



SAN JOAQUIN COUNTY
PURCHASING AND SUPPORT SERVICES
PURCHASING DIVISION

David M. Louis, C.P.M., CPPO, CPPB
Director

Jon Drake, C.P.M.
Deputy Director

January 9, 2012

TO: ALL PROSPECTIVE BIDDERS

FROM: REQUEST FOR PROPOSAL NO. 11-19
AIRPORT TERMINAL HOLDROOM FOOD & BEVERAGE CONCESSION PERMIT

Ladies and Gentlemen:

Enclosed please find an invitation to bid with a bid form, a sample Holdroom Food and Beverage Concession and Permit for Commercial Activities contract and job specification.

Sealed responses are to be received no later than **February 21, 2012 at 4:00 p.m. PST**. Please return your Proposal in a sealed envelope with the RFP number and the date and time of RFP opening.

Mail or deliver your response by the above date and time to the following address:

San Joaquin County
Purchasing and Support Services
County Administration Building
44 N. San Joaquin Street, Suite 540
Stockton, CA 95202

****PRE-PROPOSAL CONFERENCE****

There will be a **MANDATORY** pre-proposal conference at **10:00, AM, PST, MONDAY, JANUARY, 30, 2011**. The walk through will begin at the **Stockton Metropolitan Airport Conference Room, 5000 S. Airport Way, Stockton, CA 95205**. This will be your only opportunity for an on-site visit. **Not attending this conference will exclude you from bidding.**

If you have any further questions, please contact me at (209) 468-3982.

Sincerely,

Patricia Gennings
Purchasing Assistant



**REQUEST FOR PROPOSAL
RFP # 11-19**

**AIRPORT TERMINAL HOLDROOM FOOD &
BEVERAGE CONCESSION PERMIT**

**DUE DATE
February 21, 2012 @ 4:00 PM**

San Joaquin County
Purchasing and Support Services
44 N. San Joaquin Street, Suite 540
Stockton, CA 95202-2931

**BUYER: Patricia Gennings, (209) 468-3982
pgennings@sjgov.org**

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KEY ACTION EVENTS AND DATES

Listed below are the events and dates for this RFP. All dates are subject to revision.

<u>Event No.</u>	<u>Description</u>	<u>Date</u>
1.	Release of RFP	<u>Monday, January 9, 2012</u>
2.	Mandatory Pre-Proposal Conference – RFP review	<u>Monday, January 30, 2012</u>
3.	Last day for Proposers to submit questions	<u>Friday, February 3, 2012</u>
4.	Last day for County to answer questions	<u>Thursday, February 9, 2012</u>
5.	Proposal is due no later than 2:00 PM, PST	<u>Tuesday, February 21, 2012</u>
6.	Award	TBD

INTRODUCTION SHEET

The County of San Joaquin is soliciting Request for Proposals (RFP) for Stockton Metropolitan Airport. Prospective Proposers are responsible for having full knowledge of this project and all issues affecting it.

SECTION 1. GENERAL INFORMATION

OBJECTIVE:

The objective of this RFP is to select the most qualified, experienced firm, hereinafter "Proposer" or "Permittee" to operate a food and beverage service concession at the Stockton Metropolitan Airport (Airport) for the purpose of enhancing customer service and providing convenience to the passengers at the Airport in conformance with all Federal, state, and local rules and regulations. This firm will provide a year round food & beverage concession in a businesslike manner to serve those passengers traveling into and out of the Stockton Metropolitan Airport. The available area is located in the Airport Terminal Building, post security, in an area known as the "passenger holdroom."

The Airport invites proposals from qualified business entities that have demonstrated expertise in the development and operation of food service at airports or other transportation centers, shopping centers, malls, or metropolitan or suburban areas. To be considered for award of the Concession Lease, Proposers must have a minimum of three (3) years' prior experience within the last five (5) years in the marketing, development, operating, and management of food service at airports, other transportation facilities, shopping centers, malls, or metropolitan or suburban areas. Such experience must be with operations as large or larger in size and scope of that being proposed in terms of square footage and sales volume.

The County will select the firm which is most responsible, responsive and qualified. The terms of the Contract will be based on a minimum square footage rate for the available space or 12% of revenue whichever is greater through the initial contract period.

The selected proposer will be responsible for monitoring and maintaining food quality in compliance with state and local laws and industry standards.

INTRODUCTION:

The Stockton Metropolitan Airport is a commercial air carrier facility and the primary airport for San Joaquin County. The Airport serves the flying public as a gateway to the local community and the surrounding area. The Airport is located less than five miles south of central Stockton, the government seat of San Joaquin County. Ranked as the 13th largest city in California, the City of Stockton covers an area of 61 square miles, with an estimated population of 289,927 in 2008.

The Stockton Metropolitan Airport Terminal was constructed in 1963. A new, approximately 6,500 square feet, addition to the Terminal Building has just been completed. This addition offers an area ranging from 150-236 square feet for food & beverage concessions to include "grab and go" food and beverage services and two (2) specific areas designed for large vending machines.

Allegiant Air provides scheduled commercial air carrier service with flights to Las Vegas, NV and Palm Springs, CA several times a day/week. The number of flights and passengers has increased substantially in the past two (2) years and varies by season. Passenger enplanements in 2011 totaled approximately 50,000. Based on the airline's proposed flight schedule, 2012 passenger enplanements are expected to exceed the 2011 level.

The passenger enplanement information provided may be of value to bidders in estimating revenue potential, however, San Joaquin County assumes no responsibility and does not guarantee the validity of the statistics.

There is currently one restaurant located in the main portion of the Stockton Metropolitan Airport Terminal which provides sit-down food service and a bar for the public.

Airport Terminal Food & Beverage Concession Contract:

A draft of the Holdroom Food and Beverage Concession and Permit for Commercial Activities Contract for the Airport Terminal Holdroom Food & Beverage Concession is attached as an Exhibit.

Each Proposer is instructed to carefully examine the terms of the Contract. The failure of any Proposer to make such an examination will not constitute grounds for declaration by Proposer that it did not understand the Contract. If any Proposer has a concern about the contents of the Contract, it should so state the concern and the rationale therefore in the Proposal Documentation "Exception Summary". Unless otherwise stated in the proposal, it will be assumed by the County that the proposer has accepted, without reservation or amendment, the whole of the contract documents.

At the Proposer's discretion, a proposal may be conditioned upon such qualification of, or amendments to the contract documents, as do not materially change the

requirements contained therein. Such qualifications or amendments shall be fully described. The County reserves the right to accept or reject any such qualifications or amendments.

After the determination of awards, the County will enter into negotiations with the successful Proposer. The result of negotiations will be reflected as the Holdroom Food and Beverage Concession and Permit for Commercial Activities Agreement for Airport Terminal Holdroom Food & Beverage Concession which will be completed by the County and forwarded to the selected Proposer(s) for execution.

Worksite:

Worksite for the Contract is the assigned area in the Airport Terminal Holdroom of the Stockton Metropolitan Airport, 5000 S. Airport Way, Stockton, CA 95206.

Contract Period:

The term of this sublease shall be three (3) years, with one (1) two-year extension upon mutual agreement and shall hereinafter be referred to as the Permit Term.

Compensation:

To be considered, the minimal rental rate for the area is \$34.00/square foot or 12% of gross revenue whichever is greater. This amount will serve as a minimum guarantee to the Airport through the initial contract period. The County reserves the right to adjust all fees and rates at the end of each contract period.

AUDIT RIGHTS

The County reserves to itself the right to have available at the Permittee's place of business, the right to inspect such documents as necessary to establish the Permittee's gross revenue. Notwithstanding cancellation notice requirements set out above, if the contractor refuses such inspection, the County may immediately cancel the contract.

SECTION 2. DEFINITIONS

“Contract,” as used herein, shall mean the signed and binding Holdroom Food and Beverage Concession Agreement for Airport Terminal Holdroom Food & Beverage Concession. The Contract contemplates and includes the Airport locations (hereinafter, “Stockton Metropolitan Airport,” “airport,” or “terminal,”) and permission for “Lessee,” (as defined in Contract), to use such Airport locations for the conduct of airport terminal holdroom food & beverage concession within said Airport locations under the terms and conditions expressly set forth herein.

“Airport Terminal” and **“Terminal”** shall mean the passenger terminal building and any future addition or expansion or replacement of the existing terminal facility at the Airport in use as of the date of the execution of the Contract.

