

GIFT SHOP CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT made and entered into this ____ day of _____ 20____, by and between the following:

CITY OF BILLINGS, MONTANA, hereinafter
designated "City"

and

AIR HOST BILLINGS, INC., hereinafter
designated "Concessionaire"

W I T N E S S E T H

WHEREAS, the Concessionaire is engaged in the business of operating gift shops;
and

WHEREAS, the Concessionaire desires to obtain a concession, use certain facilities and obtain certain rights in connection with and on the Airport, including the use of exclusive use space within the Terminal Building on said Airport, as defined hereinafter, and the City is willing to grant a concession to the Concessionaire upon the terms and conditions hereafter stated. In this Agreement, the term "Terminal Building" refers to the Terminal Building and concourses at the Airport as shown on Exhibit A attached hereto and made a part hereof, as well as any expansions or additions thereto.

NOW THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements herein contained and other valuable consideration, the City does hereby grant a concession unto the Concessionaire, and the Concessionaire does hereby accept said

concession from the City, certain facilities, and rights in connection with and on the Airport, as follows, to-wit:

ARTICLE I

CONCESSION

The Concessionaire shall have the right to operate a gift shop in the Terminal Building, which right shall include the following:

A. Use of Airport and Facilities.

1. The nonexclusive right to use with others, the areas of the Airport and appurtenances thereto, including additions to the Airport, which may be designated by the City for nonexclusive use, together with all facilities, equipment, improvements and services which have been or may hereafter be provided at or in connection with the Airport from time to time for nonexclusive use.

2. The right to sell to the public those retail merchandise items and such other news and gift items as may be approved herein. The Concessionaire shall be required to offer for sale those items listed in Category I of Exhibit B, and shall be permitted to sell those items listed in Category II of Exhibit B, which is attached hereto and made a part hereof.

3. The right to utilize reasonable adequate vehicular parking facilities in common with other tenant employees. Such facilities shall be located in an area designated by the City. The City reserves the right to assess a reasonable charge to the Concessionaire's employees for such employee parking facilities at a rate not

more than that being charged to other tenant employees for use of the same facilities.

4. The concession rights herein granted to the Concessionaire shall be exclusive within the current Terminal Building, but nonexclusive at the Airport.

5. In the event of a dispute between the Concessionaire and the City as to the services to be offered or products to be sold, the Concessionaire shall meet and confer with the Director of Aviation and Transit and, if the parties continue to disagree, the Director of Aviation and Transit shall determine the services to be offered or products to be sold, and the Concessionaire shall be bound by said determination.

6. The full and unrestricted right of access to and egress from the Airport and those portions of the Airport occupied by the Concessionaire. This privilege shall extend to employees, business visitors, guests and invitees of the Concessionaire, and be subject to the security requirements put in place by the Transportation Security Administration (TSA).

7. In no case shall the rights granted above be construed as authorizing the conduct of a separate business by the Concessionaire. The rights granted above shall permit the Concessionaire to perform only such functions as are incidental to providing retail merchandising services in the Terminal Building.

B. Space in and Adjacent to Terminal Building.

1. The nonexclusive use with others of the common areas and lobby in the Terminal Building and of such space and such facilities as may be made available from time to time by the City.

2. The exclusive use in the Terminal Building of the space shown on Exhibit A attached hereto and made a part hereof. The use of the exclusive use space herein granted to the Concessionaire shall be for purposes in connection with or incidental to the Concessionaire's gift shop business at the Airport.

3. Depreciation and Investment Credit. Neither Concessionaire nor any successor of Concessionaire under this Agreement may claim depreciation or an investment credit with respect to the Leased Premises under the Internal Revenue Code of 1986, as amended. Concessionaire hereby makes an irrevocable election binding on it and its successors in interest under this Agreement, not to claim such depreciation or investment credit with respect to the Leased Premises.

4. Useful Life of the Facility. Concessionaire and Lessor agree that the term of this Agreement does not exceed eighty percent (80%) of the reasonably expected economic life of the property or facilities covered by this Agreement. Concessionaire represents and acknowledges that it has no option or right to purchase or acquire any interest in the personal or real property subject to this Agreement.

ARTICLE II

TERM

A. Initial Term. The term of this Agreement shall commence on the 1st day of February 2011, and shall end on the 31st day of January 2016. The Agreement Year for purposes of this Agreement shall be February 1 through January 31 of each year of the term herein.

During the time of war or declared national emergency, the City shall have the right to lease the landing area or any part thereof to the United States Government for military use. If any such lease is executed, any provisions of this Agreement that are inconsistent with the provisions of the lease to the Government shall be suspended, provided that the term of this Agreement shall be automatically extended by the amount of the period of suspension.

B. Occupancy. The date of actual occupancy shall not affect the term of this Agreement.

C. Holding Over. A holding over by the Concessionaire or its assigns, beyond the expiration of the term, shall not be permitted without the prior written consent of the Director of Aviation and Transit, and then only on a month-to-month basis. Such holdover shall be governed by the same conditions, restrictions, limitations, and covenants of this Agreement as set forth herein or as subsequently amended, and shall not be deemed to be a renewal of this Agreement.

ARTICLE III

CONCESSION FEES AND CHARGES

The Concessionaire agrees to pay to the City for the use of the premises, facilities, and rights granted hereunder, the following fees and charges during the term hereof:

A. Monthly Concession Fee Payment. As the monthly concession fee payment during the term of this Agreement, the Concessionaire shall pay the Percentage Fee as defined herein.

