenue control system and all other equipment necessary in the proper conduct of Concessionaire's curbside valet business. All improvements, furniture, fixtures, pick-up and drop-off booth(s) and equipment used in the Assigned Premises shall be of the highest quality, safe, fire-resistant, attractive in appearance, and shall require written approval of the Airport Director prior to installation. All improvements affixed to the Assigned Premises are referred to herein as "Fixed Improvements," which include but not limited to interior partitions, pick-up and drop-off booth(s), ceilings, wall coverings and finishes, floor coverings, and utility services. All nonaffixed items, including cash registers, safes, racks,

shelving, showcases, and other display fixtures are referred to herein as "Trade Fixtures."

C. Approval of Plans and Specifications

- (1) Any fixed improvements to be made to or upon the Assigned Premises by Concessionaire, as described in Paragraphs 6. A. and 6. B., and any subsequent installations, including office space, pickup and drop-off booth(s), alterations or additions to fixed improvements, and racks, shelving, showcases, and other display fixtures, shall be subject to the prior written approval of the Airport Director. Full and complete plans and specifications for all work, facilities, and improvements, and the time required to complete same, shall be submitted to and receive the written approval of the Airport Director before work or construction is commenced. First-class standards of design and construction will be required in connection with all work, facilities, improvements, and trade fixtures. All construction shall conform with the general architectural requirements of the Airport as may be issued from time to time by the Airport Director.
- (2) All improvements, equipment, furnishings, and fixtures, including the pickup and drop-off booth plans and specifications for same, constructed or installed by Concessionaire, its agents or contractors, shall conform in all respects to all applicable statutes, ordinances, building codes, and rules and regulations. The approval given by the Airport Director shall not constitute a representation

or warranty as to such conformity; responsibility therefor shall at all times remain in Concessionaire.

- (3) Two (2) copies of plans for all improvements or subsequent changes therein or alterations thereof shall be given to the Airport Director for review prior to commencement of construction; after final approval by County, County shall return to Concessionaire one (1) approved copy for its records and shall retain one (1) approved copy as an official record thereof.
- (4) Plans and specification for initial improvements and alterations of the Assigned Premises, as contemplated by County's Request for Proposals and Concessionaire's Proposal, including design and layout, shall be submitted by Concessionaire to the Airport Director for approval within ninety (90) days after the execution of this Agreement. The Airport Director shall review same within thirty (30) days after receipt, and shall advise Concessionaire, in writing, of either its approval or disapproval with appropriate specificity. In the event of disapproval by the Airport Director in whole or in part, Concessionaire shall have ten (10) days thereafter within which to submit revised plans and specifications for approval. The Airport Director shall likewise review such revisions within ten (10) days after receipt of same and advise Concessionaire of either approval or disapproval in the manner described above. Approval of the Airport Director shall include both architectural and aesthetic matters. In the event of disapproval by the Airport Director of any portion of the plans and

specification, Concessionaire shall promptly submit necessary modifications and revisions thereof.

- (5) No changes or alterations shall be made in said plans or specifications after approval by the Airport Director and in no event shall structural alterations or improvements be made to or upon the Assigned Premises without the prior written approval of the Airport Director. The Airport Director agrees to act promptly upon requests for approval of changes or alterations in said plans and specifications.
- (6) Upon completion of all work, Concessionaire shall provide the Airport Director two (2) completed sets of as-built drawings (if applicable). Concessionaire agrees that, upon the request of the Airport Director, Concessionaire will inspect the premises jointly with the Airport Director to verify the as-built drawings (if applicable).

D. Amortization

Within one hundred twenty (120) days of completion of improvements, Concessionaire shall submit a certified cost statement(s) to the Airport Director setting out the total improvement costs, showing the cost of said installation and construction including the elements of, furnishings, fixtures, equipment, and architectural and engineering fees, which shall be the basis for establishment of a written amortization schedule to be prepared by the Airport Director in accordance with the terms of this Agreement. If the cost of said improvements is less than the Minimum Investment Requirement set forth above, the difference shall be payable to County within sixty (60) days after completion of construction. The cost of all leasehold

improvements required herein shall be amortized on a straight-line basis over the base term of this Agreement as of the first date of the Commencement Date. For purposes of amortization, allowable leasehold improvement costs shall include: development costs (as approved by the Airport Director, pickup and drop-off booth(s) hook-up (utilities), demolition, construction, and material costs, architectural and engineering fees, taxes, freight and warehousing costs directly attributable to the renovation project. The cost of all fixtures, furniture, pick-up and drop-off booth(s) and equipment shall be amortized, on a straight-line basis, over the base term of this Agreement. For purposes of amortization as described in this section, the following are not allowable as amortizable: all Concessionaire in-house expenses, including architectural and engineering costs (unless the prior written approval of the Airport Director is obtained), and legal expenses.

E. Title

All improvements made to the Assigned Premises and all fixtures, furniture and equipment installed by Concessionaire shall be and remain the property of Concessionaire, except that title to any improvements made by Concessionaire within the Assigned Premises and which are of such nature as cannot be removed without substantial damage to the Assigned Premises shall, consistent with Concessionaire's obligations contained in Paragraphs 7.F. and 19.A., vest in County without compensation to Concessionaire upon the termination of this Agreement.

F. Replacement or Removal

Concessionaire shall not replace or remove, in whole or in part, any elements of the leasehold improvements and fixtures in the Assigned Premises without the prior written consent of the Airport Director, who may, at his/her discretion, condition such consent upon the obligation of Concessionaire to replace the same by an improvement specified in such consent.

G. Alterations

Concessionaire shall make no alterations to the Assigned Premises without the prior written consent of County's Airport Director.

H. "Existing" Condition of Premises

Concessionaire accepts the Assigned Premises "As Is" and in its present condition with absolutely no warranties as to condition or suitability for use being given by County. All improvements made to the Premises, unless otherwise specified in Paragraph 6, shall be made and maintained by Concessionaire at Concessionaire's expense.

I. "Shell" Condition of Premises

Concessionaire accepts Premises that have not been built out delivered in an "As Is" condition, with a minimum amount of development, which may, or may not, include framed demising walls and utilities to the space or a designated distribution point. Concessionaire may be required to demolish and remove existing fixtures and improvements.

7. OBLIGATIONS OF CONCESSIONAIRE

A. Conduct of Concession Operations

Concessionaire shall conduct its concession operations in a first-class manner and in accordance with the highest standards for similar curbside valet operations at other major air terminals and in the local area. The service shall be prompt, clean, courteous, and efficient.

Concessionaire shall maintain its Assigned Premises at all times in a safe, clean, orderly, and inviting condition, to the reasonable satisfaction of the Airport Director.