“Airport” shall include such public officials and public bodies as may, by operation of law, succeed to any or all of the rights, powers, or duties which lawfully reside in the Stockton Metropolitan Airport.

“Administrator” shall mean the Airport Director or Acting Airport Director of the Airport as appointed by the County.

“Gross Revenue” shall refer to all money generated by the company prior to its expenses.

“Stockton Metropolitan Airport” shall include all areas encompassed within the boundaries and as designated within the Contract, Appendices and Attachments hereto where the business of Lessee will be conducted.

“Assigned Area” is the area or areas of the Terminal designated by this Agreement and the Exhibits thereto where the business of Lessee may be conducted. **“Beneficial Occupancy”** shall occur when the Lessee has occupied the facilities of the terminal.

“Permittee” or **“Concessionaire”** shall mean the firm awarded the Terminal Holdroom Food & Beverage Concession Contract.

SCOPE OF SERVICE/WORK OR PROJECT

SECTION 3. SCOPE OF WORK

The County is requesting proposals from qualified individuals, firms or team of professionals to provide Food & Beverage Concession services for the Stockton Metropolitan Airport Terminal Holdroom.

The Selected Proposer shall operate the concession location in the post-security area of the Airport. At a minimum the County requires that the food and beverage concession be open and accessible during all hours of Airline operations. Monthly airline operating schedules vary.

Flight delays sometimes occur due to weather and similar events. To accommodate passengers, the Selected Proposer must be able to quickly extend operating hours (staying open later, adding additional staff, ensuring sufficient inventory) to ensure service is provided to passengers.

For specific information regarding the scheduled flights for Allegiant Airlines, visit their website at www.allegiantair.com.

Required Duties and Responsibilities of Proposer and Lessee:

Proposer:

Proposed plans should include color schemes, signage, and a proposed menu of items, with associated prices, that will be for sale. Proposers are encouraged to plan for providing prepackaged fast food selections that will allow take-out and grab-and-go options.

Proposers should provide a proposed menu that includes a suitable blending of local, regional and nationally recognized products that offer a broad customer appeal. Proposed menu items should be varied food, snack, beverage and desert items that are moderately priced, compatible with time-of-day considerations and can be delivered to customers at a central service counter in a timely manner.

Healthy choice items should be included including low calorie and heart-healthy selections. Please identify specific hot and cold drinks that will be available and if you plan to offer beer, wine, or other alcoholic beverages.

For illustrative purposes only, Attachment "A" provides sample illustrations of small airport concession areas and various cart and kiosk designs.

The concession area may require tenant improvements. The extent of these improvements will be specific to your proposal and will vary by Proposer.

Permittee:

The Permittee shall maintain a clean, orderly food & beverage concession at the Airport which provides courteous, honest, businesslike and fair service to patrons traveling into and out of the airport. Permittee and its employees will be knowledgeable about and comply with all Operational Standards, Food & Beverage Standards and Minimum Requirements as stated herein.

Lessee shall be responsible for all tenant improvements, equipment and merchandise costs, installation costs, utilities (except as noted herein), maintenance and repairs to any equipment or merchandise and any costs associated with food & beverage concession sales.

Permittee shall furnish food & beverage on a fair and not unjustly discriminatory basis to the public, and to charge fair, reasonable and not unjustly discriminatory prices.

Permittee shall furnish marketing and advertising, signage, and follow all State, Federal, Local codes and regulations for this type of work. Permits will be the responsibility of the Lessee. The Airport Director or her/his designee shall have the final approval for all tenant improvements.

SECTION 4. OPERATIONAL STANDARDS**License and Permits:**

The Permittee shall procure and pay all licenses, certificates and permits applicable to the conduct of the Contract by the Permittee: all taxes and fees applicable to the conduct of the Contract shall be paid by the Permittee at its sole expense.

San Joaquin County Sales and Personal Property Tax:

Vendors/merchants conducting business within the County are required by law to register with the County for sales and property tax. Vendors/merchants must be in good standing for all amounts owed to the County prior to award, but in any event no later than five business days following notification by the County of intent to award. Failure to meet these requirements, if so subject, shall be cause for your proposal to be rejected. To determine if your business is subject to these requirements, or for further information, contact the appropriate state or local department for permit information.

Training and Personnel:

All of Permittee's personnel who are to perform duties as set forth herein must have had, prior to assuming duties, sufficient food service and customer service training to meet the minimum requirements necessary to perform their duties.

The operations of Permittee, its employees, invitees, suppliers, and contractors shall be conducted in an orderly and proper manner so as not to annoy, disturb, or be

offensive to others. All employees of the Lessee must conduct themselves at all times in a courteous manner toward the public and in accordance with the rules, regulations, and policies developed by the Lessee and approved by the Airport Director.

The Permittee agrees that its employees shall be of sufficient number so as to properly conduct the Permittee's operation. The Permittee will be responsible for purchasing and providing its employees with identification tags and airport security badges.

AIRPORT SECURITY:

Understanding Airport Operations

The airport is not a "9-to-5" operation. It is imperative that you, as a potential concessionaire, learn about the regulatory requirements that all airport businesses face, and the differences in operating a business in an airport environment versus a mall or street environment.

DO YOUR HOMEWORK: The available concession area, located in the Terminal holdroom, is considered a sterile area and has heightened security regulations. These Federal regulations are enforced by the Transportation Security Administration (TSA) who is responsible for security at the nation's airports. These regulations can change over time.

BADGING: All employees needing access to this area will need to obtain an Airport Security Badge, from the Airport Operation's Office located in the Airport Terminal Building, which requires specific Airport training and an Federal Bureau of Investigation (FBI) 10-year background check. You should assume that the training and background check will take several hours to complete and the results of the background check are not available immediately. You should expect a one to two week wait before a badge is available. The current cost for each individual badge, which may increase in the future, is as follows:

- Badge Cost including fingerprinting/FBI Background Check: \$75.00
- Lost Badge Fee: \$100.00

In addition to security badging requirements defined previously, the following list provides additional security information that contractors will need to be aware of and adhere to while completing tenant improvements in the Sterile Area (i.e., passenger holdroom). This list may not be all inclusive and it should be noted that airport security requirements may change without any notice.

- A. Before beginning any work, all plans must be coordinated and approved by Airport Administration Staff.
- B. Never allow a security access door to be propped open unless a guard is posted at the door to prevent unauthorized access. Guards must be approved and trained by Airport Operations staff.
- C. Do not modify a security access door closure device. All security access doors must close and lock automatically unless otherwise approved by Airport Operations staff.
- D. Never use an emergency exit (alarmed door) for access, unless authorized by Airport Operations staff.
- E. Contractor is responsible to ensure that there are no tools left in the Sterile Area after they have completed work. It is suggested that they prepare a tool inventory log identifying each tool brought into the Sterile Area and recheck the log at the end of their shift, before leaving the area, to ensure no tools are left behind.
- F. Contractors will not be allowed to work in the Sterile Area during flights, for 2 hours before a flight, and until after the flight departs, and the Sterile Area is clear of all passengers, airline, and Transportation Security Administration (TSA) personnel. The County is unable to provide the exact hours that will be available

for contractors to plan their work schedules as flights can arrive early or experience a delay.

DELIVERIES: There is no parking allowed in front of the Terminal Building. In addition all deliveries, and items entering the Terminal hold which must be coordinated in advance with the Airport and/or TSA. Some items are restricted entirely in this area such as sharp knives or items that could be picked up by passengers and taken onto the aircraft and used as a weapon.

PENALTIES/FINES: Permittee will be financially responsible for any fines from TSA associated with their concession area. The Airport and County will not be held responsible for Proposer's activities and operations.

Maintenance on Equipment and Displays:

The Airport shall maintain and repair only those items which it has provided to the Permittee for use during the term of this Contract. The Airport does not assume the maintenance, repair or replacement of the aforementioned items if the damage of the equipment or premises is the result of any willful or negligent act of Permittee its employees or those under the control of Permittee. The Permittee will be held responsible for the repair or replacement of items which are the result of said negligence or willful act. The Permittee assumes responsibility for all maintenance and repair of its own equipment or displays which it has provided for its concession use.

Permittee shall provide all tenant improvements. All improvements must meet current ADA standards and all Federal, (including FAA and TSA), state and/or local regulations. All improvements shall be approved in advance by the Airport Director or his/her designee.