B. Percentage Fee. The Percentage Fee shall be the percentage of the Gross Revenues of the Concessionaire generated at the Airport during the Agreement Year as follows:

<u>FOR THE PERIOD</u>	<u>PERCENTAGE TO BE APPLIED TO GROSS REVENUES</u>
02/01/11 thru 1/31/12	First \$675,000 – 19.75%
	Over \$675,000 – 25.00%
02/02/12 thru 1/31/13	First \$675,000 – 19.75%
	Over \$675,000 – 25.00%
02/01/13 thru 1/31/14	First \$675,000 – 19.75%
	Over \$675,000 – 25.00%
02/01/14 thru 1/31/15	First \$675,000 – 19.75%
	Over \$675,000 – 25.00%
02/01/15 thru 1/31/16	First \$675,000 – 19.75%
	Over \$675,000 – 25.00%

C. Minimum Annual Guarantee. The Minimum Annual Guarantee (MAG) for each Agreement Year of the term shall be \$120,000, except if annual Enplaned Passenger numbers drop below 250,000 in a given Agreement Year, then there shall be no MAG for that Agreement Year. Enplaned Passenger numbers refer to the aggregate number of passengers departing by air travel from the Billings Logan International Airport Terminal Building as reported by the airlines and published by the City in its monthly activity report.

D. No Abatement. The City and/or Federal government shall retain the right to restrict access to areas "airside" of security checkpoints to ticketed passengers and Airport, airline, and tenant personnel only.

E. Annual Adjustment. At the end of each Agreement Year during the term hereof, the City shall prepare and submit to the Concessionaire a statement showing the total calculated annual fee owing for said Agreement Year. If the sums paid by the Concessionaire during said Agreement Year were greater than the City's calculated annual fee, such overpayment shall be credited to the fees and charges due from the Concessionaire in the next Agreement Year, except at the end of the Agreement Term, in which case the City will reimburse the Concessionaire within thirty (30) calendar days. If the Concessionaire's aggregate payments for the Agreement Year are less than the total calculated annual fee, the Concessionaire shall, within ten (10) calendar days after notification, pay the City the difference.

F. Method of Payment. The procedure for the payment of the fees and charges shall be as follows:

1. Monthly Payments. The fees and charges to be paid by the Concessionaire to the City hereunder shall be payable in monthly installments throughout the term of this Agreement. Within ten (10) calendar days after the end of each calendar month, the Concessionaire shall pay the City, as the fees and charges for such prior calendar month, the actual percentage fee charge.

2. Monthly Gross Revenues and Fee Report. The Concessionaire shall submit a monthly accounting of the Gross Revenues received at each location in the Airport operated by the Concessionaire under this Agreement. Each monthly

accounting shall be in such manner and detail and upon such forms as are prescribed by the City. Each monthly report shall be due on the same date and at the same address as the payment for that month is due. The City reserves the right to make modifications to said reporting form at any time under this Agreement.

3. Annual Statement. No later than thirty (30) calendar days following the end of each Agreement Year, Concessionaire shall deliver to City, a summary statement signed and certified by a corporate officer to be true and correct, setting forth the total amount of Concessionaire's annual Gross Revenues made during the immediately preceding Agreement Year. This statement shall be for the purposes of reconciling the monthly statements of Gross Revenues and payments made. Any adjustment for any deficiencies between the MAG payment and the calculation of the concession fees payable (by comparing the annual Percentage Fee calculation with the MAG) shall be paid with interest as set forth herein.

4. Pro Rata Payment. If the commencement or termination of this Agreement falls upon any date other than the first or last day of any calendar month, the applicable fees and charges for said month shall be in the proportion that the number of days the Agreement is in effect for that month bears to the total number of days in that month. Should this Agreement terminate at any time other than at the end of an Agreement Year, the minimum fees for the Agreement Year in which such termination occurs shall be in the same proportion that the number of days the Agreement is in effect for that Agreement Year bears to the total number of days in the year.

G. Financial Records and Audits. The Concessionaire shall keep true and accurate accounts, records, books, and data, which will show the sales, including taxes, surcharges, and Gross Revenues as herein defined, as separate line items of said business operated at the Airport, which books and records shall be maintained in accordance with generally accepted accounting principles and shall be open for inspection and audit by authorized representatives of the City at all reasonable times during normal business hours. The City reserves the right, either directly or through an agent, to make necessary detailed audits as required at any time during the term of this Agreement and for at least a three (3) year period following the end of each Agreement Year. If, as a result of such audit, it is established that the Concessionaire has understated the Gross Revenues received from all of its operations at the Airport by two percent (2%) or more, the entire expense of said audit shall be borne by the Concessionaire. Any additional Percentage Fee due shall immediately be paid by the Concessionaire to the City with interest thereon at one and one-half percent (1.5%) per month from the date such additional Percentage Fee became due. Within ninety (90) calendar days from the end of each Agreement Year, and at the sole cost and expense of the Concessionaire, the Concessionaire shall engage a Certified Public Accountant (CPA) to provide a letter stating that the Concessionaire has complied with the monthly collection, reporting and remittance requirements pursuant to and in accordance with this Agreement. The CPA statement shall be in a format as specified by the City and shall be due to the City at the office of the Director of Aviation and Transit. Any reported discrepancies shall be corrected with ten (10) calendar days of receipt of the CPA statement.

H. Gross Revenues Defined. "Gross Revenues" shall include all receipts, whether by coin or currency, on account, by check or credit card, collected or uncollected, derived

by the Concessionaire as a result of its operation of the concession rights herein granted, without any exclusion whatever, except those expressly permitted under this Paragraph H. Gross Revenues shall include the sales revenues received or billed by the Concessionaire from the sale of any item pursuant to this Agreement whatsoever. Goods, work, or services furnished by any person or firm in lieu of payment in exchange for value received shall be deemed to be Cash Sales. Gross Revenues shall exclude revenues from the following:

1. Taxes on Sales. Retail sales taxes, excise taxes, or related direct taxes on the consumer, which are collected by the Concessionaire on such sales for remittance to the City, County, State, or Federal government, provided all such taxes are properly accounted for and recorded.

2. Sale of Scrap, Equipment, or Uniforms. Receipts from the sale of waste or scrap materials resulting from the operation of the Concessionaire's business at the Airport; receipts from the sale of or the trade-in value of furniture, fixtures, or equipment used on the concession premises, and owned by the Concessionaire; receipts from the sale at cost of uniforms/clothing to the Concessionaire's employees where such uniforms/clothing are required to be worn by said employees.