- (1) Concessionaire shall immediately inspect all vehicles being dropped off at the booth location(s) for security purposes, including the possibility of explosive devices or substances which might cause injury to persons and/or property damage, and Concessionaire shall not allow any customer to leave the vehicle or receive a vehicle claim check until it has been inspected by Concessionaire. The inspection of the vehicle shall include Concessionaire inspecting underneath the vehicle, opening the hood of the vehicle, opening the trunk and all vehicle compartments within the vehicle. All packages that are remaining in the vehicle shall also be inspected.
- (2) Concessionaire shall manage and allocate the staging of customer's vehicles in accordance with all security directives of the Transportation Security Administration and the Milwaukee County Sheriffs' Department. It is the responsibility of the Concessionaire to report any security concerns, including but not limited to, the possible presence of

explosives in a vehicle immediately to the Milwaukee County Sheriffs' Department.

- (3) Concessionaire shall monitor and manage all traffic by setting up and taking down cones or erecting or replacing delineators.
- (4) Upon both drop-off and pick-up, the vehicle must be inspected for exterior damage to the vehicle.
- (5) Customers shall have minimal wait time for picking up their vehicles upon their return to the Airport. Once a customer returns to the Airport and notifies the Operator of their return (in-person, phone call, mobile application or other), Concessionaire shall immediately transport the customer's vehicle to the curbside drop-off/pick-up area.
- (6) Once a valet parking customer drops off their vehicle and the Concessionaire conducts the vehicle inspection and completes the business transaction with the customer, the Concessionaire shall immediately relocate the customer's vehicle to the Designated Area.
- (7) Concessionaire shall secure keys accepted from customers to all the vehicles stored and retain such keys under the Concessionaire's physical control.

B. Quality and Pricing

- (1) It is specifically stipulated and agreed by and between County and Concessionaire, with reference to the services rendered by Concessionaire to the public using the facilities at the Airport, that Concessionaire will at all times maintain a high degree of quality in the services rendered.

- (2) The Airport Director shall have the right at all times to raise objections to the condition of the Assigned Premises and commercially reasonable objections to the quality, prices charged, and the character of the service rendered, and to require that all objectionable practices either be remedied or discontinued.
- (3) At all times while Concessionaire is open for business, the prices of each service(s) offered must be displayed at the pick-up and drop-off booth(s). Within seven (7) days after receipt of a request from the County, Concessionaire must submit to the County a complete list of all service(s) offered in the Assigned Premises, and the price for each service(s).
- (4) The customers shall have reasonable wait times for picking up or dropping off their vehicles.
- (5) Questions or complaints regarding the quality of services, whether raised by customers or potential customers or on the County's own initiative or otherwise, may be submitted to Concessionaire for response. A response will be provided by Concessionaire within seven (7) calendar days following submission. The Airport Director shall be the sole judge as to whether the conduct of any of Concessionaire's drivers or of Concessionaire's other representatives is objectionable, and if so judged, Concessionaire shall take all steps necessary to eliminate the conditions which have occasioned such judgment. Concessionaire shall forward to the County, on a monthly basis, a list of all complaints received,

whether verbal or written, accompanied by a description of the resolution of any such complaints.

- (6) Should a conflict arise between the Concessionaire and other operators of transportation services or other services at GMIA regarding customers, potential customers or any other issues with respect to the scope of the concession privileges, the Airport Director or designee's decision on the matter shall be final and conclusive. The Concessionaire agrees to abide by the Airport Director or designee's decision.

C. Additional Airport Customer Services

In the course of its business at the Airport, Concessionaire must accept as a form of payment a minimum of at least two (2) major credit or charge cards. Concessionaire further agrees to make change in cash for any persons requesting such accommodation.

D. Hours of Operation

- (1) Concessionaire shall be required to operate the curbside valet concession at the Airport from 5:00AM to 11:00PM, every day of the year, including holidays, unless lesser or extended periods shall be specifically authorized, in writing, by the Airport Director.
- (2) Concessionaire's daily schedule may not be changed without the prior written consent of the Airport Director. At no time, shall the pick-up and drop-off booth(s) be left unattended or "temporarily closed" during the established hours of operation.
- (3) In the event of flight delays or other changes to airline flight schedules or weather emergencies, the

Airport Director may, in his sole discretion, require Concessionaire to extend hours or to otherwise modify its daily schedule of hours in order to provide continuity of services to Airport passengers, employees and visitors.

E. Personnel

- (1) Concessionaire shall maintain at all times a responsible person in charge to supervise its curbside valet concession operations at the Airport and authorized to represent and act for and on behalf of Concessionaire.
- (2) Concessionaire shall furnish, at its cost, all personnel required for the efficient and proper operation of its Airport concession. Concessionaire's employees shall be clean, courteous, efficient, and neat in appearance, and such employees shall be trained to perform any and all of the customer services contemplated under this agreement. Concessionaire shall not employ any person or persons in or about the Airport who shall use improper language or act in a loud, boisterous, or otherwise improper manner. Upon written notification by County's Airport Director to Concessionaire of a violation of this paragraph, Concessionaire shall have the responsibility to take appropriate action to prevent such violation from reoccurring.

F. Maintenance of Concessionaire's Premises

(1) Routine Maintenance

Concessionaire agrees to assume full responsibility for the routine maintenance of the Assigned Premises

to include pick-up and drop-off booth(s) and other equipment, at its own cost, of the Assigned Premises. County will provide for maintenance and repairs to the building structure, building service equipment, and all equipment facilities and appurtenances that provide utilities (i.e., electricity, gas, water, sewer, conditioned air, and the like) to or for the Assigned Premises. Concessionaire has inspected the Assigned Premises prior to the execution of this Agreement and is satisfied with the physical condition of the Assigned Premises and its taking possession thereof is agreed to be conclusive evidence of its receipt of the Assigned Premises in good order and repair. Concessionaire agrees to faithfully and fully maintain the Assigned Premises in good order and repair through-out the entire Term of this Agreement or any extensions hereof. Concessionaire further agrees that upon the termination of this Agreement for any reason, it shall, except as otherwise provided in Paragraphs 19 and 22 hereof, surrender the Assigned Premises in good condition, reasonable and ordinary wear and tear excepted. If the Assigned Premises shall not be so kept by Concessionaire, County may, after giving Concessionaire seven (7) days written notice, or without notice in cases of emergency (defined as immediate danger or damage to persons or property), enter the Assigned Premises (without such entering causing or constituting a termination of this Agreement or an interference with the possession of the Assigned Premises by the Concessionaire) and do all things necessary to restore the Assigned Premises

to the condition required by this Agreement, charging the cost and expense to Concessionaire; and Concessionaire shall pay to County all such costs and expenses in addition to the rental and privilege fees, and charges herein provided.

