



NOTICE TO BIDDERS AND/OR PROPOSERS

PROJECTS, SERVICES & SUPPLIES

The City of Tyler will accept bids and/or proposals for the following projects, services, and/or supplies in the Office of Tyler Water Utilities, 511 West Locust, Tyler, Texas 75702, ATTN: Greg Morgan until 2:00 p.m. on Tuesday, January 26, 2010, for items shown below, at which time they will be publicly opened. All interested persons may attend.

Bid/Proposal

The City of Tyler is soliciting and receiving competitive proposals until 2:00 p.m. on Tuesday, January 26, 2010, for the lease and operation of the restaurant and other related concession services at the North Side Airport Terminal building at Tyler Pounds Regional Airport, Bid Number 10-006. The area for the requested services is at the North Side Airport Terminal building as described in the bid packet. The contract will be for an initial term of three years with the City having the option of one two-year extension. The City desires that all those submitting quotations possess certain experience and qualifications to ensure high quality operation of the restaurant. In addition to obtaining the highest level of service, experience and expertise available, the City seeks to establish a strong, sound, and mutually beneficial relationship with a customer service oriented company.

Proposal documents may be obtained from the Airport Manager's Office, 700 Skyway Blvd., Suite 201, Tyler, TX 75704, telephone (903) 531-9825, during regular business hours Monday through Friday, 8:00 a.m. until 5:00 p.m. Electronic copies of the proposal documents can be obtained by contacting Davis Dickson at (903) 531-9825, or by email at ddickson@tylertexas.com, or by download from the Airport website, www.tylerairport.com. Also, a pre-bid conference for Bid No. 10-006 will be held on Tuesday, January 19, 2010, at 2:00 p.m., in the second floor conference room at Tyler Pounds Regional Airport, 700 Skyway Blvd., Suite 201, Tyler, TX 75704. The City reserves the right to accept, reject, cancel or modify any bid or proposal, waive all formalities, and to award the bid most advantageous to the City.

Tyler Morning Telegraph

1st Publication: December 29, 2009

2nd Publication: January 5, 2010

City of Tyler, Texas
Mark McDaniel
City Manager

Tyler Pounds Regional Airport
Tyler, Texas
Request for Proposals – Bid/Proposal No. 10-006
Lease and Operation of Food Concession/Vending/Gift Shop Facility
NORTH SIDE TERMINAL BUILDING

1. SOLICITATION

The City of Tyler (“City”), Tyler, Texas is soliciting competitive proposals for the lease and operation of the Food & Beverage Concession, Vending, and/or News & Retail Services Concession in the **North Side Terminal Building** at Tyler Pounds Regional Airport (“Airport”). The Restaurant / Vending Concession Lease will be for an initial term of three years with the City having the option of one two-year extension. The City desires that all those submitting proposals possess certain experience and qualifications to ensure high quality operation of the food concession. In addition to obtaining the highest level of service, experience and expertise available, the City seeks to establish a strong, sound, and mutually beneficial relationship with a customer service oriented company. We believe that this RFP is structured to allow for creativity in developing a proposal that is consistent with your potential for profit and the City’s needs.

2. HISTORY AND CURRENT SITUATION

Tyler Pounds Regional Airport has as many as 150,000 commercial passengers arriving and departing the Airport’s West Side Terminal Building each year. The General Aviation side of the Airport (near the North Side Terminal Building) handles as many as 65,000 operations per year. Many community events, conferences and company meetings also occur at the Airport resulting in potential catering opportunities. Additionally, Fixed Base Operators on the Airport have a number of corporate aircraft and chartered aircraft with the need for quality food services.

In addition to the ability to provide service on the airport, the proposed lease also allows the concessionaire to provide delivery or “to-go” services from the airport location. Parking is free for staff, customers and visitors at the North Side Terminal Building.

The restaurant at the North Side Terminal facility contains approximately one thousand eight hundred and ninety-six (1,896) square feet of floor space comprised of the kitchen, dining area, and counter area on the first floor, together with the first floor and basement storage space. Proposer must design and construct a wall with interior entrance door between the public lobby area and the restaurant subject to the “Improvements” provisions in the Restaurant/Gift Shop Lease. If the Proposer desires to sublease the airside ramp area and/or the public lobby area on the first floor of the North Side Terminal Building, a Sublease and Joint Use Agreement between the Historic Aviation Memorial Museum and the Proposer must be executed. The Museum is prepared to offer the restrooms and ingress/egress at no cost to the successful bidder of the restaurant. The restaurant operator will be responsible to keep the restrooms fully stocked and maintained at their expense.

The Airport will assist by providing the following capital items and support services:

- Partially equipped and finished Food/Beverage facility
- Marketing support from the airport on its web site
- Free parking for customers

The attached Airport Traffic Record (Exhibit A) reflects Tyler Pounds Regional's enplanement and deplanement history.

3. SCHEDULE

Date	Event
December 29, 2009	Request for quotation documents to be advertised to prospective proposers in the newspaper.
January 19, 2010	Pre-proposal meeting to be held at 2:00 P.M. in the conference room, Tyler Pounds Regional Airport, 2 nd Floor of the West Side Terminal Building.
January 26, 2010	Quotations are due at Tyler Water Utilities at 2:00 PM Central Time.
February 10, 2010	Award contract pending successful bid.

4. RESTAURANT/VENDING LEASE AGREEMENT

The Restaurant / Vending Concession Lease Agreement (Exhibit C) attached is substantially **similar** to the final agreement to be executed by the successful proponent. The City's specific goals in awarding a Lease for the operation of the restaurant include, but under no circumstances will be limited to, the following:

A. Goal.

To develop a concession/vending program that is unique, creative, and with local flavor; that offers value to passengers and users; and is on a par with the best airport concession programs for airports of similar size.

B. Program objectives.

1. Enhance our airport user and general public's experience with high-quality, attractive facilities that create a strong sense of place and are appropriate for our airport, and with food/beverage/merchandise selections that are expected and recognized by travelers.

2. Select proposers with demonstrated reputations for strong customer service, value, and excellence.
3. Incorporate national, regional and local brands as much as possible.
4. Consider catering opportunities to airport tenants as well as off-site customers.
5. The successful proposer will have the exclusive right and privilege, within its defined areas, to operate a restaurant at Tyler Pounds Regional Airport Northside Terminal.

5. MANAGEMENT SERVICES

All services normally expected for the operations of a restaurant/vending service include, but are not limited to, the following:

- A. Services of a manager, provide an adequate number of courteous, well-trained, uniformed or neatly attired personnel as required to successfully operate and maintain a restaurant. All personnel will be employees of the successful proposer.
- B. The City will not reimburse the successful proposer for any cost of licenses or registration with the State of Texas. The City will not reimburse the successful proposer for the cost of quotations.
- C. See Restaurant / Vending Concession Lease Agreement for details and complete scope of services provided.

6. DELIVERY OF PROPOSALS

An original and one copy of the quotation must be submitted in a sealed package, clearly marked on the outside with "Proposal for Airport Restaurant/Vending Service, Bid #10-006" and delivered to 511 West Locust, Tyler, TX 75702, Attn: Greg Morgan. Each quotation submitted must clearly show the proposer's company name on the outside. Facsimile quotations will not be accepted. Any quotations received **after January 26, 2010, at 2:00 p.m.** will be returned unopened. It is the sole responsibility of the proposer to have its quotation delivered to the City as specified herein on or before the above date and time. Reliance upon mail, public carrier or other delivery service is at proposer's risk. **LATE QUOTATIONS WILL NOT BE CONSIDERED.** All expenses for making a quotation to the City is to be borne by the proposer and will not be borne, charged to or reimbursed by the City in any manner or under any circumstance.

