City of Philadelphia
Procurement Department

Addendum No. 2 **Dated: April 21, 2011**
RFP C-105-11
Submission Due Date: 4/27/11

NOTICE

It is the sole responsibility of the bidder to ensure that it has received any and all addenda and the Procurement Commissioner may in his/her sole discretion reject any bid RFP for which all addenda have not been executed and returned.

PROPOSAL FOR

Concession Request for Proposal for Self-Service Luggage Carts Service Program at the Philadelphia International Airport

IS AMENDED AS FOLLOWS

The Contract Documents for the referenced project are modified as follows:

I. **AMENDED SUBMISSION DATE: CHANGED FROM APRIL 27, 2011 TO MAY 11, 2011**
Sealed Proposals will be received until 10:30 AM, Wednesday, May 11, 2011, prevailing local time in Room 170A, Municipal Services Building, 1401 J.F.K. Blvd, Phila., PA 19102, and will be opened immediately thereafter.

II. **ATTACHED FIND SIGN IN SHEET FROM PREPROPOSAL MEETING ON APRIL 18TH.**

III. **ATTACHED FIND LIST OF QUESTIONS RELATED TO THIS PROCUREMENT WITH RESPONSES AND SUPPORTING DOCUMENTS.**

Please sign, date and return this addendum with your proposal, as it now becomes part of the proposal.

Firm Name (type or print)_____

Authorized Signature_____Title_____

Name (type or print)_____Date_____

Self-Service Luggage Carts Concession
Request for Proposals ("RFP")
Answers to Vendor Questions

1. Is it possible to receive historical usage and revenue information by month and by luggage cart dispenser for the prior three years?

Answer – The Division of Aviation receives the luggage cart program's gross sales by month, however, this information is not broken down by dispenser. Attached is an accounting of the current concessionaire's gross sales broken down by month for CY 2008, 2009, 2010 & CYTD 2011 prepared by Division of Aviation's Finance Department.

2. Under the previous luggage cart RFP in 2006, the selected respondent proposed to provide 44 cart dispensers as well as 1600 luggage carts. Are there currently 44 dispensers and 1600 carts in use?

Answer - Currently there are 1400 luggage carts and 33 luggage cart dispenser units in use

3. Is it possible to receive a terminal map illustrating luggage cart dispenser locations and/or a listing of the current luggage cart dispenser locations?

Answer - See attached locator map indicating approximate location of current luggage cart dispenser units.

4. Will there be a tour of existing cart dispenser operation following the pre-bid meeting?

Answer - Yes, there was a brief tour which consisted of visiting the Customs Hall and a few sample dispenser units located in the terminal building, baggage claim and ticketing curbside.

5. Is office space part of the luggage cart agreement?

Answer - Yes, a 259 square foot office in the A-B link, located between Concourses A-East and B, is available for use by the successful luggage cart concessionaire.

6. Smarte Carte requests that the City of Philadelphia Division of Aviation staff consider at least a 30 day extension to the due date for this response. While some of the response items can be completed quickly, certain items like the ACDBE requirements will require significantly more time to properly complete.

Answer - City of Philadelphia has agreed to extend the RFP response due date by two (2) weeks from Wednesday, April 27, 2011 at 10:30 AM until Wednesday, May 11, 2011 at 10:30 AM.

Self-Service Luggage Carts Concession
Request for Proposals ("RFP")
Answers to Vendor Questions

7. Please send a list of certified DBE participants for the PHL International airport.

Answer - Information is available on the PaUCP website at www.paucp.com .

8. Page 10 of the RFP, Section 2.3.5 states "The annual Concession Fee will consist of the greater of a Minimum Annual Guarantee ("MAG") and/or a percentage of Annual Gross Revenues. Each Proposal submitted in response to this RFP must contain the terms and conditions for payment of the MAG and/or a percentage of Annual Gross Revenues to the City." This statement directs that a MAG and or percentage is expected. If this is not possible due to needed support from the airport for the services requested of the RFP, what format of submittal shall be used? Will such a proposal excluding this contribution be accepted?

Answer – Proposers are expected to submit the proposal form in Section 5.1 and to state their proposed financial consideration along with their business plan or proforma to support this proposed financial consideration. Submitted proposals will be taken under consideration.

9. Page 25 of the RFP, Section 5.1.1. Financial Consideration states "The Consideration to be paid to the City will be the greater of: $_____: Minimum Annual Guarantee ("MAG"); or _____percent (___%) of Annual Gross Revenues. Please submit a Business Plan or Proforma to support the Financial Consideration figures." If income generated from units cannot sustain a business without the aid of a fee from the airport, how shall this type of offer be submitted with the format provided?

Answer – See response to question no. 8 above.

10. Page 33 of the RFP, Section 5.2.3. F states "The undersigned herewith submits a letter from -- --- indicating that the Proposer has an available working line of credit of no less than One Million Dollars ($1,000,000.), or other evidence of Proposer's capital sufficient to permit it to meet the obligations contemplated by its Proposal. If equipment is existing and in place whereas no formal installation is needed will Proposer still need this letter of credit? If so, to what purpose and for how long will it be needed?

Answer - Yes, all Proposers need to submit the above referenced line of credit letter to provide evidence of the proposers ability to meet the obligations contemplated by its proposal until such time that the negotiation process is completed.

Self-Service Luggage Carts Concession
Request for Proposals ("RFP")
Answers to Vendor Questions

11. In order to aid our effort to determine the financials of the luggage cart operation in Philadelphia, Smarte Carte requests copies of the current luggage cart agreement as well as any extension paperwork and amendments. We realize that these documents can be achieved through a Freedom of Information Act request, however, in the interest of expediency we are making the request in this manner.

Answer – Please see attached luggage cart concession agreement dated June 1, 2007, formal luggage cart rental rate change and equipment reduction approval letter dated April 22, 2010 and first amendment dated February 7, 2011.

12. During the pre-proposal meeting, it was discussed that a map would be provided that illustrates the current cart rental locations. Smarte Carte further requests that a terminal map without the current cart rental locations be provided so that we would then be able to map out our proposed dispenser locations without having to manipulate the map showing the current locations.

Answer – Please see attached terminal map without the current cart rental unit locations. Terminal maps can also be viewed on the airports website at www.phl.org/terminal_map

CONCESSION AGREEMENT

by and between

The City Of Philadelphia

and

bagport America LLC

Dated: June 1, 2007

TABLE OF CONTENTS

Page

SECTION 1 Operations of Business 1-2

SECTION 2 Term 2

SECTION 3 Cost of Luggage Carts Service To Passengers 2

SECTION 4 Equipment 2-3

SECTION 5 Location of Equipment 3-4

SECTION 6 Fees 4-6

Section 6.A. Concession Fee. 4-6

SECTION 7 Security Deposit 6-7

SECTION 8 Book and Records Report 7-8

Section 8.A. Monthly Reports. 7
Section 8.B. Annual DBE Report. 7
Section 8.C. Books & Records. 7

SECTION 9 Access; Office Space 8-10

SECTION 10 Personnel 10-11

SECTION 11 Insurance 11-14

Section A.(1) Worker's Compensation & Employers' Liability Insurance. 11
Section A.(2) General Liability Insurance. 11-12
Section A.(3) Automobile Liability Insurance 12
Section A.(4) Excess Liablity Insurance 12
Section A.(5) Property Insurance 12

SECTION 12 Indemnification, Hold-Harmless, Liability 14-15

SECTION 13 Airport Security Programs and Safety Restrictions 15-16

SECTION 14 Force Majeure 16

SECTION 15 Signs 16

SECTION 16 Assignment 16

SECTION 17 Compliance with Laws; Regulations 16-18

Section 17A.Compliance with applicable Laws; Environmental Matters. 17-18

SECTION 18 Certification of Non-Indebtedness 18

Section 18.A. Concessionaire Not Indebted. 19
Section 18.B. Requirement For Subcontractors. 19

SECTION 19 Non-Discrimination 19-22

Section 19.A Local Requirements 19-20
Section 19.B. Federal Requirements. 20-22

SECTION 20 Taxes 22-23

SECTION 21 Liens 23

22 Northern Ireland Provision 23-24

SECTION 23 Corporate and Slavery Era Insurance Disclosure 24

SECTION 24 Concessionaire's Representations and Warranties 24-26

Section 24.A. Good Standing 24
Section 24.B. Authority to Act. 24-25
Section 24.C. Legal Obligation 25
Section 24.D. No Litigation Preventing Performance. 25
Section 24.E. Requisite Licensure and Qualifications. 25
Section 24.F. No Adverse Interests 25
Section 24.G. No Delinquencies. 25
Section 24.H. Business Privilege License 25
Section 24.I. Subcontractor Licensure; Non- Delinquency 25-26
Section 24.J. Survivor of Representative 26

SECTION 25 Default By Concessionaire, Remedies of City 26-28

SECTION 26 Notices 28-29

SECTION 27 Airport Modifications 29

SECTION 28 City's Right to Terminate 29-30

SECTION 29 City 30

SECTION 30 City Approvals 30-31

SECTION 31 DBE Participation 31

SECTION 32 Waiver 31

SECTION 33 Time of the Essence 31

SECTION 34 Invalid Provisions 31-32

SECTION 35 Binding Agreement 32

SECTION 36 Governing Law 32

SECTION 37 Interpretation; Order of Precedence 32

SECTION 38 No Joint Venture 32

SECTION 39 No Third Party Beneficiaries 32

SECTION 40 Concessionaire; Gender 32

SECTION 41 Headings 32-33

SECTION 42 Waiver of Jury Trial; Consent To Jurisdiction 33

SECTION 43 Integration; Amendments 33

SECTION 44 Guaranty 33

#078003
#C-102-07

CONCESSION AGREEMENT

THIS AGREEMENT (this "**Agreement**"), is made and entered into as of this 1st day of June 2007, by and between **THE CITY OF PHILADELPHIA**, a City of the first class, acting through its **DEPARTMENT OF COMMERCE, DIVISION OF AVIATION** ("**City**") and **bagport America LLC** a Limited Liability Company with its principal office at 3663 Southwest 8th Street, Suite 200, Miami, FL 33135 authorized to do business in the Commonwealth of Pennsylvania ("**Concessionaire**").

WITNESSETH:

WHEREAS, City is the owner, and operator of Philadelphia International Airport, located in Philadelphia and Delaware Counties in the Commonwealth of Pennsylvania (the "Airport");

WHEREAS, Concessionaire is engaged in the business of providing and managing self-service luggage carts systems at airports;

WHEREAS, in response to a request for proposals issued by City, Concessionaire submitted a proposal dated October 13, 2006 (the "Proposal");

WHEREAS, Concessionaire was the successful proposer; and

WHEREAS, City desires Concessionaire to provide and manage self-service luggage carts services at the Airport in accordance with the terms and conditions set forth in the Proposal and in accordance with this Agreement.

NOW, THEREFORE, with the foregoing background incorporated herein by reference, for and in consideration of the mutual covenants herein contained and intending to be legally bound hereby, City and Concessionaire hereby agree as follows:

1. OPERATIONS OF BUSINESS.

A. Subject to the terms and conditions set forth in this Agreement and in Concessionaire's Proposal, and in accordance with all applicable federal, state and local laws and regulations, Concessionaire shall install, maintain, manage, service and operate a self-service luggage carts ("Luggage Carts") system (the "Luggage Carts Service") on and about the Airport. Concessionaire's Proposal is attached hereto and made a part hereof as Exhibit "A". (This Agreement and all Exhibits attached hereto shall hereinafter be referred to as the "Agreement".)

B. The services to be performed by Concessionaire shall be consistent with the operations plan ("Operations Plan") and shall be rendered to the sole satisfaction of the Director of Aviation (the "Director"). The Operations Plan is attached hereto and made a part hereof as Exhibit "B".

C. Concessionaire shall enter upon the performance of the Agreement with all due diligence and make all efforts to complete performance. Concessionaire shall act in accordance with sound Airport business practices.

D. Concessionaire shall meet the needs and requests of the Airport and shall maintain the highest level of service. Concessionaire shall furnish said service in accordance with Exhibit "A". Concessionaire shall take all steps necessary to remove or correct any phase of its operation which City finds objectionable upon notice by City.

E. The rights and privileges granted to Concessionaire herein are subject to the limitations of law, licenses and concession agreements either presently existing or as may be hereinafter approved by City. Except for the Luggage Carts Service, which is expressly authorized herein, nothing contained herein shall be construed as authorizing Concessionaire to conduct a separate business or businesses at the Airport.

F. Concessionaire shall obtain all necessary approvals and furnish at its own expense all licenses, permits and authorizations necessary for the installation, maintenance, management and operation of Luggage Carts Service as required by the terms of this Agreement.

2. TERM.

A. Concessionaire shall have and hold the rights and privileges set forth herein for the period June 1, 2007 through May 31, 2008 (hereinafter the "Term"). Thereafter, City, in its sole discretion, may choose to extend the Term for no more than three (3) additional one-year terms (the "Renewal Terms"). Prior to the end of the Term, unless City provides Concessionaire with notice at least sixty (60) days prior to the end of the then current Term that City does not intend to renew this Agreement for an additional Term, the Term will automatically renew for one (1) additional one (1) year term.

B. Upon the expiration or earlier termination of this Agreement, Concessionaire shall cease all activities, remove the Equipment, if requested by City, and vacate the Airport peaceably and quietly.

3. COST OF LUGGAGE CARTS SERVICE TO PASSENGERS.

The cost to passengers for the Luggage Carts Service shall be at a rate which is mutually agreed upon between City and Concessionaire. The rate charged to passengers or other users shall only be changed after receiving consent from City which may be granted in City's sole and absolute discretion. As of the date of this Agreement, the cost to passengers of Luggage Carts Service shall be no more than $3.00 for each Luggage Cart during the Term or any Renewal Term.

4. EQUIPMENT.

A. Concessionaire, at its sole cost and expense, shall install, maintain, service and operate Luggage Carts and related equipment of the type and quality of the luggage carts and related equipment including, but not limited to, the following:

(1) 1600 –Light Liner, Stainless steel Type 8 928 71 ("Carts"):
(2) 44 BCM-D 2006 Depot Units
(3) 3-Tunkers E2 1000 Airport Scooters; and
(4) 2 Taylor Dunn Roadmaster R38036 Vehicles

Concessionaire shall provide the above-described equipment and all fixtures, additional equipment, supplies and any other such items incidental thereto or as necessary or reasonably requested by City for the operation of the Luggage Carts Service at Concessionaire's sole cost and expense (collectively, the "Equipment"). All of the Equipment shall be new at the commencement of the Term and shall be installed in accordance with the schedule attached hereto and made a part hereof as Exhibit C.

B. City shall approve the size, shape, color, design and appearance of the Equipment prior to its installation anywhere in the Airport. The Equipment shall be subject to the inspection and prior approval of City throughout the Term and the Renewal Term.

C. Concessionaire shall keep all Equipment in good condition, order and repair at all times. Should damage occur, Concessionaire shall repair, refurbish and/or replace such Equipment at the request and to the satisfaction of City. Any Equipment of any nature which in the opinion of City is worn or damaged so as not to present a good appearance or becomes incapable of being kept in good working order must be removed and replaced by Concessionaire upon notice by City.

D. City may develop or change Airport terminal design standards during the Term or any Renewal Term of this Agreement. Upon Concessionaire's receipt of notice to Concessionaire that its Equipment must comply with City's terminal design standards, Concessionaire shall have ninety (90) days to replace, relocate or take such other action with respect to its Luggage Carts Service, City requires as necessary or appropriate to comply with the terminal design standards.

E. Concessionaire hereby agrees to "sweep" the Airport to collect loose Carts a minimum of four (4) times a day and more frequently as may be required by City, from time to time.

F. Concessionaire hereby agrees to keep at least ninety-five percent (95%) of the Carts fully operational at all times during the Term.

5. LOCATION OF EQUIPMENT.

A. The Concessionaire shall install its Equipment only in such number and in such locations throughout the Airport as have been previously approved by City (the "Equipment Locations"). Concessionaire shall use the Equipment Locations solely for installation and placement of Concessionaire's Equipment and for no other purpose.