(2) Custodial Responsibilities

- (a) Concessionaire shall keep the Assigned Premises and said furnishings and fixtures in a safe, clean, orderly, and inviting condition at all times, satisfactory to the Airport Director. If said furnishings and fixtures shall not be so kept, the Airport Director shall have the right to order the immediate repair or reconditioning thereof, including the repainting of the Assigned Premises, by Concessionaire; and if Concessionaire does not complete such repair or reconditioning of said furnishings and fixtures within ten (10) days of such order, the Airport Director shall have the further right to order the removal from the Assigned Premises of the objectionable furnishings and fixtures and the replacement thereof by Concessionaire to the satisfaction of the Airport Director.
- (b) Concessionaire, at its cost, shall provide for sweeping and mopping the floor in the Assigned Premises and dusting its fixtures and equipment. Concessionaire shall be responsible for the maintenance and repair of all lighting fixtures within the Assigned Premises (if applicable), including the replacement of incandescent and fluorescent lamps, starters, ballasts, and other

similar appurtenances. Concessionaire shall not permit the accumulation of rubbish, trash, debris, or other litter in and upon the Assigned Premises and shall, at its own expense, provide for the disposal of such items in the trash compactor provided by County for all terminal building tenants, and County will then be responsible for said removal of rubbish, trash, debris, or other litter from the Airport.

G. Taxes, Permits, Licenses

Concessionaire shall bear, at its own expense, all costs of operating the concession, including any and all taxes assessed against its furnishings, equipment, or stocks of merchandise and supplies, and shall obtain and pay for all permits, licenses, or other authorizations required by authority of law in connection with the operation of its business at the Airport.

H. Compliance With Laws, Regulations, Ordinances, Rules

Concessionaire shall at all times comply with applicable Federal, State, and local laws and regulations, all applicable health rules and regulations, all applicable ordinances of the City of Milwaukee and the County of Milwaukee, and the rules and regulations governing the operation, use, and control of the Airport.

I. Utility Services

Concessionaire shall pay, in the manner set forth below, for utility services used by it at the public utility retail rates, including meter charges, applicable to such services in the Milwaukee metropolitan area:

- (1) to County for metered electricity, water, and sewer charges;
- (2) to the telephone utility company for all direct and private lines and intercommunicating telephone services; and
- (3) to the utility company involved for gas service.

8. SERVICES TO BE PERFORMED BY COUNTY

Unless otherwise limited by federal or state statutes, executive orders, rules, or regulations, County shall, at its cost, furnish ordinary heat for Concessionaire's baggage claim office space twenty-four (24) hours a day to the minimum temperature required by laws or ordinances applicable to public buildings in the municipality wherein the Airport Terminal Building is located. In addition, County shall provide ordinary air conditioning in the baggage claim office space. Installation of equipment to provide extraordinary heat and/or air conditioning shall be the responsibility of Concessionaire.

9. PRIVILEGE FEES, CHARGES, ACCOUNTING RECORDS AND REPORTS

A. Privilege Fees

Beginning with the Commencement Date and continuing throughout the Term of this Agreement, Concessionaire shall pay to the County on a Contract Year basis, a Percentage Fee, in the amount and manner set forth herein.

(1) Percentage of Gross Receipts

For each Contract Year, or portion thereof, the Percentage Fee to be used over the term of this Agreement shall be the following percentage fee rates multiplied by gross sales as follows:

- (a) Monthly Gross Receipts x Forty Percent (40%) = percentage due County for valet parking program.

B. Monthly Payments

Beginning on the Commencement Date and continuing each month throughout the Term of this Agreement, Concessionaire shall make payments to the County of Rental Fees as follows:

(1) Calculation of Monthly Percentage Fee Payments and Remittance of Daily and Monthly Reports

- (a) Concessionaire is to complete a monthly report entitled "Calculation of Amount Due to Milwaukee County," as shown in Exhibit D attached hereto, and submit said report to County within twenty (20) days after the end of the month for which it was prepared.
- (b) Payment due, if any, shall be made within twenty (20) days after the end of the calendar month for which it was calculated.
- (c) All remittances for rentals, fees, and charges to be made by Concessionaire under this Agreement are to be in lawful money of the United States of America and shall be made payable to the Milwaukee County Department of Transportation, Airport Division, and remitted to County of Milwaukee, General Mitchell International Airport, Box 78979, Milwaukee, Wisconsin, 53278-0979.
- (d) Notwithstanding the foregoing, it is understood and agreed that the Concessionaire shall provide the County with a daily report of gross receipts of the previous day's transactions. Said report shall include the daily transaction tapes from the revenue control system, all parking tickets

collected that day, a car count and daily vehicle inventory, and a reconciliation between ticket counts and physical inventory.

(2) Nonexclusivity

This provision permitting collection of interest and penalty by Milwaukee County on delinquent payments is not to be considered Milwaukee County's exclusive remedy for Concessionaire's default or breach with respect to delinquent payment. The exercise of this remedy is not a waiver by Milwaukee County of any other remedy permitted under this Agreement, including but not limited to termination of this Agreement.

C. Definition of Gross Receipts

The term "Gross Receipts" as used herein shall mean the aggregate amount of the gross selling price received by Concessionaire from all sources through the operation of the curbside valet concession service granted by this Agreement. It shall be all-inclusive whether or not such sales are made by cash or credits or whether the selling price is collected or uncollected. It shall include all business transacted by Concessionaire at the Airport. Deductions shall be allowed only for the amount of any federal, state, or local excise and sales taxes presently or hereafter levied upon such sales or to be collected from the purchaser; and bona fide reimbursements to Concessionaire by its agents or employees for shortages in cash or inventory.

D. Accounting Records and Reports

- (1) Concessionaire agrees to keep accurate records and books of account in compliance with Generally Accepted Accounting Principles (GAAP). These reports shall show a full and complete breakdown analysis of all items included in the calculation of total gross receipts reported and such statements shall be submitted to County together with Concessionaire's payment of monthly rentals as due hereunder. In those situations, where Concessionaire's records have been generated from computerized data (whether mainframe, minicomputer, or PC-based computer systems), Concessionaire agrees upon request to provide County with extracts of data files in a computer readable format on data disks, E-mail with attached files, or suitable alternative computer data exchange formats.
- (2) Within twenty (20) days after the close of each calendar month Concessionaire shall submit to County, in a form and with detail satisfactory to the Airport Director, a statement of its gross receipts during the preceding month derived from its operations at the Airport upon which the percentage payments to County set forth in Paragraph 9.A. were computed. Said statement must be signed by a responsible officer or manager of Concessionaire. Concessionaire shall keep full and accurate books and records showing all of its said gross receipts pertaining to operations at the Airport, and County shall have the right, through its representatives, and at all reasonable times, to inspect such books and records, including sales tax return records. Concessionaire hereby agrees that all

such records and instruments will be made available to County for at least three (3) years after the termination of this Agreement, or in the event of a claim by County, until such claim of County has been fully ascertained, fixed, paid, and resolved. The records requirements of this section shall also extend to any of Concessionaire's subsidiaries, partners, joint venturers, and sub-Concessionaires or the like.

- (3) Concessionaire shall employ an independent certified public accountant who shall furnish, within ninety (90) days after the close of each calendar year, or portion thereof, an audit report to County certifying that in their opinion the fees paid by Concessionaire to County during the preceding year pursuant to this Agreement were made in accordance with the terms of this Agreement. The audit report shall comply with GAAP auditing standards. Such audit report shall also contain a list of the Gross Revenues as shown on the books and records of Concessionaire, which were used to compute the fees paid to County during the period covered by the audit report.
- (4) Within thirty (30) days of receipt of the audit report required in Paragraph 9. E. (3) Concessionaire or County shall make any necessary payment, one to the other, to comply with the percentage due for each said year.
- (5) County reserves the right to prescribe or change reporting forms, their method and time of submission, and the payment schedule. The County shall first submit to Concessionaire a written description of the desired changes.