7. OBLIGATION OF PROPOSER

The proposer must become fully aware of the City's requirements for the operation of a restaurant/vending service. Failure to do so will not relieve a successful proposer of its obligation to carry out the provisions of the restaurant lease agreement and to manage the

restaurant in a manner consistent with those provisions. The proposer must be familiar and comply with all federal, state and local laws, ordinances, rules and regulations that affect in any manner the operation of the assigned areas. The proposer must have all current licenses and/or permits (local, county, State or Federal) required to operate a restaurant/vending service.

Proposers will be held responsible for having examined the details of the restaurant lease agreement. The proposer will use its personal knowledge and experience or professional advice as to the character of the services required and any other conditions surrounding and affecting the proposed type of operation.

The submittal of a quotation will be construed as evidence that all proposer obligations have been satisfied and no subsequent allowance will be made in this regard.

8. ADDENDA - CHANGES WHILE PROPOSING

No interpretation of the meaning of any part of a request for quotations, or corrections of any apparent ambiguity, inconsistency or error therein, will be made to any proposer orally. Any request for interpretations or corrections must be made in writing to:

Mr. Davis Dickson
Airport Manager
Tyler Pounds Regional Airport
700 Skyway Blvd., Ste. 201
Tyler, TX 75704

Any such request which is not received at least five (5) working days before opening of proposals will not be considered. All interpretations and supplemental instructions will be in the form of written addenda to the request for quotation documents, which, if issued, will be delivered certified mail and faxed to all known prospective proposers. However, it is the responsibility of each proposer, before submitting its quotation, to contact Davis Dickson to determine if any addenda have been issued and to make such addenda a part of its quotation. Quotations submitted will be considered as if the addenda had been received. Only the interpretation or correction given by the City in writing will be binding, and prospective proposers are advised that only the City will give information concerning, or will explain or interpret the request for quotation documents.

9. PREPARATION OF PROPOSALS

- A. All documentation submitted with this proposal shall be bound in a single folder.
- B. Proposals shall be prepared simply and economically providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of this quotation. Emphasis should be on completeness and clarity of content and ease of locating responses to requested information.

- C. A customer service summary shall be included in the proposal detailing specifically how the proposer will provide the highest level of customer service available to the users of Tyler Pounds Regional Airport.
- D. Each proposer shall include a brief proposed plan of operation including the general menu items and types of service anticipated.

10. WITHDRAWAL OF PROPOSALS

Any proposal may be withdrawn by written request of the proposer until the date and time established herein for opening of the proposals. Any proposals not previously withdrawn will, upon opening, constitute an irrevocable offer for ninety (90) days (or until one or more of the proposals have been duly accepted by the City, whichever is earlier) to provide the City the services solicited in this request for proposals.

11. RESPONSIBLE PROPOSER CRITERIA

In considering the responsibility of proposers the City will examine the following factors. The successful proponent will address each factor specifically and completely in its proposal:

- A. Degree of experience in operating a restaurant and/or vending service. Proposers are required to have a minimum of three (3) years continuous successful experience operating a restaurant and/or vending service, and must include a list of locations and their size.
- B. Operation of the restaurant and/or vending service, to include management of multiple employees, supplies and food to be well stocked and properly stored, and a schedule of daily, weekly and monthly cleaning to be performed.
- C. Provide experience with other airport concessions, if any.
- D. Proposer must provide an organizational chart including the company's management structure, and a statement of qualification and experience of the management personnel that will be directly involved in management of the restaurant.
- E. Proposer must provide three (3) references. All references will include the contact person, title, company, address, telephone and fax number for each reference given.
- F. Proposer must provide a copy of its license to do business in the State of Texas or documentation that the company is capable of becoming licensed.
- G. Proposer must submit a statement detailing any cancellation, default or notice of default for lack of performance or for any other reason at any

location in the United States within the past five (5) years.

- H. Each proposal shall include a proposed fee arrangement on Exhibit B, Page 7, that can be based on one or more of, but not limited to, the following options:
 - Flat rental fee for each year of the lease.
 - Percent of gross revenue
 - Percent of defined net revenue
 - Percent beginning at specified revenue threshold
- I. Proposer must declare outstanding obligations or contracts that might adversely affect the proposer's ability to perform the City contract.
- J. Proposer must provide copies of the last three (3) inspections by the Health Department.
- K. Proposer must state if business is a Certified Disadvantaged Business Enterprise and provide certification.
- L. All forms included herein as “Exhibit B”, as applicable, will be filled out completely and executed where indicated.

The City reserves the right to reject any or all quotations, in whole or part, and to waive any non-conformance in quotations or any other irregularities received, whenever such rejection or waiver is in the best interest of the City.

12. DISQUALIFICATION OF QUOTATIONS

The City may disqualify a proposer and reject its quotation for any of the following reasons:

- A. Submission of more than one quotation for the same work by an individual, firm, partnership or corporation under the same or different names. If a company has more than one division, only one quotation may be submitted for the company.
- B. Evidence of collusion among proposers in the preparation and submittal of any quotations.
- C. Incomplete work for which the proposer is committed by contract, which, in the judgment of the City, might hinder or prevent the prompt completion of work under the agreement if awarded to such proposer.

Failure to provide the notarized form(s) required in the quotation documents in a timely manner, or to satisfy any other requirements listed in Sections Nine (9) and Eleven (11).

Minor irregularities that do not materially affect the quotation may be waived at the sole discretion of the City.

13. REJECTIONS OF IRREGULAR QUOTATIONS

Quotations will be considered irregular and may be rejected if they show omissions, alterations of form, additions not called for, conditions, limitations, alternate quotations or other irregularities of any kind. The City reserves the right to waive any non-conformance or irregularities of quotations, or to reject any or all quotations, in whole or in part, whenever such nonconformance or irregularities are minor and such action is deemed to be in the best interest of the City.

14. DISADVANTAGED BUSINESS ENTERPRISES PARTICIPATION GOALS

It is the policy of the City to require the inclusion of firms owned and controlled by minorities or women in contract awards and projects whenever feasible. This policy is consistent with the administrative mandate set out by the United States Department of Transportation in Part 26 Code of Federal Regulations, Title 49.

15. NONDISCRIMINATION PROVISIONS

Operator, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby agree that "as a covenant running with the land";

- A. No person on the grounds of race, color, sex, creed, national origin, or disabled status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, or in the construction of any improvements on, or under such land, or the furnishing of services thereof, and
- B. That Operator shall use the premises in compliance with and conduct its operations in accordance 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, or Section 504 of the Rehabilitation Act of 1973 (23 USC 794) and 49 CFR Part 27 and as said regulations may be amended, and that Operator will comply with such enforcement procedures as the United States might demand that City take.

16. EVALUATION OF PROPOSALS AND AWARD OF CONTRACT

The City reserves the right to accept or reject any or all Proposals, in whole or in part. The City will be under no obligation or duty to award the Contract to the highest proposed monthly minimum or percentage fee, and the City reserves the right to award the Contract to the Proposer submitting the Proposal that the City, in its sole discretion,

determines will be most advantageous and beneficial to the City. The City will be the sole judge of which Proposal will be in its best interest and its decision will be final.

Proposers meeting certain ranking criteria to be determined by the City may be required to meet with the airport manager to discuss additional information. Proposers must address each of the criteria below, those criteria detailed in paragraphs nine (9) and eleven (11) herein, and provisions of the management services agreement. The City is under no obligation to contact a Proposer to obtain information required to evaluate the Proposal.

