

AMENDMENT THREE
TO
RESTAURANT/LOUNGE CONCESSION AGREEMENT
BILLINGS LOGAN INTERNATIONAL AIRPORT TERMINAL BUILDING
BY AND BETWEEN
CITY OF BILLINGS
AND
AIR HOST BILLINGS, INC.

WITNESSETH

RECITALS

WHEREAS, City is the owner and operator of the Billings Logan International Airport, Billings, Montana (hereinafter called "Airport").

WHEREAS, City and Air Host Billings, Inc. (hereinafter called "Concessionaire") previously entered into a Restaurant/Lounge Concession Agreement dated October 28, 2002 (hereinafter called the "Agreement") for Concessionaire to provide restaurant and lounge concessions at the Airport, and

WHEREAS, the Agreement was amended via Amendment One dated February 25, 2008, amending the term of the Agreement to expire October 31, 2014, and

WHEREAS, the Agreement was subsequently amended via Amendment Two dated October 14, 2014, further amending the term of the Agreement to expire on January 31, 2016, and

WHEREAS, the term of the Agreement was to expire on January 31, 2016; however, via written letter dated January 29, 2016, the City and Concessionaire agreed to treat Concessionaire as a holdover concessionaire operating on a month-to-month arrangement under the terms of the previously amended Agreement, and

WHEREAS, City is in the design process for making substantial improvements to the Airport Terminal Building and its concourse areas, in order to better serve and more efficiently and effectively meet the needs of the traveling public and the airlines using the Airport in the future, and

WHEREAS, those substantial improvements to be made at the Airport will involve, among other things, the construction of new and/or renovated spaces for use in providing concessions (all such improvements to be constructed at the Airport hereinafter referred to as the "Terminal Expansion Project"), and

WHEREAS, the Airport will advertise through a Request for Proposals (RFP) process for potential concessionaires to provide a proposal to operate the new concession spaces so said spaces can be built with concessionaire involvement during the Terminal Expansion Project construction process, and

WHEREAS, the parties have agreed that until the new concession spaces are constructed and operational, Concessionaire shall continue as a holdover concessionaire under the terms and conditions of the Agreement and any Amendments as set forth herein.

NOW, THEREFORE, for and in consideration of the recitals set forth above and of the mutual covenants and agreements contained herein and other good and valuable consideration, the parties hereby agree as follows:

1. Holdover. Concessionaire shall continue as a holdover concessionaire under Article I, Paragraph C of the Agreement, until the earlier of either

(a) The date that those sections of the Terminal Expansion Project incorporating the new concession facilities are substantially completed and City has obtained a tenant/operator (whether such tenant/operator be the Concessionaire or another person or entity) to have concession rights at the Airport using the space completed in the Terminal Expansion Project; or

(b) Three (3) years from the first day of the month following the date of the full execution of this Amendment.

However, should the Terminal Expansion Project not be completed within such three-year period, City shall have the right to extend Concessionaire's holdover period for up to an additional one (1) year on the same terms and conditions set forth in the Agreement and this Amendment. To exercise such right to extend the holdover period, City shall provide Concessionaire with not less than sixty (60) calendar days written notice prior to the expiration of the three-year period.

2. Location of Concessionaire's Premises in the Airport. Concessionaire will initially use the Premises and facilities in the Airport Terminal Building that it is using as of the date of the execution of this Amendment Three. However, Concessionaire acknowledges that, in connection with the Terminal Expansion Project, City anticipates the need to demolish Concessionaire's post-security deli space, certain restroom facilities, breakroom, office space, and substantially all of the area adjacent to the kitchen as currently located. City anticipates that it will also need to reclaim a portion of Concessionaire's pre-security dining room to utilize for passenger

access to post-security areas of the Terminal. City also anticipates that Concessionaire's non-working walk-in cooler area may be used as temporary office space for Concessionaire. All of the above described demolition work, as well as any other work removing or relocating portions of the Terminal Building, will be hereinafter referred to in this Amendment as the "Demolition Work."