E. Audit

- (1) County reserves the right, at County's expense, to audit Concessionaire's books and records of receipts at any time for the purpose of verifying the gross receipts hereunder. If, as a result of such audit, it is established that Concessionaire has understated the gross receipts, as defined herein, by three percent (3%) or more, the entire expense of said audit shall be borne by Concessionaire. Any additional percentage fee due shall be paid by Concessionaire to County within 45 days from the date of Concessionaire's notice of such additional fee, with interest thereon at eighteen percent (18%) per annum from the date such additional percentage fee became due.
- (2) Concessionaire shall have available, within twenty (20) business days after written request, at its Airport office for review and/or audit by County staff or its designee, full and accurate records, accounts, books, and data with respect to business done by it hereunder which shall show all of the Gross Receipts of said business, as defined herein, in sufficient detail to readily permit verification. Should travel to the Concessionaire's out of state offices be required in order for County to conduct such a review and/or audit, all reasonable costs incurred by County including but not limited to airfare, meals, lodging and local transportation shall be paid by Concessionaire.

F. Annual Adjustment

Within thirty (30) days of receipt of the audit report required in Paragraph 9.E.(3), Concessionaire or County

shall make any necessary payment, one to the other, to comply with the percentage due for each said year. If the sums paid by Concessionaire during said period exceed the minimum fee or the percentage fee payments, whichever is greater, such overpayment shall be credited to the fees next thereafter due from Concessionaire, or shall be refunded to Concessionaire if such determination is made after termination or expiration of this Agreement.

G. Additional Fees and Charges

- (1) Concessionaire shall pay additional fees and charges under the following conditions:
 - (a) If County has paid any sum or sums or has incurred any obligation or expense which Concessionaire agreed to pay or to reimburse County;
 - (b) If County is required or elects to pay any sum or sums or incurs any obligations or expense because of the failure, neglect, or refusal of Concessionaire to perform or fulfill any of the conditions of this Agreement; or
 - (c) If County incurs any obligation or expense on behalf of Concessionaire in order to insure Concessionaire's continuing operation of its concession at the Airport.
- (2) Concessionaire shall pay additional fees and charges related to employees including but not limited to employee parking and employee identification badges.

10. ENVIRONMENTAL RESPONSIBILITIES

A. Definitions

- (1) The term "Environmentally Regulated Substances" as used in this Agreement means any element, compound,

pollutant, contaminant, or toxic or other hazardous substance, material, or waste, or any mixture thereof, designated, referenced, regulated or identified pursuant to any Environmental Law.

- (2) The term "Environmental Law" as used in this Agreement means any common law or duty, case law or ruling, statute, rule, regulation, law, ordinance or code, whether local, state or federal, that regulates, creates standards for or imposes liability or standards of conduct concerning any element, compound, pollutant, contaminant, or toxic or hazardous substance material or waste, or any mixture thereof or relates in any way to emissions or releases into the environment or ambient environmental conditions, or conduct affecting such matters.

B. Indemnification

Concessionaire hereby indemnifies and agrees to defend, protect and hold harmless County, its officers, employees or agents, any successor or successors to County's interest, (collectively "Indemnitees") from and against any and all losses, liabilities, fines, charges, damages, injuries, penalties, response costs, or claims of any and every kind whatsoever paid, incurred or asserted against, or threatened to be asserted against, any Indemnitee, in any way relating to or regarding, directly or indirectly, any Environmentally Regulated Substances or Environmental Laws, including all related claims or causes of action at common law or in equity which arise from or relate to Concessionaire's use or operations on or within the Assigned Premises (hereinafter "Environmental Claims");

such matters will include without limitation: (i) all consequential damages; (ii) the costs of any investigation, study, removal, response or remedial action, as well as preparation or implementation of any monitoring, closure or other required plan or response action; and (iii) all reasonable costs and expenses incurred by any Indemnittee in connection with such matters including, but not limited to, attorney's fees and reasonable fees for professional services or firefighting or pollution control equipment; Concessionaire further agrees to defend, protect, indemnify and hold harmless any Indemnittee for any such matters arising out of Sections C. and E. below. Such indemnification and Concessionaire's obligation hereunder, shall survive cancellation, termination or expiration of the term of this Agreement.

C. Compliance with Environmental Laws

Concessionaire shall keep and maintain and shall conduct its operations on the Assigned Premises in full compliance with Environmental Laws. Concessionaire will further ensure that its employees, agents, contractors, subcontractors, and any other persons conducting any activities on the Assigned Premises do so in full compliance with all Environmental Laws. By virtue of its operational control of the facility, Concessionaire shall be responsible for obtaining all necessary government permits or other approvals required by Environmental Laws in its name.

D. Notification

Concessionaire shall immediately notify the Airport Director in writing of any matter that might give rise to

an Environmental Claim, or if Concessionaire obtains knowledge of any release, threatened release, discharge, disposal or emission of any Environmentally Regulated Substance in, on, under or around the Assigned Premises which is not in full and complete compliance with all Environmental Laws.

E. Right to Take Action

County shall have the right, but not the obligation or duty, to join or participate in, including if it so elects as a formal party, any legal or administrative or equitable proceedings or actions initiated by any person or entity in connection with any Environmentally Regulated Substance, Environmental Law, Environmental Claim pertaining to Concessionaire's operations of the Assigned Premises, or if Concessionaire is not fulfilling its obligations under Section B. above, and in such case to have its reasonable attorney's fees and costs incurred in connection therewith paid by the Concessionaire.

F. Right to Investigate

County shall have the right, but not the obligation or duty, any time from and after the date of this Agreement, to investigate, study and test to determine whether Environmentally Regulated Substances are located in, on or under the Assigned Premises, or were emitted or released therefrom, which are not in compliance with Environmental Laws. Upon reasonable request of County, Concessionaire shall provide a list of any and all Environmentally Regulated Substances used in, on or under the Assigned Premises, certified as true and correct, and specifying how

such Environmentally Regulated Substances are used, stored, treated or disposed.

G. Environmentally Regulated Substances

- (1) The Concessionaire shall promptly advise the Airport Director in advance of any environmental findings which suggest that any Environmentally Regulated Substance may be disturbed by the performance of construction work at or on the Assigned Premises. The County shall have the right to direct the Concessionaire to stop the performance of construction work at any location where it is reasonably expected such work will disturb any Environmentally Regulated Substance. The County shall thereafter promptly commence the performance of any appropriate environmental testing at such location or redirect the Concessionaire to an alternative location. The County and the Concessionaire shall promptly discuss the appropriate modifications to the construction work. The County shall have the right to direct the Concessionaire to alter the location of any construction work in order to investigate the need for any clean-up, removal and disposal, response or remediation. The Concessionaire shall consult with the County prior to preparing its plans and specifications to minimize any disturbance to any Environmentally Regulated Substance.
- (2) As between the Concessionaire and the County, the Concessionaire shall be responsible for the clean-up or removal and disposal, response or remediation of any and all Environmentally Regulated Substances which could

subject any person to liability for costs of clean-up or removal. Response or remediation under any Environmental Laws and which arise out of or result from (i) the use of occupancy of the Assigned Premises by Concessionaire or its officers, employees, guests, invitees, contractors and other representatives, or (ii) any acts or omissions of the Concessionaire or any of the aforesaid in connection with the Assigned Premises.