3. Exchanges and Refunds from Suppliers. The value of any merchandise, supplies, or equipment exchanged or transferred from or to other business locations of the Concessionaire, where such exchanges or transfers are not made for the purpose of avoiding a sale by the Concessionaire which would otherwise be made from or at the concession premises; receipts in the form of

refunds from or the value of merchandise, supplies, or equipment returned to shippers, suppliers, or manufacturers.

4. Refunded Receipts. Receipts with respect to any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by the Concessionaire, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit.

5. Supplier Discounts. The amount of any cash or quantity discounts received from sellers, suppliers, or manufacturers.

6. Tips. The amount of any gratuity paid or given by patrons or customers to employees of the Concessionaire. Concessionaire's employees shall not, at any time while on Airport property, solicit tips.

7. Reimbursement. Receipts in the form of reimbursements from the Concessionaire's subcontractor(s) for any taxes, loan payments, and/or license fees paid by the Concessionaire for or on behalf of such subcontractor.

8. Damages. Amounts received as insurance proceeds, or otherwise, for damages to Concessionaire's personal property located at the Airport.

I. Miscellaneous Fees. The Concessionaire shall pay all other reasonable miscellaneous charges established by the City on a nondiscriminatory basis from time to time and applicable to the Concessionaire's operation at the Airport within fifteen (15) calendar days from receipt of the City's invoice for any such charges, including, but not limited to, reasonable charges for signage changes, late payment fees, identification badges, and/or employee parking.

Notwithstanding, the Concessionaire shall not be required to pay any charges for common area costs, such as for security or common maintenance.

J. Utilities. The City shall provide for heating, air conditioning, and electrical utilities to the point of outlet presently existing in the exclusive use premises. Additional electrical connections, telephone lines, cable, and other communication or data lines and services shall be the responsibility of the Concessionaire.

K. Interest Penalty. Without waiving any other right or action available to the City, in the event of default in the payment of any fees or charges payable to the City by the Concessionaire under this Agreement, which are not paid when due, shall accrue interest at the rate of one and one-half percent (1.5%) per month from the date such fees or charges are due and payable, until paid in full. Said interest shall not apply with respect to items being contested in good faith by Concessionaire and which are resolved in Concessionaire's favor.

L. Contract Security.

1. The Concessionaire shall provide the City with a performance bond, irrevocable letter of credit, or other similar "Contract Security" acceptable to the City in the amount of \$40,000. Said Contract Security is to be provided by a surety company qualified to do business in the State of Montana, acceptable and satisfactory to the City, and shall be conditioned to insure faithful and full observance and performance by the Concessionaire of all the terms, conditions, and covenants set forth in this Agreement. In lieu of a performance bond, the Concessionaire, at the Concessionaire's option, may deposit with the City, a cash amount, certificate of deposit, or an irrevocable letter of credit equal to the amount

of the required Contract Security. In the event the Concessionaire chooses to provide a letter of credit as the Contract Security, the letter of credit shall be irrevocable for the period of performance, shall be drawn on a bank approved by the City, and shall be payable on demand by the City. Said deposit will be held as security and refunded or returned in full at the end of the term of this Agreement, unless used to satisfy the Concessionaire's financial obligations herein.

2. If the Concessionaire shall fail to obtain and/or keep in force such Contract Security required hereunder, such failure shall be grounds for immediate cancellation of this Agreement pursuant to Article VIII. The City's rights under this Paragraph L shall be in addition to all other rights and remedies provided to the City under this Agreement.

ARTICLE IV

OPERATIONAL STANDARDS AND MAINTENANCE BY CONCESSIONAIRE

A. Concession Personnel. The Concessionaire shall, at its cost, furnish prompt, courteous and efficient service and shall ensure polite and inoffensive conduct and demeanor on the part of its representatives, agents, and employees, collectively referred to herein as "personnel." The Concessionaire shall employ or permit the employment of only such personnel as will assure a high standard of customer service to the public. All personnel will be provided with annual customer service training designed to ensure the best service possible. All such personnel, while on or about the Airport premises, shall be clean, neat in appearance, courteous at all times, and shall be appropriately attired, with badges or other suitable means of identification, in such instances as are appropriate. No personnel, while on or about the Airport

premises, shall use improper language, act in a loud, boisterous, or otherwise improper way, or be permitted to solicit business in an inappropriate manner.

B. Local Manager. The Concessionaire shall select and appoint a local Manager of the Concessionaire's operations at the Airport. Such person must be an active, qualified, competent, and experienced manager or supervisor of comparable retail operations, vested with full power and authority to accept service of all notices provided for herein and regarding operation of the concession business herein authorized, including the quality and prices of retail items and the appearance, conduct, and demeanor of the Concessionaire's personnel. Said Manager shall ordinarily be available during regular business hours, and where, at all times during the Manager's or other absences, a responsible subordinate shall be in charge and available.

C. Hours of Operation. On each day throughout the term of the Agreement, the Concessionaire shall operate during those hours as are necessary to adequately serve the public demand, as said demand may be determined and altered by the Director of Aviation and Transit. The Concessionaire may advise the Director of Aviation and Transit regarding optimum hours of operation at each location.

1. Minimum Hours of Operation. The Concessionaire shall be obligated to operate the facilities for the hours that are defined in this paragraph until such time as the Director of Aviation and Transit requests that hours be extended or authorizes hours to be altered. The initial minimum hours each day shall be as follows:

Facilities shall open one (1) hour prior to the departure of the first scheduled flight of the day, which boards a significant amount of passengers.

Facilities shall remain open until at least the departure of the last scheduled flight of the day, which boards a significant amount of passengers.

2. Curtailement of Hours Beyond Control. The Concessionaire shall be excused from its obligation as set forth in Subparagraph C 1 above in the event that its operations are closed or curtailed, in whole or in part, by reason of a strike, lockout, or a cause beyond its control as determined by the Director of Aviation and Transit.