Conflicts:

Should a conflict arise between the Permittee and other concession Concessionaires at the Airport regarding the scope of concession privileges, the Airport Director's decision on the matter shall be final and conclusive. The Permittee agrees to abide by the Airport Director's decision.

SECTION 5. PROPOSAL CONTENT AND FORMAT

The County recognizes that Proposers are likely to commit significant resources in preparation of their proposals. Further, it is in the County's best interest to have maximum competition among Proposers in order that the County retains the most qualified Proposers. Therefore, it is crucial that Proposers thoroughly read this entire RFP and carefully follow all instructions. It is not uncommon for a proposal to be deemed non-responsive by the County because of what some might consider are inconsequential errors or omissions by a Proposer. For example, proposals have been rejected by the County because they were not sealed or properly marked on the outside as specified in the RFP. Proposers should assume that the form and content

requirements of this RFP will be rigorously applied by the County in determining the responsiveness of proposals.

Proposers should also allow adequate time for mailing or special delivery of proposals to the County. It is not uncommon for one or more Proposers to be disqualified in submitting proposals to the County because the proposals were not received in a timely manner.

Proposals must respond directly to the evaluation criteria for this project. Additional material (other than that requested below) is not required or desired. Clarity and brevity are encouraged.

One page is defined as one side of a standard 8½” by 11” sheet of paper. Submittals shall be presented in 8½” by 11” format. A limited number of larger sheets may be included if folded to the 8½” by 11” format. Larger sheets will count as two pages. Tabs and/or divider pages do not count against the maximums. Small print should be avoided. The proposal shall not exceed 50 pages.

The following sections address the specific content expected for each portion of the proposal.

Cover Letter:

In the cover letter, the Proposer must:

- State its understanding of the services to be performed,
- Explain why the Proposer firm is the best qualified to provide those services.
- Provide the name and contact information of the individual who is authorized to make representations and commitments on behalf of the Proposer.

RFP Response:

The Response may not exceed 15 pages and should address the following:

Provide information about the experience of the firm in terms of the criteria listed. Experience in terms of similar projects is crucial. Recognition of the challenges presented by the airport location in Stockton is also vital.

Describe the nature of work that will likely be conducted by subcontractors (if any). Proposers must include any plans for subcontracting services or activities under the proposed program. This plan must include a description of the services and activities to be subcontracted, names of subcontractors (if any), and the process through which subcontracts will be obtained. The contractor will be responsible for the performance of any services provided by subcontractors.

For the firm's three most representative projects provide a professional reference that represented the owner's interest. Also include a valid telephone contact number for same.

Provide information about the character, integrity, reputation, and judgment of the firm and employees in terms of the services to be provided.

Project approach and methodology to provide services for “Airport Terminal Holdroom Food & Beverage Concession”.

Provide information about the firm’s ability to successfully operate an airport food & beverage concession to include:

A summary of the Proposers understanding of the current market area and description of how the proposed service will attract and serve the anticipated clientele.

- Identification of the principal persons to be associated with the proposed operation and their respective qualifications and experience levels.
- The scope and extent of services to be offered, days and hours of operation, and anticipated staffing.
- The expected timetable for setup, occupancy, and start up of services, once approved to proceed.
- A conceptual floor plan showing the anticipated layout of the lease area to accommodate proposed business/service needs.
- A proposed menu and sample pricing to be offered.
- Theme (if any).
- List any special terms and conditions that would be anticipated in a lease agreement with the County, such as, but not limited to, length of lease, initial and future revenue expectations, exceptions or variations in the scope of operation, or any other pertinent information within this category.
- References related to the Proposer’s experience in other, similar food service locations.

List each key member of the firm and their plans for oversight and role in the day-to-day operation of the food & beverage concession.

Other Information:

Specify any minority/women/disadvantage ownership of Proposer and any other relevant MBE/WBE/DBE participation planned.

Required Signatures:

The proposal must also be signed by a person who is authorized to bind the Proposer. Specifically:

1. A proposal by a corporation shall be executed in the corporate name by the president, vice-president, or other corporate officer. *Evidence of authority to sign must also be provided.* Such evidence may be in the form of a copy of the corporate bylaws; articles of incorporation; resolution of the board; corporate certificate; or other reliable evidence.

2. A proposal by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), *accompanied by evidence of authority to sign*. Evidence of authority to sign may be in the form of a copy of the partnership agreement or other reliable evidence.
3. A proposal by a limited liability company shall be executed in the name of the firm by a member and *accompanied by evidence of authority to sign*. Such evidence may be in the form of a copy of the corporate bylaws; articles of incorporation; resolution of the board; corporate certificate; or other reliable evidence.
4. A proposal by an individual shall show the proposer's name, business name (if different) and business address.

Prior to the award of a contract, the County reserves the right to investigate and confirm the authority of the signer to enter into a contractual agreement with the county.

Proposal Documentation Forms:

To be considered, proposers must complete, sign and include the attached Proposal Documentation Forms with submitted proposals.

REVENUE STRUCTURE PROPOSAL

REVENUE PROPOSAL:

Revenue proposals are to be provided in the manner described herein and submitted in a **separate sealed envelope**.

When submitting revenue information, Proposer must provide a detailed breakdown of all costs associated with the purchase of any equipment, any cost for tenant improvements before starting operations, proposed percentage of monthly gross sales, proposed monthly guarantee, and any other cost that need to be factored in.

Proposal must be valid for a period of ninety (90) working days.

GRADING CRITERIA

Following the deadline for receipt of proposals, all proposals submitted will be analyzed and reviewed by a review panel consisting of representative(s) of the Airport and Purchasing Department.

The County reserves the right to negotiate one contract based on all factors involved in the written proposal without further discussion or interview.

Proposals will be evaluated for cost and compliance with all requirements set forth in this RFP, including timely submission and provision of all documents requested; and for the following minimum requirements:

Qualifying proposals will be scored by the review panel members.

The review panel will have only the response to the solicitation to review for selection of finalists. It is therefore important that Proposers emphasize specific information pertinent to the work.

All evaluations will be based on the following criteria:

1. Qualifications, education and experience, advertising, outreach of the individual, the firm and assigned staff members; 25%
2. The degree of completeness of response to the specific requirements of the solicitation; 20%
3. Capacity to complete the scope of work outlined in this RFP; 25%
4. Revenue percentage to the Airport (Revenue Proposal); 30%

Though rank ordered, all of the evaluation factors above should be considered important in the evaluation process.

The County has the right not to award any contracts at its discretion.

GENERAL PROPOSAL REQUIREMENTS

1. CONTRACTOR RESPONSIBILITIES

All procedures and services must be in compliance with all Federal, State, and Local Laws and Regulations. The Contractor will be responsible for the following:

2. BASIS FOR SELECTION AND CONDITIONS

The responsiveness, competency and responsibility of Proposer and of their proposed subcontractors will be considered in making the award of contract. Any Proposer before being awarded a contract may be required to furnish evidence satisfactory to the County that Proposer and their proposed subcontractors have sufficient means and experience in the type of work called for to assure completion of the contract in a satisfactory manner. The County reserves the right to reject the proposal of any Proposer as not responsible and not qualified to do the particular work under consideration who have previously failed to perform properly or to complete on time contracts with the County of a nature similar to this project. Other factors that may be considered by the County to determine a responsible proposal and the overall capability of the Proposer to satisfactorily complete the work under consideration may include, but are not limited to: insufficient experience, experience on other public projects, experience doing the same type of work, length of tenure and capacity with bonding or insurance company, financial stability, and whether a Proposer has been terminated on other projects.

A responsive proposal is one that meets all terms, conditions, and specifications of the RFP. The bid must comply with the content requirements of the RFP documents. The Proposer must perform and do what the RFP documents and contract required and said they must do, whether it be pricing in a certain way, attending a mandatory pre-bid conference, providing bonds, etc. Other examples where a proposal might be declared and found to be non-responsive include:

- Proposal is substantially incomplete
- Proposal is not signed
- Proposal is delivered late
- No acknowledgement of critical addenda
- Significant discrepancies appear in the response

A responsive proposal conforms to RFP specifications. However, a proposal which substantially conforms, though not strictly responsive, to a call for proposals may be accepted if the variance cannot have affected the amount of the proposal or given a Proposer an advantage or benefit not allowed other Proposers or, in other words, if the variance is inconsequential. The County reserves the right to reject any and all proposals or alternatives and waive any informality or irregularity in the proposals or in the bidding, and to determine responsiveness and responsibility of Proposer, including but not limited to those areas mentioned above.