11. NONDISCRIMINATION

Concessionaire, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; (2) that in the construction of any improvements and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) that Concessionaire shall use the 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, Nondiscrimination 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. That in the event of breach of any of the above nondiscrimination covenants, County shall have the right to terminate the agreement and to re-enter and repossess the facilities and hold the same as if said agreement had never been made or issued.

12. AFFIRMATIVE ACTION

The Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Concessionaire assures that it will require that its covered suborganizations provide assurances to the Concessionaire that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

13. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- A. Concessionaire shall comply with County's approved Disadvantaged Business Enterprise (DBE) program submitted in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Office of the Secretary, Parts 23 and 26.
- B. Concessionaire shall adhere to the DBE participation plan submitted with its proposal, which assures that Seventeen Percent (17% of the gross revenues derived from the operation of its business at the Airport be attributed to DBEs certified by the Wisconsin Unified Certification Program (UCP) as detailed in 49 CFR Parts 23 and 26. Written approval from the County is required prior to any change to the DBE participation plan submitted with Concessionaire's proposal.

- C. If Concessionaire fails to reflect a good faith effort to maintain the level of certified participation stated herein throughout the term of this Agreement, County may consider this as a material breach of this Agreement and may terminate the Agreement in accordance with Paragraph 25 of this Agreement.
- D. Concessionaire shall be required to comply with appropriate provisions of 49 CFR Parts 23 and 26. Concessionaire shall submit reports as required in the form specified by County for the purpose of demonstrating compliance with this Paragraph.
- E. If the ACDBE participant fails to maintain its status as a certified ACDBE at any time during the term of this Agreement due to the ACDBE participant no longer meeting the statutory or regulatory requirements of ACDBE total gross receipts or the statutory or regulatory ACDBE personal net worth requirements, such failure shall not be considered a default by Concessionaire under the terms and provisions of this Agreement. The foregoing shall apply only during the initial term of this Agreement and shall not apply during any extension or renewal term.

14. NONDISCRIMINATION AND EQUAL OPPORTUNITY PROVISIONS REQUIRED BY GENERAL ORDINANCES OF MILWAUKEE COUNTY

A. Section 56.17(1a)

In the performance of work or execution of this agreement, the Concessionaire shall not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex, or handicap, which shall include but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment

advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeships. The Concessionaire will post in conspicuous places, available for employment, notices to be provided by the County setting forth the provisions of the nondiscriminatory clause. A violation of this provision shall be sufficient cause for the County to terminate the agreement without liability for the uncompleted portion or for any materials or services purchased or paid for by the Concessionaire for use in completing the agreement.

B. Section 56.17(1d)

The Concessionaire agrees that it will strive to implement the principles of equal employment opportunities through an effective affirmative action program, and will so certify prior to the award of the agreement, which program shall have as its objective to increase the utilization of women, minorities and handicapped persons, and other protected groups, at all levels of employment in all divisions of the Concessionaire's work force, where these groups may have been previously under-utilized and under-represented. The Concessionaire also agrees that in the event of any dispute as to compliance with the aforementioned requirements, it shall be its responsibility to show that it has met all such requirements.

15. INDEMNITY

Except for losses caused by the negligence or willful misconduct of the County, its agents, officers or employees, to the fullest extent permitted by law, the Concessionaire agrees to indemnify, defend, and hold harmless the County and its agents, officers, and employees from and against all losses or expenses including

costs and attorney's fees by reason of liability for damages including suits at law or in equity, caused by any wrongful, intentional, or negligent acts or omissions of the Concessionaire, or its (their) agents which may arise out of or are connected with the activities covered by this Agreement. Concessionaire shall indemnify and save County harmless from any award of damages and costs against County for any action based on Title VII of the Civil Rights Act of 1964 or any other state or federal antidiscrimination law or regulation or for U.S. patent or copyright infringement related in any way to the performance of the tasks and services covered by this Agreement.

16. INSURANCE

Concessionaire agrees to evidence and maintain proof of financial responsibility to cover costs as may arise from employees. Such evidence shall include insurance coverage for Worker's Compensation claims as required by the State of Wisconsin, including Employers Liability, and Business Insurance covering general liability and automobile coverage in the following minimum amounts:

Type of Coverage	Minimum Limits
<u>Wisconsin Workers Compensation and Employers Liability & Disease</u>	<u>Statutory/Waiver of Subrogation</u> \$100,000/\$500,000/\$100,000
<u>General Liability including Garage Liability</u>	
Bodily Injury and Property Damage to include:	\$2,000,000 Per Occurrence

Personal Injury, Fire, Products and Completed Operations \$2,000,000 Aggregate

Garage Keeper's Legal Liability \$1,000,000 Per Occurrence

Automobile Liability - Bodily Injury & Property Damage \$1,000,000 Per Accident

All Autos

Crime - Employee Theft of Client Property \$1,000,000

Umbrella Liability \$10,000,000 Aggregate

Milwaukee County shall be named as and Additional Insured in the General Liability including Garage Liability, Garage Keeper's Legal Liability, Automobile Liability, and Umbrella liability policies as its interests may appear as respects the services provided in this agreement and for any liability related to any actions arising out of the activities conducted under this Agreement. A waiver of subrogation shall be afforded to Milwaukee County on the Workers' Compensation policy. A thirty (30) day written notice of cancellation or non-renewal shall be afforded to Milwaukee County.

The insurance specified above shall be placed with an A rated carrier per AM Best's Rating Guide approved to do business in the State of Wisconsin. Any deviations or waiver of required coverages or minimums shall be submitted in writing and approved by Milwaukee County's Risk Manager as a condition of this agreement. Milwaukee County reserves the right to change or increase the required coverages in accordance with new or expanded exposures introduced in the successful proposal.

A certificate of insurance shall be submitted for review to Milwaukee County for each successive period of coverage for the duration of this agreement.

17. UNEMPLOYMENT INSURANCE

Concessionaire shall also furnish evidence satisfactory to said Airport Director that it carries unemployment insurance pursuant to the requirements of the Statutes of the State of Wisconsin.