3. Director of Aviation and Transit May Alter Hours. The Director of Aviation and Transit may, on twenty-four (24) hours notice to the Concessionaire, require earlier opening times or later closing times for any of its locations at the Airport. The Concessionaire shall comply with said hours. The Director of Aviation and Transit may, from time to time, authorize a later opening or earlier closing time, provided the Director of Aviation and Transit finds that the Concessionaire has submitted adequate justification therefore.

D. Merchandise, Service, and Assortment Plan. The Concessionaire's management plan and merchandise plan shall be approved in advance by the Director of Aviation and Transit.

1. Amendments May Be Required. The Director of Aviation and Transit may reevaluate the selection of items during the term. The Concessionaire may meet and confer with the Director of Aviation and Transit, or a designated representative regarding such matters. The Director of Aviation and Transit's determination that the assortment of items offered is inadequate (in general or at

any particular location), or that any price is excessive, or that the quality or quantity of any item is deficient, shall be conclusive.

2. Quality of Retail Items. All retail items offered for sale by the Concessionaire shall be of high quality, and comparable to those offered at first class news and gift facilities of a similar type in other comparable airports in the United States.

3. Prices. All retail items with a pre-marked price shall be sold at that price or less. All items listed in Exhibit B offered for sale by the Concessionaire shall be priced reasonably in comparison to non-discount, off-airport facilities selling similar products to the general public in the Billings area. What constitutes "non-discount facilities" and "comparability of prices" shall be determined solely by the City, but generally in accordance with the following guidelines: non-discount facilities shall generally mean retail convenience establishments serving the public and located within a ten (10) mile radius of the Airport. Prices no more than ten percent (10%) over the average of a minimum of three (3) like facilities for the same item shall be deemed to be reasonable.

E. Cash and Record Handling Requirements. The Concessionaire shall prepare a description of its cash handling and sales recording systems and equipment, which shall be submitted to the Director of Aviation and Transit for approval. When approved by the Director of Aviation and Transit, such systems and equipment, including any revision thereto approved by the Director of Aviation and Transit, shall be utilized by the Concessionaire in its operations at Airport.

F. Cash Registers. The Concessionaire shall accurately record each sale on a point-of-sale register acceptable to the Director of Aviation and Transit. Such register shall be non-resettable and sufficient to supply an accurate record of all sales, refunds, taxes, etc., on tape or otherwise as directed by the Director of Aviation and Transit. Such register shall also have a merchandise sale item display visible to the purchaser.

G. Credit Cards. Customers shall be permitted to utilize at a minimum the following credit cards in payment for the purchase of merchandise: Discover, Visa, MasterCard, and American Express.

H. Prohibited Acts. The Concessionaire shall not do or permit to be done anything specified herein. Specifically, it shall not:

1. Interfere with Access. The Concessionaire or its employees, agents, or representatives shall not do anything which may interfere with free access and passage in the concession premises or the areas adjacent thereto, or to the elevators, escalators, streets or sidewalks of the Airport, or hinder police, fire fighting, or other emergency personnel in the discharge of their duties, or hinder access to utility, heating, ventilating or air-conditioning systems, or portions thereof, on or adjoining the concession premises.

2. Interfere with Systems. The Concessionaire or its employees, agents, or representatives shall not do anything which may interfere with the effectiveness of security, utility, heating, ventilating or air-conditioning systems or portions thereof on or adjoining the concession premises (including, but not limited to, lines, pipes, wires, conduits, and equipment connected with or appurtenant

thereto), or interfere with the effectiveness of elevators or escalators in or adjoining the concession premises, or overload any floor in the concession premises.

3. Permit Smoking. The Concessionaire or its employees, agents, or representatives shall not permit smoking, or do anything contrary to the City policy, ordinance, or signs prohibiting smoking on the Airport premises.

4. Install Unauthorized Locks and Security. The Concessionaire or its employees, agents, or representatives shall not place any additional lock, of any kind, upon any window, or interior or exterior door in the concession premises, or make any change in any existing door or window lock(s) or the mechanism(s) thereof, unless a key therefore is maintained on the concession premises, nor refuse, upon the expiration or cancellation of this Agreement, to surrender to the Director of Aviation and Transit any and all keys to the interior or exterior doors on the concession premises, whether said keys were furnished to or otherwise procured by the Concessionaire. In the event of the loss of any keys furnished by the Director of Aviation and Transit, the Concessionaire shall pay the City, on demand, the cost for replacement thereof, and the cost of re-keying the City locks. The City shall maintain, and appropriately secure, all keys that afford access to the premises assigned under this Agreement. The Concessionaire shall be fully responsible for fully complying with any law, rule, regulation, or order regarding Airport security.

5. Increase Liability. The Concessionaire or its employees, agents, or representatives shall not do anything on or to the concession premises which will

invalidate, suspend, or increase the rate of any insurance policy required under this Agreement, or carried by the City covering the concession premises, or the buildings in which the same are located, or which, in the opinion of the Director of Aviation and Transit, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement. If, by reason of any failure on the part of the Concessionaire after receipt of notice in writing from the City to comply with the provisions of this paragraph, any insurance rate on the concession premises, or any part thereof, or on the buildings in which the same are located, shall at any time be higher than it normally would be, then the Concessionaire shall pay the City, on demand, that part of all insurance premiums paid by the City which have been charged because of such violation or failure of the Concessionaire, provided however, that nothing contained herein shall preclude the Concessionaire from bringing, keeping, or using on or about the concession premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary.

6. Permit Loitering or Lodging. The Concessionaire or its employees, agents, or representatives shall not permit undue loitering on or about the concession premises or use the concession premises, or any part thereof, for lodging or sleeping purposes.

I. Signs, Advertising, and Displays. The Concessionaire shall not install, construct, or place any sign, advertisement, or display upon any portion of the Terminal Building

without first obtaining the prior written approval of the Director of Aviation and Transit. The Concessionaire shall not install, construct, or place any sign, advertisement, or display anywhere outside the Terminal Building.