Proposals will be evaluated based on the following criteria:

1. Customer Service Summary **(30 Points)**
2. Monthly Minimum and Percentage of Gross Revenue **(10 Points)**
3. Experience of the Proposer and Management Qualifications **(25 Points)**
4. Proposed Plan of Operation **(35 Points)**

EXHIBIT A – PAGE 1

AIRPORT TRAFFIC RECORD TYLER POUNDS REGIONAL AIRPORT 2008									
MONTH	ITINERANT					LOCAL			TOTAL OPERATIONS
	Air Carrier	Air Taxi	General Aviation	Military	TOTAL	General Aviation	Military	TOTAL	
January	2	799	1,816	25	2,642	914	6	920	3,562
February	2	690	2,068	39	2,799	1,595	24	1,619	4,418
March	0	778	2,019	21	2,818	1,674	10	1,684	4,502
April	0	731	2,522	20	3,273	1,629	9	1,638	4,911
May	0	759	2,669	31	3,459	1,919	16	1,935	5,394
June	0	796	2,399	17	3,212	1,641	12	1,653	4,865
July	24	831	2,827	88	3,770	2,012	48	2,060	5,830
August	0	782	2,094	7	2,883	1,174	78	1,252	4,135
September	0	614	2,251	18	2,883	1,522	22	1,544	4,427
October	0	727	2,567	20	3,314	2,056	38	2,094	5,408
November	0	638	2,217	27	2,882	1,458	66	1,524	4,406
December	0	655	1,495	8	2,158	938	0	938	3,096
ANNUAL TOTALS	28	8,800	26,944	321	36,093	18,532	329	18,861	54,954

AIRPORT TRAFFIC RECORD TYLER POUNDS REGIONAL AIRPORT 2009									
MONTH	ITINERANT					LOCAL			TOTAL OPERATIONS
	Air Carrier	Air Taxi	General Aviation	Military	TOTAL	General Aviation	Military	TOTAL	
January	0	700	2,015	15	2,730	1,403	47	1,450	4,180
February	0	709	1,787	15	2,511	1,195	6	1,201	3,712
March	0	687	1,880	31	2,598	1,396	20	1,416	4,014
April	0	695	2,174	26	2,895	2,123	18	2,141	5,036
May	0	705	2,223	30	2,958	1,810	10	1,820	4,778
June	0	765	2,542	23	3,330	2,342	22	2,364	5,694
July	0	740	2,266	30	3,036	2,024	12	2,036	5,072
August	0	707	2,251	13	2,971	1,509	24	1,533	4,504
September	0	723	1,857	17	2,597	986	10	996	3,593
October	66	717	1,686	19	2,488	994	25	1,019	3,507
November	103	571	2,234	21	2,929	1,624	22	1,646	4,575
December	NOT YET AVAILABLE								
ANNUAL TOTALS YTD	169	7,719	22,915	240	31,043	17,406	216	17,622	48,665

EXHIBIT B – PAGE 1

REQUIRED FORMS

BUSINESS INFORMATION

1. Name of Firm (exactly as it is to appear on the Agreement):

2. Principal Office Address:

3. Telephone Number:

4. Contact Person/Title:

5. Form of Business Entity; check one and complete appropriate statement(s):

Partnership

Corporation

Joint Venture

Individual/Sole Proprietor (no additional page required)

EXHIBIT B – PAGE 2
PARTNERSHIP STATEMENT

If a PARTNERSHIP, answer the following:

1. Date of Organization?

2. General Partnership () Limited Partnership ()

3. Partnership Agreement Recorded? Yes () No ()

4. Has the Partnership done business in Texas? Yes () No ()

If Yes, when?/where?

5. Name, address, and partnership shares of each partner:

<u>NAME</u>	<u>ADDRESS</u>	<u>PERCENT OWNERSHIP</u>
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6. If any partner is not an individual, the appropriate business entity statement must also be completed for that partner.

7. A certified copy of the partnership agreement must be submitted.

EXHIBIT B – PAGE 3
CORPORATION STATEMENT

If a CORPORATION, answer the following:

1. When incorporated?

2. Where incorporated:

3. Is the corporation authorized to do business in Texas?

Yes () No () If "Yes" as of what date?

4. If Texas is not state of incorporation:

5. Address of the registered office in Texas

6. Name of registered agent in Texas at such office:

7. The Corporation is held:

Publicly () Privately ()

8. Furnish the name, title, and address of each officer, director and principal shareholders owning 10% or more of the corporation's issued stock.

DIRECTOR'S NAME	ADDRESS	TITLE
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EXHIBIT B – PAGE 4
CORPORATION STATEMENT (Page 2)

<u>OFFICER’S NAME</u>	<u>ADDRESS</u>	<u>POSITION</u>
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<u>SHAREHOLDERS</u>	<u>ADDRESS</u>	<u>PRINCIPAL PERCENT OWNERSHIP</u>
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9. If any principal shareholder is not an individual, the appropriate business entity statement must also be completed for such shareholder.

EXHIBIT B – PAGE 5
JOINT VENTURE STATEMENT

If a JOINT VENTURE, answer the following:

1. Date of Organization?

2. Joint Venture Agreement recorded? Yes () No ()

3. Have the Joint Venturers done business in Texas
 Yes () No (). If yes, when?/where?

4. Name and Address and Percent Ownership of Each Joint Venturer:

<u>NAME</u>	<u>ADDRESS</u>	<u>PERCENT OWNERSHIP</u>
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5. If any joint venturer is not an individual, the appropriate business entity statement must also be completed for such joint venturer.

6. A certified copy of the joint venture agreement must be submitted with the proposal.

EXHIBIT B – PAGE 6
FINANCIAL INFORMATION

1. Fidelity Information

Have you or any entities in which you have had an ownership interest, ever had a fidelity bond canceled or forfeited?

Yes () No ()

If yes, state name of bonding company, date, amount of bond and reason for such cancellation or forfeiture.

2. Bankruptcy Information

Have you or any entities in which you or they have had ownership interest, ever been declared bankrupt?

Yes () No ()

If yes, attach statement setting forth date, court jurisdiction, amount of liabilities and amount of assets, type (e.g., Chapter 7, 9, 11, etc.), and resolution or current status.

3. Credit References (Attach Sheet)

Provide names, titles, addresses, and phone numbers of at least three (3) persons/firms (banks and vendors) your company has done business with for at least the most recent three (3) years.

EXHIBIT B – PAGE 7
RENTAL FEE PROPOSAL FORM

Proposed Monthly Rental Fee:

Each proposal shall include a proposed fee arrangement that can be based on one or more of, but not limited to, the following options:

- A. Flat rental fee for each year of the lease
- B. Percent of gross revenue
- C. Percent of defined net revenue
- D. Percent beginning at specified revenue threshold

Please describe in detail below.

CONCESSIONAIRE SIGNATURE

CORPORATION (Please Print)

THE STATE OF TEXAS
COUNTY OF SMITH

This instrument was acknowledged before me on _____, 2_____, by _____, Concessionaire.

Notary Public in and for the State of Texas
My Comm. Expires: _____

EXHIBIT C to Request For Proposals
Bid/Proposal No. 10-006

THE STATE OF TEXAS	§	TYLER POUNDS REGIONAL AIRPORT
	§	RESTAURANT/VENDING CONCESSION LEASE
COUNTY OF SMITH	§	NORTH SIDE TERMINAL BUILDING

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FOR QUESTIONS CALL:

Airport Manager, Davis Dickson, PHONE: 903-531-9825

STATE OF TEXAS	§	CITY OF TYLER
	§	TYLER POUNDS REGIONAL AIRPORT
	§	NORTH SIDE TERMINAL BUILDING
COUNTY OF SMITH	§	RESTAURANT / VENDING CONCESSION LEASE

THIS LEASE is by and between the City of Tyler, a political subdivision of the State of Texas located in Smith County, Texas, hereinafter “City,” and _____, hereinafter “Concessionaire”.

ARTICLE I. PREMISES AND PURPOSE OF LEASE

1. Leased Areas.

In consideration of the prompt and timely payment of the rentals set out herein and the performance by Concessionaire of all of its obligations hereunder, City hereby leases unto Concessionaire and Concessionaire hereby accepts for the term and subject to the provisions hereof, the following described space:

The kitchen, dining room and counter area on the first floor of the Northside Terminal Building of Tyler Pounds Regional Airport, together with the first floor and basement storage space, said area comprising one thousand eight hundred and ninety-six (1,896) square feet of floor space. Said area is marked Exhibit “A”, attached hereto. If Concessionaire desires to lease the airside ramp area and/or the public lobby area on the first floor of the North Side Terminal Building, a separate Sublease and Joint Use Agreement will be executed between Concessionaire and the Historic Aviation Memorial Museum.