18. PERFORMANCE GUARANTEE

A. Prior to the beginning of the term of this Agreement, Concessionaire shall furnish to County a valid performance bond or letter of credit in the principal sum of One Hundred Thousand and No/100 Dollars (\$100,000.00). The bond or letter of credit shall be issued by a surety company licensed to do such business in the State of Wisconsin. The bond or letter of credit is subject to the approval of County's Corporation Counsel, and shall be maintained and kept by Concessionaire in full force and effect during the entire term of this Agreement and three (3) months past the termination date of this Agreement and any extensions thereof. Such surety bond or letter of credit shall be conditioned to insure the faithful and full performance by Concessionaire of all the covenants, terms, and conditions of this Agreement and to stand as security for the payment by Concessionaire of all valid claims by County against Concessionaire. If at any time this Agreement terminates or is terminated, there is due and owing to County any sum payable under the terms hereof; or, if County has any claim against Concessionaire arising out of this Agreement, then said One Hundred Thousand and No/100 Dollars (\$100,000.00) or any part thereof shall be applied in payment of the amount due or in settlement of the claim or claims of County against Concessionaire.

B. It is understood that this remedy is nonexclusive and is in addition to and not in lieu of all other rights, remedies or causes of action available to the County under this Agreement, at law or in equity, which County specifically reserves to itself.

19. SURRENDER OF POSSESSION - RESTORATION OF PREMISES

A. Upon the termination of this Agreement by lapse of time or for cause, Concessionaire shall forthwith remove from the premises assigned to it hereunder all signs, equipment, goods, chattels, fixtures, and exhibits installed or placed in, on, or upon the Assigned Premises and other areas or anywhere upon the premises of the Airport and surrender the Assigned Premises in good condition, reasonable and ordinary wear and tear, and damage by fire or the elements excepted; provided that the restoration of any portion of the Assigned Premises damaged by fire as provided in Paragraph 22. A. shall be the responsibility of Concessionaire without any cost to County. Title to any improvements made by Concessionaire to or within the Assigned Premises and which are of such nature as cannot be removed without substantial damage to the Assigned Premises shall vest in County without compensation to Concessionaire upon the termination of this Agreement. In the event of the failure of Concessionaire to restore the Assigned Premises to the condition herein required and to remove from the Assigned Premises all property as demanded in this Paragraph 19, County may effect such restoration and remove and store all such property at Concessionaire's expense, and Concessionaire agrees to pay all reasonable costs, attorney's fees, and all other legitimate expenses that

shall be incurred by County in connection with such restoration, removal, and storage.

- B. Concessionaire agrees to cooperate in good faith and in a commercially reasonable manner in the transition from Concessionaire's predecessor to Concessionaire at the beginning of this Agreement and in the transition from Concessionaire to Concessionaire's successor upon expiration or termination of this Agreement, as directed by County.

20. LIENS AND ENCUMBRANCES

Concessionaire shall not permit the Assigned Premises to become subject to any mechanic's, laborer's, or materialman's lien on account of labor or material furnished to Concessionaire or claimed to have been furnished to Concessionaire in connection with work of any character performed or claimed to have been performed on or in the Assigned Premises by, or at the direction of Concessionaire.

21. EMINENT DOMAIN

In the event that the United States of America or the State of Wisconsin shall, by exercise of the right of eminent domain or any other power, acquire title in whole or in part to the Airport, including any portion assigned to Concessionaire, Concessionaire shall have no right of recovery whatsoever against County but shall make its claim for compensation solely against the United States of America or the State of Wisconsin, as the case may be.

22. UNTENANTABLE PREMISES

- A. If the Assigned Premises are partially damaged by fire or other casualty, but not rendered untenable, as

determined by County, County shall repair same at its own cost and expense, provided, however, that if the damage is caused by the negligent act or omission of Concessionaire its agents, or employees, Concessionaire shall be responsible for reimbursing the County for the cost and expenses incurred in such repair.

- B. If the damage is so extensive as to render the Assigned Premises untenable, as determined by the County, but capable of being repaired in sixty (60) days, the same shall be repaired by County at its own cost and expense, and rentals and privilege fees payable by Concessionaire for the damaged structure shall be proportionately adjusted until such time as the Assigned Premises shall be fully restored; provided, however, that if said damage is caused by the negligent act or omission of Concessionaire, its agents or employees, the rental and privilege fees due will not abate and Concessionaire shall be responsible for reimbursing the County for the costs and expense incurred in such repair.
- C. In the event the premises are completely destroyed by fire or other casualty or so damaged that they will remain untenable, as determined by County for more than sixty (60) days, Concessionaire shall have two options:
- (1) If the Assigned Premises are repaired or reconstructed with due diligence by the County at its own cost and expense, the rental due hereunder for the damaged structures shall be proportionately adjusted until such time as the building shall be fully restored, and Concessionaire may continue this Agreement; or
 - (2) If after twelve (12) months from the time of such damage or destruction of the Assigned Premises have not been

repaired or reconstructed for Concessionaire's use, or other reasonable facilities provided in lieu thereof, Concessionaire may give the County written notice of its intention to then cancel this Agreement in its entirety or to cancel as of the date of such damage or destruction. The term "Assigned Premises" as used herein refers to the area defined in Paragraph 1. L.

23. LIABILITY OF COUNTY

Except as provided in Paragraph 23 hereof, it is specifically understood and agreed that County shall have no liability to Concessionaire, its employees, agents, servants, or patrons, for damage to or loss of property of Concessionaire from any cause whatsoever, unless such damage to or loss of property shall be caused by negligence or willful misconduct on the part of County, its employees, agents, or servants.

24. ASSIGNMENT AND SUBLETTING

Except as provided in Paragraph 6 hereof, Concessionaire is prohibited from assigning this Agreement or subletting the Assigned Premises, in whole or in part, without the prior consent of County, evidenced by a resolution that has been fully adopted by its Board of Supervisors.

25. TERMINATION BY COUNTY

This Agreement shall be subject to cancellation by County in the event of the happening of any one or more of the following contingencies:

- A. If Concessionaire shall file a voluntary petition of bankruptcy; or if proceedings in bankruptcy shall be instituted against it and it is thereafter adjudicated a

bankrupt pursuant to such proceedings; or if a court shall take jurisdiction of such Concessionaire and its assets pursuant to proceedings brought under the provisions of any Federal reorganization act; or if a receiver for Concessionaire's assets is appointed; or if Concessionaire shall be divested of its rights, powers, and privileges under this contract by other operation of law.

- B. If Concessionaire shall abandon and discontinue the conduct and operation of said concession at the Airport for a period of sixty (60) days or more.
- C. If Concessionaire shall default in or fail to make any payments at the times and in the amounts as required of it under this Agreement.
- D. If Concessionaire shall fail to perform, keep, and observe all of the conditions of this Agreement to be performed, kept, and observed by it, including, but not limited to, the payment of fees and other charges in the time, manner, and amount as provided in this Agreement and compliance with all applicable laws, ordinances, codes, rules, and other regulatory measures of the United States of America, the State of Wisconsin, County of Milwaukee, and City of Milwaukee, and the rules and regulations governing the use, operation, and control of the Airport.
- E. All rights, privileges, or interests acquired by Concessionaire under the terms of this Agreement may, at the option of County, following written notice of thirty (30) days, be suspended or finally terminated if such suspension or termination is found by County, acting in good faith, to be necessary to secure federal financial aid for the development and improvement of the Airport. In the instance of a suspension, Concessionaire's obligations

shall be abated. In the instance of a termination, Concessionaire shall promptly be reimbursed by the County for the undepreciated portion of its investment based on a straight-line three (3) year depreciation schedule.