J. Removal of Signs. Upon the termination, cancellation, or expiration of this Agreement, the Concessionaire shall remove, obliterate, or paint out, any and all of its signs, advertising, and displays as the Director of Aviation and Transit may direct. If the Concessionaire fails to do so, the City may cause said work to be completed at the sole expense of the Concessionaire.

K. Removal of Garbage and Refuse. The Concessionaire shall strictly comply with all Airport and other rules and regulations regarding the disposition of trash and garbage; shall regularly remove from all concession facilities to the garbage or refuse disposal area all rubbish, refuse, and garbage; and shall remove the accumulation of all such material in said garbage or refuse disposal area at frequent intervals. Accumulation of trash, boxes, cartons, barrels, or other similar items shall not be permitted in any public area at the Airport. The Concessionaire shall not remove trash or garbage through public or common areas (including concourses and sidewalks) in an unsightly manner.

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

M. Maintenance Program. The Concessionaire shall regularly maintain and repair all interior areas and surfaces of the facilities, including sweeping, washing, servicing, repairing, replacing, cleaning, and interior painting that may be required to properly maintain the premises in a safe, clean, wholesome, sanitary, orderly, attractive, and inviting condition. The Concessionaire shall establish an adequate preventive maintenance program and the provisions of same shall be subject to periodic review by the City. Said program shall include, without limitation, the cleaning and repair of all floors, interior walls, ceilings, lighting, décor, and equipment, and a minimum of two (2) carpet cleanings per Agreement Year. Regardless of the Concessionaire's compliance with its preventive maintenance program, the Concessionaire shall clean such surfaces and equipment immediately upon being instructed to do so by the City or by other governmental agencies having such authority.

N. City May Repair. In the event the Concessionaire fails to accomplish such nonstructural repairs, replacements, rebuilding, redecorating, or painting required hereunder within a period of ten (10) calendar days after written notice from the City to do so, or fails to diligently repair, replace, rebuild, redecorate, or paint all the premises required to be repaired, replaced, rebuilt, redecorated or painted by the Concessionaire pursuant to said schedule, the City may, at its option, and in addition to all other remedies which may be available to it, repair, replace, rebuild, redecorate, or paint any such premises included in said notice, the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by the Concessionaire to the City on demand.

O. Right to Enter Premises. The City shall have the right to enter upon the concession facilities at all reasonable times to make such repairs, alterations, and replacements as

may, in the opinion of the Director of Aviation and Transit, be deemed necessary or advisable and, from time to time, to construct or install over, in, under, or through the concession facilities new lines, pipes, mains, wires, conduits, and equipment; provided, however, that such repair, alteration, replacement, or construction shall not unreasonably interfere with the use of the concession facility by the Concessionaire and provided further, that nothing herein shall be so construed as relieving the Concessionaire of any obligation imposed upon it herein to maintain the concession areas and the improvements and utilities therein. The City shall have the right to enter the premises at any time to maintain or repair emergency systems when either loss of life or damage to property may result.

ARTICLE V

MAINTENANCE BY THE CITY

The City agrees that it will, during the term of this Agreement, maintain and keep all Airport facilities and buildings, other than the exclusive space occupied by the Concessionaire, in a safe, working, clean, and sanitary condition, and in good repair and free from obstructions. The City agrees to maintain and operate the Airport facilities and buildings in such manner as to render them suitable for use by the Concessionaire in the operation of its business. However, this duty by the City shall not be construed to relieve the Concessionaire from its duty to provide reasonable safety precautions for use of all facilities under this Agreement by its employees, representatives, invitees, and/or airline passengers.

ARTICLE VI

RULES AND REGULATIONS

A. Rules and Regulations. This Agreement shall be subject to pertinent rules and regulations governing the conduct and operation of the Airport and its facilities as promulgated from time to time by the Federal Aviation Administration or any other duly authorized governmental agency having jurisdiction over the operation of the Airport. This Agreement shall be further subject to reasonable rules and regulations promulgated from time to time by the City, provided that such rules and regulations shall not be inconsistent with safety, or the provisions of this Agreement, or in conflict with rules and regulations now or hereafter in effect by any Federal or State agency having jurisdiction with respect hereto.

B. Fair and Equal Treatment. The Concessionaire agrees to furnish its service on a fair, equal, and nondiscriminatory basis to all users thereof, and to charge fair, reasonable, and nondiscriminatory prices for each unit or service, provided that the Concessionaire may be allowed to make reasonable and nondiscriminatory discounts, rebates, or similar types of price adjustments.

C. Nondiscrimination and Other Federal Requirements. This Agreement is conditioned upon the following covenants by the Concessionaire:

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

a) That no person on the grounds of race, color, creed, political ideas, sex, age, national origin, or physical or mental disability shall be

excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Airport facilities.

b) That in the construction of any improvements in, on, over, or under the premises on behalf of the Concessionaire and the furnishing of services thereon, no person on the grounds of race, color, creed, political ideas, sex, age, national origin, or physical or mental disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination.

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

2. The Concessionaire shall also comply with all applicable provisions of the Americans with Disabilities Act and any other regulations pertaining to such act.

3. The Concessionaire assures that it will undertake an affirmative action program as required by Title 14, Code of Federal Regulations, Federal Aviation Administration, Department of Transportation, Part 152, Airport and Program, Subpart E, Nondiscrimination in Airport and Program, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded

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

4. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, Title 49 Code of Federal Regulations, Part 23, Participation of Disadvantaged Business Enterprise in Airport Concessions. The Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

The Concessionaire agrees to include the above statements in any subsequent concession related agreement or contract that it enters into and cause those businesses to similarly include the statements in further agreements.

5. The Concessionaire shall comply, at its own expense, with all laws, rules, regulations, and orders concerning the general area of civil rights and minorities and the topics dealt with in this Paragraph C, Subparagraphs 1 through 4

above, now in force or hereafter prescribed or promulgated by Federal, State, or City, whether foreseen or unforeseen, or ordinary or extraordinary.