2. Restaurant Operation/Purpose of Lease.

Except where otherwise indicated, the provisions of this Lease shall apply to the leased areas in the Tyler Pounds Regional Airport North Side Terminal Building. The above-described premises shall be used solely for purposes of operating a restaurant and gift shop. The operations shall include the sale of food; non-alcoholic beverages; alcoholic beverages, where prior approval by City is obtained; candy; chewing gum; tobacco products; snack, drink and cigarette vending machines; magazines; newspapers; gifts; notions and similar items; provided, however, that Concessionaire may not install video game machines nor insurance vending machines and may not sell or offer for sale any items, goods, services or products nor use the premises for any other purposes without the prior written approval by the Airport Manager.

The concession rights herein granted to the Concessionaire shall be exclusive within the North Side terminal building with the following exceptions:

- Tenant employee vending machines, in-flight catering, catering for conferences held in the terminal (unless Concessionaire is the caterer), aviation related items and gift concessions providing non-competitive items.

- City's other tenants may, at City's option, be granted the right to operate food and beverage vending facilities for their employees, but not for the general public, and not in locations to which the general public has access without the first refusal option to Concessionaire. Concessionaire shall not have the exclusive or first right to provide such services to said tenants.
- The City has the option of allowing food service to the public in the West Side Commercial Terminal building.
- Concessionaire has the right to perform food delivery and catering services from the leased premises to locations within and outside the airport.
- Concessionaire agrees to maintain and operate a clean restaurant with high quality food and service on the premises. Concessionaire may be required to prepare and furnish in advance to the Airport Manager, a list of the items, goods, services or products to be sold by Concessionaire on the premises and the prices to be charged therefore, and the list shall be subject to the reasonable approval or disapproval of the Airport Manager.

The list of items to be sold and prices charged shall be subject to reconsideration and revision, but revisions shall not become effective until placed in writing and signed by the Airport Manager. Items, goods, services or products not reflected on said list may be sold by Concessionaire from time to time at prices comparable to those charged for regularly sold items, but not to the exclusion of any items, goods, services or products on said list.

In each location and on each day, Concessionaire shall operate during those hours as are necessary to serve the public demand adequately; as said demand may be reasonably determined and re-determined by the Airport Manager. Concessionaire may advise the Airport Manager regarding optimum hours of operation.

The Airport Manager may, on 30-day notice to Concessionaire, require earlier opening times or later closing times for any location. Notwithstanding the above, the Airport Manager may on 72 hours notice to Concessionaire, require earlier opening times or later closing times for any location for brief, special occasions only (e.g., grand openings, holidays, etc.). Concessionaire shall comply with said hours. The Airport Manager may, from time to time, authorize a later opening or earlier closing time for any location, provided it first finds that Concessionaire has submitted adequate justification therefor.

Any operations hereunder by Concessionaire without an approved schedule of hours of operation and an approved list of items to be sold and prices to be charged, or any failure by Concessionaire to conform to such schedules, shall constitute a breach of this lease and shall be cause for termination by City.

Concessionaire further agrees that it will provide an adequate number (minimum of two (2)) of courteous, well trained, hygienic and neatly attired personnel sufficient to meet the high standard of service to the public in the restaurant.

Concessionaire may not do or permit to be done anything in or upon any portion of said building or bring or keep anything therein or thereon which will in any way conflict with the conditions of any insurance policy upon the building or any part thereof, or in any way increase the rate of fire insurance upon the building or on the property kept therein or in any way obstruct, injure, annoy or interfere with the rights of the other tenants of said building.

3. Improvements.

Terminal Building. The provisions of this Section shall apply to the Airport North Side Terminal Building only.

1. Concessionaire shall design and construct the facilities as proposed by Concessionaire and accepted and approved by City. The Concessionaire shall accept such premises "as is". Concessionaire shall provide all improvements which are necessary to operate said concession to the satisfaction of City, including all improvements proposed to be provided in its proposal to City and accepted by City. Concessionaire shall design and construct a wall with interior entrance door between the public lobby area and restaurant. Said wall design and construction shall be subject to all provisions of this section.
2. Concessionaire guarantees that it will make capital investments for said concession.
3. Construction work done, equipment supplied and installed, and interior design and decor furnished by Concessionaire pursuant to this Section shall be at its sole cost and expense, free and clear of liens for labor and material and Concessionaire shall hold City harmless from any liability in respect thereto.
4. Prior to the commencement of any construction by Concessionaire, Concessionaire shall furnish, at its sole cost and expense, both Performance and Payment Bonds in the principal sum of the amount proposed by Concessionaire in Article IV, Section 15 herein, or the security deposit for said amount acceptable to the Airport Manager, to guarantee compliance with this Section. This Bond shall be in a form acceptable to City and be issued by a surety company authorized and licensed to transact business in the State of Texas and be for the full amount of the proposed improvements with City of Tyler as obligee conditioned upon full, faithful and satisfactory performance by Concessionaire of its obligations to construct and install the aforementioned facilities and improvements. The principal amount of said Bond or other security deposit, however, may be reduced during the term hereof as Concessionaire completes the improvements contemplated thereby.
5. Prior to any work being done, Concessionaire shall obtain City's written approval of all plans, and shall obtain other Permits and approval required by law.
6. Prior to the construction and installation of improvements including furniture, furnishings, and equipment, Concessionaire shall first prepare an overall program including a time schedule for same, which shall be subject to approval of City. Such schedule shall, if such improvements exceed \$15,000, include as a minimum the following milestones: (1) Conceptual Design; (2) Design Development; (3) Construction Documents; (4) Plan Check and

Permit; (5) Bid; (6) Construction; and (7) Date of Beneficial Occupancy (DBO).

7. Concessionaire shall provide distribution of utilities **within the leased premises**.
8. Concessionaire shall, at its own cost and expense, employ competent architects, engineers and/or interior designers who will prepare architectural, interior and engineering designs, including detailed plans, specifications, and cost estimates of all concession improvements, decor and equipment to be installed in the concession areas. Concessionaire shall at its own cost and expense and prior to the start of construction obtain all necessary permits. Concessionaire shall, if such improvements exceed \$15,000, submit two (2) sets of plans, specifications and/or cost estimates for review and approval by City at each milestone, including the Overall Program, Conceptual Design, Design Development, and Construction Documents phases of the project. All plans, specifications, equipment, interior design and decor and cost estimates shall be first submitted to City for written approval before Concessionaire awards or lets any contract for the construction of said concession improvements, enters into contracts for the purchase of equipment in amounts exceeding \$30,000 to be installed in the concession areas, or enters into any contracts for the installation of the interior decor and design therefore.
9. The City and/or City's Design Architects shall review each submittal and may reject any such submittal and require Concessionaire to resubmit design proposals until they meet with City's approval if such approval is required hereunder. Concessionaire shall include in the project schedule the following minimum review times:
 - Overall Program.....14 Calendar Days
 - Conceptual Design.....14 Calendar Days
 - Design Development.....21 Calendar Days
 - Construction Documents.....21 Calendar Days

City shall return one set of plans and specifications to Concessionaire with written comments within the above timeframe. Concessionaire shall incorporate these comments. Concessionaire shall obtain written approval from City and shall obtain approvals from applicable City departments before letting of contracts for the construction of said concession improvements.

10. All structural or other improvements, equipment and interior design and decor constructed or installed by Concessionaire in the concession areas, including the plans and specifications therefore, shall in all respects conform to and comply with all applicable federal, state, Smith County Public Health District, and City statutes, ordinances, building codes, orders, rules and regulations governing the concession areas and Concessionaire's operations therein. The

approval by City provided above shall not constitute a representation or warranty as to such conformity or compliance, but responsibility therefore shall at all times remain in Concessionaire.