3. **LOCAL VENDOR PREFERENCE**

The County of San Joaquin has a 5% local vendor preference; however the preference shall not exceed \$ 7500.00 per bid. Click on the link below to view San Joaquin County's Policy and Procedures.

<http://www.sjgov.org/SupportServ/dynamic.aspx?id=10217>

4. **SAN JOAQUIN COUNTY GREEN PURCHASING POLICY**

San Joaquin County has a Green Purchasing Policy, please click on the link to view.

<http://www.sjgov.org/SupportServ/dynamic.aspx?id=10128>

5. **SUBMITTAL FORMAT**

A. Forms to be included in your response are listed below:

- 1) Identification Sheet
- 2) W-9
- 3) Licenses / Certifications as required
- 4) References
- 5) Addendum(s)

Vendors are to indicate acknowledgement, sign, and return Addendum(s) with their response. The County reserves the right to reject any responses deemed to be non-responsive.

- 6) One (1) copy of proposal clearly marked "ORIGINAL" and four (4) copies clearly marked "COPY"

6. **SAN JOAQUIN COUNTY RESPONSIBILITIES**

A. County shall provide facility, public restrooms, heating and air conditioning.

7. **SPECIFICATION CHANGES**

The County may, during the proposal period, advise the Proposer in writing of additions, omissions, or alterations in the specifications. Changes shall be included in the RFP and become part of the specifications as if originally submitted.

8. **AMENDMENTS**

No one is authorized to amend this proposal in any respect, by an oral statement, or to make any representation or interpretation in conflict with the provisions of this RFP. If necessary, supplementary information in addendum form will be prepared and posted on the "Purchasing Open Bids" website. It is the Proposer's responsibility to obtain, sign and submit all addendum(s) for the RFP at:

<http://www.sjgov.org/supportserv/Control/PurchasingBids.asp>

Failure of Proposer to not submit signed addendum(s) with their proposal shall be cause for rejection.

Any exceptions taken to this RFP shall be clearly stated in writing.

9. **RFP WITHDRAWAL**

Any Proposer may withdraw their proposal, either personally or by written request, at any time **prior** to the date and time due.

10. **RIGHT TO REJECT PROPOSALS**

San Joaquin County reserves the right to reject any and all proposals, or any part of a proposal; to waive minor defects or technicalities; or to solicit new proposals on the same project or modified project, which may include portions of the original RFP document, as the County may deem necessary and in its best interest. False, incomplete or unresponsive statements in connection with a submitted proposal may be sufficient cause for rejection. The County will be the sole judge in making such determinations.

11. **EXAMINE SPECIFICATIONS**

Proposer shall thoroughly examine and be familiar with the specifications herein. Failure or omission of any Proposer to receive or examine any form, instrument, addendum or other document, or become acquainted with existing conditions, shall in no way relieve Proposer from any obligations with respect to Proposer's offer or to the contract. Submission of a proposal shall be taken as prima facie evidence of compliance with this section.

12. **SITE INSPECTION**

Proposers shall have examined the work sites, and shall be responsible for having acquired full knowledge of the job and of all issues affecting it. No variations or allowances from the contract sum will be made because of lack of such examination. **The mandatory pre-proposal conference will be the only opportunity to view the site.**

13. **ALL RFP DOCUMENTS PART OF FINAL CONTRACT**

Any RFP documents, letters and materials submitted by the Proposer shall be binding and included as part of the final contract. Unauthorized conditions, limitations or provisions attached to proposals may cause its rejection.

14. **EXCEPTIONS**

Any exceptions to this RFP must be stated in your proposal. It is otherwise assumed that the wording within this document is acceptable and agreed to by the Proposer.

15. **RESULTING CONTRACT**

Through the RFP process, the County reserves the right to negotiate one contract based on all factors involved in the written proposal without further discussion or interview.

The performance of the contract resulting from this proposal shall be governed, construed and interpreted according to the laws of the State of California.

Terms and Conditions of a resulting contract shall be those of Exhibit A "Sample Agreement". **Any contentions must be submitted with your RFP.**

16. **NOTICE**

Any notice, demand, request, consent approval or communication that either party desires or is required to give the other party shall be in writing and either serviced personally or sent by pre-paid first-class mail, or the equivalent thereof by private carrier. Any such writing shall be addressed to County of San Joaquin, Purchasing Department, 44 N. San Joaquin Street, Suite 540 Stockton, CA, 95202-2931, Attention: **Patricia Gennings / RFP #11-19**

IDENTIFICATION SHEET

PROPOSER TO COMPLETE AND RETURN WITH PROPOSAL

Type or print the following information:

Company: _____

Address: _____

(City) (State) (Zip)

Name: _____

Title: _____ E-mail: _____

Telephone: () _____ Fax: () _____

Years in business: _____

Number of employees: _____

Name of Insurance carriers: _____

Public Liability: _____ Expires: _____

Workers' Compensation: _____ Expires: _____

REFERENCES

SIMILAR CONTRACTS/RFPS PERFORMED: List below permits and/or contracts under which the Proposer has provided similar food & beverage concession services during the past five (5) years.

Proposer's financial stability, technical and support capabilities will be verified through reference checking, which may include site visits and contact with other clients or vendors.

FIRM NAME: _____

ADDRESS: _____

PHONE NUMBER: _____

CONTACT PERSON: _____

DATE OF CONTRACT: _____ through _____

FIRM NAME: _____

ADDRESS: _____

PHONE NUMBER: _____

NON-COLLUSION AFFIDAVIT

(Title 23 United States Code Section 112 and Public Contract Code Section 7106)

In accordance with Title 23, United States Code Section 112, and Public Contract Code 7106, the bidder declares that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the Proposer has not directly or indirectly induced or solicited any other proposer to submit a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the Proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Proposer or any other proposer, or to fix any overhead, profit or cost element of the proposal price, or of that of any other proposer, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and further, that the Proposer has not, directly or indirectly, submitted their proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

NOTE: The above Non-collusion Affidavit is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Non-collusion Affidavit.

Proposers are cautioned that making a false certification may subject the certifier to criminal prosecution.

Proposer's Signature _____ **Date** _____

SUBMITTAL OF PROPOSALS

Sealed Proposals will be received at the Office of the Purchasing Agent at 44 N. San Joaquin Street, Suite 540, Stockton, CA 95202-2930, until **4:00 PM, PST, FEBRUARY 21, 2012.**

ALL PROPOSALS SHALL BE ADDRESSED AS FOLLOWS:

Request for Proposal **RFP# 11-19**
Patricia Gennings
County of San Joaquin
44 N. San Joaquin Street, Suite 540
Stockton, CA 95202-2931

The Proposal envelope shall have stated thereon the name and address of the submitting Contractor.

ALL PROPOSALS RECEIVED AFTER SAID TIME AND DATE WILL BE TIME-STAMPED AND RETURNED UNOPENED TO THE SUBMITTER. PROPOSALS WILL NOT BE ACCEPTED AFTER 4:00 PM, PST, FEBRUARY 21, 2012.

THE COUNTY WILL NOT ACCEPT PROPOSAL RESPONSES SUBMITTED BY FAX OR EMAIL.

PROPOSAL AUTHORIZATION
SIGNATURE PAGE

The undersigned, having carefully read and examined this RFP, and being familiar with (1) all the conditions applicable to the work for which this proposal is submitted; (2) with availability of the required equipment, materials and labor hereby agrees to provide everything necessary to complete the work for which this proposal is submitted in accordance with the proposal documents for the amounts quoted herein and further agrees that if this proposal is accepted, within five (5) days after the contract is presented for acceptance, will execute, and mail a signed contract to the County of San Joaquin Purchasing Agent.

This Signature/Authorization page must be included of your Proposal.

Signature of Authorized Agent

Date

Printed Name of Authorized Agent

EXHIBIT A



FOOD AND BEVERAGE CONCESSION AGREEMENT AND PERMIT FOR COMMERCIAL ACTIVITIES

THIS AGREEMENT is made by and between the San Joaquin County, (County), and _____ (Operator) for the purpose of providing a food and beverage concession at the Stockton Metropolitan Airport.