As a result of the Demolition Work and other work to be done by City in connection with the Terminal Expansion Project, Concessionaire will be required to use other space in the Airport to conduct its concession business. Specifically, the parties agree as follows with respect to the Terminal Expansion Project:

(a) At all times during the Terminal Expansion Project, City will use its best efforts to provide Concessionaire with adequate space and facilities to conduct Concessionaire's concession business and to ensure that the traveling public has access to Concessionaire's concession business. In particular, City will permit Concessionaire to conduct its post-security concession business at the Airport in the new temporary space located on Concourse B, which City and Concessionaire anticipate will be finished out in a manner similar to the drawing attached as Exhibit A to this Amendment (hereinafter the "Temporary Concourse Concession Space"). In addition, City will provide additional space on the first floor (basement) of Concourse B for Concessionaire's use (hereinafter the "First Floor Space"). The First Floor Space will include areas for the storage needs of Concessionaire. If Concessionaire elects, Concessionaire shall be allowed to provide and set in place (at Concessionaire's own expense) a beer system in the First Floor Space, providing refrigeration for beer storage units and lines

connecting the units to the Temporary Concourse Concession Space. In the pre-security area of the Airport, City will also endeavor to provide replacement storage and office spaces for the spaces that will be demolished in connection with the Demolition Work.

(b) With respect to the Temporary Concourse Concession Space, the seating areas and other areas in front of the counters in such space shall remain as common areas of the Airport Terminal, but Concessionaire shall have the non-exclusive right to use those areas for the seating and service of its customers. The exact location of the seating area in the Temporary Concourse Concession Space as shown on Exhibit A may change from time to time in accordance with City's requirements regarding the on-going completion of the Terminal Expansion Project; however, City shall endeavor to ensure at all times that adequate seating is provided to meet the reasonable needs of Concessionaire's customers, and Concessionaire shall not change any seating areas without first obtaining City's prior approval. At its own cost, Concessionaire shall provide and install in the Temporary Concourse Concession Space the millwork and all equipment to be used by Concessionaire in the Temporary Concourse Concession Space. City shall be responsible, at its own expense, for providing all floor drains and the flooring in the Temporary Concourse Concession Space.

(c) Concessionaire shall continue to maintain the kitchen and other equipment used for the pre-security concession operations at the Airport. At City's expense, City will provide a replacement dry storage area for the existing, non-

working walk-in cooler that City anticipates demolishing during the Terminal Expansion Project, once the permanent office space is completed and the office space is vacated.

(d) The parties agree that, as the Terminal Expansion Project continues, it may be necessary for City to again relocate all or certain portions of Concessionaire's premises used to operate its concession business at the Airport (including the possible relocation or modification of the Temporary Concourse Concession Space). If such relocation or modification becomes necessary, City agrees to endeavor to provide at least ninety (90) calendar days advance written notice to Concessionaire of the need to relocate and to provide, in connection with any such relocation or modification, substitute space to Concessionaire suitable in order to allow Concessionaire to continue to conduct its concession operations at the Airport.

(e) City shall be responsible for distributing, at its own costs, the utilities in the new areas provided to Concessionaire (including, but not limited to, the Temporary Concourse Concession Space and the First Floor Space) to conduct its concession business.

(f) As Concessionaire's premises and facilities are demolished during the Terminal Expansion Project, Concessionaire shall be entitled to remove, at Concessionaire's own expense, and retain for its own use at locations other than the Airport, its equipment, furniture, and fixtures that Concessionaire may not be able to use in connection with its continuing operations during the Terminal Expansion

Project. However, should Concessionaire determine that it will not be able to use any items of equipment, furniture, or fixtures for such continuing operations at the Airport or for Concessionaire's business in other locations then Concessionaire shall notify City in writing of its intent to abandon such items. Upon notice, said items shall be considered abandoned to City and Concessionaire shall have no further responsibility for removing/disposing of the same and the disposition of said items shall be at the sole discretion of the City.