B. City and Concessionaire may agree to increase, decrease or change the number of Equipment Locations at any time throughout the Term or the Renewal Term of this Agreement. City may require Concessionaire to relocate the Equipment Locations at any time throughout the Term or the Renewal Term of this Agreement at City's sole discretion. Any relocation, removal or addition of Equipment Locations shall be at the Concessionaire's sole cost and expense. Any relocation or removal of the Equipment Locations shall be performed by Concessionaire within seventy-two (72) hours of the date of City's request. Concessionaire shall use its best efforts to promptly obtain additional Equipment in the event the parties agree to increase the number of Equipment Locations. City shall not be liable for any damages, costs or lost profit which Concessionaire may suffer by reason of any relocation, removal or addition of Equipment Locations.

C. Concessionaire shall keep the Equipment Locations neat and clean at all times. Concessionaire shall arrange for the frequent and adequate sanitary handling and disposal of all refuse created by the installation, operation and maintenance of the Equipment. Such disposal shall be at an off Airport location.

D. City will not supply utilities, facilities, services, or materials to Concessionaire or to the Equipment Locations or the Activity Area.

E. Upon expiration or other termination of this Agreement, Concessionaire will immediately remove its Equipment and surrender its Equipment Locations in a neat and clean condition and in as good a condition as that prior to installation of the Equipment.

6. FEES.

A. Concession Fee. As consideration for the rights and privileges granted to the Concessionaire in this Agreement, each month Concessionaire shall pay to City a fee in an amount equal to twelve (12%) percent of Concessionaire's "Gross Revenues" for the previous month (the "Concession Fee"). As used herein, the term "Gross Revenues" shall mean the aggregate amount earned by Concessionaire as a result of providing the Luggage Carts Service whether rendered by Concessionaire or its authorized agents, whether rendered for cash or credit or otherwise and whether collected or uncollected, less only (i) the amount of federal, state or

local sales tax levied and separately stated and collected by Concessionaire and (ii) receipts from the sale or trade-in value of any Concessionaire-owned Equipment. The Concession Fee which Concessionaire shall pay to City hereunder shall in no event be less than One Hundred Eighty Thousand Dollars ($180,000.00) per annum (the "Minimum Annual Guarantee").

(1) Gross Revenues as used above shall not include any advertising revenues as long as Concessionaire contracts with Clear Channel Outdoor, Inc. d/b/a Clear Channel Airports or any successor or assign advertising company under contract with City for managing and administering commercial advertising at the Airport for any and all advertisements that appear on the Equipment or at the Equipment Locations. After City approval, and upon Concessionaire's placement of advertising on the Equipment or Equipment Locations (regardless of whether such advertising is placed through a company under contract with City for managing and administering commercial advertising at the Airport), the parties shall enter into a separate agreement regarding the amount City will receive based upon the advertising revenues. Notwithstanding anything to the contrary set forth herein the placement and content of any advertising on the Equipment or Equipment Locations shall be subject to the prior consent of City, which may be granted in City's sole and absolute discretion.

(2) One-twelfth (1/12) of the Minimum Annual Guarantee ("MAG") shall be due and payable in advance on the first day of each month during the Term of the Agreement and the Renewal Term (the "MAG Monthly Due Date"). The remaining Concession Fee, if any, which is due and owing pursuant to the terms of Section 6.A. shall be due and payable on or before the tenth (10th) day of each month during the Term of the Agreement and the Renewal Term (the "Monthly Due Date") along with a Monthly Report (defined in Section 8. below). Funds remitted to City throughout the year by Concessionaire must be equal to or in excess of the aggregate MAG amount to be received by City on an annualized basis. Concessionaire's final Concession Fee payment, including MAG and Concession Fee, shall be due and payable on or before the last day of the Term or the Renewal Term, and submitted along with Concessionaire's annual reconciliation report as required pursuant to Section 8.D. herein, notwithstanding City's agreement to accept payment of said final payment up to ten (10) days after the expiration or earlier termination of this Agreement in accordance with Section 8.D. herein. City's acceptance of Concessionaire's remittance of the Concession Fee, including any payment of the MAG, shall not preclude City from challenging the accuracy of the Monthly Report and shall not be construed as a waiver of any of City's rights, including, but not limited to, those rights established pursuant to Section 8.D herein.

(3) If Concessionaire fails to remit payments of the Concession Fee within the (10) days of the MAG Monthly Due Date or the Monthly Due Date, as applicable, City may, as of the eleventh (11th) day after the relevant MAG Monthly Due Date or the Monthly Due Date and without notice to Concessionaire, impose an interest charge of one and one-half percent (1 1/2%) per month on all late amounts due until the late amount is paid in full.

(4) If any Concession Fee remains unpaid for a period of five (5) business days after any MAG Monthly Due Date or the Monthly Due Date, City may give Concessionaire notice of default. If Concessionaire fails to completely cure said default within five (5) business days after the date of the written notice of default, City may exercise any or all rights or remedies available against Concessionaire as set forth in this Agreement or at law or equity, including (without limitation) terminating this Agreement at the sole option of City without liability to City and without further notice. Upon such termination Concessionaire shall be liable for all outstanding Concession Fees and charges (plus applicable interest) and all costs (including, without limitation, attorney fees), expenses and damages arising from such termination.

(5) All payments due hereunder shall be made payable to the "The City of Philadelphia" and shall be delivered to The City at the following address:

The City of Philadelphia
241758
P.O. Box 8500
Philadelphia, PA 19178-1758

Payments made by check shall be received by City subject to collection. Concessionaire agrees to pay on demand by City any costs, including attorney fees and costs incurred by City for collection. All payments due and owing under the terms of this Agreement shall be secured by Security Deposit required by Section 7. herein. If Concessionaire fails to timely remit to City all or any part of the payments which it is obligated to make to City hereunder, which failure remains uncured for a period of five (5) days after the date of City's written notice to Concessionaire of such failure, then, in addition to all other remedies of City under this Agreement, at law or in equity, City shall be entitled to draw or make a claim against the Security Deposit for any unpaid amounts, plus applicable interest or other costs, damages and expenses.

7. SECURITY DEPOSIT.

As additional security for the full and prompt performance by Concessionaire of the terms and covenants of this Agreement, Concessionaire shall maintain and deliver to City, and at all times shall maintain, a performance bond or letter of credit in the aggregate amount required by City, which may be changed from time to time at the sole discretion of City. On or before the execution of this Agreement, Concessionaire shall provide City with a performance bond or letter of credit in an amount of One Hundred Thousand Dollars ($100,000.00). The performance bond or letter of credit shall be issued by a bonding company approved by City and qualified to do business in the Commonwealth of Pennsylvania. The performance bond or letter of credit shall be in such form as may be designated by City. The performance bond or letter of credit shall constitute a security deposit for all of Concessionaire's obligations under this Agreement

(the "Security Deposit"). This Security Deposit shall not be deemed to constitute the Concession Fee for any month. If Concessionaire defaults with respect to any provisions of this Agreement including, but not limited to the provisions relating to the payment of the Concession Fee, City may (but shall not be required to) apply all or any part of the Security Deposit for the payment of any Concession Fee or any other sum in default, or for the payment of any amount which City may spend or become obligated to spend by reason of Concessionaire's default, or to compensate City for any other loss or damage which City may suffer by reason of Concessionaire's default. If any portion of the Security Deposit is so applied, Concessionaire, within five (5) days after demand therefore, shall reinstate the bond in the amount required by City, and Concessionaire's failure to do so shall be a material breach of this Agreement.

8. BOOK AND RECORDS; REPORTS.

A. MONTHLY REPORTS. On or before each Monthly Due Date and together with the Concession Fee required in Section 6 above, Concessionaire shall submit to City a report detailing the Concessionaire's Gross Revenues for the preceding month (the "Monthly Report"). The Monthly Report shall also specify the services performed by the Disadvantaged Business Enterprise ("DBE") Participant and all payments made to the DBE Participant during that preceding month.

B. ANNUAL DBE REPORT. The Concessionaire shall submit to City an Annual DBE Report due on September 1st of each calendar year during the Term of this Agreement. The reporting period shall coincide with City's fiscal year (July 1st to June 30th) and the Annual DBE Report shall contain the following information: the name of the DBE Participant; a copy of the current agreement between the Concessionaire and DBE Participant; the services provided by the DBE Participant (including any supporting documentation); the total amount paid to the DBE Participant (including any supporting documentation); the methodology used to determine the DBE participation percentage; and any other information as may be required by City or US DOT (hereinafter defined).

C. BOOKS & RECORDS. Concessionaire shall keep full and complete books of account and other records relating to the operation of the Luggage Carts Service and the provisions and requirements of this Agreement, including records of DBE participation, and in so doing shall comply with the minimum procedural requirements prescribed by City. City, through its duly authorized representative, shall have the right to inspect and audit Concessionaire's books of account and other records at all reasonable times during normal business hours. Concessionaire shall retain said records for a period of no less than three (3) years and upon City's request shall make such records available to City for audit at the Airport or at some other mutually agreed upon location. Should adequate records not be made available by Concessionaire at the appointed location, then the additional cost of said audit including all reasonable travel, food and lodging expenses incurred by City shall at City's discretion be borne by Concessionaire. Unreasonable failure or refusal to furnish information or to cooperate in any compliance review shall constitute a substantial breach of contract.

D. Concessionaire shall within ninety (90) days after the end of each Term and any Renewal Term, or at such other intervals as City may prescribe, submit to City a written

statement certified by an independent certified public accountant ("Audit Report") stating that, in the accountant's opinion, payments for all fees and charges due hereunder for the preceding Term or the Renewal Term were made in accordance with the terms of this Agreement.

E. Together with the submission of the Audit Report, Concessionaire shall submit an annual reconciliation report, reconciling amounts due to City or Concessionaire based upon amounts paid to City for the prior Term or the Renewal Term. To the extent there has been an underpayment to City, Concessionaire shall remit along with the Audit Report, all amounts due to City. To the extent there has been an overpayment to City, Concessionaire shall be entitled to a credit against the next monthly installment of the Concession Fee or the MAG and such credit shall continue to be offset until such credit is fully recovered by Concessionaire. Upon the expiration or earlier termination of this Agreement, a final reconciliation shall be prepared by Concessionaire. The payments or credits required to be made as set forth herein shall be made by Concessionaire or City, as appropriate, within twenty (20) days of the termination or earlier expiration of the Agreement.

9. ACCESS; OFFICE SPACE.

A. Concessionaire, its authorized agents, employees, contractors, subcontractors, suppliers of goods and materials and furnishers of service shall have the rights and privileges of ingress and egress to that area of the Airport that is specifically designated by City from time to time for use by Concessionaire to support Concessionaire's management and operation of the Luggage Carts Service (the "Activity Area"). As of the commencement of the Term, the Activity Area shall consist of approximately two hundred (200) square feet of space located in the Terminal A/B Connector. During the Term, City reserves the right to require Concessionaire to vacate the Activity Area at any time for any or no reason on thirty (30) days prior notice to Concessionaire. On or before the eleventh (11th) day after Concessionaire's receipt of such notice, Concessionaire shall peaceably vacate and surrender the Activity Area to City in a neat and clean condition and in as good a condition as that prior to Concessionaire's occupancy of the Activity Area. If such vacation is prior to the expiration or other termination of this Agreement, City shall attempt to locate a substitute Activity Area for Concessionaire to use in accordance with the terms set forth herein. City does not represent or guarantee that a designated Activity Area will be available to Concessionaire throughout the Term or the Renewal Term of this Agreement.

B. Concessionaire shall have the right, in common with others so authorized, to the use of the common areas of the Airport and appurtenances thereto, such as parking lots, and any additions thereto which may be designated by City for common use together with the facilities, equipment, improvements and services which have been or may hereafter be provided at the Airport for common use, subject, however, to the rules, regulations and practices and Concessionaire's payment of such rates and charges, as may be applicable thereto at the time of such use.

C. Concessionaire shall have the right to use and occupy the Activity Area, as available, and on the condition that no uncured default of this Agreement exists, at no cost for the Term and the Renewal Term, provided, however, that Concessionaire shall use the Activity

Area only for those purposes directly related to Concessionaire's operation and management of the Luggage Carts Service. If Concessionaire uses the Activity Area for any other purpose, City may, at its election, (i) deem such use an event of default hereunder (thereby entitling City to exercise all rights and remedies set forth herein or at law or equity); and (ii) impose a rental or other fee upon Concessionaire for its use of the Activity Area.

D. Concessionaire shall not make or permit any alterations, additions or improvements, including, without limitation, the alteration, addition or installation of trade fixtures (hereinafter, collectively, the "Improvements") to the Activity Area without City's prior consent, which consent may be granted or withheld in City's sole discretion. Plans and specifications for all proposed Improvements must be submitted to City, for City's approval with respect to both items and the method of installation, prior to installation. All Improvements and trade fixtures shall be in accordance with the highest current standards and practices of the trade and shall, in the opinion of City, be safe, fire-resistant and suitable in appearance, quality and quantity.

E. Concessionaire shall construct all Improvements solely in accordance with plans and specifications approved by City, as set forth above. Any Improvements shall become fixtures annexed to the realty and title thereto shall vest in City, without further consideration, upon the earlier of (i) Concessionaire's vacation of the Activity Area or (ii) the expiration or earlier termination of this Agreement. Concessionaire shall not remove such Improvements from any Activity Area upon the surrender thereof; provided, however, that City may require Concessionaire to remove such Improvements and return the Activity Area to its original condition and to City's satisfaction, upon the surrender thereof. All Improvements shall be completed with due diligence and at Concessionaire's sole expense.

F. Concessionaire shall, at its sole cost and expense, assume complete maintenance responsibility for the Activity Area and any Improvements thereon, which shall include, but not be limited to general janitorial service. Concessionaire shall provide a complete and proper arrangement for the frequent and adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of the operation of its business. Concessionaire shall provide and use suitable covered metal receptacles for all such garbage, trash and other refuse. Piling of boxes, cartons or other similar items on or about the Airport is forbidden.

G. In addition to Concessionaire's obligations under the preceding subsection, if a notice of violation is issued by any governmental authority relating to the Activity Area, Concessionaire shall at its own cost and expense, make all repairs, alterations and renovations and take such other action with respect to the Activity Area as may be necessary to comply with such notices of violation.

H. City or its authorized agents may, at any reasonable time, without notice, enter upon the Activity Area to determine if reasonably satisfactory maintenance is being performed. If it is determined that said maintenance is not reasonably satisfactory, City shall so notify Concessionaire in writing. If said maintenance is not commenced by Concessionaire within twenty-four (24) hours after receipt of notice and pursued with due diligence, in addition to its

other rights, City, or its agents shall have the right, but not the obligation, to perform said maintenance. The cost for the performance of such maintenance by City shall be borne by Concessionaire and Concessionaire shall reimburse City for any maintenance costs and expenses upon demand.

I. City may enter upon any Activity Area at any reasonable time for any purpose necessary, incidental to, or connected with any matter related to Airport modifications or as may be required in the operations, maintenance, or development of the Airport, or to determine whether Concessionaire has complied or is complying with the terms and conditions of this Agreement.

J. City reserves to itself an irrevocable right and easement to install, maintain, repair, replace, or remove and replace water or sewer pipes, electrical lines, gas pipes, or any other utilities or services in the Activity Area, and the Improvements thereon, along with access to the Activity Area at all reasonable times in order to accomplish any actions permitted by such rights and easement, provided however City shall take reasonable precaution to avoid the disruption of Concessionaire's authorized business activities.

K. Upon the expiration or earlier termination of this Agreement, Concessionaire will immediately and peaceably vacate and surrender the Activity Area to City in a neat and clean condition and in as good a condition as that prior to Concessionaire's occupancy of the Activity Area.