- F. During the time of war or national emergency, the County shall have the right to lease the Airport or any part thereof to the U.S. Government for military or naval use; and, if any such lease is executed, the terms and conditions of Concessionaire's agreement with County, insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended.
- G. Upon the happening of any of the contingencies recited in subsections (B), (C), or D of Paragraph 25, County shall give written notice to Concessionaire to correct or cure such default, failure to perform, or breach; and if, within thirty (30) days from the date of such notice, the default, failure to perform, or breach complained of shall not have been corrected in a manner satisfactory to County's Airport Director, then, and in such event, County shall have the right, at once and without further notice to Concessionaire, effectuated by resolution adopted by County's Board of Supervisors, to declare this Agreement terminated and to enter upon and take full possession of the Assigned Premises.
- H. Upon the happening of any one of the contingencies enumerated in Paragraph 25. A. hereof, this Agreement shall be deemed to be breached by Concessionaire and without entry or any other action by County, this Agreement shall terminate, subject to be reinstated only if such involuntary bankruptcy or insolvent proceedings, petition for reorganization, trusteeship, receivership, or other

legal act divesting Concessionaire of its rights under this Agreement shall be denied, set aside, vacated, or terminated in Concessionaire's favor within sixty (60) days from the happening of the contingency. Upon the happening of said latter events, this Agreement shall be reinstated as if there had been no breach occasioned by the happening of said contingencies, provided that Concessionaire shall, within ten (10) days after the final denial, vacating, or setting aside of such petition on the vacating, terminating, or setting aside of such appointment, pay or discharge any or all sums of money which may have become due under this agreement in the interim and shall then remain unpaid and shall likewise fully perform and discharge all other obligations which may have accrued and become payable in the interim.

- I. In the event that defaults, failure to perform, and breaches by Concessionaire of its obligations under this Agreement to be performed, kept, and observed by it shall recur from time to time to such extent that County's Airport Director believes that Concessionaire is an unsatisfactory Concessionaire, then, upon written recommendation by the Airport Director to County's Board of Supervisors, County shall have the right, upon resolution fully adopted by said Board, to terminate this Agreement. Upon adoption of such resolution, County shall give written notice of such termination to said Concessionaire and this Agreement shall terminate within ten (10) days from the date of said notice.
- J. In the event there is a finding by an independent CPA firm or County's designated auditors which indicates a lack of proper internal control structure or fraudulent practices

on the part of Concessionaire which results in an audit adjustment of the amount due to County of five percent (5%) or more.

26. WAIVERS

- A. The acceptance of charges and fees by County for any period or periods after a default of any of the terms, covenants, and conditions herein contained to be performed, kept, and observed by Concessionaire shall not be deemed a waiver of any rights on the part of the County to cancel this Agreement for failure by Concessionaire to so perform, keep, or observe any of the terms, covenants, or conditions hereof to be performed, kept, and observed.
- B. No waiver by County of any of the terms of this Agreement to be kept, performed, or observed by Concessionaire shall be construed to be or act as a waiver by County of any subsequent default on the part of Concessionaire.
- C. No waiver of default by either party of any of the terms, covenants, or conditions of this agreement to be performed, kept, and observed by either party, either prior to or after either party may have remedied the same, shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, and conditions herein contained to be performed, kept, and observed by either party.
- D. County's decision not to conduct an annual audit shall not constitute a waiver of any right or privilege arising under or as a result of this Agreement.

27. TERMINATION BY CONCESSIONAIRE

This Agreement shall be subject to termination by Concessionaire in the event of the happening of any one or more of the following contingencies:

- A. The permanent abandonment of the Airport as an air terminal.
- B. The issuance by any court of competent jurisdiction of an injunction substantially preventing or restraining the use of the Airport or of the terminal building and the remaining in force of such injunction for at least sixty (60) days.
- C. The breach by the County of any of the terms, covenants, and conditions of this agreement and the failure of County to remedy such breach within a period of sixty (60) days after written notice from Concessionaire of the existence of such breach.
- D. The assumption by the U.S. Government or the State of Wisconsin, or any authorized agency of either, of the operation, control, or use of the airport and its facilities in such a manner as to substantially restrict Concessionaire from operating said advertising display concession, if such restriction be continued for a period of three (3) months or more.
- E. Termination by Concessionaire as hereinabove provided shall take place within ten (10) days after receipt by County of written notice of such termination from Concessionaire. No waiver of default by Concessionaire of any of the terms, covenants, or conditions hereof to be performed, kept, or observed by County shall be construed to be or act as a waiver by Concessionaire of any subsequent default of any of the terms, covenants, and conditions herein contained to be performed, kept, and observed by County.

28. QUIET ENJOYMENT

County agrees that, on payment of the fees and the performance of the covenants and agreements on the part of Concessionaire to be performed hereunder, Concessionaire shall be entitled to the quiet enjoyment of the Assigned Premises and the rights and privileges with respect thereto as granted herein.

29. INDEPENDENT CONTRACTOR

It is understood and agreed that nothing herein contained is intended or should be construed as in anywise creating or establishing the relationship of copartners between the parties hereto or as constituting Concessionaire as the agent, representative, or employee of the County for any purpose or in any manner whatsoever. Concessionaire is to be and shall remain an independent contractor with respect to all services performed under this Agreement and agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for Social Security, Worker's Compensation Insurance, Unemployment Insurance, or Old Age Retirement Benefits, Pensions, or Annuities now or hereafter imposed under any local, state or federal laws which are measured by the wages, salaries, or other remunerations paid to persons employed by Concessionaire for work performed under the terms of this Agreement, and agrees to indemnify and save County harmless from any such contributions or taxes or liability therefore.

30. INVALID PROVISIONS

In the event any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition, or

provision shall in no way affect any other covenant, condition, or provision herein contained; provided that the invalidity of such covenant, condition, or provision does not materially prejudice either County or Concessionaire in their respective rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

31. NOTICES

Notices to the County provided for in this Agreement shall be sufficient if sent by certified or registered mail, postage prepaid, addressed to the Airport Director, General Mitchell International Airport, 5300 South Howell Avenue, Milwaukee, Wisconsin 53207; and notices to Concessionaire shall be sufficient if sent by certified or registered mail, postage prepaid, to the following:

To Contractor:

Interflight Parking Company LLC
Attn. Tony Janowiec
710 N. Plankinton Avenue, Suite 700
Milwaukee, WI 53203
Fax, (414) 431-6556

With a copy to general counsel:

Zilber, Ltd.
Attn. Jim Young
710 N Plankinton Avenue, Suite 1200
Milwaukee, WI 53203
Fax, (414) 274-2710

or to such other respective addresses as the parties may designate to each other in writing.

32. PARAGRAPH HEADINGS

The paragraph headings contained herein are for convenience in reference and are not intended to specifically define or limit the scope of any provision of this Agreement.