(g) The parties agree to cooperate with each other in attempting to ensure that the Terminal Expansion Project is completed in an orderly and efficient manner and that Concessionaire is allowed to continue without interruption its concession operations in the Airport during such construction.

3. ARTICLE XII, GENERAL PROVISIONS, is renamed as ARTICLE XII, NONDISCRIMINATION, and revised as follows:

ARTICLE XII

NONDISCRIMINATION

A. General. In the use and occupation of the Airport, Concessionaire shall not discriminate against any person or class of persons by reason of race, color, religion, sex, national origin or ancestry, age, or disability. Additionally, for the services provided during the use and occupation of the Airport, Concessionaire shall furnish said services on a reasonable and not unjustly discriminatory basis to all users thereof and charge reasonable and not unjustly discriminatory prices for each unit of service, provided that the Concessionaire may be allowed to

make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

B. Civil/Human Rights Laws. In the operation and use of the Airport, Concessionaire shall not, on the grounds of race, color, religion, sex, national origin or ancestry, age, or disability, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21 of Title 49, Code of Federal Regulations, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and such other Federal, State, or Local laws as may be applicable.

Without limiting the generality of the foregoing, Concessionaire agrees to not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry, age, or disability. Concessionaire agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin or ancestry, age, or disability. Such action shall include, but not be limited to, employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. Concessionaire agrees to post, in conspicuous places available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

C. Concessionaire, for itself, its heirs, personal representatives, successors in interest, and assignees, as part of the consideration of this Agreement, does hereby covenant and agree as a covenant running with the land that, in the event improvements are constructed, maintained, or otherwise operated on the Airport for a purpose for which a United States

Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Concessionaire shall maintain and operate such improvements and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21 (Nondiscrimination in Federally Assisted Programs of the Department of Transportation), as said regulations may be amended.

D. Concessionaire, for itself, its heirs, personal representatives, successors in interest, and assignees, as a part of the consideration of this Agreement, does hereby covenant and agree as a covenant running with the land that:

1) No person on the grounds of race, color, religion, sex, national origin or ancestry, age, or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said improvements.

2) No person on the grounds of race, color, religion, sex, national origin or ancestry, age, or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the construction of any improvements on, over, or under such land and the furnishing of services thereon.

3) Concessionaire shall use the facilities 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), as said regulations may be amended.

Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or disability shall be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E, or such employment activities covered in any applicable State or Local law. Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Article XII.

E. During the performance of this Agreement, the Concessionaire, for itself, its assignees, and successors in interest, agrees to comply with the following nondiscrimination statutes and authorities, including, but not limited to:

- 1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 2) 49 CFR Part 21 (Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of The Civil Rights Act of 1964);
- 3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal aid programs and projects);
- 4) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

5) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*) (prohibits discrimination on the basis of age);

6) Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, § 47123) as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

7) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and § 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);

8) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;

9) The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies,

and activities with disproportionately high and adverse human health or environmental effects on minority and low income populations;

11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (LEP), and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Federal Regulations at 74087 – 74100);

12) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

4. ARTICLE XII, GENERAL PROVISIONS, is renumbered as ARTICLE XIII, GENERAL PROVISIONS, and revised as follows:

A. Attorney's Fees. Should either party employ an attorney or attorneys or utilize the services of in-house attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Agreement, the non-prevailing party in any action pursued in a court of competent jurisdiction agrees to pay to the prevailing party all reasonable costs, damages, expenses, and attorney's fees, including fees for in-house attorneys, expended or incurred in connection therewith.

B. Taxes. The Concessionaire shall pay any taxes or assessments which may be lawfully levied against Concessionaire's occupancy or use of the Premises, or any improvements placed thereon as a result of Concessionaire's occupancy.

C. Subordination of Agreement.

1) This Agreement shall be subordinate to the provisions of any existing or future agreements between the City and the United States relative to the administration, operation, or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport.