11. Concessionaire shall require by any contract that it awards in connection with the structural or other improvements, the installation of any and all equipment and the interior designing and decor, that the contractor doing, performing or furnishing the same shall comply with all applicable Federal, State, Smith County Public Health District, and City statutes, ordinances, codes, orders, rules and regulations, and shall submit to City evidence of required insurance coverage.
12. Upon completion of the concession improvements, Concessionaire shall, within 60 days furnish City, at no charge: (1) a certificate certifying that the improvements have been constructed in accordance with the approved plans and specifications and in strict compliance with all applicable Federal, State, Smith County Public Health District, and City laws, rules, ordinances and governmental rules, regulations and orders; (2) two complete, reproducible sets of as-built drawings covering the structural and other improvements installed by Concessionaire in the concession areas plus the location and details of installation of all equipment, utility lines, heating, ventilating, air-condition ducts and related matters. Concessionaire shall keep said drawings current by updating the same in order to reflect thereon any changes or modifications which may be made in or to the leased premises; and (3) as installation of the foregoing structural and equipment items, including counters, partitions and furnishing and the interior design and decor is completed, duplicated receipted invoices on all materials and labor costs incurred in their installation which Concessionaire enters on its records as representing its capital expenditures in the concession areas.

4. **Signs and Advertising.**

Concessionaire shall have the right to advertise brand-name products on its packaging and within the premises only upon the written approval of the Airport Manager. The installation and operation of identifying signs on the leased premises, the general type, number, design and method of installation and removal and location of such signs, is subject to approval of the Airport Manager, such approval not to be arbitrarily withheld. Such approval may be withheld if, in the sole discretion of the Airport Manager, the advertising/signage rights requested by Concessionaire would cause damage or injury to persons, would conflict with Airport operations, would cause distractions, obstructions or visual clutter, or would conflict with rights granted under any Airport advertising concession agreement.

Concessionaire may, **at its own expense**, with prior written approval by the Airport Manager, install signs only within the premises indicating Concessionaire's business. No Signs shall be installed without the prior written consent of the Airport Manager or authorized representative.

Concessionaire agrees to reimburse City for any damage to the Airport Terminal building resulting from the installation, maintenance or removal of any such signs.

ARTICLE II. TERM/TERMINATION

5. Term (Option).

The term of this lease shall be for a period of approximately three (3) years commencing upon the date of signature by both parties and ending on _____.

If Concessionaire performs all of its duties hereunder during the term hereof, then upon written application not less than thirty (30) days nor more than ninety (90) days before the end of said term, Concessionaire shall have the first right of refusal to execute a new lease for an additional two-year period should City determine to lease said premises, with such lease for such additional period to be on such terms as City may prescribe and with the rentals provided for therein to be based on the bid.

6. End of Lease.

Concessionaire further agrees that it will, at the end of the term or renewal term or upon termination, peaceably deliver to City the leased premises and all appurtenances or improvements as stated herein in a good state of repair, vacant, unencumbered, and in good and tenantable condition, reasonable wear and tear excepted.

Upon termination of this Lease, Concessionaire shall remove all personal property and only those improvements purchased by Concessionaire from the leased premises within ten (10) days after said termination. If Concessionaire fails to so remove its personal property, City may elect to retain possession of such property or may sell the same and keep the proceeds after first applying them to any payments in arrears, or may have such property removed at the expense of Concessionaire.

7. Holding Over.

If Concessionaire continues to occupy the leased premises beyond the term of the Lease or any extension thereof, such holding over shall not constitute a renewal of the Lease but shall be a day to day tenancy only, which may be terminated at any time by City.

ARTICLE III. ASSIGNMENT/TERMINATION

8. Personal Property Lien.

Concessionaire hereby grants a lien to the City upon all Concessionaire's personal property in or on the premises as a possessory pledge to secure the timely performance by Concessionaire of all of its obligations hereunder, and, upon default by Concessionaire and/or termination of this Lease, City may seize and hold all of Concessionaire's personal property on the above-described premises if necessary to secure such performance, to sell same at public or private sale and to apply the proceeds thereof first to pay the expenses of sale, and to pay all amounts due to City hereunder, and returning the balance

remaining, if any, to Concessionaire A copy of this lease shall be the only warrant required.

9. Termination by Either Party.

Either party may terminate this lease at any time upon ninety (90) days written notice delivered to the other.

10. Termination by City.

Any breach, default or failure by Concessionaire to perform any of its duties hereunder shall be cause for termination of this Lease by City as set forth in this Section. City shall deliver to Concessionaire thirty (30) days prior written notice of City's intention to so terminate this lease including a reasonable description of the breach or failure. If within said thirty (30) days Concessionaire fails or refuses to cure same to the satisfaction of City, then City may, without further notice to Concessionaire and without being deemed guilty of trespass and without any liability whatsoever, declare this lease terminated and enter upon and take full possession of the leased premises, by force or otherwise, and without legal process, to remove any and all parties who may occupy any part of said premises and any or all fixtures and equipment not belonging to City that may be found within or upon said premises without City being liable for damages therefor. Upon termination of this lease by City, all rights of Concessionaire hereunder shall cease and Concessionaire shall immediately vacate said premises and may make no claim of any kind against City, its officers, agents, servants or employees, by reason of such termination or any act incident thereto.

Any failure by City to so terminate this lease or acceptance by City of rentals for any period of time after such breach, default or failure by Concessionaire shall not be a waiver by City of any rights to terminate this lease for any subsequent breach, default or failure.

11. Termination by Concessionaire.

This Lease is subject to termination by Concessionaire, at Concessionaire's option, upon any of the following events:

- a. The permanent abandonment of the Airport as a public airport.
- b. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport or any substantial part(s) thereof, in such a manner as to restrict substantially Concessionaire for a period of at least ninety (90) days from operating thereof.
- c. Damage to Concessionaire's improvements, by any instrumentality, that renders such improvements unacceptable for the purpose for which they were intended.
- d. Breach by City of any of the lease terms herein and the failure of City to remedy such breach for a period of thirty (30) days after receipt of a written notice of such breach.
- e. Concessionaire determines that its continued occupancy or use has become uneconomical.

Concessionaire may exercise such rights of termination upon sixty (60) days prior written notice to City. The lease shall terminate as of the date provided in the notice. Rentals due shall be payable up to the date of said termination.

12. Damage to Leased Area.

City agrees that if the leased premises or any part thereof shall at any time during the term of this lease be damaged or destroyed by fire or other casualty so as to render same unfit for use and occupancy, then the rent, or a just and proportionate part thereof according to the character and extent of damage sustained, shall be waived until such time as the damage is repaired and the premises restored. If the premises have been substantially destroyed, then, at the election of Concessionaire, this lease may be terminated pursuant to Section 11.

13. Assignment.

Concessionaire shall not at any time delegate its duties or assign its rights under this lease or any part thereof without the prior written consent of the Airport Manager and any such attempted delegation or assignment without such prior written consent shall be void.

Upon City's written consent to assignment, Concessionaire shall be relieved of any further obligation hereunder, and the City will look solely to such approved assignee for performance of this lease subsequent to the date of such approved assignment. Said assignee shall not assign said lease except with the prior written approval of the City Council, and any assignment by Concessionaire shall contain a clause to this effect.

All of terms herein contained shall be binding upon and shall inure to the benefit of successors and assigns of the respective parties hereto.

14. Bankruptcy.

Concessionaire agrees that if any proceedings in bankruptcy or insolvency are instituted against Concessionaire, whether voluntary or involuntary, City may, at its option, declare this lease terminated and upon such declaration, Concessionaire agrees to deliver immediate possession of the premises to City.