6. In the event of breach of any of the Concessionaire's duties contained in this Paragraph C, Subparagraphs 1 through 5, the City shall have the right to terminate this Agreement and to re-enter and repossess the facilities, and hold the same as if said Agreement had never been made or issued.

7. The Concessionaire, by accepting this Agreement, agrees for itself, its successors and assigns that it will not make use of the exclusive use space in any manner that might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the City reserves the right to enter upon the exclusive use space and cause the abatement of such interference at the expense of the Concessionaire.

8. The Concessionaire acknowledges that the right to use Airport facilities in common with others authorized to do so shall be exercised only subject to and in accordance with the laws of the United States of America, the State of Montana, the City of Billings, and other governmental entities having jurisdiction over the Airport. The rules and regulations promulgated by their authority with reference to aviation and air navigation, and all other applicable rules, regulations, and ordinances now in force or hereafter prescribed or promulgated by authority or by law, shall be closely observed during the full term of this Agreement.

D. Subordination. This Agreement shall be subordinate to the provisions of any existing or future agreement between the City and the United States relative to the operation

or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport.

ARTICLE VII

DAMAGE OR DESTRUCTION OF PREMISES

If any building of the City in which the Concessionaire occupies exclusive space hereunder and/or the space so occupied by the Concessionaire shall be partially damaged by fire, flood, lightning, windstorm, or other force of nature, or by a public enemy, or other casualty, so as to adversely affect the Concessionaire's use of its exclusive space therein, even though not rendering such space untenable, such damage shall be promptly repaired with due diligence by the City at its own cost and expense. If damage caused in any manner hereinabove recited shall be so extensive as to render the Concessionaire's exclusive space untenable, but nevertheless is covered by insurance and is capable of being repaired and made tenantable within a period of thirty (30) calendar days, the City shall repair the damage with due diligence at its own cost and expense, and the rent payable hereunder with respect to the Concessionaire's exclusive space in such building shall be proportionately paid up to the time of such damage, but shall thenceforth cease until such time as such building and space shall be restored. If any such building is completely destroyed in the manner aforesaid or is so damaged that it will and does remain untenable for a period of more than thirty (30) calendar days, the rent payable hereunder with respect to the Concessionaire's exclusive space in said building shall thenceforth cease until such time as said building shall be fully restored. If within twelve (12) months after the time of such damage or destruction the building shall not have been repaired or reconstructed for the Concessionaire's use, then the Concessionaire may give the City written notice of its intention to

then cancel this Agreement as relates only to said building; provided, however, that the Concessionaire shall, at its own cost and expense, repair all damage to said building not covered by the City's insurance, caused by the negligence or wrongful act of the Concessionaire, and for which the Concessionaire is legally liable.

ARTICLE VIII

CANCELLATION BY CITY

A. Default. The City may cancel this Agreement without forfeiture, waiver, or release of the City's rights to any sum of money due or to become due under the provisions of this Agreement, by giving the Concessionaire ten (10) calendar days advance written notice to be served as hereinafter provided, upon or after the happening of any one of the following events of default:

1. The filing by the Concessionaire of a voluntary petition in bankruptcy.
2. The institution of proceedings in bankruptcy against the Concessionaire, which are not dismissed within one hundred twenty (120) calendar days.
3. The taking of any of the Concessionaire's assets by a court pursuant to proceedings brought under the provisions of any Federal reorganization act.
4. The appointment of a receiver of the Concessionaire's assets.
5. The divestiture of the Concessionaire's estate herein by other operation of law.

6. The abandonment by the Concessionaire of its business at the Airport for a period of at least fifteen (15) calendar days.

7. The failure of the Concessionaire to cure any of the following defaults within ten (10) calendar days of written notice from the City:

a) To pay any part of the fees and charges due under this Agreement.

b) To keep in force and provide evidence of a Contract Security as defined under this Agreement.

c) To keep in force and provide evidence of insurance coverage required under this Agreement.

8. The default by the Concessionaire, except for an event of default governed by another paragraph of this Article, in the performance or nonperformance of any covenant or agreement herein required to be performed by or required not to be performed by the Concessionaire, which covenant or agreement substantially affects the essence of this Agreement, and the failure of the Concessionaire to remedy such default for a period of thirty (30) calendar days after receipt from the City of written notice to remedy the same; provided, however, that no notice of cancellation as above provided, shall be of any force or effect if the Concessionaire shall have remedied the default within the thirty (30) calendar day cure period or while the Concessionaire is diligently proceeding to remedy any default which could not reasonably be cured within said thirty (30) calendar day period.

9. The assumption by the United States Government or by any authorized agency thereof of the operation, control or use of the Airport and its facilities or of any substantial part or parts thereof, in such manner as substantially to exclude the Concessionaire from the Airport or to prevent it from operating its business at the Airport for a period of at least ninety (90) calendar days.

10. Any assignment made by the Concessionaire for the benefit of its creditors.

B. Non-Waiver. No waiver or default by the City of any of the terms, covenants, or conditions hereof to be performed, kept and observed by the Concessionaire shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by the Concessionaire. The acceptance of payment or the performance of all or any part of this Agreement by the City for or during any period or periods after a default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by the Concessionaire, shall not be deemed a waiver of any right on the part of the City to cancel this Agreement for failure by the Concessionaire to so perform, keep or observe any of the terms, covenants, or conditions hereof to be performed, kept and observed.

ARTICLE IX

CANCELLATION BY CONCESSIONAIRE

A. Default. The Concessionaire may cancel this Agreement and terminate all or any of its obligations hereunder at any time that the Concessionaire is not in default in the payment of any rentals, fees, or charges to the City hereunder by giving the City sixty (60)

calendar days advance written notice to be served as hereinafter provided, upon or after the happening of any one of the following events of default:

1. The inability of the Concessionaire to operate at the Airport for a period in excess of ninety (90) calendar days due to no fault of its own.