2) Any mortgagee or beneficiary shall have the right to cure any default on the part of Concessionaire in the payment of rent hereunder and, in the event of default, to assume the Concessionaire's position under this Agreement. The City in no event shall be liable for the payment of the sum secured by such mortgage or trust indenture, nor for any expenses in connection with the same. Furthermore, such mortgage or trust indenture shall expressly provide that the mortgagor or beneficiary will seek no ~~money~~ monetary judgment against the City. The mortgage or trust indenture shall also contain provisions requiring the holder of the indebtedness secured by such mortgage or trust indenture to mail to the City, by certified mail, a copy of each notice of breach of covenant, default, or foreclosure given by the holder or the trustee under such mortgage or deed of trust.

~~D. Nondiscrimination. Concessionaire, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree:~~

~~1) That no person, on the grounds of race, color, creed, political ideas, sex, age, or physical or mental disability, shall be excluded from~~

~~participation, denied the benefits of, or be otherwise subjected to discrimination in the use of Airport facilities, or the exercise of its rights and privileges under this Agreement.~~

~~2) That, in the construction of any improvements on behalf of Concessionaire and the furnishing of services, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, color, creed, political ideas, sex, age, or physical or mental handicap.~~

~~3) That Concessionaire shall use the Airport facilities in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.~~

ED. Modification and Amendments. Changes or modifications to this Agreement shall only be done in the form of an amendment to be agreed upon and signed by both parties.

FE. Paragraph Headings. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Agreement or the particular paragraphs.

GF. Notices. Notices to the City provided for herein shall be sufficient if sent by certified mail, postage prepaid, addressed to:

Director of Aviation and Transit
Billings Logan International Airport
1901 Terminal Circle, Room 216
Billings, MT 59105

and notices to Concessionaire, if sent by certified mail, postage prepaid, addressed to:

Air Host Billings, Inc.
Attn: David C. Shelton
~~1355 Lynnfield Road, Suite 101~~
1255 Lynnfield Road, Suite 281
Memphis, TN 38119-5885

Other Contact Information:
Phone: (901) 767-3463 (Ext. 28)
E-mail: dairhost@bellsouth.net

With copy to:

Mark Grai, Esq.
6060 Poplar, Suite 295
Memphis, TN 38119

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

HG. Quiet Enjoyment. With Concessionaire's performance of the covenants and terms of the Agreement herein, Concessionaire shall have peaceful possession and quiet enjoyment of the Premises during the term hereof.

HH. Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any similar such relationship between the parties hereto.

JI. Effect of Invalid Provision. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provisions to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be

affected hereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

~~K~~J. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue in any proceedings held hereunder shall be in the State of Montana Thirteenth Judicial District Court, Yellowstone County, Montana.

~~L~~K. Entire Agreement. This Agreement and its attachments constitute the entire Agreement and understanding of the parties with respect to matters referenced herein. Time is expressly declared to be of the essence in connection with the obligations and undertakings of the parties to this Agreement.

~~M~~L. Force Majeure. Neither party hereto shall be liable to the other party for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to riot, war, hostilities between nations, threatened or actual terrorist acts of any kind or nature, weather conditions, floods, rebellion, sabotage, acts of God, fire, accident, strike, lockout, labor dispute (whether of a general or widespread nature or limited to the Concessionaire's own employees), lack of or failure to obtain sufficient electric power, or, without limiting any of the foregoing causes, due to any other contingencies of a similar or dissimilar nature beyond the reasonable control of such party.

FURTHER, except as otherwise set forth above in this Amendment, all other terms and conditions of the Concession Agreement remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hand this _____ day
of _____ 20____.

ATTEST:

CITY OF BILLINGS

BY _____
CITY CLERK

BY _____
MAYOR

APPROVED AS TO FORM

AIR HOST BILLINGS, INC.

BY _____
CITY ATTORNEY

BY _____
DAVID C. SHELTON
PRESIDENT