33. FAMILIARITY AND COMPLIANCE WITH TERMS

Concessionaire represents that it has carefully reviewed the terms and conditions of this agreement and is familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities as authorized and required by this Agreement.

34. SUCCESSORS AND ASSIGNS

All provisions of this Agreement shall extend to bind and inure to the benefit not only of the County and of Concessionaire, but also their respective legal representatives, successors, and assigns.

35. GOVERNMENTAL FACILITIES

In the event that the Federal Government discontinues the provision and operation of air traffic controls, navigational aids, and other Airport facilities which are now or may hereafter be furnished by it, the County shall not be required or obligated to furnish such facilities and services after discontinuance thereof by the Federal Government.

36. AIRPORT SECURITY

- (1) Concessionaire covenants and agrees that it will at all times maintain the integrity of the Airport Security Plan and comply with all laws, statutes, rules, regulations and orders, including Federal Rules 49 CFR 1542, promulgated by any federal, state or local agency, authority, or officer, including the Federal Aviation Administration (FAA), the Federal Transportation Security Administration and the U.S. Department of Justice. Concessionaire, its employees agents or contractors are expressly required at all times to comply with all laws, statutes, rules, regulations and orders, including Federal Rules 49 CFR 1542, promulgated by any federal, state or local agency, authority, or officer, including the FAA, the Federal Transportation Security Administration and the U.S. Department of Justice. Should a penalty be imposed on County for an incident involving Concessionaire's breach of security, Concessionaire agrees to reimburse County for any and all such penalties including, but not limited to, civil fines which may be imposed upon the County by any state, local or federal agency, or officer, including the Transportation Security Administration.
- (2) Concessionaire acknowledges and accepts full responsibility for the security and protection of the Assigned Premises now existing or hereafter assigned to Concessionaire, and for the prevention of unauthorized access to its facilities and expressly agrees to comply with all Airport Rules and Regulations and of any and all other governmental entities that now or may hereafter have jurisdiction over such security issues. Concessionaire fully understands that the security services provided by the County are limited and

that any special security measures deemed necessary or desirable for additional protection shall be the sole responsibility of Concessionaire and shall involve no cost to the County.

37. GOVERNMENTAL RIGHTS

Nothing in this Agreement shall be construed or interpreted in any manner whatsoever as limiting, relinquishing, or waiving any of the rights or ownership enjoyed by the County in the Airport or in any manner waiving or limiting its control over the development, improvement, operation, and maintenance of the Airport or in derogation of such governmental rights as County possesses, except as may be otherwise specifically provided herein.

38. AIRCRAFT NOISE AND OVERFLIGHT AND OPERATIONS

Concessionaire recognizes that the Assigned Premises is located on an active airport and, as such, is subject to aircraft noise, vibration, exhaust, and overflight associated with the operation of the Airport. Concessionaire acknowledges that it has familiarized itself with the overflight, noise, vibration, and exhaust characteristics of the Assigned Premises and acknowledges that it realizes that such overflight, noise, vibration, and exhaust may change during the term of this Agreement. Concessionaire hereby releases the County, the State of Wisconsin, the FAA, the airlines operating at the Airport, and their respective directors, officers, employees, board members, and agents, from any and all claims, demands, suits, or causes of action for damages or injunctive relief arising out of, or in any way associated with, aircraft noise, vibration, and exhaust at, or aircraft overflight of the Assigned Premises.

It is understood between the parties that this release is a material inducement of County's decision to enter into this Agreement.

39. COUNTY'S RIGHT TO PERFORM CONCESSIONAIRE'S COVENANTS

If Concessionaire shall default in the performance of any covenant required to be performed by it by virtue of any provision in this Agreement, the County may, but shall not be obligated to, perform the same for the account and at the expense of Concessionaire after first having delivered to Concessionaire at least thirty (30) days written notice of intention to do so or such shorter written notice as may be appropriate under emergency conditions. If County at any time is compelled to pay any sum of money or to do any act which will require the payment of any sum of money by reason of the failure of Concessionaire to comply with any provision of this Agreement, or if County elects to make any such payment or to take any such action, which payment or action is reasonably necessary for the protection of the County's interest in the Assigned Premises, or if County is compelled to incur any expense, including reasonable attorneys fees, in instituting, prosecuting or defending any action or proceeding instituted by reason of any default of Concessionaire hereunder, the sum or sums so paid by County, with interest at the rate of twelve percent (12%) per annum, penalties, costs and damages, shall be deemed to be additional rent and shall be paid by Concessionaire to County on the next date following the incurring of such expenses upon which a regular monthly rental payment is due.

40. MISCELLANEOUS

This Agreement shall be interpreted and enforced under the laws and jurisdiction of the State of Wisconsin. This Agreement will not be construed more strongly against either party regardless of which party is more responsible for its preparation. This Agreement constitutes the entire understanding between the parties and is not subject to amendment unless agreed upon in writing by both parties hereto. Concessionaire acknowledges and agrees that it will perform its obligations hereunder in compliance with all applicable state, local, and federal laws, needs, regulations, and orders.

41. GENERAL PROVISIONS

A. Operations

Concessionaire acknowledges that there may be considerable changes at the Airport and disruptions due to construction during the term of this Agreement. County will endeavor to the extent practical to minimize the disruption, but County shall have no responsibility or liability for disruptions to Concessionaire's operations or temporary interruptions of Concessionaire's use of any part of the Airport due to construction activities by the County or the County's contractors or representatives.

B. Attorney's Fees

In the event any action, suit, or proceeding is brought to collect the rent or fees due or to become due hereunder or any portion thereof or to take possession of any concession space or to enforce compliance with this Agreement or for failure to observe any of the covenants of this Agreement, Concessionaire agrees to pay the County such sum as the

court may adjudge reasonable as attorney's fees to be allowed in the suit, action or proceeding.

C. Relationship of Parties

It is understood and agreed that nothing herein contained is intended or shall be construed as in anyway creating or establishing the relationship of co-partners between the parties hereto, or as constituting the Concessionaire as the agent, representative or employee of the County for any purpose or in any manner whatsoever. The Concessionaire is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

D. Severability

If any part of this Agreement shall be held invalid this does not affect the validity of the remaining parts of this Agreement, provided that such invalidity does not materially prejudice either the County or Concessionaire under the remaining parts of this Agreement.

42. FORCE MAJEURE

Neither the Airport nor the Concessionaire shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages or materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not within its control.

43. AUTHORITY

Concessionaire acknowledges that this agreement was sent for execution to the address and place (whether physical or electronic) requested Concessionaire and that the person(s) signing this amendment have the full authority to do so and to bind Concessionaire to its terms.



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EXHIBIT A
ASSIGNED PREMISES



EXHIBIT B
COUNTY'S REQUEST FOR PROPOSAL DOCUMENTS



EXHIBIT C
CONCESSIONAIRE'S PROPOSAL



Exhibit D
Monthly Report
"Calculation of Amount Due to Milwaukee County."