10. PERSONNEL.

A. Concessionaire shall appoint a full time local representative who is qualified and experienced in the management and control of the Luggage Carts Service. The representative will be delegated sufficient authority to insure proper performance of the terms and conditions of this Agreement and shall have the authority to act on behalf of Concessionaire to make day to day business decisions and to resolve any customer problems arising out of Concessionaire's Luggage Carts Service. The local representative shall be responsible for coordinating all business activities with City and shall be available on a daily basis during all operating hours. Concessionaire shall keep City advised of the local representative's name and telephone number. Concessionaire must advise City of any change in the local representative and give as much notice as possible prior to any change. City, in its sole discretion, must approve of any local representative and, if City provides Concessionaire with cause and notice that the local representative is not acceptable, then Concessionaire shall promptly appoint a new local representative. The local representative shall meet with City on a monthly basis and as requested by City to discuss operation of the Luggage Carts Service and any concerns of City.

B. Concessionaire shall employ competent, courteous and efficient employees in such numbers as to appropriately conduct the Luggage Carts Service in an efficient and orderly manner. Reasonable effort shall be made to replace any employee whose retention shall be determined by City to be disruptive to the atmosphere of the Airport. Concessionaire hereby

agrees to employ a sufficient number of employees and will provide an inventory of staffing levels on the Monthly Report.

C. Each of the Concessionaire's employees who is required to be licensed to operate any vehicle or perform any service set forth herein shall be duly licensed and authorized in accordance with applicable laws, rules and regulations (including, but not limited to, City's airfield driving rules).

D. Concessionaire's employees shall present a clean and neat appearance at all times, discharge their duties in a courteous and efficient manner. All employees shall be properly attired in a readily identifiable company uniform and employee identification tags shall conform to Airport rules and regulations. Concessionaire's employees are to be under the control and supervision of Concessionaire at all times.

E. Concessionaire shall furnish all personnel who are authorized to access restricted Airport areas with such identification as the Airport's security program requires. Upon execution of this Agreement, the Concessionaire shall furnish City with a list of the names and additional pertinent data of persons who are authorized to access restricted Airport areas and Concessionaire shall update said list as appropriate.

F. The Concessionaire is an independent contractor and not an agent of City. City shall not exercise any control over the daily performance of the duties of the Concessionaire's employees. The selection, retention, assignment, direction and payment of employees shall be the Concessionaire's sole responsibility.

11. INSURANCE.

A. Unless otherwise approved by City's Division of Risk Management in writing, Concessionaire shall, at its sole cost and expense, procure and maintain in full force and effect, during the term and any extension or renewal thereof, the types and minimum limits of insurance specified under this Section 11, or such greater amounts as City shall, from time to time, require:

(1) **Workers' Compensation and Employers' Liability Insurance**

a. Workers' Compensation: Statutory Limits

b. Employers' Liability: $500,000 Each Accident – Bodily Injury by Accident; $500,000 Each Employee – Bodily Injury by Disease; and $500,000 Policy Limit – Bodily Injury by Disease.

c. Other states coverage including Pennsylvania.

(2) **General Liability Insurance.**

a. Limit of Liability: $1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; $1,000,000

personal and advertising injury; $2,000,000 general aggregate and $2,000,000 aggregate for products and completed operations. City may require higher limits of liability if, in City's sole discretion, the potential risk so warrants.

b. Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors and employees and volunteers as additional insureds; cross liability; broad form property damage (including completed operations).

(3) **Automobile Liability Insurance.**

a. Limit of Liability: $5,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.

b. Coverage: Owned, non-owned, and hired vehicles.

(4) **Excess Liability Insurance** with limits of $5,000,000 when combined with the types and amounts of insurance required under (1), (2), and (3) above

(5) **Property Insurance** - All risk property insurance covering all improvements, betterments, equipment, trade fixtures, merchandise, business personal property and any other property in Concessionaire's care, custody and control in the amount equal to the full replacement value of the property with no penalty for coinsurance, including coverage during any construction or renovation period.

B. With respect to the insurance listed above the following shall apply:

(1) All of the foregoing policies shall be provided on an "occurrence" basis and not on a "claims made" basis.

(2) The City of Philadelphia, it officers, employees and agents, shall be named as additional insureds on all liability insurance policies required hereunder except Workers' Compensation and Employers' Liability. All such policies shall include an endorsement stating that the coverage afforded these parties as additional insureds will be primary to any other coverage available to them.

(3) Certificates of insurance evidencing the required coverage shall be submitted by Concessionaire to the Division of Aviation (Philadelphia International Airport, Terminal "E", Philadelphia, Pennsylvania 19153, Attention: Airport Properties Manager), and City's Risk Manager (1515 Arch Street, 14th Floor, Philadelphia, Pennsylvania 19102-1595), at least ten (10) days before commencement of the Term or the Renewal Term. Concessionaire's failure to furnish certificates of insurance as required

herein shall be considered as a default with a cure period of five (5) days after receipt of written notice thereof. Thereafter, and without further notice to Concessionaire, City may exercise any and all remedies set forth in this Agreement and at law or equity.

(4) Concessionaire shall furnish copies of the original policies of all insurance required under this Agreement at any time within ten (10) days after written request by City.

(5) All insurance policies shall provide for at least thirty (30) days prior written notice to be given to City in the event coverage is materially changed, canceled or not renewed (with language requiring that the insurer only endeavor to give notice and releasing the insurer from any liability or obligation for failure to give such notice and releasing the insurer from any liability or obligation for failure to give such notice deleted). At least ten (10) days prior to the expiration of each policy, Concessionaire shall deliver to City a certificate or certificates evidencing a replacement policy to become effective immediately upon the termination of the previous policy.

(6) From time to time during the Term of the Agreement and in any event not more frequently than every year, City may adjust the amounts, types and deductibles of insurance coverage required to reflect changed circumstances affecting insurance requirement.

(7) If Concessionaire fails to cause such insurance to be maintained, City shall not be limited in the proof of any damages which City may claim against Concessionaire or any other person or entity to the amount of the insurance premium or premiums not paid or incurred and which would have been payable upon such insurance, but City shall also be entitled to recover as damages, expenses of suit and costs, including without limitation, reasonable cancellation fees, suffered or incurred during any period when Concessionaire shall have failed or neglected to provide insurance as required herein.

(8) The insurance requirements set forth herein shall in no way be intended to modify, limit or reduce the indemnifications made in this Agreement by Concessionaire to City or to limit Concessionaire's liability under this Agreement to the limits of the policies of insurance required to be maintained by Concessionaire hereunder.

C. Concessionaire shall not do, or suffer to be done, any matter or thing whereby, or in consequence whereof, the policy or policies of insurance shall become voided or suspended, or which increase the risk or hazard of fire in or on the Airport unless, in the latter case only, such increased risk or hazard is adequately insured in City's sole discretion and the use creating such increased risk or hazard is permitted hereunder.

D. Concessionaire shall not permit separate insurance to be carried which relates to the Airport and is concurrent in form or contributing, in the event of loss, with that required to be maintained under this Agreement, or increase or permit to be increased the amounts of any then existing insurance relating to the Airport by securing an additional policy or additional policies, without including the applicable parties required in this Section as insured parties or additional insured. Concessionaire immediately shall notify City whenever such separate insurance is obtained and deliver to City certificates evidencing such policies and, upon request, certified copies or duplicate originals of the same (as required in this Section and in accordance with the procedures set forth herein).

12. INDEMNIFICATION, HOLD-HARMLESS, LIABILITY.

A. Concessionaire shall indemnify, defend and hold harmless City, its agents, employees, boards, and commissions from and against any and all suits, claims, causes of action, liabilities, losses, costs and expenses (including without limitation, attorneys' fees) of every kind relating to or arising in connection with:

(1) Any act or omission of Concessionaire, its agents, directors, officers, owners, employees, members, contractors, subcontractors, tenants, subtenants, or invitees in, on or about the Airport, or in connection with Concessionaire's activities on the Airport;

(2) Any use, condition, operation, maintenance, or management of any or all Equipment and Concessionaire's, employee's or agent's misuse of any or all Equipment;

(3) Any accident, injury, death or damage to any person or property at the Airport caused, in whole or in part, by Concessionaire, its agents, directors, officers, owners, employees, members, contractors, subcontractors, sublicensees, tenants or subtenants;

(4) Any breach, violation or nonperformance of any covenant, term or condition of this Agreement to be performed or observed by Concessionaire, or of any restrictions of record or of any laws, ordinances, statutes, rules, codes or regulations, affecting Concessionaire's activities or use of the Airport; and

(5) Any tax attributable to the execution, delivery or recording of the Agreement.

B. In the event that any action or proceeding is brought against City by reason of any matter referred to in this Section, Concessionaire, upon written notice from City, shall at Concessionaire's sole cost and expense, resist or defend such action or proceeding by counsel approved by City in writing, provided that no approval of counsel shall be required in each

instance where the action or proceeding is resisted or defended by counsel of an insurance carrier obligated to resist or defend such action or proceeding, and further provided that City may engage at its expense its own counsel to participate in the defense of any such action.

C. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement shall waive, or be construed to waive, any power or authority or defense of City under all applicable laws, ordinances, statutes, rules and regulations.

D. The provisions of the Section as they apply to occurrences, or actual or contingent liabilities arising during the Term or the Renewal Term of this Agreement shall survive the expiration or any earlier termination of this Agreement.

E. The indemnification and liability to City by Concessionaire as set forth above, shall also apply to any and all environmental matters and shall also include but not be limited to Concessionaire's duty to pay any fines and satisfy any punitive measures imposed upon City by governmental agencies and Concessionaire's duty to pay City for any costs or liability incurred by City in connection with safety measures, containment and/or clean-up of environmental matters arising from activities of the Concessionaire.

F. The indemnification and liability to City by Concessionaire as set forth above, shall also apply to any and all security matters and shall include but not be limited to Concessionaire's duty to pay any fines and satisfy any punitive measures imposed upon City by the Federal Aviation Administration or the TSA (hereinafter defined) and any other governmental agencies in connection with breaches of security rules and regulation.

13. AIRPORT SECURITY PROGRAM AND SAFETY RESTRICTIONS.

A. In accordance with regulations issued by the U.S. Department of Transportation, Transportation Security Administration ("**TSA**"), and found at 49 Code of Federal Regulations ("**CFR**") Parts 1540 and 1542, airports are required to have TSA-approved security programs. These programs are designed to control access to certain areas of airports and to control the movement of people and vehicles within those areas. City has a TSA-approved security program for the Airport. Concessionaire is required, at all times during the Term and the Renewal Term, to be familiar with and to comply with City's security program for the Airport. Failure to comply with City's TSA-approved security program shall be a material breach of this Agreement and, in addition to all other rights and remedies of City hereunder, at law or in equity, City shall be entitled to terminate this Agreement without liability to City and, upon such termination, Concessionaire shall be liable to City for all outstanding fees and charges and all costs, including attorney costs, expenses and damages arising out of such termination.

B. Concessionaire shall indemnify, defend and hold City harmless against all fines and charges and any other punitive measures in connection with breaches of security on the Airport or any other violations of Airport security resulting directly or indirectly from Concessionaire's activities on the Airport.

C. In the use of the ramps, roads, streets, corridors, hallways, stairs and other common areas of the Airport as a means of ingress and egress to, from and about the Airport, and also in the use of portions of the Airport to which the general public is admitted, the Concessionaire shall comply (and shall require its employees, invitees and others doing business with it to comply) with the ordinances, rules and regulations of City which are now in effect or which may hereafter be in effect for the safe and efficient operation of the Airport. Concessionaire and its employees shall not have any right hereunder to park vehicles at the Airport except in parking areas designated by the Division of Aviation.

14. FORCE MAJEURE.

City shall not be liable or responsible for Concessionaire's damages, lost profits or other costs that may result from any strike, labor dispute or other work stoppage, federal or state or governmental action, any breakdown or failure of the Equipment, any power failure, civil commotion, Acts of God or other act or condition beyond City's control.

15. SIGNS.

Concessionaire shall not, without the prior written approval of City, which may be granted or withheld by City in its sole discretion, erect, maintain or display any signs in the Airport. In addition to City's approval, Concessionaire shall at its sole cost and expense obtain the approval of all other local, state and federal agencies as may be required for erecting, maintaining or displaying any signs.

16. ASSIGNMENT.

Concessionaire shall not assign, mortgage, pledge or otherwise transfer this Agreement by operation of law or otherwise, without obtaining the prior written consent of City, which may be withheld or granted in City's sole discretion. In the event such assignment is approved by City, such approval shall in no way relieve Concessionaire of any contractual obligations assumed under this Agreement unless City specifically consents to such relief. Approval of or consent to any assignment shall not constitute a waiver of Concessionaire's strict future compliance with the provisions of this Section.

17. COMPLIANCE WITH LAWS; REGULATIONS.

A. Concessionaire shall observe and comply with any and all requirements of the constituted public authorities and with all federal, state, or local statutes, ordinances, regulations, and standards applicable to Concessionaire or its activities on the Airport, including, but not limited to, rules and regulations currently in force and amended from time to time by City's Commerce Department, Division of Aviation and other authorities having jurisdiction over any phase of operation in and about the Airport.

B. Except for the Equipment, Concessionaire shall not install, maintain, or operate any coin-operated device or any machine for the vending of food, beverages, tobacco, or merchandise of any other kind unless otherwise expressly authorized to do so in writing by City.

C. Concessionaire shall not furnish, maintain, store, or cause or permit to be furnished, maintained or stored, gasoline, fuels, lubricants, or other flammable materials on the Airport without the prior written consent of City, which may be withheld or granted in City's sole discretion.

17.A COMPLIANCE WITH APPLICABLE LAWS; ENVIRONMENTAL MATTERS

A. Except for the sole negligence or willful misconduct of City, Concessionaire shall indemnify, defend and hold harmless City, its agents, employees, boards, and commissions from and against any and all suits, claims, causes of action, liabilities, losses, costs and expenses (including, without limitation, attorneys' fees) of every kind relating to or arising in connection with the release of any Hazardous Material (as defined herein) by Concessionaire or Concessionaire's Agents, including but not limited to any cost or expense incurred in connection with safety measures, containment and /or clean-up of Hazardous Material; or Concessionaire or Concessionaire Agents' failure to comply with any applicable Environmental Laws, including but not limited to any fines or punitive measures arising from such failure.

B. The term "Hazardous Material" as used in this Agreement means any and all materials which require, under Environmental Laws, special handling in use, generation, collection, storage, treatment or disposal, or payment of costs associated with responding to lawful directives of any court or agency of competent jurisdiction as well as any toxic chemical or other substance from or related to industrial, commercial or institutional activities; and asbestos, gasoline, diesel fuel, motor oil, waste and used oil, heating oil, and other petroleum products or compounds, polychlorinated biphenyls, radon, urea, formaldehyde and lead-containing materials.

C. Concessionaire shall comply, and cause its subcontractors to comply, with all present and future, federal, state and local laws, statutes, ordinances, orders, rules, regulations, building codes, and all other applicable governmental requirements, including, but not limited to Environmental Laws (defined below) (" Applicable Laws"). Concessionaire shall obtain any and all permits and approvals required to conduct its work and shall require that all work be done by properly certified workers. This Agreement shall not be constructed to constitute an approval or permit required to be given by a City department or agency under Applicable Laws.

D. Concessionaire itself shall and Concessionaire shall require all subcontractors to conduct all of its or their work in the Activity Area in compliance with all Environmental Laws. Concessionaire itself shall and Concessionaire shall require all subcontractors to obtain all permits, licenses or approvals and give all notifications as required by Environmental Laws. Concessionaire itself shall and Concessionaire shall require all subcontractors to comply with the terms and conditions of any such permits, licenses, approvals or notifications at all times.