ARTICLE IV. FEES/PAYMENT

15. Rental Rate and Payment Schedule.

As consideration for this lease, Concessionaire agrees to pay to City a monthly rental of \$ _____ per month (refer to Exhibit B for Fee Schedule) plus _____ percent of the Concessionaire's gross revenue above \$ _____ per month as described in Article IV, Section 16, of this Lease.

Concessionaire shall be responsible for all electricity usage by Concessionaire based on electric meter readings at the North Side Terminal Building. Concessionaire shall be responsible for payment of natural gas and telephone charges, including service account

charges, for the kitchen, dining room and counter area on the first floor of the North Side Terminal Building.

Such rental shall be paid on or before the tenth (10th) day of each calendar month. (First rental payment due on the 10th day of the second month.) In addition to the monthly rental installments, Concessionaire promises to pay a late charge at the rate of ten percent (10%) of the monthly rental for each month or portion of the month that any monthly installment is past due, and a separate computation and payment of such late charge shall be made for each monthly installment that is past due so that if two monthly installments are past due, then two separate late charges shall accrue and so on.

Payments shall be made to Airport Manager's Office, 700 Skyway Blvd. Suite 201, Tyler, Texas 75704, Phone (903) 531-9825. Questions about payment or delinquent bills should be made to the Airport Manager.

16. Gross Receipts.

Concessionaire shall furnish to City a verified statement of gross receipts. The term "gross receipts" is used herein in a comprehensive and all-inclusive sense and shall include all monies, goods and services, or obligations to furnish same, received by or accruing to Concessionaire for services rendered or products sold under this lease. Such sales may be either for cash or credit. All sales whether for cash or credit shall be immediately and accurately recorded by Concessionaire at the time the same is completed, and for the purpose of calculating gross receipts for any period in connection with this lease. A sale on credit shall be deemed to be completed at the time the credit was extended, regardless of whether the account is ever paid, and not at the time of payment, delivery or any other time. A cash sale shall be deemed to be completed when goods or services are furnished by Concessionaire. Any sale made by Concessionaire in exchange for goods or services shall be deemed to be a cash sale for the market value of the goods or services.

Gross receipts shall exclude revenue from the following:

- a. Retail sales taxes, excise taxes or related direct taxes on the consumer which are collected by Concessionaire on such sales, provided all such taxes are properly accounted for and recorded.
- b. The amount of any gratuity paid or given by patrons or customers to employees of Concessionaire.

Within one hundred twenty (120) days after the end of Concessionaire's fiscal year, and City provides prior written request, Concessionaire agrees to furnish City with the gross receipts reported under this lease. City shall have the right to perform its own audit or routine inspection of Concessionaire's books at reasonable times throughout the term of this lease at City's sole cost and expense.

ARTICLE V. OTHER OBLIGATIONS OF CONCESSIONAIRE

17. Removal of Garbage and Refuse.

Concessionaire shall strictly comply with all Airport and other rules and regulations regarding the disposition of trash and garbage, shall regularly remove from all concession premises to the garbage or refuse disposal area all rubbish, refuse and garbage, and shall remove the accumulation of all such material in said garbage or refuse disposal area at frequent intervals. Accumulation of trash, boxes, cartons, barrels or other similar items shall not be permitted in any public area at Airport. Concessionaire shall not remove trash or garbage through public or common areas in the North Side Terminal Building (including concourses and sidewalks).

18. Cleaning.

Concessionaire shall, at all times and at its expense, keep and maintain the concession premises, including all structural and other improvements installed on the premises together with all of its fixtures, plate and mirror glass, equipment and personal property therein, in good repair and in a clean and orderly condition and appearance. Concessionaire shall keep the areas immediately adjacent to the exits and entrances to the concession premises clean and orderly and free of obstructions.

Concessionaire shall maintain and repair all interior areas and surfaces of the leased premises, including sweeping, washing, servicing, repairing, replacing, cleaning and interior painting that may be required to properly maintain the premises in a safe, clean, wholesome, sanitary, orderly and attractive condition. Concessionaire shall establish an adequate preventive maintenance program and the provisions of the same shall be subject to periodic review by City. Said program shall include, without limitation, the cleaning and repair of all floors, interior walls, ceilings, lighting, decor and equipment. Regardless of Concessionaire's compliance with its preventive maintenance program, Concessionaire shall clean such surfaces and equipment immediately upon being instructed to do so by City or by other governmental agencies having such authority.

Concessionaire shall be responsible for the repair and maintenance of all plumbing within the leasehold area. Concessionaire is responsible for all material that is deposited in the plumbing system from its leasehold and for cleaning the grease traps within its leasehold as required by City Ordinances and Smith County Health requirements. Concessionaire is responsible for the repair and maintenance of all sewer lines from the leasehold to the point that the line connects to the Airport's main sewer line. Concessionaire is responsible for the repair and maintenance of all domestic water lines, hot and cold, from the point of connection of the Airport's water meter throughout the leasehold. If Concessionaire fails to maintain the plumbing system or places liquid, grease, debris, etc. that results in stoppage or damage to Airport's maintained plumbing, Concessionaire will be billed for the cost thereof, plus fifteen (15%) percent of the cost of clean-up for administrative overhead for managing/coordinating such services, to be paid by Concessionaire to City on demand. It is further agreed that all exhaust vents will be cleaned by Concessionaire to properly maintain sanitary and operational requirements of the ventilation system. If Concessionaire fails to perform such cleaning or maintenance

as recommended by City, City may, within its discretion, perform such cleaning or maintenance as it may deem necessary for and on behalf of Concessionaire, and, in such event, the cost of services plus fifteen (15%) percent of the cost of clean-up for administrative overhead for managing/coordinating such services shall be paid by Concessionaire within ten (10) days following completion.

The City's goal is to maintain a pest free environment within the entire terminal building. Concessionaire shall be solely responsible for a pest free environment within **its leasehold area** by maintaining its own pest control services, in accordance with the most modern and effective control procedures. All materials used in pest control shall conform to Federal, State, and City laws and ordinances. All control substances utilized shall be used with all precautions to obviate the possibility of accidents to humans, domestic animals and pets. Whenever City deems that pest control services must be provided to a building or area that includes premises under this Agreement, Concessionaire shall pay for the costs of services provided for its premises under this Agreement.

City reserves the right to review Concessionaire's receipts of maintenance charges in the leased premises to ensure that systems are being maintained properly.

19. Language.

Concessionaire agrees that it shall not permit the use of loud, abusive, foul or obscene language by its employees on the leased premises, nor shall Concessionaire permit any unlawful, obscene or offensive acts or conduct by its employees on said premises. The performance of such obligation by Concessionaire's employees shall be determined at the sole discretion of the City. Upon written notice by City to Concessionaire that any person employed by Concessionaire at the Airport is, in City's opinion, detrimental to the best interests of the Airport, Concessionaire will respond in writing to Airport Manager within forty-eight (48) hours of its response and action.

20. Compliance With Rules.

Concessionaire agrees to comply with all federal, state and local laws, including all City ordinances and the City Charter, all orders, rules and regulations of the City Police and Fire Departments and the Smith County Public Health District, all rules and regulations established by the Airport Manager for the operation of the Airport and all Airport rules and regulations adopted by the City Council as such laws, orders, rules and regulations exist or may hereafter be amended or adopted. It is agreed that if City calls the attention of Concessionaire to any such violation by Concessionaire, or any of Concessionaire's officers, agents, servants, employees, contractors, subcontractors, licensees or invitees, Concessionaire shall immediately desist from and correct such violation.

21. Permits.

Concessionaire shall at its own responsibility and expense obtain and keep in effect all licenses and permits necessary for the operation of its business on the leased premises, and shall pay for and remit to the appropriate authorities all applicable taxes owing in connection with its operation under this lease.

22. No Lien.

Concessionaire agrees that it has no power to do any act or make any contract that may create or be the foundation for any lien upon the property or interest in the property of City and any such contract or lien attempted to be created shall be void. Should any such purported lien be created or filed, Concessionaire, at its sole cost and expense, shall liquidate and discharge same within ten (10) days next after filing thereof, and should Concessionaire fail to discharge the same, such failure shall constitute a breach of this lease.