RECITALS

- A. County owns and operates the Stockton Metropolitan Airport (Airport).
- B. It is necessary in the promotion and accommodation of air commerce and air transportation that qualified, economical, courteous, safe, clean and efficiently operated food and beverage facilities be available for the benefit of air travelers and the public.
- C. Operator was awarded the right to operate an available food and beverage concession at the Stockton Metropolitan Airport.
- D. Operator has been approved to occupy a portion of the Airport terminal building to operate a food and beverage concession.
- E. All of the Airport is not required for aeronautical activities. County desires to use portions of the Airport to provide facilities and services for other than aeronautical activities for the benefit of the general public.

AGREEMENT

1. PREMISES.

- A. Those portions of the Airport to be used exclusively by Operator pursuant to this Agreement are described and depicted in the RFP, at the Airport Terminal Building.

2. TERM.

- A. The term of this Agreement shall be for a period of Three (3) years commencing at on XXXXXX, 2011, and expiring on XXXXXX, 2013.
- B. County shall have two (2) two-year options to extend the term of this Agreement. If County exercises such option, all of the terms and conditions of this Agreement shall remain in full force and effect, with the exception of this clause covering County's option to extend the term of the Agreement. County may exercise its option to extend the term by written notice to the Operator no less than ninety (90) calendar days' prior to the expiration of the initial term, and first option term, if any.
- C. This Agreement is entered into with the understanding that the County will initiate an open competitive process for the provision of food and beverage concession service beyond the expiration of this Agreement.

3. USE.

Operator is authorized to use the Premises for the sole purpose of operating and maintaining a food and beverage concession at the Stockton Metropolitan Airport.

- A. Airport Terminal shall be used for the purpose of conducting food and beverage concession transactions for the convenience of passengers, patrons and tenants utilizing the Airport.

4. PERMIT FOR COMMERCIAL ACTIVITIES. This Agreement shall also constitute a Permit for Commercial Activities ("Permit"), and the terms hereof shall constitute the terms for a permit for commercial activities required by the County. The **Board of Supervisors** of the County has determined that these commercial activities are compatible with the use of the Airport, and that the best interests of the public and the San Joaquin County will be served by approval of such commercial activities. A breach or default in the terms of this Agreement shall constitute a breach of the Permit.

5. CONCESSION FEES AND CHARGES.

- A. Concession Fees. The monthly concession fee to be paid by Operator to County under this Agreement shall be the **GREATER** of the **Minimum Monthly Guarantee** or the **Percentage of Gross Receipts** payable each month during the twelve month periods as follows:

<u>12 Month Period</u>	<u>Percentage of Minimum Monthly Guarantee</u>	<u>or</u>	<u>Gross Receipts</u>
XXXXXXXXXXXX, thru XXXXXXXXXXX	_____ %		\$
XXXXXXXXXXXX, thru XXXXXXXXXXX	_____ %		\$
XXXXXXXXXXXX, thru XXXXXXXXXXX			\$ _____ %
XXXXXXXXXXXX, thru XXXXXXXXXXX	_____ %		\$
XXXXXXXXXXXX, thru XXXXXXXXXXX			\$ _____ %

- B. Operator shall pay to County the Minimum Monthly Guarantee or the percentage of gross receipts, whichever is greater, without deduction, set off, prior notice or demand on or before the twentieth (20th) day of each month (no payment shall be due under this agreement on XXXXXXX, 2011).
- C. Each payment specified in **Section 5.B.** above shall be submitted with a **Monthly Certified Activity Report**, attached hereto which shall state the Operator's gross receipts during the prior calendar month.
- D. If County exercises its option to extend the term of this agreement for an extended term, Operator shall pay to County the most current Minimum Monthly Guarantee or percentage of gross receipts, whichever is greater, pursuant to the terms and conditions of the Agreement.
- E. All payments required under this Agreement shall be paid to County, addressed to the Stockton Metropolitan Airport, at 5000 S. Airport Way, Room 202, Stockton, California, 95206, or any other place or places that County may designate by written notice to Operator. Payments not paid when due and/or not submitted with the appropriate Monthly Certified Activity Report are subject to late fees and penalty charges.

6. GROSS RECEIPTS DEFINED.

- A. "Gross receipts" of Operator means (1) all monies paid or payable to the Operator for cash or credit under a transaction entered into at the Airport, regardless of when or whether paid for or not and regardless of all fees of any nature charged or generated by Operator, Operator's permitted vendors, licensees, or concessionaires, if any, whether for cash or on credit (whether collected or not)

pursuant to this Agreement. Any transaction on an installment basis or otherwise involving the extension of credit, shall be treated as a sale for the full price at the time of the transaction, irrespective of the time of payment.

- B. Gross receipts shall not include, or if included there shall be deducted (but only to the extent they have been included), the following:
- 1 Sums and credits received in the settlement of claims for loss of or damage to concessions or merchandise.
 - 2 Gift certificates, or similar vouchers, until such time as they have been converted into a sale by redemption.
 - 3 Sales and use taxes, so-called luxury taxes, consumer's excise taxes, gross receipt taxes, rental car transaction fees and other similar taxes now or in the future imposed on the sale of food, beverages, merchandise or services, but only if such taxes are added to the selling price, separately stated, collected separately from the selling price of merchandise or services, and collected from customers.
 - 4 Sales of fixtures, trade fixtures, equipment, vehicles or personal property that are not merchandise as allowed in this Agreement.

7. STATEMENT OF GROSS RECEIPTS; REVIEW.

- A. Operator shall furnish to County a statement of Operator's gross receipts, as defined, on the County's Monthly Certified Activity Report on or before the twentieth (20th) day of each month following the reporting period. Each statement shall be signed and certified to be correct by Operator or its authorized representative.
- B. Operator shall keep at its address of record full and accurate books of account, records, cash receipts, and other pertinent data showing its gross receipts. Operator shall maintain accurate receipts and shall maintain procedures for accurately recording any and all sales and other transactions made on the Premises and shall record all gross sales and other transactions made on the Premises or pursuant to this Agreement. Operator's books of account, records, cash receipts, and other pertinent data shall be kept for a period of two (2) years after the end of each year of this Agreement. The receipt by the County of any statement, or any payment of percentage gross receipts for any event shall not bind the County as to the correctness of the statement or payment.
- C. The County shall be entitled during the term of this Agreement and within two (2) years after the expiration or termination of this Agreement to inspect and examine all Operator's books of account, records, cash receipts, and other pertinent data, so the County can ascertain and/or verify Operator's gross receipts. Operator shall cooperate fully with the County in making the inspection. The County shall also be entitled, once during each year of this Agreement and once after the expiration or termination of this Agreement, to an independent audit of Operator's

books of account, records, cash receipts, and other pertinent data to determine and/or verify Operator's gross receipts, by a certified public accountant to be designated by the County. The audit shall be limited to a determination of Operator's gross receipts and shall be conducted during regular business hours.

- D. If the audit shows that there is a deficiency in the payment of any percentage gross receipts paid to the County, the deficiency shall become immediately due and payable. The costs of the audit shall be paid by the Operator.
- E. The County shall keep any and all information gained from such statements, inspections, or audits confidential and shall not disclose it without Operator's written consent other than to carry out the purposes of this Agreement.

8. SECURITY DEPOSIT.

- A. Operator shall post with the County a security deposit in the form of cash or check in favor of the County in an amount equal to the first two (2) months minimum monthly guarantee (\$ _____) to assure payment under the terms of this Agreement.
- B. The security deposit shall be available unconditionally to County for correcting any default or breach of this Agreement by Operator. At the sole discretion of the County, a claim may be made by the County against the security deposit in the event of one of the following:
 - 1. Failure on the part of Operator to make timely payment of any amount due the County under the terms and conditions of this Agreement;
 - 2. Any damage to or loss of Airport property caused by Operator, its officers, employees, agents and invitees, or Operator's activities pursuant to this Agreement;
 - 3. Failure to pay other charges, if any;
 - 4. Removal expenses incurred by the County if Operator does not promptly remove Operator's property from the Airport after this Agreement expires or is terminated; or
 - 5. Costs incurred by the County at the time this Agreement expires or is terminated if Operator fails to leave the Airport in satisfactory condition.
- C. A claim made by the County against the security deposit shall not cure the default by Operator. However, at the County's sole discretion, if the County elects to make a claim against the security deposit, the County may, in writing, expressly waive the default by Operator. County has no obligation to provide notice to Operator prior to claiming funds from the deposit. Upon written notice by the County that a claim has been made against the deposit and the amount of such claim, Operator shall, no later than ten (10) calendar days after notice is deemed received by Operator pursuant to **Section 31**, deposit with the County the amount

of said claim thereby fully funding the deposit.