E. The term "Environmental Laws" as used in this Agreement shall mean all current and future federal, state and local environmental, safety or health laws, statutes, rules, regulations, ordinances, and orders or common law, including, but not limited to, reported decisions of any applicable state or federal court and shall include and not be limited to, the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. § 651 et.seq.); the National Environmental Policy Act, as amended (42 U.S.C. § 4321 et.seq.); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et.seq.); the Resource Conservation and Recovery Act, as amended (42 U.S.C. §6901 et.seq.); the Toxic Substances Control Act, as amended, (15 U.S.C. §2601 et.seq.); the Hazardous Materials Transportation Act, as amended (49 U.S.C. §1801 et.seq.); the Clean Air Act, as amended, (42 U.S.C. §7401 et.seq.); the Clean Water Act, as amended (33 U.S.C. §1251 et.seq.); the Oil Pollution Act of 1990, as amended (33 U.S.C. § 2701 et.seq.); the Safe Drinking Water Act, as amended (42 U.S.C. § 1251 et.seq.); the Pennsylvania Solid Waste Management Act, as amended (35 P. S. § 6018. 101 et.seq.); the Pennsylvania Hazardous Sites Cleanup Act, as amended((35 P.S. § 6020.101 et.seq.); the Pennsylvania Clean Streams Law, as amended (35 P.S. § 691.1 et.seq.); the Pennsylvania Underground Storage Tank and Spill Prevention Act (35 P.S. § 6021.101, et.seq.); and the Hazardous Material Emergency Planning and Response Act, as amended (35 P.S. § 6022.101 et.seq.), as any of the foregoing may hereinafter be amended; any rule or regulation promulgated pursuant thereto, and any other present or future law, ordinance, rule regulation, permit or permit condition, order or directive addressing environmental, health, or safety issues of or by the federal government or any applicable state or other political subdivision thereof, or any agency, court or body of the federal government, or any applicable state or political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions.

F. Concessionaire shall and Concessionaire shall require its subcontractors to immediately provide to City copies of the following with respect to its or their activities in connection with the work at the Airport:

(i) applications or other materials submitted to any governmental agency in compliance with Environmental Laws;

(ii) any notification submitted to any person or entity pursuant to Environmental Laws or otherwise with respect to the existence of a potentially adverse environmental impact of a condition; on the Activity Area and other Airport property or related proceedings;

(iii) any permit, license, approval or amendment or modification thereto granted pursuant to Environmental Laws;

(iv) upon City's request, any record or manifest required to be maintained pursuant to Environmental Laws; and

(v) any notice of violation, summons, order complaint or any correspondence threatening or relating to any of the foregoing received by Concessionaire or any subcontractor pertaining to compliance with Environmental Laws.

18. CERTIFICATION OF NON-INDEBTEDNESS.

A. Concessionaire Not Indebted. Concessionaire hereby certifies and represents that Concessionaire and Concessionaire's sister and parent company(ies) and subsidiary(ies) are not currently indebted to City and will not at any time during the Term of this Agreement (including any extensions or renewals thereof) be indebted to City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to City has been established. In addition to any other rights or remedies available to City at law or in equity, Concessionaire acknowledges that any breach or failure to conform to this certification may, at the option of City, result in the termination of this Agreement for default (in which case Concessionaire shall be liable for all excess costs and other damages resulting from the termination).

B. Requirement For Subcontractors. Concessionaire shall require all subcontractors performing work in connection with this Agreement to be bound in writing by the following provision and Concessionaire shall cooperate fully with City in exercising the rights and remedies described below or otherwise available at law or in equity:

"Subcontractor hereby certifies and represents that Subcontractor and Subcontractor's sister and parent company(ies) and subsidiary(ies) are not currently indebted to City and will not at any time during the term of Concessionaire's Agreement with City, including any extensions or renewals thereof, be indebted to City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to City has been established. In addition to any other rights or remedies available to City at law or in equity, Subcontractor acknowledges that any breach or failure to conform to this certification may, at the option and direction of City, result in the termination of Subcontractor for default (in which case Subcontractor will be liable for all excess costs and other damages resulting from the termination)."

19. NON-DISCRIMINATION.

A. Local Requirements.

(1) This Agreement is entered into under the terms of the Philadelphia Home Rule Charter and in the exercise of the privileges herein granted, Concessionaire shall not discriminate nor permit discrimination against any person because of race, color, religion, national origin, sex or ancestry. Without limiting any other provision of this Agreement, Concessionaire agrees, in performing the Agreement, to comply with the provisions of the Fair Practices Ordinance of The Philadelphia Code (Chapter 9-1100) and the Mayor's Executive Order No. 4-86, as each may be amended from time to time, both of which prohibit, among other things, discrimination against individuals because of race, color, sex, sexual orientation, religion, national origin, ancestry, age, handicap (including but not limited to Human Immunodeficiency Virus infection), marital status, presence of children or source of income, in employment, housing and services in places of public accommodation. In the event of such discrimination,

City will be permitted, in addition to any other rights or remedies available under the contract, at law or in equity, to terminate the Agreement.

(2) Concessionaire covenants and agrees that in accordance with Chapter 17-400 of The Philadelphia Code, payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment, on the basis of race, color, religion, national origin, ancestry, sex, sexual orientation or physical handicap constitutes a substantial breach of this Agreement entitling City to all rights and remedies provided in this Agreement or otherwise available in law or equity.

a. Concessionaire agrees to include the immediately preceding subsection, with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for work to be performed pursuant to this Agreement.

b. Concessionaire further agrees to cooperate with the Commission on Human Relations of City of Philadelphia in any manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of the Philadelphia Code. Failure to so cooperate shall constitute a substantial breach of this Agreement entitling City to all rights and remedies provided herein or otherwise available in law or equity.

B. **Federal Requirements.**

(1) Concessionaire covenants and agrees that in order to confirm the assurance required of the City of Philadelphia by Title VI of the Civil Rights Act of 1964 and by 49 CFR Parts 23 and 26 of the regulations governing the U.S. Department of Transportation ("DOT"), as amended, it will not, in its operation and use of the Airport, discriminate nor permit discrimination against any person or group of persons as set forth in the assurance included in 49 CFR Part 23.9(c). Noncompliance with 49 CFR Part 23 will constitute a material breach of this Agreement; therefore in the event of such noncompliance, Concessionaire hereby authorizes City to take such action as the Federal Government may direct to enforce compliance, and Concessionaire also authorizes the Federal Government to take appropriate action to enforce compliance, including the right to seek judicial enforcement.

a. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Concessionaire or contractor shall 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.

b. The Concessionaire or contractor shall include the above statements in any subsequent concession agreement or contract covered by 49

CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

(2) Concessionaire covenants and agrees that it will undertake an affirmative action program if required by 14 CFR part 152, Subpart E, as amended from time to time. 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.

(3) Concessionaire understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in Concessionaire's agreement with City or from activities or services provided under the agreement with City. Concessionaire agrees to comply with all provisions of the Americans With Disabilities Act, 42 U.S.C. Section 12101 et seq., and all regulations promulgated thereunder, as the Act may be amended from time to time, which are applicable (a) to Concessionaire; (b) to the benefits, services, activities, facilities, and programs provided in connection with the contract; (c) to City or the Commonwealth of Pennsylvania; (d) to the benefits, services, activities, facilities, and programs of City or of the Commonwealth; and (e) if any funds under the contract are provided by the federal government, which are applicable to the federal government and its funds, benefits, services, activities, facilities, and programs applicable to the contract. Without limiting the generality of the preceeding sentence, Concessionaire shall comply with the "General Prohibitions Against Discrimination", 28 C.F.R. 35.130, and all other regulations promulgated under Title II of the "Americans With Disabilities Act", as they may be amended from time to time, which are applicable to the benefits, services, activities, facilities, and programs provided by City through contracts with outside contractors."

(4) In accordance with the City's Airport Concession Disadvantaged Business Program, as required by 49 CFR Part 23, as may be amended from time to time, it is the Airport's intention to create a level playing field on which DBEs can compete fairly for concession-related contracting opportunities. In furtherance of this policy, the City has required a "good faith effort" to achieve DBE participation under this Agreement. Concessionaire shall comply with the requirements of 49 CFR Part 23, and Concessionaire shall, without limitation, submit documentation responsive to the City's DBE participation requirements for the Agreement.

a. In furtherance of the foregoing, Concessionaire shall comply with the following:

(1) Concessionaire represents that it has entered into legally binding agreement(s) with certified DBE(s) as participants under Concessionaire's Agreement with City and in the dollar amount(s) and/or percentage(s) as specified in the Proposal, or as otherwise agreed upon by the Concessionaire and the City.

(2) Concessionaire shall secure the prior approval of the Minority Business Enterprise Council ("MBEC") before making any changes or modifications to any DBE commitments made under this Agreement by Concessionaire, including, without limitation, substitutions for its DBEs, changes or reductions in the services provided by its DBE subconcessionaires, or changes or reductions in the dollar and/or percentage amounts of commitments with its DBE subcontractors.

(3) In connection with payments to DBEs, Concessionaire shall comply with City's payment reporting process, which may include the use of electronic payment verification systems.

(4) Concessionaire agrees that, in the event of an increase in units of work and/or compensation under the Agreement, Concessionaire will increase its commitments with its DBE Subcontractors proportionately. The MBEC may from time to time request documentation from Concessionaire evidencing compliance with this provision.

(5) Concessionaire shall submit, within the time frames prescribed by City, any and all documentation City may request, including, but not limited to, copies of subcontract(s) with DBEs and participation summary reports,

(6) Concessionaire agrees that City may, in its sole discretion, conduct periodic reviews to monitor Concessionaire's compliance with the terms of 49 CFR Part 23.

b. No privity of contract exists between City and any DBE subcontractor identified herein and City does not intend to give or confer upon any such DBE subcontractor(s) any legal rights or remedies in connection with the subcontracted services under or by reason of the Agreement except such rights and remedies that the DBE subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party. The remedies enumerated above are for the sole benefit of City and City's failure to enforce any provision or City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of City's rights in connection with the Agreement resulting from the Proposal process nor shall it give rise to actions by any third parties including identified DBE subcontractors.

20. <u>TAXES</u>.

A. Concessionaire shall pay, before any fine, penalty, interest or cost may be added, all taxes, assessments, governmental fees and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of whatever character that may be levied, assessed or charged upon or with respect to (i) any income received by Concessionaire from its activities at the Airport, (ii) Concessionaire's privilege to occupy space at the Airport; or (iii) Concessionaire's improvements, fixtures, equipment, or other property. Also, City will assess and collect from Concessionaire any applicable Use and Occupancy Tax on behalf of the School

District of City of Philadelphia. Concessionaire may contest, in its own name or in the name of City the validity or amount of any tax or charge in lieu of tax it shall hereunder by required to pay to City or to any taxing authority; provided, however, that Concessionaire shall pay such tax or charge under protest to the taxing authority and indemnify and hold City harmless from all liability and expense arising out of, or for such contest. Concessionaire shall not permit a lien or encumbrance to attach to the Airport or any portion thereof by reason of any failure to pay taxes or any other payment owing under this provision.

B. Concessionaire's failure to comply with applicable provisions of this Section shall be a default under this Agreement.

21. LIENS.

Concessionaire shall not permit a mechanic's lien for any labor or materials to attach to the whole or any part of the Airport and Concessionaire hereby agrees that if a mechanic's lien is filed upon all or any portion of the Airport, Concessionaire shall protect and save harmless City against any loss, liability or expense whatsoever, by reason thereof and shall defend at Concessionaire's own expense such action or proceedings as may be necessary to remove such lien from the records within forty-five (45) days of notice from City to Concessionaire of the existence of said lien. Notwithstanding anything to the contrary herein contained, Concessionaire may contest the validity of any mechanic's lien so long as City is protected by Concessionaire's posting of a bond in the amount of the lien.

22. NORTHERN IRELAND PROVISION.

A. In accordance with Section 17-104 of The Philadelphia Code, Concessionaire, by execution of this Agreement certifies and represents that (i) Concessionaire (including any parent company, subsidiary, exclusive distributor or company affiliated with Concessionaire) does not have, and will not have at any time during the term of this Agreement (including any Extensions thereof), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (ii) no product to be provided to City under this Agreement will originate in Northern Ireland, unless Concessionaire has implemented the fair employment principles embodied in the MacBride Principles.

B. In the performance of this Agreement, Concessionaire agrees that it will not utilize any suppliers, subcontractors or subconsultants any tier (i) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, managements agreements or operations in Northern Ireland or (ii) who will provide products originating in Northern Ireland unless said supplier, subconsultant or subcontractor has implemented the fair employment principles embodied in the MacBride Principles. Concessionaire further agrees to include the provisions of this subsection, with appropriate adjustments for the identity of the parties, in all subcontracts and supply agreements which are entered into in connection with the performance of this Agreement.

C. Concessionaire agrees to cooperate with City's Director of Finance in any manner which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of The Philadelphia Code. Concessionaire expressly understands and agrees that any false certification or representation in connection with this Section and/or any failure to comply with the provisions of this Section shall constitute a substantial breach of this Agreement entitling City to all rights and remedies provided in this Agreement or otherwise available in law (including but not limited to, Section 17-104 of The Philadelphia Code) or equity. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A Section 4904.

23. CORPORATE AND SLAVERY ERA INSURANCE DISCLOSURE

In accordance with Section 17-104 of The Philadelphia Code, the Concessionaire, after execution of this Agreement, will complete an affidavit certifying and representing that the Concessionaire (including any parent company, subsidiary, exclusive distributor or company affiliated with Concessionaire) has searched any and all records of the Concessionaire or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit.

The Concessionaire expressly understands and agrees that any false certification or representation in connection with this Section and/or any failure to comply with the provisions of this Section shall constitute a substantial breach of this Agreement entitling City to all rights and remedies provided in this Agreement or otherwise available in law (including, but not limited to, Section 17-104 of The Philadelphia Code) or equity and the contract will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. Section 4904.

24. CONCESSIONAIRE'S REPRESENTATIONS AND WARRANTIES.

Concessionaire makes the following representations and warranties upon which City relies on as an inducement to enter into the Agreement, and which shall survive termination of this Agreement:

A. Good Standing. Concessionaire is a Limited Liability Company, duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly licensed, qualified and in good standing in the Commonwealth of Pennsylvania and in all jurisdiction in which it conducts business activities.

B. Authority to Act. Concessionaire has full legal power and authority to enter and perform the Agreement and provide the services and materials and equipment, and such will not result in a default under, or a breach or violation of (1) Concessionaire's Articles of Organization, organizational documents and (2) any applicable law or any license, permit or other instrument

or obligation to which Concessionaire is now a party or by which Concessionaire may be bound or affected.

C. Legal Obligation. The Agreement has been duly authorized, executed and delivered by Concessionaire by and through persons authorized to execute the Agreement on behalf of Concessionaire and constitutes the legal, valid and binding obligation of Concessionaire, enforceable against Concessionaire in accordance with its terms.

D. No Litigation Preventing Performance. There is no litigation, claim, consent order, investigation, challenge or other proceeding pending or threatened against Concessionaire, its properties or business, or any individuals acting on Concessionaire's behalf, including, without limitation subcontractors, which seeks to enjoin or prohibit Concessionaire from entering into or performing its obligations under the Agreement.

E. Requisite Licensure and Qualifications. Concessionaire and all of the individuals acting on Concessionaire's behalf, including without limitation subcontractors, in connection with the services, materials and equipment under this Agreement possess and, at all times during the Term or any Renewal Term of this Agreement, shall continue to possess all licenses, certifications, qualifications, or other credentials as required in accordance with applicable law and the terms of the Agreement, to perform the services and provide the materials and Equipment. Concessionaire shall provide City with copies of all licenses, credentials and/or certifications specified in this Section within five (5) days of a request by City.

F. No Adverse Interests. Except as disclosed in writing and approved by City, neither Concessionaire nor any of its directors, officers, members, partners or employees, has any interest, nor shall they acquire any interest, directly or indirectly, that would or may conflict in any manner or degree with the performance or rendering of the services, materials and equipment.

G. No Delinquencies. Concessionaire has no unpaid debt due and owing to City and is not delinquent in the payment of any taxes due to City, except such debts or obligations for which Concessionaire and City, through its Department of Revenue, have executed an agreement to eliminate such delinquencies or which Concessionaire is contesting by way of appeal or other formal legal process. Concessionaire shall not at any time during the Term of the Agreement (and any renewal or extension thereof) be delinquent in the payment of monies owed to City, including but not limited to taxes and water and sewer bills. Concessionaire shall remain current during the Term of the Agreement (and the Renewal Term) with all such payments and shall inform the Director of Aviation in writing of Concessionaire's receipt of any notices of delinquent payments, within five (5) days after receipt.