23. Nondiscrimination.

Concessionaire, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby agree that:

- (1) no person on the grounds of race, color, sex, creed, national origin, or disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;
- (2) that in the construction of any improvements on or under such land, or in the furnishing of service thereof, no person on the grounds of race, color, sex, creed, national origin, or disabled status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;
- (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 VII of the Civil Rights Act of 1964, and as said Regulations may be amended, and that Concessionaire will comply with such enforcement procedures as the United States might demand that City take; and
- (4) that the Concessionaire shall conduct its operations in accordance with the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 701 et. seq.) 49 CFR Part 27, the Americans With Disabilities Act (ADA) at 42 U.S.C. Sec. 12101 et. seq., and the Civil Rights Act of 1991 at 42 U.S.C., Sec. 1981 et. seq., and will assure that no qualified person with a disability shall be excluded from participation, be denied the benefits of, or otherwise subjected to discrimination, including discrimination in employment.

This lease is made with reference specifically to the City Manager's Policy Statement on Equal Employment Opportunity, and Concessionaire hereby agrees that Concessionaire, its officers, agents, servants and employees, have fully complied with all provisions of same and that no person has been discriminated against by either Concessionaire, its officers, agents, servants or employees.

24. Restaurant Manager.

A condition precedent to the lease is that at all times during the term of this lease, Concessionaire maintains a restaurant manager responsible for the leased premises with a minimum of three (3) years experience. A restaurant manager is not required on the

premises at all times of operation unless required by 30 day written notice from the Airport Manager.

25. Other Payments Timely Made.

Concessionaire agrees that no payments owed by Concessionaire of any nature whatsoever to City, the Tyler Independent School District, or Smith County, including payment in advance for service charges, such as garbage collection, or any other sums of any character, shall become delinquent.

ARTICLE VI. INSURANCE/INDEMNITY/BOND

26. Type and Amount. Pursuant to City Code Section 12-33, Concessionaire shall provide and maintain, at its own expense, the following types and amounts of insurance, during the term of this lease:

<u>TYPE</u>	<u>AMOUNT</u>
1) Comprehensive General (Public) Liability - to include (but not limited to) the following:	<u>Bodily Injury:</u> \$500,000 per person \$1,000,000 per occurrence and
a) Premises/operations	<u>Property Damage:</u>
b) Independent contractors	\$500,000 per occurrence or
c) Personal injury liability/ contractual liability (insuring indemnity provision within this contract)	Combined Single Limit for Bodily Injury and Property Damage: \$1,000,000
AND, where the exposure exists, coverage for:	
d) Products/Completed operations	
e) Explosion, Collapse and Underground Property Damage	
2) Worker's Compensation and Employer's Liability (where required by state law)	Statutory \$500,000 per occurrence

The preceding amounts notwithstanding, the City Council reserves the right to increase the minimum required insurance to be effective thirty (30) days after notice is sent to the address provided herein. If City exercises the right to increase minimum insurance amounts, Concessionaire may choose to either comply with the increase or cancel this lease with no penalty.

The procuring of such policy of insurance shall not be construed to be a limitation upon Concessionaire's liability or as a full performance on its part of the indemnification

provisions of the lease. Concessionaire's obligations to the City are, notwithstanding said policy of insurance, for the full and total amount of any damage, injury or loss as provided under the lease.

27. Other Insurance Requirements.

Prior to the lease effective date, Concessionaire shall furnish to City Clerk certificates or copies of the policies, plainly and clearly evidencing required insurance, and thereafter new certificates *prior to the expiration date of any prior certificate*. Concessionaire has sole responsibility to provide this necessary information and failure to comply timely with the requirements of this article shall be cause for termination of this Lease, under the provisions of the termination clause.

Insurance required herein shall be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies shall be subject to examination and approval by the City Attorney's Office for their adequacy as to form, content, form of protection, and providing company.

Insurance required by this Lease for the **City as additional insured** shall be primary insurance and not contributing with any other insurance available to City, under any third party liability policy.

Concessionaire further agrees that with respect to the above required insurance, the City shall:

1. Be named as additional insured/or an insured, as its interest may appear; and
2. Be provided with a waiver of subrogation; and
3. Be provided with 30 days advance notice, in writing, of cancellation or material change.

If either requirement #1 or #2 require the payment of additional premiums by Concessionaire, Concessionaire may present such information to the City Council for its reconsideration. CITY will not be responsible for any of Concessionaire's insurance costs.

WHENEVER A CONCESSIONAIRE IS UNABLE TO SHOW PROOF OF INSURANCE REQUIRED AND AFTER TEN (10) DAYS PRIOR NOTICE, THEN THE CITY MANAGER SHALL HAVE THE AUTHORITY TO SUSPEND TEMPORARILY CONCESSIONAIRE'S AIRPORT ACTIVITIES ON A DAILY, OR PORTION OF A DAY, BASIS UNTIL PROOF OF REQUIRED INSURANCE IS PROVIDED. THIS REMEDY IS IN ADDITION TO ALL OTHERS HEREIN AND IS INTENDED TO OBTAIN COMPLIANCE WITHOUT AND BEFORE TERMINATION OF THE LEASE.

28. Indemnity.

It is agreed for all purposes hereunder, Concessionaire is and shall be an independent contractor and shall not, with respect to its acts or omissions be deemed an agent or employee of City.

As required by City Code Section 12-11.d., Concessionaire agrees to indemnify, hold harmless and defend City, its officers, agents and employees, from and against all liability for any and all claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorney's fees and other reasonable costs occasioned by Concessionaire's occupancy or use of the premises and/or activities conducted in connection with or incidental to this lease and arising out of or resulting from the intentional acts or negligence of Concessionaire, its officers, agents or employees, including all such causes of action based on common, constitutional, or statutory law, or based upon the negligent or intentional acts or omissions of Concessionaire, its officers, agents, employees, or visitors.

Concessionaire further agrees that it shall at all times exercise reasonable precautions for the safety of its officers, agents, employees, customers, and visitors, as well as their property, while in or on the leased premises. It is expressly agreed that City shall not be liable or responsible for the negligence of Concessionaire, its agents, servants, employees, customers, and visitors. Provided, however, nothing herein shall be construed to create a duty owed by Concessionaire to third persons where no such duty exists by law.

Further, City assumes no responsibility or liability for harm, injury, or any damaging events which are directly or indirectly attributable to premises defects in improvements constructed by Concessionaire which may now exist or which may hereafter arise upon the leased premises, any and all such defects being expressly waived by Concessionaire. Concessionaire agrees that this indemnity provision shall apply to any and all claims, suits, demands, and/or actions based upon or arising from any such premise defects or conditions, including but not limited to any such claim asserted by or on behalf of Concessionaire or any of its members, agents, employees, customers, or visitors.

It is further agreed with respect to the above indemnity, that the parties will provide the other prompt and timely notice of any event covered which in any way, directly or indirectly, contingently or otherwise, affects or might affect the parties, and City shall have the right to compromise and defend the same to the extent of its own interests. Provided, however, nothing in this lease shall be construed as obligating Concessionaire to indemnify City for the negligence or actions of City, its agents, servants, or employees, or third parties over whom Concessionaire has no right of control.

ARTICLE VII. OBLIGATIONS OF CITY

29. City Supplied Equipment.

City shall make available for Concessionaire's use the restaurant equipment and other items listed in Exhibit C and incorporated herein, but City makes no warranty as to the condition thereof. Maintenance of equipment and other items shall be the responsibility of Concessionaire. Upon termination of this Lease, all items listed in

Exhibit C shall be returned to City in as good condition as at the time of execution of this lease, reasonable wear and tear excepted.