D. Upon termination of this Agreement, County shall return to Operator that portion of the security deposit remaining after any deductions authorized by this Agreement or otherwise authorized by law. Operator shall not be entitled to any interest on any portion of the security deposit.

9. TAXES. Operator is advised that, pursuant to Revenue and Taxation Code §107.6, a possessory interest subject to taxation may be created by the grant of this Agreement and that Operator may be subject to the payment of property taxes levied upon the interest. Operator shall promptly pay before delinquency any taxes and/or special assessments assessed against the Premises and any improvements and/or Operator's personal property, and any possessory interest tax levied by reason of its use and/or occupancy of the Premises. On demand from the County, Operator shall furnish the County with satisfactory evidence of these payments. Non-payment of taxes will cancel lease.

10. SERVICE.

A. Operator shall operate the Food and Beverage Concession in accordance with the highest standards and practices of the industry. Further, Operator understands and acknowledges that the County's obligation to facilitate air travel of the public at the Airport includes efficiently operated Food and Beverage Concessions for the use of air travelers and other members of the public. Consequently, and as an additional consideration to the County for awarding this Agreement to the Operator, Operator covenants as follows:

1. To furnish service on a fair, reasonable and nondiscriminatory basis to all users of the Airport. Operator shall furnish prompt, courteous and efficient service adequate to meet all reasonable demands for its services at the Airport. It shall maintain and operate the Concession in a first-class manner and shall keep its premises in a safe, clean, orderly and inviting condition at all times satisfactory to the Airport Director.
2. Operator's Food and Beverage concession shall be kept open so as to provide maximum availability of service and adequate purchasing opportunities to the traveling public during such hours as may be established or reestablished from time to time by the Airport Director. Minimum hours of operation shall be that the food and beverage concession be open and accessible during all hours of Airline and Air Carrier Charter operations. The hours of operation may be reduced or modified with the prior written approval of the Airport Director
3. Except in case of emergency, the Operator shall obtain the approval of the Airport Director prior to any concession closure outside of normal operating hours.

4. Operator shall control the conduct, demeanor and appearance of its employees and representatives. Operator and their employees while on duty, shall wear acceptable attire which at all times shall be maintained in a neat, orderly and clean condition.. Cutoff shorts, undershirt-type shirts, or clothing of suggestive nature are prohibited and shoes are required. Employees will wear name-tags which display their name and the name of the food and beverage concession or company logo. Such employees shall be trained by Operator to render a high degree of courteous and efficient service and it shall be the responsibility of the Operator to maintain close supervision over such employees to assure the rendering of a high standard of service to the public and the patrons of the food and beverage concession.
5. Operator shall accept major or nationally recognized credit cards.
6. Operator and its employees shall abide by all reasonable rules, regulations, policies, and instructions of the Airport Director or his designee.

11. PARKING AND ACCESS.

- A. Employee Parking. Operator's employees will be allowed to park in the main lot without cost while they are working, however they will be responsible to pay if they are passengers.
- B. Access to Premises. County shall provide Operator with keys to access the Premises. Operator is responsible for the cost to replace all lost keys. Operator is responsible for the costs associated with re-keying the Premises if the Airport Director determines that the lost or misplaced key may compromise Operator's security.

12. AIRPORT FACILITIES. Nothing contained in this Agreement shall be construed as entitling Operator to the exclusive use of any services, facilities, or property rights of any nature at the Airport, except for the purpose and use of the Premises as set forth in this Agreement and the Premises as described and set forth.

13. MECHANIC'S LIENS. Operator shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by Operator.

14. WASTE; QUIET CONDUCT. Operator shall not commit or suffer to be committed any waste upon the Premises, or any nuisance or other act or thing which may disturb the quiet enjoyment of any other occupant of or user of the Airport or the County's adjoining property.

15. STORAGE. Operator shall not store anything outside of the Premises without the prior written approval of the Airport Director.

16. OPERATOR'S SECURITY RESPONSIBILITIES. Operator shall completely secure Airport Terminal during non-operating hours. Operator shall pay any fines imposed upon the County by the Transportation Security Administration or the Federal Aviation Administration for violation of security caused by actions of Operator or its agents, employees, or invitees. Operator shall pay such fine within thirty (30) calendar days of written notice from the County of the obligation to pay the fine. Failure to comply with the provisions of this section is grounds for termination of this Agreement by the County.

17. RULES AND REGULATIONS; COMPLIANCE WITH LAWS. Operator shall, at Operator's sole cost and expense, comply with all requirements, statutes and regulations of all County, county, state and federal authorities now in force, or which may hereafter be in force, pertaining to Operator's use of the Premises or its services to be performed under this Agreement. Operator's use of the Premises shall conform to all Airport rules and regulations and local building and fire codes.

18. MAINTENANCE AND ALTERATIONS.

A. Operator shall, at Operator's sole cost and expense and at all times during the term, maintain the Premises in a safe and attractive condition and in the same condition as received at the beginning of the term, ordinary wear and tear excepted. Operator shall do, or cause to be done without delay, all those things which, in the opinion of the Airport Director, are necessary or desirable in the interests of safety or to maintain the Premises in good repair and appearance. All damage caused to the Premises and/or Airport by Operator, its officers, employees, agents and invitees, shall be repaired at Operator's sole expense.

B. Operator shall not make or cause to be made any alterations or improvements to the Premises, including modifications or alterations of the Premises' electrical installations or equipment, without first securing the written consent of the Airport Director. The Airport Director may impose restrictions upon any proposed alterations or improvements. All such alterations or improvements shall comply with Airport Policy and all applicable building, zoning and fire codes. Upon the termination of this Agreement, at the sole option of the County: (1) The alterations or improvements shall become the property of the County and shall remain on the Premises; or (2) Operator shall remove all alterations or improvements and return the Premises to the County in substantially the same condition as the Premises existed at the commencement of this Agreement.

C. County shall maintain electrical, plumbing and HVAC systems within the Airport terminal facility in good condition and repair. The Operator hereby expressly waives any and all claims and holds the County harmless for damages arising or resulting from failures or interruption of utility services furnished by

the County herein including but not limited to stoppages in electrical energy, the quantity or temperature of water, heating or air-conditioning, or for the failure or interruption of any public or passenger conveniences.

19. RIGHT TO INSPECT.

- A. The County and its authorized officers, agents, employees, volunteers, contractors, subcontractors and other representatives shall have the right to inspect and enter upon the Premises for any purpose, including, but not limited to, the following:
1. To inspect the Premises at reasonable intervals during regular business hours to determine whether Operator has complied with or is complying with the promises, terms, covenants and conditions of this Agreement;
 2. To make repairs, additions, or alterations as may be necessary or convenient for the conduct, safety, improvement, or preservation of the Airport;
 3. For emergency purposes; and
 4. In the exercise of the County's police power.
- B. No inspection or entering on the Premises by or on behalf of the County shall cause or constitute a termination of this Agreement, or be deemed to constitute an interference with Operator's use of the Premises.

20. INDEMNITY.

Operator shall indemnify and defend the County, its officers, officials, employees, agents and volunteers, against and hold them harmless from any and all claims, losses, damages, civil penalties, and liability for damages, including attorneys' fees and other costs of defense incurred by the County, whether for damage to or loss of property or injury to or death of person(s), including properties of the County and injury to or death of the County's officers, officials, employees, agents and volunteers, arising out of or resulting from Operator's possession or use of the Premises or activities hereunder or from the actions of Operator's officers, employees, agents and invitees, unless such damage, loss, injury or death is caused by the sole negligence or willful misconduct of the County.