H. Business Privilege License. Concessionaire has a valid current business privilege license to do business in City of Philadelphia.

I. Subcontractor Licensure; Non-Delinquency. Concessionaire represents that each subcontractor (1) holds a valid current business privilege license to do business in City of

Philadelphia, if required by applicable law; (2) has executed a Certificate of Non-Indebtedness; and (3) representations in its Certificate of Non-Indebtedness are true and correct.

J. Survival of Representations. All representations and warranties of Concessionaire contained in the Agreement, including, without limitation, any Certification of Non-Indebtedness, or in any separate certificate or other instrument furnished or to be furnished pursuant to the Agreement shall survive termination of the Agreement. This Section shall not be construed as limiting the generality of any other survival provision herein.

25. DEFAULT BY CONCESSIONAIRE, REMEDIES OF CITY.

A. Subject to the notice and cure provisions of subsection 25 (F) below, in the event Concessionaire shall fail to pay when due any sum required to be paid by Concessionaire under this Agreement; or defaults in the performance of or compliance with any of the terms, covenants, representations, warranties, conditions or other provisions of this Agreement; or if Concessionaire shall abandon all or any part of the Activity Area or shall discontinue its operations respecting the Luggage Cart Service, in whole or in part, at the Airport; or if Concessionaire shall be in default under any other agreement with City; or if Guarantor shall be in default under its Guaranty to City of even date herewith; or if Concessionaire shall be adjudicated as Bankrupt; or shall make an assignment for the benefit of creditors or shall file a bill in equity or otherwise initiate proceedings for the appointment of a receiver of its assets; or shall file any proceedings in bankruptcy or for reorganization, adjustment, composition or an arrangement under any federal or state law; or if any proceedings in bankruptcy or a petition seeking reorganization, arrangement, adjustment or composition or proceedings for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) shall be instituted with respect to Concessionaire under any state or federal law; or if the assets of Concessionaire are attached or levied under execution or other legal process; or if Concessionaire fails to pay its debts generally as they become due; or if, Concessionaire admits in writing its inability to pay its debts as they mature, then and in addition to any other rights or remedies City may have under this Agreement or at law or in equity, City, at City's sole option, shall have the following rights:

(1) to accelerate the whole or any part of any fee, charge or other amount due under this Agreement for the entire unexpired balance of the Term of this Agreement and such accelerated fee, charge or other amount due under this Agreement shall be deemed due and payable as if, by the terms and provisions of this Agreement, such accelerated fee, charge or other amount due under this Agreement were on that date payable in advance;

(2) to terminate this Agreement and the Term or Renewal Term hereby created without any right on the part of Concessionaire to waive the forfeiture by payment of any amount due or by other performance of any condition, term or covenant broken, but Concessionaire shall remain liable as herein provided; or

(3) whether or not this Agreement has been terminated as herein provided, City shall have the right to remove all persons and property from the Airport or any part thereof by force, summary proceedings, ejectment or otherwise. City shall be under no liability for or by

reason of any such removal. No expiration or termination of this Agreement, by operation of law or otherwise, and no reissuance of the Agreement or any part thereof shall relieve Concessionaire of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession or reissuance.

B. In the event of any expiration or termination of this Agreement or removal from the Airport by reason of default, and if City has not elected to accelerate the fees, charges or other amount due under this Agreement, Concessionaire shall pay to City the fees, charges and other required amounts to be paid by Concessionaire to and including the date of such expiration, termination or removal and, thereafter, Concessionaire shall, until the end of what would have been the expiration of the Term in the absence of such expiration, termination or removal, and whether or not the Agreement or any part thereof shall have been reissued, be liable to City for, and shall pay to City, as current damages, the fees, charges and other amounts which would be payable under this Agreement by Concessionaire in the absence of such expiration, termination or removal, less the net proceeds, if any, of any reissuance (including, without limitation, all related removal costs, brokerage commissions, legal expenses, attorneys' fees, employees' expenses, alteration costs and expenses or preparation for such reissuance). Concessionaire shall pay such current damages on the days on which the fees, charges and other amounts would have been payable under this Agreement in the absence of such expiration, termination or removal, and City shall be entitled to recover the same from Concessionaire on each such day.

C. No right or remedy herein conferred upon or reserved to City is intended to be exclusive of any other right or remedy herein or by law provided but each shall be cumulative and concurrent and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity or by statute or ordinance. The exercise of any one or more of such remedies shall not preclude the exercise by City, at the same or different times, of any other remedies for the same default or any other default. No termination of this Agreement or removal of Concessionaire from the Airport shall deprive City of any remedies or actions against Concessionaire for fees, charges or for damages for the breach of any covenant or condition herein contained. No removal of Concessionaire from the Airport or reissuance of the Agreement shall be construed as an election on the part of City to terminate this Agreement unless written notice of such intention is given by City to Concessionaire. The failure of City to insist upon the strict and/or prompt performance of the terms, agreements, covenants and conditions of this Agreement or any of them, and/or the acceptance of such performance thereafter shall not constitute or be construed as a waiver of City's right to thereafter enforce the same strictly according to the terms of this Agreement in the event of a continuing or subsequent default.

D. If Concessionaire fails to perform any covenant or observe any condition to be performed or observed by Concessionaire hereunder or acts in violation of any covenant or condition hereof, and thereafter, a default occurs, City may, but shall not be required to, on behalf of Concessionaire, perform such covenant and/or take such steps, as may be necessary or appropriate to meet the requirement of any such covenant or condition, and all costs and expenses incurred by City in so doing, including reasonable legal fees, shall be paid by Concessionaire to City upon demand. City's proceeding under the rights reserved to City under

this subsection shall not in any way prejudice or waive any rights as City might otherwise have against Concessionaire by reason of Concessionaire's default.

E. Concessionaire shall pay upon demand all City's costs, charges and expenses, including the fees of counsel, agents and others retained by City (or, if City utilizes its own employees for such services, the amount that City would have paid had it engaged the services of outside counsel or others) incurred by City in any litigation, negotiation or transaction in which Concessionaire causes City to become involved or concerned.

F. Notwithstanding anything hereinabove stated, City agrees that Concessionaire shall not be in default hereunder, and City will not exercise any right or remedy provided for in this Agreement or allowed by law because of any default, unless Concessionaire shall have failed to pay, within a period of five (5) business days after the due date, the sum or sums due if the potential default consists of the failure to pay money, or if the potential default consists of something other than the failure to pay money, Concessionaire shall have failed, within fifteen (15) calendar days after the date of City's written notice of such potential default to Concessionaire, to commence to correct such potential default and thereafter to actively and diligently in good faith proceed with and continue the correction of the potential default and to correct the same within no more than thirty (30) calendar days after the date of City's notice; provided, however, that no such notice from City shall be required nor shall City be required to allow any part of the said grace period if Concessionaire shall have filed a petition in bankruptcy (or a petition is filed against Concessionaire) or for reorganization or a bill in equity or otherwise initiated proceedings for the appointment of a receiver of its assets, or if a receiver or trustee is appointed for Concessionaire, or Concessionaire makes an assignment for the benefit of creditors or if the assets of Concessionaire are attached or levied under execution on a judgment. In the event that Concessionaire fails to cure any default under the Agreement as provided in Section F herein, City shall have the right to cancel the security badge access to the Airport of all employees of Concessionaire.

26. NOTICES.

Except as otherwise provided herein, all notices, requests, consents, approvals and other communications under this Agreement shall be effectively given only if in writing and sent by United States registered or certified mail, return receipt requested, postage prepaid, by facsimile or by a nationally recognized and receipted overnight courier service (such as Federal Express) guaranteeing next business day delivery, addressed as follows:

If to City:

Division of Aviation
Terminal E
Philadelphia International Airport
Philadelphia, Pennsylvania 19153
Attention: Director of Aviation
Facsimile: (215) 937-6759

with a copy to:

City of Philadelphia Law Department
1515 Arch Street, 16th Floor
Philadelphia, Pennsylvania 19102
Attention: Divisional Deputy City Solicitor – Transportation Division
Facsimile: (215) 683-5175

If to the Concessionaire:

bagport America, LLC
3663 Southwest 8th Street
Suite 200
Miami, FL 33135
Attention: Chief Operating Manager
Facsimile: (305) 441-1272

or to such other addresses of which City or the Concessionaire shall have given notice as herein provided. All such notices, requests and other communications shall be deemed to have been sufficiently given for all purposes hereof on the third (3rd) business day after proper mailing thereof (in the case of United States registered or certified mail) or on the date of the delivery thereof by facsimile or a courier service as aforesaid, and may be given on behalf of either party by its counsel.

27. AIRPORT MODIFICATIONS.

It is understood and agreed by the parties that major Airport modifications may take place during the Term or the Renewal Term of this Agreement and the parties further agree that in the event City, in its sole and absolute discretion, shall determine that it is necessary or proper in order to facilitate the planning, design or construction of any such modifications City may direct Concessionaire to remove and/or relocate any part of or the whole Luggage Carts Service authorized hereunder, including, without limitation, any Equipment Location or the Activity Area, and Concessionaire shall restore any area affected by the Luggage Carts Service, Equipment Location and/or the Activity Area to City's satisfaction. Subject to the provisions of Section 5, in the event City shall direct such removal, relocation, or restoration Concessionaire shall immediately proceed to perform such work at its sole cost and expense. It is understood and agreed that there shall be no liability by City to Concessionaire for any damages or loss of profits or cost by reason of such removal or relocation of the Luggage Carts Service, Equipment Location or Activity Area or any improvements or restoration of those areas in which any part of the Luggage Carts Service or Equipment Location is located or in the Activity Area.

28. CITY'S RIGHT TO TERMINATE.

terminated solely for City's convenience, City shall give Concessionaire notice of the termination date, which shall be not less than ninety (90) days from the date of the notice (the "Termination Date").

B. Termination of the Agreement shall not affect any obligations or liabilities of either party accruing prior to the Termination Date.

C. There shall be no liability, cost or penalty to City for termination of the Agreement in accordance with this Section.

D. In the event of such termination for convenience, Concessionaire shall be paid an amount that shall compensate Concessionaire for actual services performed prior to the Termination Date. No amount will be allowed for termination expenses, or for anticipated profits, unabsorbed or under-absorbed overhead, capital costs or unperformed services.

29. CITY.

The term "City" as used in this Agreement shall refer to the owner of City's estate in the Airport. City shall be and is hereby relieved of all covenants and obligations of City hereunder, if any accruing after the date of transfer of City's estate in the Airport, and it shall be construed without further agreement between the parties that the transferee has assumed and agreed to carry out any and all covenants and obligations of City hereunder, if any, during such time as said transferee shall own or hold City's estate or interest in the Airport. The provisions of this Section shall apply to each successive transfer of City's interest or estate in the Airport. The liability of any transferee of City under this Agreement shall be and thereby is limited to its interest in the Airport and no other assets of City shall be affected by reason of any liability which City may have to Concessionaire or to any other person by reason of the execution of this Agreement, or acquisition of City's interest in the Airport or this Agreement.

30. CITY APPROVALS.

Notwithstanding the acceptance and approval by City of any services performed or materials or Equipment provided by Concessionaire, Concessionaire shall continue to be responsible for the professional quality, accuracy and coordination of all services, materials and Equipment furnished under this Agreement. Concessionaire shall, without additional compensation, correct or revise any errors, deficiencies or omissions in Concessionaire's services, materials or Equipment.

B. City's review, approval or acceptance of, or payment for, any services, materials or Equipment required under this Agreement shall not constitute any representation, warranty or guaranty by City as to the substance or quality of the matter reviewed, approved or accepted and shall not be construed to operate as a waiver of any of City's rights or privileges under this Agreement or of any cause of action arising out of the performance of this Agreement or stop City from exercising its rights on account of services not performed or materials or Equipment or provided in accordance with the Agreement. No person or firm or entity shall rely in any way on

such review, approval or acceptance by City and Concessionaire shall be and remain liable to City in accordance with applicable law for all damages to City caused by Concessionaire. Review, approval or acceptance by City or any City official under this Agreement shall not constitute or be construed to constitute approval otherwise required by any and all City departments, boards, commissions, or other regulatory agencies in connection with any and all aspects of the Agreement.

31. DBE PARTICIPATION.

In the RFP, the City included a requirement that the Concessionaire use "good faith efforts" to include DBE participation from a Pennsylvania Unified Certification Program (PaUCP)-certified DBE firm in its Proposal. Concessionaire committed to include such DBE participation under this Agreement. The failure by Concessionaire to actually achieve the DBE participation outlined in its Proposal, or to otherwise comply with Section 19.A., shall be an event of default under this Agreement. In the event of such default, City shall be entitled to exercise all of its rights and remedies hereunder, at law or equity. Concessionaire has, in its proposal, made good faith efforts to obtain DBE participation by committing to thirty-five percent (35%) DBE participation under this Agreement. Concessionaire shall, if it has not already, enter into an agreement with its DBE participants, in a form acceptable to the City in its sole discretion.

32. WAIVER.

No failure by City or Concessionaire to insist upon the strict performance by the other of any agreement, term, condition or covenant hereof or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such agreement, term, condition, or covenant. No waiver of any breach shall affect or alter this Agreement, but each and every agreement, term, condition and covenant hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

33. TIME OF THE ESSENCE.

It is expressly understood and agreed that with respect to all responsibilities, covenants and conditions of Concessionaire herein, time is of the essence of this Agreement. Any payments due by Concessionaire are due by 4:00 P.M. on the due date. Any payment that is submitted by Concessionaire to cure a financial default must be received no later than 4:00 P.M. on the final day of the cure period or such payment may not be accepted by City as a cure of the default.

34. INVALID PROVISIONS.

In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either City

or Concessionaire in their respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

35. BINDING AGREEMENT.

All of the terms, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

36. GOVERNING LAW.

This Agreement has been made in and all shall be governed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

37. INTERPRETATION; ORDER OF PRECEDENCE.

In the event of a conflict or inconsistency between the terms of this Agreement and the terms of the Proposal, this Agreement shall control.

38. NO JOINT VENTURE.

Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venture or any association between City and Concessionaire.

39 NO THIRD PARTY BENEFICIARIES.

Nothing in the Agreement, expressed or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation or legal entity, other than the parties hereto, any rights, remedies, or other benefits under or by reason of the Agreement.

40 CONCESSIONAIRE; GENDER.

The word "Concessionaire" whenever used herein shall be construed to mean Concessionaires or any one or more of them and, in all cases where there is more than one Concessionaire the necessary grammatical changes shall in all cases be assumed as though in each case fully expressed. In all cases where there is more than one Concessionaire, the liability of each shall be joint and several. If the Concessionaire is a general partnership, the liability of the partners shall be joint and several. Whenever the context requires, words used in the singular shall be construed to mean or include the plural and vice versa, and pronouns of an gender shall be deemed to include and designate the masculine, feminine or neuter gender.

41. HEADINGS.

41. HEADINGS.

Any headings preceding the text of the several Sections and subsections hereof are inserted solely for the convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

42. WAIVER OF JURY TRIAL; CONSENT TO JURISDICTION.

It is mutually agreed that City and Concessionaire hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other as to any matters arising out of or in any way connected with this Agreement. Concessionaire consents to jurisdiction and venue, in any legal proceeding involving, directly or indirectly, any matter arising out of or related to this Agreement or the relationship created or evidenced thereby to the jurisdiction of the Court of Common Pleas of Philadelphia County and agrees not to raise any objection to such jurisdiction or to the laying or maintaining of the venue of any such proceeding. Concessionaire agrees that service of process in any such proceeding may be duly effected upon it by mailing a copy thereof, by registered or certified mail, postage prepaid.

43. INTEGRATION; AMENDMENTS.

It is expressly understood and agreed by and between the parties hereto that the Agreement sets forth all the promises, agreements, conditions and understandings between City and Concessionaire and there are no promises, agreements, conditions or understanding, either oral or written, between them other than as are herein otherwise provided, no subsequent alterations, amendment, change or addition to this Agreement shall be binding upon City or Concessionaire unless reduced to writing and signed by them.