30. Parking.

Concessionaire shall have the privilege, upon payment of the rental fees described herein, to use designated spaces in the employee parking area at the Airport for the parking of its employees, subject to all City regulations and all applicable laws.

ARTICLE VIII. GENERAL PROVISIONS

31. Inspection.

City, through its authorized representatives, shall have the full and unrestricted right to enter the leased premises for the purpose of doing any and all things which City is authorized or required to do under this lease or which may be deemed necessary for the proper operation of the Airport.

32. Applicable Law and Venue.

This lease and all transactions made hereunder shall be construed and governed according to Texas law. Venue for any legal proceeding shall be in Smith County, Texas.

33. Attorney Fees.

In any action brought by City for the enforcement of the obligations of Concessionaire, City shall be entitled to recover interest and reasonable attorneys' fees.

34. Severability.

If any provision herein contained is held to be invalid by a court of competent jurisdiction, such invalidity shall in no way affect any other provision, which shall remain in full force and effect.

35. Entire Lease.

This lease constitutes the entire lease by the parties hereto concerning the premises and any prior or contemporaneous, oral or written agreement which purports to vary from the terms hereof shall be void.

36. Federally Required Assurances.

The Concessionaire, for itself, its heirs, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby agree, as a covenant running with the land, that if facilities are constructed, maintained, or otherwise operated on the leased premises, for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the U.S. Department of Transportation and the Americans With Disabilities Act, 42 U.S.C. Sec. 12101 et. seq., and as said Regulations may be amended.

37. **Utilities.**

Concessionaire will be responsible for the costs of telephone and electricity for the leased premises in the North Side Terminal Building.

38. **Notice.**

Whenever any notice or payment is required by this Lease to be made to the parties hereto, such notice or payment shall be enclosed in an envelope with sufficient postage attached to ensure delivery and deposited in the United States mail, addressed to:

Airport Manager
City of Tyler
700 Skyway Blvd., Suite 201
Tyler, Texas 75704
(903) 531-9825

and notices, consents and approval to Concessionaire addressed to:

Phone: _____

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

39. **Security.**

Concessionaire shall be responsible for fully complying with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws and/or orders of any federal, state and /or local government entity regarding airport and/or airfield security.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed
this _____ day of _____, 2_____.

CITY OF TYLER, TEXAS

CONCESSIONAIRE

BY: _____
MARK MCDANIEL, CITY MANAGER

BY: _____

ATTEST:

ATTEST:

Cassandra Brager, CITY CLERK

APPROVED:

CITY COUNCIL APPROVAL _____
AIRPORT MANAGER (Airport Board met on
_____ and their recommendation is
Approve/Disapprove)

APPROVED:

CITY ATTORNEY

THE STATE OF TEXAS
COUNTY OF SMITH

This instrument was acknowledged before me on _____,
2_____, by _____, Concessionaire.

Notary Public in and for the State of Texas
My Comm. Expires: _____

EXHIBIT A

NORTHSIDE TERMINAL BUILDING

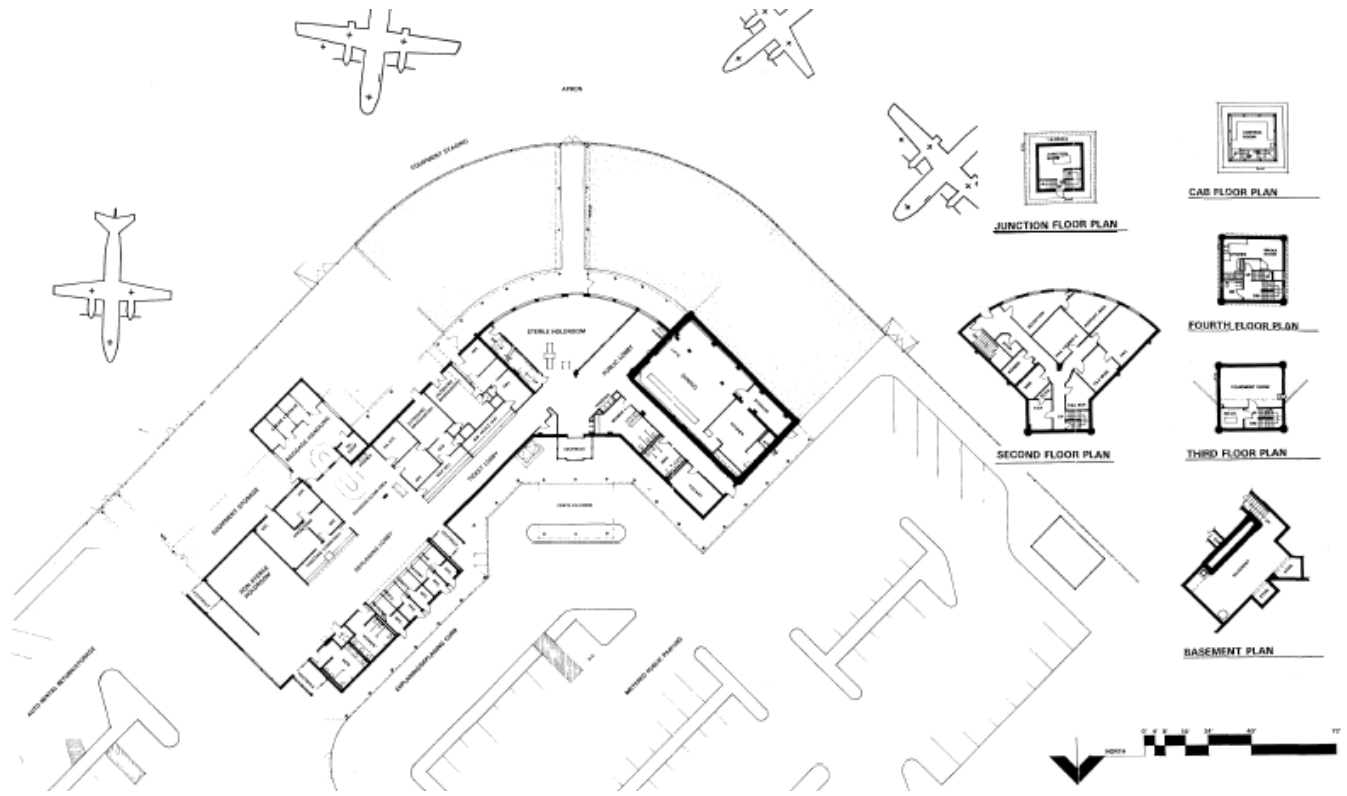


Exhibit B
Monthly Rental Fee Schedule

	2010	2011	2012	2013	2014
Jan					
Feb					
Mar					
Apr					
May					
Jun					
Jul					
Aug					
Sep					
Oct					
Nov					
Dec					
Total					

EXHIBIT C

List of Airport Restaurant Equipment Owned by the City of Tyler

<i>Item</i>	<i>Description</i>	<i>Qty</i>	<i>Serial #</i>	<i>Details</i>
1	Vent-A-Hood	1		Stainless Steel, with Fire Suppression System
2	Jade Refrigeration Ice Chest	1		42" x 18", mounted in counter
3	Designers Choice 3-compartment sink	1		Stainless Steel, 6' x 2', floor stand
4	Sink, 3-compartment	1		Stainless Steel, 4' x 2', floor stand
5	Hand sink	1		Stainless Steel, 12" x 12", mounted in counter
6	Porcelain hand sinks	2		Wall-mounted, 18" x 18"
7	Sink, 3-compartment	1		Stainless Steel, 9' x 2', floor stand
8	Mop Sink, PVC	1		2' x 2', floor stand
9	50-gallon natural gas Rheem hot water heater	1	RHNG 0801142665	Model #41V50, Roof-vented
10	Espresso Machine	1		Rancilio Group Automati
11	Coffee Grinder	1		Fiorenzato
12	2-Burner	1	050010004002	12" Natural Gas
13A & 13B	Fryer	2	03146401	W/SS Tank, Natural Gas