21. INSURANCE.

- A. Operator shall procure and maintain from an insurance company authorized to do business in the State of California, for the duration of the Agreement, insurance for claims for injuries to persons or damages to property which may arise from or in connection with the Operator's operation and or use of the Premises by the Operator, its members, agents, representatives, employees, contractors, subcontractors, and invitees. The cost of such insurance shall be borne by the Operator. Insurance shall be provided as follows:

1. Insurance Services Office form number CG-0001, Commercial General Liability Insurance, in an amount not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury, personal injury and property damage;
 2. Insurance Services Office form number CA-0001 (Ed. 1/87), Comprehensive Automobile Liability Insurance, which provides for total limits of not less than \$1,000,000 combined single limits per accident applicable to all owned, non-owned and hired vehicles;
 3. Property insurance against all risks of loss to any tenant improvements, betterments, and contents at full replacement value. The property insurance policy shall contain the insurer's waiver of subrogation in favor of County, its elected officials, officers, employees, agents and volunteers;
 - a. Operator agrees that in the event of any loss or partial or complete destruction of those tenant improvements, betterments, and contents, any proceeds of insurance received by Operator shall be utilized in the replacement, reconstruction, or repair of the damage or destroyed improvements, betterments, and contents.
 4. Statutory Workers' Compensation required by the Labor Code of the State of California and Employers' Liability Insurance in an amount not less than \$1,000,000 per occurrence. Both the Workers' Compensation and Employers' Liability policies shall contain the insurer's waiver of subrogation in favor of County, its elected officials, officers, employees, agents and volunteers;
- B. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of the County, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its elected officials, officers, employees, agents and volunteers, or the Operator shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.
- C. The General Liability shall contain or be endorsed to contain the following provisions:
1. County, its elected officials, officers, employees, agents and volunteers are to be covered as additional insured. Such endorsement shall include liability arising out of or in connection with Operator's operations, premises owned, occupied, or used by Operator. The coverage shall contain no special limitations on the scope of protection afforded to the County, its elected officials, officers, employees, agents and volunteers.

2. The insurance coverage of Operator shall be primary insurance as respects County, its elected officials, officers, employees, agents and volunteers. Any insurance or self-insurance maintained by County, its elected officials, officers, employees, agents and volunteers, shall be in excess of Operator's insurance and shall not contribute with it.
 3. Coverage shall state that the insurance of Operator shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 4. The certificate holder will be the San Joaquin County, 44 N. San Joaquin Street, Suite 540, Stockton, CA 95202.
- D. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII.
- E. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be canceled except after thirty (30) calendar days' prior written notice has been given to County. In addition, Operator agrees that it shall not reduce its coverage or limits on any such policy except after thirty (30) calendar days' prior written notice has been given to County.
- F. Operator shall designate the San Joaquin County as a Certificate Holder of the insurance. Operator shall furnish County with certificates of insurance and original endorsements effecting the coverages required by this Section. Certificates and endorsements shall be furnished to: Purchasing Department, San Joaquin County, 44 N. San Joaquin Street, Suite 540, Stockton, CA 95202. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by the County's Risk Manager prior to commencement of this Agreement.
- G. The requirements as to the types and limits of insurance coverage to be maintained by Operator as required by this Agreement, and any approval of said insurance by County, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by Operator pursuant to this Agreement, including, without limitation, provisions concerning indemnification.

22. HAZARDOUS MATERIALS.

- A. Hazardous substances or materials include, but are not limited to:
1. Substances which are flammable, explosive, corrosive, radioactive, toxic;
 2. Any material or substances defined as hazardous substances, hazardous

materials, toxic substances, or hazardous wastes in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sections 9601, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901, et seq.), the Hazardous Waste Control Act (California Health & Safety Code Sections 25100, et seq.) the Hazardous Substance Account Act (California Health & Safety Code Sections 25300, et seq.), California Health and Safety Code Section 25280, et seq., Hazardous Materials Release Response Plans and Inventory or the California Porter-Cologne Water Quality Control Act, (Water Code Sections 13000, et seq.), and all amendments to these laws and regulations adopted or publications promulgated pursuant to these laws;

3. Those asbestos-containing materials defined and described in Environmental Protection Agency Report No. 56/5-85-024 (June 1985) whether or not friable, or any related or successor report, or other applicable government regulations defined or describing such materials;
 4. Pesticides as defined by Section 136(u) of FIFRA (7 U.S.C. Section 136) as may be present in soil or groundwater;
 5. "Hazardous wastes" as defined in Section 25117 of the California Health and Safety Code, or as a chemical that is known to the State of California "to cause cancer or reproductive toxicity" under the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Sections 25249.5, et seq.; and
 6. Hazardous materials, substances or waste, or toxic materials, substances or waste as those terms or similar terms are defined by any other federal, state or local law or regulation or orders.
- B. Operator agrees to indemnify, protect, hold harmless, and defend County, its elected officials, officers, employees, agents and volunteers from and against any and all liability, including without limitation, (1) all foreseeable and unforeseeable consequential damages, directly or indirectly arising from the use, generation, storage, or disposal of hazardous materials by Operator, and (2) the cost of any required or necessary repair, cleanup or detoxification and the preparation of any closure or other required plans, to the full extent that such liability is attributable, directly or indirectly, to the presence of use, generation, storage, release, threatened release, or disposal of hazardous materials by Operator, its officers, employees, agents and/or invitees on the Premises or Airport after the beginning of the term of this Agreement.
- C. Operator release County from any and all claims Operator may have against County of whatever kind or nature resulting from or in any way connected with the environmental condition of the Premises, including any and all claims Operator may have against County under the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), or any other federal, state, or local law, whether statutory or common law, ordinance, or regulation pertaining to the release of hazardous materials into the environment from or at the Premises. Operator expressly waives the benefits of Civil Code Section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or expect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

D. Operator’s obligations under this Section shall survive termination or expiration of this Agreement.

23. FEDERAL REQUIREMENTS. To comply with FAA requirements, Operator, its representatives, successors and assigns, as part of the consideration hereof, does hereby covenant and agree:

A. That in the event facilities are constructed, maintained, or otherwise operated on the Premises described in this Agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Operator shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, 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 the Regulations may be amended.

B. 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 in use of the facilities, (2) that in the construction of any improvements on, over, or under such land 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 subject to discrimination, (3) that Operator shall occupy and 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 the Regulations may be amended.

C. That in the event of breach of any of the above nondiscrimination covenants, the County shall have the right to terminate this Agreement and to reenter and repossess the land and the facilities thereon, and hold the same as if this Agreement had never been made or issued. This provision does not become

effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

- D. That Operator shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided, that Operator may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to purchasers.
- E. That non-compliance with subdivision D above shall constitute a material breach thereof and in the event of such non-compliance the County shall have the right to terminate this Agreement without liability therefore or at the election of the County or the United States either or both said Governments shall have the right to judicially enforce Provisions.
- F. That Operator shall insert the above five provisions, subdivisions A through E, in any agreement, contract, etc., by which Operator grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Premises herein;
- G. The Operator, for himself, his heirs, personal representatives, successors in interest, and assigns as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Operator shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federal Assisted Programs of the Department of Transportation, as said Regulations may be amended.
 - 1. The Operator for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land: (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 in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land 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 the Operator shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

- H. That the County reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of Operator and without interference or hindrance.
- I. That the County reserves the right, but shall not be obligated to Operator to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of Operator in this regard.
- J. That this Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the County and the United States relative to the development, operation or maintenance of the airport.
- K. That there is hereby reserved to the County, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Stockton Metropolitan Airport.
- L. That Operator agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises.
- M. That Operator, its officers, administrators, representatives, successors and assigns will not erect nor permit the erection of any structure or object, nor permit the growth of any tree or vegetation on the Premises above ground level elevation of eighty (80) feet. In the event the aforesaid covenants are breached, the County reserves the right to enter upon the Premises and to remove the offending structure or object and cut the offending tree or vegetation, all of which shall be at the expense of Operator.
- N. That Operator, its officers, administrators, representatives, successors and assigns will not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from Stockton Metropolitan Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the County reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of Operator.
- O. That this Agreement and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Stockton Metropolitan Airport or the exclusive or non-exclusive use of the airport by the

United States during the time of war or national emergency.

24. ASSIGNMENT. Operator shall not voluntarily assign or encumber its interest in this Agreement or in the Premises, or allow any other person or entity (except its authorized representatives) to occupy or use any or all part(s) of the Premises, without first obtaining the County's prior written consent. Said consent shall not unreasonably be withheld. Any assignment or encumbrance without the County's consent shall be voidable and, at the sole election of the County, shall constitute a default of this Agreement. No consent to any assignment or encumbrance shall constitute a further waiver of the provisions of this section.

25. INVOLUNTARY ASSIGNMENT.

A. No interest of Operator in this Agreement shall be assignable by operation of law. Each of the following acts shall be considered an involuntary assignment:

1. If Operator is or becomes bankrupt (whether voluntary or involuntary) or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which Operator is the bankrupt; or, if Operator is a partnership or consists of more than one person or entity, if any partner of the partnership, or other person or entity, is or becomes bankrupt (whether voluntary or involuntary) or insolvent, or makes an assignment for the benefit of creditors;
2. If a writ of attachment or execution is levied on this Agreement;
3. If, in any proceeding or action to which Operator is a party, a receiver is appointed with authority to take possession of the Premises; or
4. The abandonment or discontinuance of any operation at the Airport by Operator, or the failure to conduct any service, operation or activity permitted by this Agreement. If this condition exists for a period of seven (7) consecutive calendar days without the prior written consent of the County, it will constitute an abandonment of the land, facility or location, and this Agreement and the Permit shall become null and void.