44. GUARANTY

Concessionaire acknowledges that this Agreement is expressly conditioned on receipt by City of an unconditional guaranty ("Guaranty") of all Concessionaire's obligations; hereunder by Expresso Deutschland GmbH, a sister company to Concessionaire and supplier of the Equipment pursuant to this Agreement. The Guaranty is attached hereto and made a part hereof as Exhibit D.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective duly authorized representatives as of the day and year first above written.

Approve as to form
Romulo L. Diaz, Jr.
City Solicitor:

By: _____
Senior Attorney

The CITY OF PHILADELPHIA
Procurement Department

By: _____
Janet Hagan
Acting Procurement Commissioner

Approve as to form
Romulo L. Diaz, Jr.
City Solicitor:

By: _____
Senior Attorney

The CITY OF PHILADELPHIA
Acting through its Department of
Commerce, Division of Aviation

By: _____
Stephanie W. Naidoff
Director of Commerce

CONCESSIONAIRE:

Witness: _____
Name: SVEN A. STOHN
Title: CHIEF OPERATING OFFICER

_____
bagport America LLC
a Limited Liability Company

Acknowledged and Consented To By:
Guarantor: Expresso Deutschland GmbH

Witness: _____
Name: Volker Asemann
Title: Senior Vice President

By: _____
Name: Wolfgang Krakenberg
Title: President & CEO

FIRST AMENDMENT TO
CONCESSION AGREEMENT

This **FIRST AMENDMENT TO CONCESSION AGREEMENT** (the **"Amendment"**) is made as of the 7th day of February, 2010, by and between The **CITY OF PHILADELPHIA**, a municipal corporation of the Commonwealth of Pennsylvania, acting through its Department of Commerce, Division of Aviation and the Procurement Department (**"City"**) and **bagport America LLC**, a Limited Liability Company, qualified to do business in the Commonwealth of Pennsylvania (**"Concessionaire"**).

WHEREAS, pursuant to that certain Concession Agreement by and between City and Concessionaire, dated June 1, 2007 ("Concession Agreement"), Concessionaire provides and manages a self-service luggage cart system at Philadelphia International Airport; and

WHEREAS, City and Concessionaire now desire to amend the Concession Agreement for the purpose, among other things, of revising the Term and modifying the amount of the Concession Fee.

Capitalized term not otherwise defined herein, shall have the meaning set forth in the Concession Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and premises contained herein and intending to be legally bound hereby, City and Concessionaire agree as follows:

1. **Background:**

The above Background is hereby incorporated.

2. **Amendments:**

A. Term

Section 2.A. of the Concession Agreement is hereby deleted in its entirety and replaced by the following:

"2.A. Concessionaire shall have and hold the rights and privileges set forth herein for the period June 1, 2010 through August 31, 2010 (hereinafter the "Term"). Thereafter, City, in its sole discretion, may choose to extend the Term from month to month thereafter (the "Renewal Terms"). Prior to the end of Renewal Term, either party may terminate the Concession Agreement with at least thirty (30) days notice prior to the end of the then current Renewal Term. If neither party gives notice, the Renewal Term will automatically renew for an additional one month term."

B. Cost of Luggage Cart Services to Passengers

Section 3 of the Concession Agreement is hereby deleted in its entirety and replaced by the following:

"3. Cost of Luggage Cart Services to Passengers

The cost to passengers for the Luggage Carts Service shall be at a rate which is mutually agreed upon between City and Concessionaire. The rate charged to passengers or other users shall only be changed after consent from City which may be granted in City's sole and absolute discretion. As of June 1, 2010, the cost to passengers of Luggage Cart Service shall be no more than $4.00 for each Luggage Cart during the Term or any Renewal Term; provided, however, effective as of August 1, 2010, the cost to passengers of Luggage Carts Services in the Federal Inspection Services Area of Terminal A-West, shall be $2.00 for each Luggage Cart during the Term or any Renewal Term."

C. Fees

Section 6.A. of the Concession Agreement is hereby deleted in its entirety and replaced by the following:

"6.A. Concession Fee. As consideration for the rights and privileges granted to the Concessionaire in this Agreement, each month Concessionaire shall pay to City a fee in an amount equal to twelve (12%) percent of Concessionaire's "Gross Revenues" for the previous month (the "Concession Fee"). As used herein, the term "Gross Revenues" shall mean the aggregate amount earned by Concessionaire as a result of providing the Luggage Carts Service whether rendered by Concessionaire or its authorized agents, whether rendered for cash or credit or otherwise and whether collected or uncollected, less only (i) the amount of Federal, state or local sales tax levied and separately stated and collected by Concessionaire and (ii) receipts from the sale or trade-in value of any Concessionaire-owned Equipment. The Concession Fee, which shall be paid to the City hereunder, shall in no event be less than Ninety Thousand Dollars ($90,000.00) per annum (the "Minimum Annual Guarantee")." In the event that the Term shall be for less than twelve (12) months, the MAG shall be pro rata accordingly.

Sections 6.A(1), (2), (3), (4) and (5) shall remain unmodified and in full force and effect.

D. Books and Records; Reports

Section 8.A. of the Concession Agreement is hereby deleted in its entirety and replaced by the following:

"8. Books and Records; Reports

A. Monthly Reports. On or before each Monthly Due Date and together with the Concession Fee required in Section 6 above, Concessionaire shall submit to City a report detailing the Concessionaire's Gross Revenues for preceding month (the "Monthly Report"). The Monthly Report shall also specify the services performed by the Disadvantaged Business Enterprise ("DBE") Participant and all payments made to the DBE Participant during that preceding month. In addition, the Monthly Report shall specify the number of Luggage Carts rented during the preceding month by passengers in the Federal Inspection Services Area of Terminal A-West."

Sections 8.B, C, D and E shall remain unmodified and in full force and effect.

3. **Credits:**

Concessionaire and the City agree that effective August 1, 2010, Concessionaire will be credited $2.00 for each Luggage Cart rented in the Federal Inspection Services Area of Terminal A-West, which credit shall be offset against any arrearages or other amounts due to the City, and shall not be included in "Gross Revenues".

4. **Other Provisions:**

A. Lease in Full Force:

Except to the extent specifically amended in this First Amendment, all of the terms and provision of the Lease remain unmodified and in full force and effect.

B. Counterparts:
This First Amendment may be executed in one or more identical counterparts, each of which shall be deemed an original and all of which, together, shall comprise a single agreement.

Signatures on Next Page.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective duly authorized representatives as of the day and year first above written.

Approved as to form:
Shelley R. Smith
City Solicitor
By: _____
Senior Attorney

THE CITY OF PHILADELPHIA
Procurement Department
By: _____
Hugh Ortman
Procurement Commissioner

Approved as to form:
Shelley R. Smith
City Solicitor

By: _____
Senior Attorney

THE CITY OF PHILADELPHIA
Division of Aviation

By: _____
Rina Cutler
Deputy Mayor, Transportation
& Utilities

CONCESSIONAIRE:

Witness: _____
Name: SVEN A. STOHN
Title: COO, bagport

_____
bagport America, LLC
a Limited Liability Company

Acknowledged and Consented To By:
Guarantor: Expresso Deutschland GmbH

Witness: _____
Name: SVEN A. STOHN
Title: COO, bagport

By: _____
Name: Sebastian Loh
Title: CEO

PHL PHILADELPHIA INTERNATIONAL AIRPORT

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

April 22, 2010

Mr. Paul Stutzbach
Director of Operations
bagport America LLC
2810 Grand Avenue
Baldwin, NY 11510-4047

Dear Paul,

The City of Philadelphia, Division of Aviation ("City") approves the following operational changes to the luggage carts program at Philadelphia International Airport:

- Luggage carts rental rate increase from $3.00 to $4.00 per cart, effective October 15, 2009; and
- The reduction in the following luggage cart equipment effective February 2009
    1. 1,600 luggage carts to 1,400 luggage carts; and
    2. 44 depot units to 34 depot units.

The City reserves the right to repeal the above referenced operational changes to the luggage carts program at any time during the term and any renewal terms at the City's sole discretion.

Please feel free to contact me at 215.937.5422 with any questions.

Sincerely,

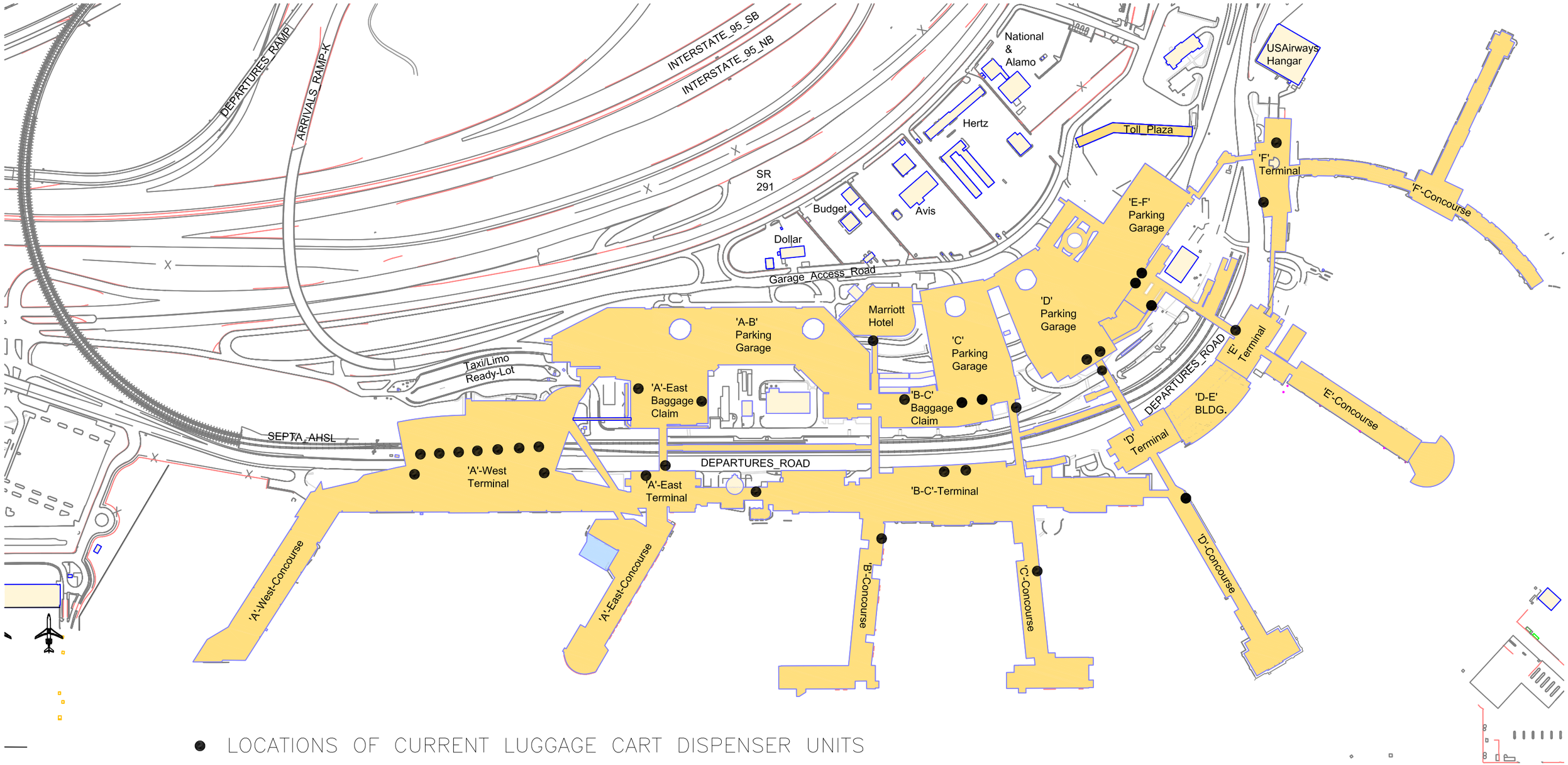
Marshall Evans
Airport Properties Manager

cc: James M. Tyrrell, Deputy Director of Aviation
Sara Beth Kalb, Senior Attorney, City of Philadelphia

City of Philadelphia Aviation Division
Philadelphia International Airport
Bagport America LLC
Cart Rental Gross Sales
Calendar Year Analysis

Month	Calendar 2011	Calendar 2010	Calendar 2009	Calendar 2008
January	$38,527.25	$46,915.00	$48,626.00	$70,564.00
February	$23,638.00	$35,854.00	$32,686.25	$48,937.25
March		$28,631.00	$38,951.00	$60,053.00
April		$41,427.75	$46,728.00	$54,728.75
May		$48,150.00	$45,874.25	$61,948.25
June		$55,897.50	$55,959.25	$75,165.25
July		$65,274.50	$79,427.25	$72,958.50
August		$54,997.00	$74,495.00	$66,355.25
September		$68,138.50	$56,248.00	$59,541.50
October		$48,943.50	$57,917.00	$47,921.50
November		$41,981.75	$45,404.75	$40,257.00
December		$47,455.50	$49,977.75	$51,107.75
	$62,165.25	$583,666.00	$632,294.50	$709,538.00

kmp 04/14/2011



PHL PHILADELPHIA INTERNATIONAL AIRPORT

REVISIONS:

NO.:	DATE:	DESCRIPTION:	BY:

TITLE:

LUGGAGE CART LOCATION PLAN

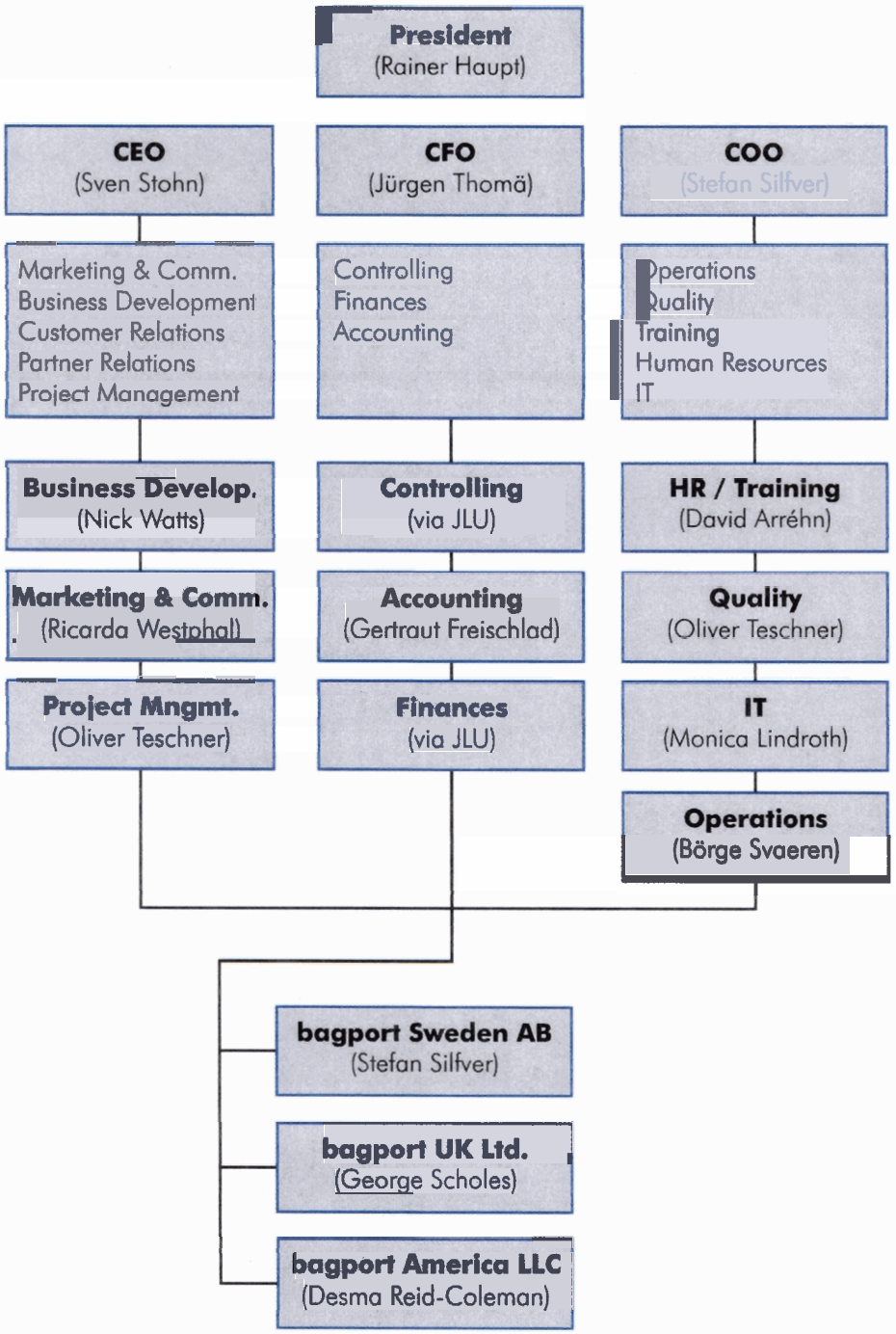
DATE:	SCALE:	DRAWING NO.:
4/18/11		

Exhibit B

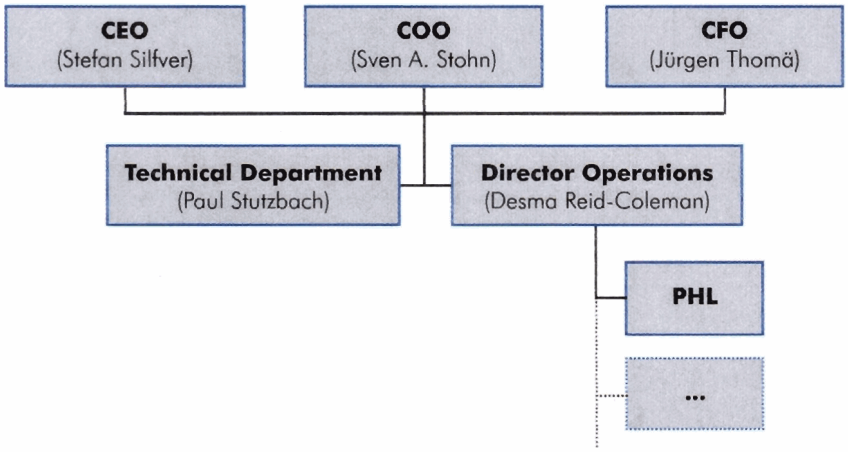
Exhibit B: Managing, Operating and Maintaining Plan

For the provision of a high quality luggage cart concession program bagport has implemented the following structures:

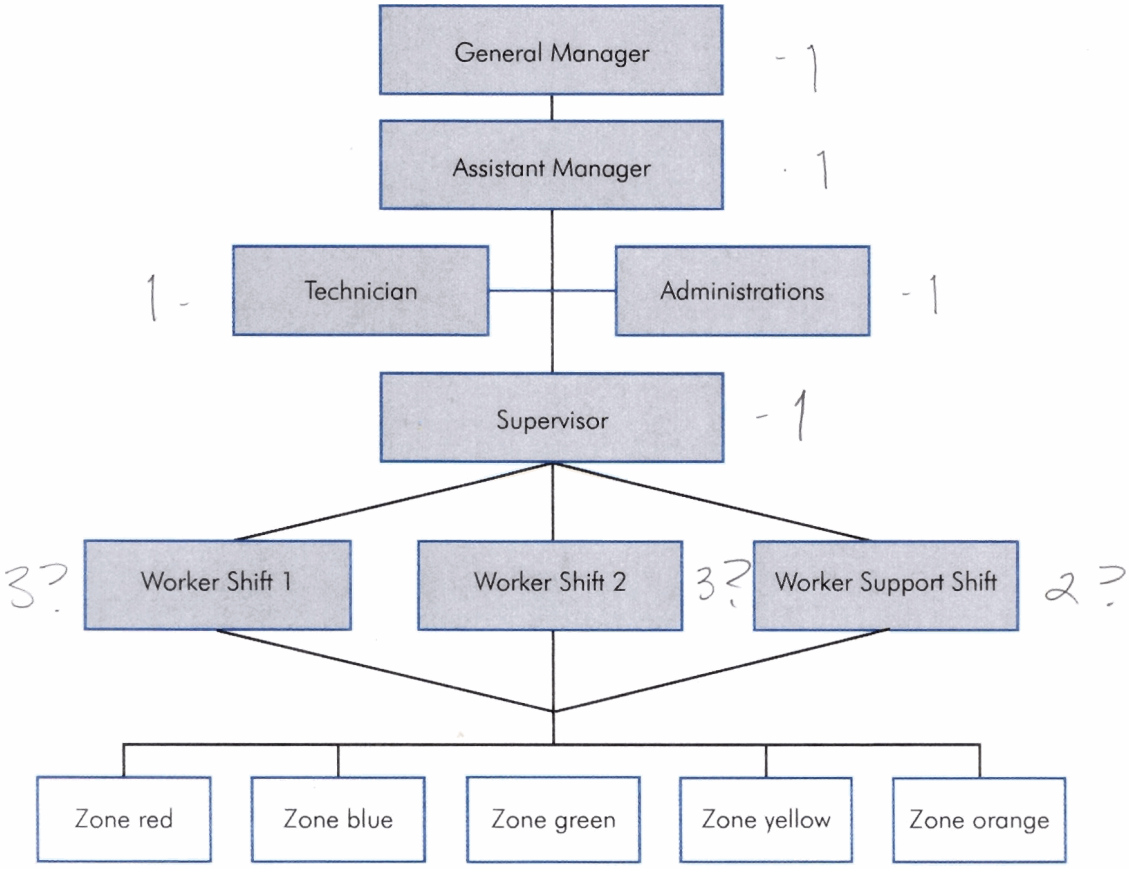
The bagport group structure



bagport America LLC



The PHL structure



bagport – Smart Baggage Services

The **General Manager** oversees the whole operation at Philadelphia International Airport. A strong local management is able to make all necessary decision towards the customers needs. He ensures the quality of the operation and is responsible for all money handling related issues, employment, staffing, development and management of budget as well as the operations P&L and reporting procedures. He is the main contact person for all customer issues, interfaces with airport staff and airlines and all concerns, discussions or requests.

The **Assistant Manager** is responsible for the day-to-day operation on a field level and ensures that all defined standards & procedures are being fulfilled during the operation. Scheduling, training, safe and secure money handling and equipment service are his main tasks.

A **Technician** will be responsible for the maintenance of the luggage cart fleet and especially for the service of the CMUs.

bagport's reputation for quality service is based in a large measure on the strength of the supervisory skills and forms a key element of the management philosophy. Dedicated Quality Control Managers belong to the team as well as **Site Supervisors** and Cart Handlers who are on duty and at service as required by the flight schedules. Quality Control Managers and Managers perform regular unannounced inspections during non-business hours, or on weekends and on holidays.

This daily supervision is augmented by top level company executives who make periodic and unannounced visits to all client locations. These visits serve to maintain management familiarity with personnel and the service needs of each location.

In the event a bagport employee cannot report for duty, bagport will immediately dispatch a member from a support shift or a Supervisor to perform that employee's duties until a trained replacement can be drawn from a qualified pool of pre-selected employees.

Our **Cart Handlers** collect and maintain carts and refill or balance carts in FIS areas or CMUs. With the advance bagport training each of them has received they are a service ambassador the airport can be proud of.

The operational plan is based on an daily in-depths analysis of flight activities and passenger numbers. Through IT-based schedules und shift-plans it is always possible to adjust towards the operational needs quickly and efficient. The general staffing plan is as follows:

Planned schedule

bagport PHILADELPHIA	Mo	Thu	Wen	Thu	Fri	Sat	Sun	Mo	Thu	Wen	Thu	Fri	Sat	Sun	Mo	Thu	Wen	Thu	Fri	Sat	Sun	Mo	Thu	Wen	Thu	Fri	Sat	Sun
17-05-2007	26	27	28	29	30	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
GENERAL MANAGER	1	1	1	1	1			1	1	1	1	1			1	1	1	1	1									
SUPERVISOR 1	1	1	1	1	1			2	2				2L	2L			2	2	2			1	1	1	1	1		
SUPERVISOR 2	2	2				2L	2L			2	2	2			1	1	1	1	1			2	2				2L	2L
SUPERVISOR 3			2	2	2			1	1	1	1	1			2	2				2L	2L			2	2	2		
WORKER 1		2	2	2	2	2		1	1	1	2			1				1	1	1	1	1	1			2	2	2
WORKER 2	1	1	1	2			1				1	1	1	1	1	1			2	2	2				1	1	1	1
WORKER 3				1	1	1	1	1	1			2	2	2			1	1	1	1		2	2	2			1	1
WORKER 4	1	1			2	2	2			1	1	1	1		2	2	2			1	1		2	2	2	2	2	
WORKER 5			1	1	1	1		2	2	2			1	1		2	2	2	2	2			1	1	1	2			1
WORKER 6	2	2	2			1	1		2	2	2	2	2		1	1	1	2			1				1	1	1	1
SUPPORT SHIFT	3	3	3	3	3			3	3	3	3	3			3	3	3	3	3			3	3	3	3	3		
EXTRA 1						2	2						2	2						2	2						2	2
EXTRA 2	2						2	2						2	2						2	2						2
EXTRA 3						3	3						3	3						3	3						3	3
TECHNICIAN	1	1	1	1	1			1	1	1	1	1			1	1	1	1	1			1	1	1	1	1		

SHIFT HOURS SUPERVISOR

1	04:30-14:00	9	(AFTER BREAKS)
2	13:30-23:30	9	
2L	09:00-22:00	12	

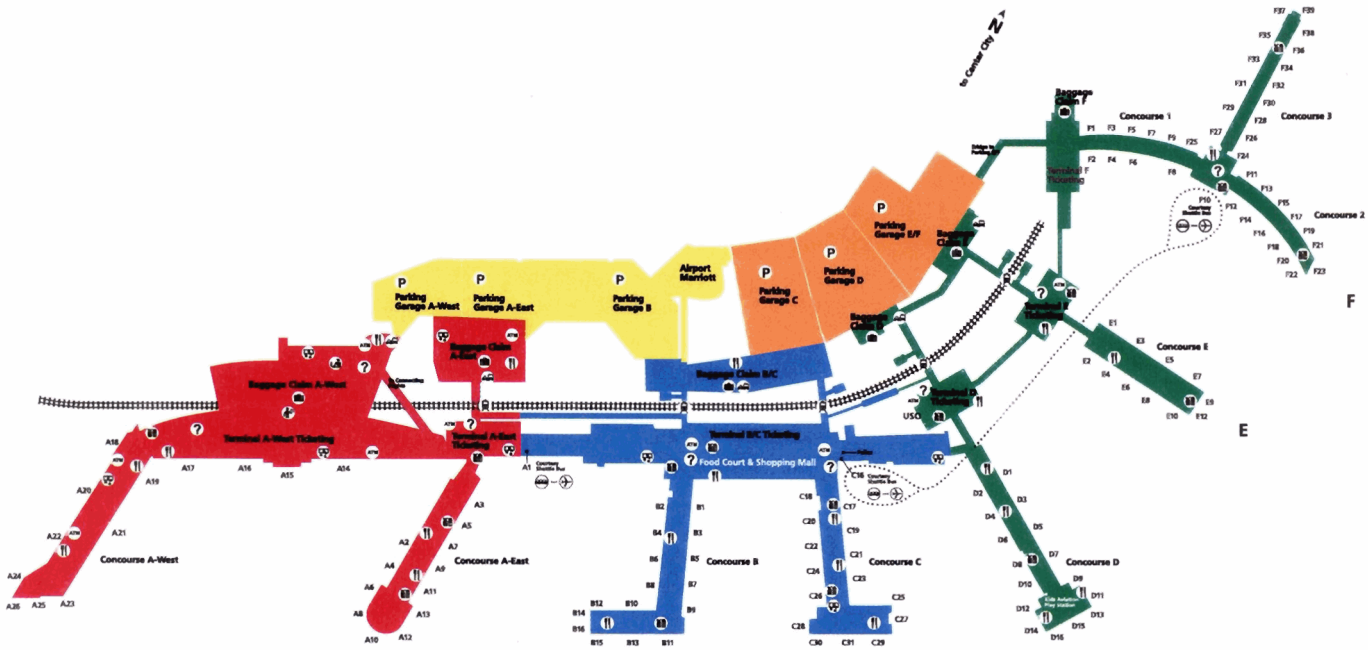
SHIFT HOURS WORKERS

1	04:30-14.00	9
2	13:45-23:30	8,45

Staffing and Zone system

The staffing at PHL will be scheduled in different zones at the airport with responsibilities for the different areas that the zone represents. Each employee in zone will be in contact with the shift supervisor via communication radios. The number of employees in each zone will depend on the traffic situation and day of the week. The shift supervisor will change the number of employees in the different zones during the day if needed.

The zones are:



A-West

Red Zone: Terminal A-West and A-East

FIS arrival:

The staff will be placed inside the FIS area during the arrival period and in-between replenishing the CMU with carts to ensure that all units are filled with carts at all times.

A-West and A-East departure:

The cart handlers will be moving from Terminal A-West to Terminal A-East departure level and ticketing to collects carts and replenishing all CMUs on the curbside and on the bridges to baggage claim and parking area.

Concourses A-West and A-East

The cart handlers will be moving from Concourse A-West to Concourse A-East to collect carts and replenishing all CMUs in the concourses area minimum once per day.

Blue Zone: Terminal B and Terminal C

Baggage claim

The cart handlers will be moving from Terminal B and Terminal C baggage claim area and bus, taxi and curbside to collects carts and replenishing all CMUs

Terminal B and C Departure

The cart handlers will be moving from Terminal B and Terminal C departure level and ticketing to collects carts and replenishing all CMUs on the curbside and on the bridges to baggage claim and parking area.

Concourses B and C

The cart handlers will be moving from Concourse B to Concourse C to collect carts and replenishing all CMUs in the concourses area minimum once per day.

Green Zone: Terminal D, Terminal E and Terminal F

Baggage claim

The cart handlers will be moving from Terminal D through Terminal E and Terminal F baggage claim area and bus, taxi and curbside to collects carts and replenishing all CMUs

Terminal B and C Departure

The cart handlers will be moving from Terminal D through Terminal E and Terminal F departure level and ticketing to collects carts and replenishing all CMUs on the curbside and on the bridges to baggage claim and parking area.

Concourses B and C

The cart handlers will be moving from Concourse D, Concourse E and Concourse F to collect carts and replenishing all CMUs in the concourses area minimum once per day.

Zone Yellow: Parking Garage A-West, A-East and B

The cart handlers will be moving from A-West through A-East to B parking garage to collects carts and replenishing all CMUs in the baggage claim area minimum once per day.

Zone Orange: Parking Garage C, D, E and F

The cart handlers will be moving from C, D, E and to F parking garage to collects carts and replenishing all CMUs in the baggage claim area minimum once per day.

Exhibit C

Installation Schedule

All equipment will be located in a staging area close to Philadelphia Int'l Airport to assure a smooth installation process. Responsible for the installation are Paul Stutzbach and Stefan Silfver from bagport America LLC. During this time bagport will have up to 3 installation teams working simultaneously on different locations.

The Installation will start in A-West FIS baggage claim area, and then move to A-East, B, C, D, E and F. bagport will need approximately 3 – 5 hours to install one Unit. The estimated time for the overall installation will be 5-7 days

On the first day of installation bagport will assure that the FIS baggage claim area will be equipped with carts and CMU's prior to the first arrivals. As soon as the previous concessionaire has removed their equipment, bagport will bring in Carts, to be at passengers disposal for free until the Units are installed so we can ensure the highest service level possible at the airport.

Please note that this schedule is subject to change with airport passenger flow and/ or ability of working without endangers to the public safety.