2. The default by the City in the performance of any covenant or agreement herein required to be performed by the City, which to covenant or agreement, substantially affects the essence of this Agreement, and the failure of the City to remedy such default for a period of sixty (60) calendar days after receipt from the Concessionaire of written notice to remedy the same; provided, however, that no notice of cancellation, as above provided, shall be of any force or effect if the City shall have remedied the default within the sixty (60) calendar day cure period or is diligently proceeding to remedy any default which could not be reasonably cured within said sixty (60) calendar day period.

3. The assumption by the United States Government or by any authorized agency thereof of the operation, control, or use of the Airport and its facilities or of any substantial part or parts thereof, in such manner as substantially to exclude the Concessionaire from the Airport or to prevent it from operating its business on the Airport for a period of at least ninety (90) calendar days.

B. Non-Waiver. No waiver of default by the Concessionaire of any of the terms, covenants, or conditions hereof to be performed, kept and observed by the City shall be construed to be or act as a waiver by the Concessionaire of any subsequent default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by the City.

ARTICLE X

INDEMNITY AND INSURANCE

A. Indemnification. The City shall stand indemnified by Concessionaire as herein provided. It is expressly understood and agreed that Concessionaire is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions and that the City shall in no way be responsible therefore. It is further agreed that in the use of the Airport, in the construction, alteration, or maintenance of any improvements thereon, and in the exercise or enjoyment of the privileges herein granted, Concessionaire shall indemnify, save harmless and defend the City from any and all claims asserted against or losses, liabilities, judgments or expenses of any type, including litigation costs and reasonable attorney's fees, suffered by the City because of any negligent act or omission on the part of the Concessionaire, and Concessionaire shall indemnify the City against any and all mechanic's and materialmen's liens or any other types of liens imposed upon the premises.

Concessionaire expressly agrees that the City shall not be liable to Concessionaire, for personal injury, bodily injury, or for any loss or damage to real or personal property occasioned by any cause of loss including flood, fire, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil disobedience or commotion, aircraft, smoke, vandalism, malicious mischief, or acts of civil authority, unless caused by the fault or negligence of the City, its officers, agents or employees.

B. Survival of Indemnities. The provisions of Paragraph A above shall survive the expiration, termination, or early cancellation of this Agreement.

C. Insurance. Concessionaire shall provide and keep in force for the term of this Agreement a commercial general liability policy (occurrence form only), providing coverage for personal injury, bodily injury, death, property damage, and product liability, in amounts not less than \$1,500,000 per occurrence.

The commercial general liability policy shall include the following endorsements: (1) the CITY OF BILLINGS shall be named as a **PRIMARY ADDITIONAL INSURED**. The City of Billings general liability policy will be excess and noncontributory. (2) The issuer(s) of the policy or policies shall provide thirty (30) days advance written notification to the City of any reductions in the policy coverage, cancellation for any reason except nonpayment, or other adverse amendments to the policy or policies impacting the risks covered. The advance written notification to the City for nonpayment of premiums shall be ten (10) days. In addition, Concessionaire shall procure and maintain in force during the entire term of this Agreement, statutory Worker's Compensation insurance and other policies of insurance reasonably required by the City. At the time of execution of this Agreement, and annually thereafter, Concessionaire shall furnish a certificate of insurance and copies of all policy endorsements specific to the City, showing that all required insurance is in force. Concessionaire shall also keep in force, insurance coverage upon all of Concessionaire's furnishings, fixtures, and equipment utilized in connection with its operations at the Airport, and shall furnish to the City with evidence that such coverage has been procured and is being maintained in full force and effect during the entire term of this Agreement. Insurance coverage shall be maintained with insurance underwriters authorized to do business in the State of Montana and that are satisfactory to the City.

If, in the City's opinion, the minimum limits of the insurance coverage herein required become inadequate during the term of this Agreement, Concessionaire agrees that it will increase such minimum limits by reasonable amounts on request of the City.

ARTICLE XI

HAZARDOUS SUBSTANCES

Concessionaire assumes full responsibility for the proper and legal use, handling, storage, and disposal of any hazardous substances used or consumed in the conduct of its business. "Hazardous substance" shall be interpreted broadly to mean any substance or toxic material, hazardous or toxic or radioactive substance, or other similar term by any Federal, State, or Local environmental law, regulation, or rule presently in effect or promulgated in the future, as such laws, regulations, or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death, or disease. Concessionaire will hold the City harmless from and indemnify the City against and from any damage, loss, expenses, or liability resulting from any breach of these representations and warranty including all attorney's fees and costs incurred as a result thereof.

ARTICLE XII

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.

ARTICLE XIII

SURRENDER OF POSSESSION

A. Surrender of Facilities. Upon the expiration or other termination of this Agreement, the Concessionaire's authority to use the space, rights, and facilities herein granted shall cease and the Concessionaire shall, upon such expiration or termination, promptly and in good condition, ordinary wear and tear excepted, surrender the same to the City. In the event the Concessionaire does not surrender possession as required, all fees and charges under Article III hereof shall be doubled during the holdover period.

B. Improvements. Except as otherwise provided herein, all improvements and other property bought, installed, constructed, or placed by the Concessionaire in, or about the Airport and the exclusive use space leased under this Agreement during the term hereof or during any prior occupancy shall be deemed to be personal property and shall remain the property of the Concessionaire. The Concessionaire shall have the right at any time during the term of this Agreement, and for an additional period of seven (7) calendar days after the expiration or other termination of this Agreement, to remove any or all of its personal property from the Airport; provided, the Concessionaire is not in default in its payments to the City hereunder and subject further to the Concessionaire's obligation to repair all damage, if any, resulting from such removal. Any and all property not removed by the Concessionaire prior to the expiration of the aforesaid seven (7) calendar day period shall thereupon become a part of the premises upon which it is located and title thereto shall thereupon vest in the City.

ARTICLE XIV

INSPECTION BY CITY

The City may enter upon the facilities used exclusively by the Concessionaire hereunder at any reasonable time for any purpose necessary, incidental to or connected with the performance of its obligations hereunder, or in the exercise of its governmental functions.