B. An involuntary assignment shall constitute a default by Operator, and the County shall have the right to elect to terminate this Agreement. In no event shall this Agreement be deemed or treated as an asset of Operator.

26. DEFAULT.

A. The occurrence of any of the following shall constitute a material breach or default of this Agreement by Operator:

1. Failure to pay any payment due under this Agreement when due, if the

failure to pay continues for seven (7) calendar days after notice of the failure has been given to Operator;

2. Failure of the Operator to operate the business authorized in this Agreement.
 3. Cessation or deterioration of any service for any period which, in the determination of the County, materially and adversely affects the operation or service required to be performed by Operator under this Agreement.
 4. Failure to maintain current licenses, if any, required for the permitted operation.
 5. Intentionally supplying the County with false or misleading information or misrepresenting any material fact on documents or in statements to or before the County and its employees, or the intentional failure to make full disclosure on a financial statement, statement of gross sales, or other required documents.
 6. Failure to perform any other provision of this Agreement if the failure to perform is not cured within thirty (30) calendar days after notice of the failure has been given to Operator. If the breach or default cannot be reasonably cured within thirty (30) calendar days, Operator shall not be in breach or default of this Agreement if Operator commences to cure the breach or default within the thirty (30) calendar day period and diligently and in good faith continues to cure the default.
- B. Notices given under this section shall specify the alleged breach or default, and shall demand that Operator perform the provisions of this Agreement or pay the payment that is in arrears, as the case may be, within the applicable time period, or this Agreement is terminated. No such notice shall be deemed a forfeiture or a termination of this Agreement or a revocation of the Permit unless the County so elects in the notice.
- C. The County, at any time after Operator commits a breach or default of this Agreement, can cure the breach or default at Operator's cost. If the County, at any time, by reason of Operator's breach or default, pays any sum or does any act that requires the payment of any sum, the sum paid by the County shall be due immediately from Operator to the County at the time the sum is paid, and if paid at a later date shall be subject to late fees and penalty charges. The sum, together with the late fees or penalty charges, shall be an additional payment owed to the County pursuant to this Agreement.

27. COUNTY'S REMEDIES FOR DEFAULT.

- A. Upon the occurrence of a default that is not timely cured by Operator, the County may terminate this Agreement and Operator shall immediately surrender the Premises to the County. On termination of this Agreement, the County may recover from Operator all of the following:
- 1 The worth at the time of the award of any unpaid fees that had been earned at the time of the termination, to be computed by allowing interest at the maximum amount of interest permitted by law;
 - 2 The worth at the time of the award of the amount by which the unpaid fees that would have been earned between the time of the termination and the time of the award exceeds the amount of unpaid fees that Operator proves could reasonably have been avoided, to be computed by allowing interest at the maximum amount of interest permitted by law;
 - 3 The worth at the time of the award of the amount by which the unpaid fees for the balance of the Agreement term after the time of the award exceeds the amount of unpaid fees that Operator proves could reasonably have been avoided, to be computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%);
 - 4 Any other amount necessary to compensate the County for all the detriment proximately caused by Operator's failure to perform obligations under this Agreement, including advertising expenses, expenses of remodeling the Premises for a new Operator (whether for the same or a different use), and any special concessions made to obtain a new Operator; and
 - 5 Any other amounts, in addition to or in lieu of those listed above, that may be permitted by applicable law.
- B. County reserves the right, during the full term of the Agreement, to use the succession of proposers in the event an Operator is found in default or breach of this Agreement and this Agreement is terminated.

28. SURRENDER OF PREMISES. On the expiration, cancellation or termination of this Agreement, Operator shall surrender the Premises to the County and deliver all keys to any locks on the Premises. Licensee shall reimburse the County for any damage done to the Premises caused by Operator's use of the Premises or Operator's actions or omissions.

29. VOLUNTEER ASSISTANCE. Under no circumstances will Operator use County employees whom are on duty to perform work at the Premises. Under no circumstances will Operator use County employees whom are off duty to perform work at the Premises if the nature of the work is substantially similar to the employee's regular work duties for

the County.

- 30. SIGNS, BANNERS, FLAGS.** Operator is required to provide a business “logo” type sign at its corresponding terminal location. The size and location of signs, banners, flags, etc., located on the Premises or at the Airport shall be subject to the prior written approval and control of the Airport Director. The size and location of all signs, banners and flags located off the Airport advertising the activities of Operator shall be subject to the County’s sign ordinance.
- 31. NOTICES.** Any notices required to be given under this Agreement shall be in writing and shall be deemed properly delivered, given or served when personally delivered to the County or Operator, or in lieu of such personal service, sent by United States mail, registered or certified, return receipt requested, addressed as follows:

TO COUNTY:

San Joaquin County Metropolitan Airport
Attn.: Airport Director
5000 S. Airport Way, Room 202
Stockton, California 96002

TO OPERATOR:

- 32. ADMINISTRATION BY COUNTY.** Whenever Operator is required to secure the approval or consent of the County pursuant to this Agreement, the County shall mean the Airport Director. When the Purchasing Director is signatory to this Agreement, the Airport Director shall have authority to execute any amendment to this Agreement which does not increase the amount of compensation allowable to Operator, or otherwise substantially change the nature or scope of the services provided herein.

33. CONTRACT INTERPRETATION AND VENUE.

- A. This Agreement shall be deemed to have been entered into in Stockton, California. All questions regarding the validity, interpretation or performance of any of its terms or of any rights or obligations of the parties to this Agreement shall be governed by California law, and any action brought by either party to enforce any of the terms of this Agreement shall be filed in the San Joaquin County Superior Court.
- B. This document, including all exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding each may have had prior to the execution of this Agreement. This Agreement shall not be altered, amended or modified except by a writing signed by County and Operator. No verbal agreement or conversation with any official, officer, agent or employee of County, either before, during or after the execution of this Agreement, shall affect or modify any of the terms or conditions contained in this Agreement.
- C. No covenant or condition to be performed by Operator under this Agreement can

be waived except by the written consent of County. Forbearance or indulgence by County in any regard whatsoever shall not constitute a waiver of the covenant or condition in question. Until performance by Operator of said covenant or condition is complete, County shall be entitled to invoke any remedy available to County under this Agreement or by law or in equity despite said forbearance or indulgence.

- D. If any portion of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
 - E. The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof.
 - F. Each party to this Agreement declares and represents that in entering into this Agreement, it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is made without reliance upon any statement or representation not contained herein of any other party or any representative, agent or attorney of the other party. The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this Agreement and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties. Accordingly, no party shall be deemed to have been the drafter hereof, and the principle of law set forth in Civil Code § 1654 that contracts are construed against the drafter shall not apply.
- 34. ATTORNEY'S FEES.** In any dispute between the County and Operator, whether or not resulting in litigation, the prevailing party shall be entitled to recover from the other party all reasonable costs, including without limitation, reasonable attorney's fees. "Prevailing party" shall include without limitation, a party who dismisses an action for specific performance or for damages in exchange for sums allegedly due, performance for covenants allegedly breached or consideration substantially equal to the relief sought in the action, or which receives from the other party, in connection with any dispute, performance substantially equivalent to any of these.
- 35. AUTHORITY TO CONTRACT.** Each of the undersigned signatories hereby represents and warrants that they are authorized to execute this Agreement on behalf of the respective parties to this Agreement, that they have full right, power and lawful authority to undertake all obligations as provided in this Agreement; and that the execution, performance and delivery of this Agreement by said signatories has been fully authorized by all requisite actions on the part of the respective parties to this Agreement.

36. DATE OF AGREEMENT. The date of this Agreement shall be the date it is signed by County.

OPERATOR Name
Address
City, State and Zip

COUNTY OF SAN JOAQUIN, a
political subdivision of
the State of California

By: _____ Date: _____
Signature, Authorized Agent

By: _____ Date: _____
David M. Louis, C.P.M., CPPO, CPPB
Director, Purchasing & Support Services