ARTICLE XV

ASSIGNMENT AND SUBLETTING

The Concessionaire shall not, at any time, assign this Agreement or any part thereof, nor shall the Concessionaire sublet the exclusive use space, without the prior written consent of the Director of Aviation and Transit, which consent shall be in the sole discretion of the Director of Aviation and Transit.

ARTICLE XVI

IMPROVEMENTS

A. Improvements. The Concessionaire shall have the right to do future construction, alteration, and maintenance of its own improvements, in any lawful manner, upon or in the exclusive use space, for the purpose of carrying out any activities provided for herein. The Director of Aviation and Transit shall have and possess final rights of approval of all plans, specifications, concepts, and buildout within the exclusive use space.

B. Condition of Premises. The City shall deliver the exclusive use space specified herein to the Concessionaire. The Concessionaire shall accept such premises "as is."

C. No Liens. All construction work performed, equipment supplied and installed, and interior design and décor furnished by the Concessionaire pursuant to this Article

shall be at its sole cost and expense, free and clear of liens for labor and material and the Concessionaire shall hold the City harmless from any liability in respect thereto. The Concessionaire shall ensure that no liens are placed on the improvements, premises, or the City property.

D. Approval of Improvements. Prior to the commencement of any construction, alteration, or improvement by the Concessionaire, the Concessionaire shall first obtain the Director of Aviation and Transit's written approval of all plans and specifications. The construction or alteration by the Concessionaire, including permits and approvals, of any and all areas included under this Agreement, shall be formalized through a private construction agreement between the Concessionaire and a contractor of the Concessionaire's choice. Said private construction agreement shall be approved by the Director of Aviation and Transit prior to the commencement of any work.

E. Utilities – Installation. The City shall provide utilities to a point within each exclusive use area and the Concessionaire shall provide distribution of utilities within the exclusive use area.

F. Future Work. The Concessionaire shall not make any structural alterations to the ceilings, walls, floors, or any permanent improvements, which it constructs or installs in the concession areas, without first obtaining the Director of Aviation and Transit's written consent. Additionally, the Concessionaire may not make any nonstructural alterations in the concession areas, which the necessity of the operation of its concession demand in order to promote efficiency in the operation thereof, without also first obtaining the Director of Aviation and Transit's written consent.

G. Contractor's Insurance. The Concessionaire shall ensure that the contractor hired to construct any of its improvements shall secure the insurance coverage required by the City prior to commencement of construction. The Concessionaire shall further ensure that its contractor maintains the required insurance throughout construction, which includes an endorsement that names the City of Billings as an additional insured, and submits to the City evidence of required insurance coverage and endorsements.

H. Regulatory Requirements. The Concessionaire shall require by any contract that it awards in connection with the structural or other improvements, the installation of any and all equipment and the interior designing and décor, that the contractor doing, performing, or furnishing the same shall comply with (or the Concessionaire, if it is doing the work itself, shall comply with) all applicable statutes, ordinances, codes, rules, and regulations.

I. As-Builts. Upon completion of any concession improvements, the Concessionaire shall, within sixty (60) calendar days thereafter, furnish the City, at no charge:

1. A certificate certifying that the improvements have been constructed in accordance with the approved plans and specifications and in strict compliance with all laws, rules, ordinances, codes, and governmental rules, regulations and orders.

2. Two (2) complete, reproducible sets of as-built drawings and CAD files covering the structural and other improvements installed by the Concessionaire in the concession areas plus the location and details of installation of all equipment, utility lines, heating, ventilating, air conditioning ducts, and related matters. The Concessionaire shall keep said drawings current by updating

the same in order to reflect thereon any changes or modifications that may be made in or to the premises.

J. Ownership of Improvements. At the completion of the term of the Agreement, the City shall take ownership of all non-inventory and fixed improvements associated with the development and buildout of the referenced concession delivery area and provided by the City in accordance with Paragraph A above. The Concessionaire shall have the rights to the ownership of all other improvements, installed as part of this Agreement, subject to the conditions provided in this Paragraph J.

1. Ownership During Term. Ownership of improvements paid for by the Concessionaire shall remain with the Concessionaire over the full term of this Agreement, subject to early termination. Any improvement not paid for by the Concessionaire shall be owned by the City.

2. Ownership Upon Termination. Title to all leasehold improvements and furniture, fixtures, and equipment, which cannot be removed without causing any damage, shall vest in the City upon termination of this Agreement.

ARTICLE XVII

GENERAL PROVISIONS

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 agrees to pay any taxes or assessments that may be lawfully levied against the space occupied by the Concessionaire in the Terminal Building, including and not limited to any tax now or hereafter levied.

C. Permits and Licenses. Concessionaire will obtain and maintain throughout the term of this Agreement, all permits, licenses, or other authorizations required in connection with the operation of its business at the Airport. Copies of all required permits, certificates, and licenses will be forwarded to the Director of Aviation and Transit upon commencement of this Agreement and regularly thereafter upon renewals of such permits, certificates, and licenses, throughout the term of this Agreement.

D. 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.

E. Successors and Assigns. All of the terms, covenants, and agreements herein contained shall be binding upon and shall inure to the benefit of successors and assigns of the respective parties hereto.

F. 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.

G. No Individual Liability. No member, officer, agent, director, or employee of the City shall be charged personally or held contractually liable by or to the Concessionaire under the terms or provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

H. 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 Concessionaire and the City.

I. 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.

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.

K. 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.
1355 Lynnfield Road, Suite 101
Memphis, TN 38119
ATTN: David C. Shelton

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

L. Entire Agreement. This Agreement and its attachments constitute the entire Agreement and understanding of the parties with respect to matters referenced herein.

IN WITNESS WHEREOF, the parties have executed this Concession Agreement as of the day and year first above written.

ATTEST:

CITY OF BILLINGS

BY _____
CITY CLERK

BY _____
MAYOR

APPROVED AS TO FORM

AIR HOST BILLINGS, INC.

BY _____
CITY ATTORNEY

BY _____