Suggested installations schedule:

Day 1:

- Carts are brought into the airport and will be placed at the planed CMU locations, as soon as the previous concessionaire has removed their equipment
- Installation in A-West baggage claim area
- Installation in A-West ticketing
- Installation in A-East baggage claim area
- Installation in A-East ticketing

Day 2:

- Installation in B and C baggage claim area
- Installation in B and C ticketing

Day 3:

- Installation in D baggage claim area
- Installation in D ticketing
- Installation in E baggage claim area
- Installation in E ticketing

Day 4:

- Installation in F baggage claim area
- Installation in F ticketing
- Installation in all airside locations

With the vending systems and its Depot Data Management tool (via SMS module) in place bagport monitors all necessary aspects of operation, including usage, equipment status, customer service and of course, money handling.
The operational goal is to ensure that every passenger is able to access and return a luggage cart as easy and convenient as possible and that they meet the bagport staff assisting them with courtesy.
Cart Vending Units (44 units in total) will be placed at the following locations:

Term.	Location	Unit No Smarte Carte	Unit No bagport	Sections	FT	EXPRESSO SIZE in Mm	Trolley#	Height	Start Rail	Middle Rails	End Rails	Battery powered
A	Bag claim	2	1	5	30,3	9843	35	L	1	3	1	
A	Curbside	30	2	2	12.3	4323	14	L	1	0	1	
A	2nd floor	51	3	3	18,3	6163	21	H	1	1	1	
AW	FIS 2nd floor	1	4	12	72.6	22723	84	L	1	10	1	
AW	FIS 2nd floor	2	5	12	72.6	22723	84	L	1	10	1	
AW	FIS 2nd floor	3	6	12	72.6	22723	84	L	1	10	1	
AW	FIS 2nd floor	4	7	12	72.6	22723	84	L	1	10	1	
AW	FIS 2nd floor	5	8	12	72.6	22723	84	L	1	10	1	
AW	FIS 2nd floor	6	9	12	72.6	22723	84	L	1	10	1	
AW	FIS 2nd floor	7/NEW	10	12	72,6	22723	84	L	1	10	1	
AE	Bag claim	1	11	3	18.3	6163	21	L	1	1	1	
AE	Bag claim	NEW	12	6	36,4	11683	42	H	1	4	1	
AW	Curbside	30	13	3	18,3	6163	21	H	1	1	1	
AW	Curbside	31	14	3	18,3	6163	21	H	1	1	1	
AW	2nd floor	40	15	3	18,3	6163	21	L	1	1	1	X
AW	2nd floor	41	16	3	18.3	6163	21	L	1	1	1	
AW	2nd floor	50	17	4	24.3	8003	28	L	1	2	1	
B	Bag claim	1	18	4	24.3	8003	28	H	1	2	1	
B	Bag claim	2	19	4	24.3	8003	28	L	1	2	1	
B	Curbside	30	20	3	18.3	6163	21	L	1	1	1	
B	Air side	40	21	3	18.3	6163	21	L	1	1	1	
B	Air side	41	22	3	18.3	6163	21	L	1	1	1	
B	Marriott	50	23	3	18.3	6163	21	L	1	1	1	
B	Marriott	51	24	3	18,3	6163	21	L	1	1	1	X
C	Street side	1	25	4	24.3	8003	28	L	1	2	1	
C	Curbside	30	26	2	12.3	4323	14	L	1	0	1	
C	Air side	40	27	2	12.3	4323	14	L	1	0	1	
C	Air side	41	28	2	12.3	4323	14	L	1	0	1	
C	2nd floor	50	29	3	18.3	6163	21	L	1	1	1	
C	2nd floor	51	30	3	18,3	6163	21	L	1	1	1	X
D	Air side	40	31	2	12.3	4323	14	H	1	0	1	X
D	Bag claim	1	32	2	12.3	4323	14	H	1	0	1	
D	Bag claim	2	33	2	12.3	4323	14	H	1	0	1	
D	Curbside	30	34	2	12.3	4323	14	H	1	0	1	
D	Street side	51	35	5	30,3	9843	35	L	1	3	1	X
D	Street side	52	36	3	18.3	6163	21	L	1	1	1	
E	Bag claim	1	37	3	18.3	6163	21	L	1	1	1	
E	Bag claim	2	38	3	18.3	6163	21	L	1	1	1	
E	Air side	30	39	3	18,3	6163	21	L	1	1	1	
E	2nd floor	50	40	3	18.3	6163	21	L	1	1	1	
E	2nd floor	51	41	4	24,3	8003	28	L	1	2	1	
F	Bag claim	1	42	3	18.3	6163	21	H	1	1	1	
F	Curbside	30	43	3	18.3	6163	21	H	1	1	1	X
F	Air side	40	44	3	18.3	6163	21	L	1	1	1	
				199		**394.452**	**1.393**		**44**	**111**	**44**	**6**

Exhibit D

GUARANTY

THIS GUARANTY (this "Guaranty") is made as of the __ day of _____, 2007, by **Expresso Deutschland GmbH** ("Guarantor"), a corporation organized and existing under the laws of the State of Hessen, Germany for the benefit of **THE CITY OF PHILADELPHIA**, a municipal corporation of the Commonwealth of Pennsylvania and a City of the First Class, acting by and through its **DEPARTMENT OF COMMERCE, DIVISION OF AVIATION** (the "City").

RECITALS

A. Guarantor (registered in Kassel, Registration No. HRB 5477, in the State of Hessen, Germany), through its partner and sister company, bagport America LLC ("bagport"), has obtained certain rights to provide and manage a self service luggage cart system at Philadelphia International Airport (the "Airport"), which is owned and operated by the City, pursuant to the terms and conditions of that certain Concession Agreement (the "Concession Agreement"), of even date herewith between bagport and the City;

B. Pursuant to the aforesaid Concession Agreement certain obligations have been imposed upon bagport, including the obligation to pay fees to the Airport, procure and maintain insurance and to provide security and to indemnify and hold the City harmless against certain liabilities, obligations, costs, damages, penalties, fines, assessments, claims, charges and expenses, all as more fully described in the Concession Agreement;

C. bagport is a partner and sister company of Guarantor;

D. In order to induce the City to enter into the Concession Agreement, Guarantor absolutely and unconditionally guarantees the performance, fulfillment and observance by bagport of all of the terms, provisions, obligations, covenants and conditions of the Concession Agreement, including without limitation, the payment of fees, and the insurance, performance, security and indemnity provisions of the Concession Agreement; and

E. This Guaranty is made in connection with the exercise by Guarantor of its corporate rights, powers, privileges and franchises and is in fulfillment of its corporate purposes and objectives.

NOW, THEREFORE, in consideration of the City's entering into the Concession Agreement and the performance of its obligations thereunder, Guarantor, intending to be legally bound hereby, does hereby covenant and agree as follows:

1. The obligations of Guarantor under this Guaranty are primary, absolute, irrevocable, unconditional and independent and are for the benefit of the City. Guarantor hereby irrevocably, absolutely and unconditionally guarantees to the City the complete, timely and faithful performance, observance and fulfillment by bagport, its successors and assigns, of all terms, provisions, obligations, covenants and conditions under the Concession Agreement and any amendments and supplements thereto, including, without limitation, bagport's obligation to make payments to the City, procure and maintain insurance, performance, security and indemnify the City.

2. Guarantor expressly agrees that this Guaranty, the validity of this Guaranty and the obligations of Guarantor hereunder shall not be terminated, affected or impaired by reason of assertion by the City against bagport of any of the rights or remedies reserved to the City under the Concession Agreement, or by reason of the waiver by the City of any rights or remedies reserved to it under the Concession Agreement. Nothing in this Guaranty shall limit or affect any rights or remedies which the City may have in law, equity or otherwise against bagport and/or Guarantor. No action which the City may take, neglect or omit to take in connection with the Concession Agreement or the performance of any obligations or undertaking of bagport, nor any course of dealing between bagport and the City or any other person or entity including the City, shall release Guarantor from its obligations hereunder, affect this Guaranty in any way, or afford Guarantor any recourse against the City. By way of example, but not in limitation of the foregoing, Guarantor expressly agrees that the City may, at any time and from time to time, without the consent of or notice to Guarantor, without incurring responsibility to Guarantor and without impairing or releasing the obligations of Guarantor hereunder, take any or all of the following actions which may or could have the effect of changing the risk hereby undertaken by Guarantor, to each of which actions Guarantor hereby consents: (a) amend, modify or terminate, in whole or in part, any term or condition of the Concession Agreement in accordance with the terms thereof; (b) in accordance with the terms of the Concession Agreement, change, amend, extend or renew the Concession Agreement for one or more periods; (c) release, settle, subordinate or compromise any obligation of bagport ; (d) grant any indulgence or forbearance to bagport, or consent to or approve any action or non-action of bagport, which, in the absence of the City's consent or approval, would violate or may be deemed to violate the Concession Agreement; (e) retain or obtain the primary or secondary obligation of any obligor or obligors, in addition to the Guarantor, with respect to any of the liabilities guaranteed herein; (f) exercise or refrain from exercising any rights against bagport or others (including Guarantor) or otherwise act or refrain from acting; (g) waive any terms, conditions or covenants of the Concession Agreement; (h) assign any of its rights to enforce any obligation of Guarantor hereunder; and (i) assign or delegate any of its responsibilities or rights under the Concession Agreement, subject to the terms and conditions thereof.

3. The liability of Guarantor hereunder shall not be affected by:

(a) The release or discharge of bagport in any creditor's receivership, bankruptcy, readjustment, insolvency, corporate reorganization or other similar proceedings of any nature whatsoever;

(b) The impairment, limitation or modification of the liability of bagport or Guarantor, or either party's estate, in bankruptcy, or of any remedy for the enforcement of the liability of bagport or Guarantor under, respectively, the Concession Agreement or this Guaranty, resulting from the operation of any present or future provisions of the United States Bankruptcy Code or any other statute or from the decision of any court having jurisdiction over bagport or Guarantor or either party's estate;

(c) The rejection, termination, assignment, expiration or disaffirmation of the Concession Agreement in any creditors' receivership, bankruptcy, corporate reorganization or other similar proceedings; or

(d) Any other disability or defense of bagport, except any defenses available to bagport under the Concession Agreement.

4. If there is an Event of Default, as defined in the Concession Agreement, by bagport in the performance of its obligations guaranteed hereunder by Guarantor, the City shall have the right to demand that Guarantor perform such obligations of bagport, as such obligations are set forth in the Concession Agreement in accordance with the terms of this Guaranty. The City may enforce its rights, powers and remedies hereunder or under any other instrument in any order, and all rights, powers and remedies available to the City in such Event of Default shall be nonexclusive and cumulative of all other rights, powers and remedies provided hereunder, under the Concession Agreement or by law or in equity. The obligations of Guarantor hereunder are independent of the obligations of bagport and the City may proceed directly to enforce all rights under this Guaranty without proceeding against or joining bagport. The liability of Guarantor shall not be subject to set-off or counterclaim. Guarantor expressly waives any right which it has or might otherwise have under any statute or rule of law, to require the City to take action against bagport or any other guarantor or any other person or entity.

5. Guarantor waives any claim or other right which it may now have or hereafter acquire against the City or any guaranteed obligation that arises from the existence or performance of Guarantor's obligations under this Guaranty, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, indemnification, or any right to participate in any claim, dispute resolution or remedy of bagport against the City or any collateral security therefore, which bagport now has or hereafter acquires, whether or not such claim, remedy, or right arises in equity, or under contract, statute or common law.

6. Guarantor agrees to pay to the City all costs and expense, including, without limitation, all court costs and reasonable attorneys' fees, incurred or paid by the City in enforcing this Guaranty.

7. Guarantor hereby represents and warrants that (a) this Guaranty is the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms; (b) the execution, delivery, and performance by Guarantor of this Guaranty does not and will not violate any authority having the force of law or any indenture, agreement, or other instrument to which Guarantor is a party or by which Guarantor may be bound; and (c) except as otherwise disclosed in Guarantor's SEC filings, if any, there is no action or proceeding at law or in equity or by or before any court or governmental instrumentality or agency now pending, or to the knowledge of Guarantor, threatened, which may affect adversely the financial condition of Guarantor.

8. Guarantor acknowledges that modifications of and amendment to the Concession Agreement may occur from time to time and agrees that this Guaranty shall remain and continue in full force and effect as to any and every renewal, amendment, modification or extension of the Concession Agreement whether in accordance with the terms of the Concession Agreement or by separate or additional documents and exhibits, and whether or not Guarantor has specifically consented to such renewal, modification, amendment or extension.

9. If, for any reason, any obligation or any part of an obligation of Guarantor hereunder shall be held invalid or unenforceable, the balance of Guarantor's obligations hereunder shall nevertheless remain in full force and effect. Failure to physically attach a copy of the Concession Agreement to this Guaranty shall not void, alter or affect this Guaranty, or alter or amend the obligations of the Guarantor hereunder.

10. This Guaranty shall inure to the benefit of and be enforceable by the City and any of its successors and assigns and shall be binding upon Guarantor and any of its successors and assigns. All references herein to bagport shall include its success and assigns.

11. This Guaranty may not be changed orally, and no obligation of the Guarantor can be released, modified or waived by the City except by a writing signed by an authorized representative of the City, and any such waiver, release or modification shall be applicable only in the specific instance for which it is given.

12. This Guaranty shall be effective as of the date hereof and shall terminate upon satisfaction of all obligations of bagport in accordance with the terms of the Concession Agreement.

13. All terms used in this Guaranty which are not specifically defined herein shall have the meaning set forth in the Concession Agreement.

14. This Guaranty shall be deemed to have been made in the Commonwealth of Pennsylvania and shall be construed, governed by and enforced in accordance with the laws of the Commonwealth without regard to the choice of law doctrine. The City and Guarantor hereby agree to submit to the jurisdiction of the courts located in Philadelphia, Pennsylvania for the resolution of any disputes relating the terms of this Guaranty.

15. All notices, requests and other communications under this Guaranty shall be in writing, shall be deemed given and effective (a) when made by personal delivery with a written receipt of delivery; (b) one day after being sent by a nationally recognized overnight courier for next-day delivery; or (c) three (3) business days after being sent by United States registered or certified mail, postage prepaid, return receipt requested and, in each such case, shall be addressed as follows:

[This section is intentionally left blank.]

If to Guarantor:

Expresso Deutschland GmbH
c/o bagport America, LLC
3663 Southwest 8th Street
Suite 200
Miami, PA 33135
Facsimile: (305) 441-1272

with a copy to:

Expresso Deutschland GmbH
Antonius–Raab–Str. 19
34123 Kassel
Germany
Facsimile: 011.49.561.9591.178

If to the City:

Division of Aviation
Terminal E
Philadelphia International Airport
Philadelphia, PA 19153
Attn: Director of Aviation
Facsimile: (215) 937-6759

with a copy to:

City of Philadelphia Law Department
1515 Arch Street, 16th Floor
Philadelphia, PA 19103-2081
Attn: Chief Deputy City Solicitor – Regulatory Affairs
Facsimile: (215) 683-5175

The parties to this Agreement, or either of them, may designate in writing from time to time any changes in addresses or any addresses of substitute or supplementary persons in connection with said notices.

Guarantor has executed and delivered to the City this Guaranty as of the date first written above.

ATTEST/CORPORATE SEAL:

By: _____

Name: Volker Aleemann

Title: Senior Vice President

(CORPORATE SEAL)

GUARANTOR:

Expresso Deutschland GmbH

By: _____

Name: Wolfgang Kiatzenberg

Title: President & CEO

CONSENTED TO:

bagport America, LLC

By: _____

Name: STEFAN SILEVER

Title: CEO

ATTEST/CORPORATE SEAL:

By: _____

Name: SVEN A. STOHN

Title: CHIEF OPERATING OFFICER

City of Philadelphia
Procurement Department

Addendum No. 1 **Dated: April 11, 2011**
Bid No. RFP C-105-11
RFP Submission Date: April 26, 2011

NOTICE

It is the sole responsibility of the bidder to ensure that it has received any and all addenda and the Procurement Commissioner may in his/her sole discretion reject any bidRFP for which all addenda have not been executed and returned.

PROPOSAL FOR

Concession Request for Proposal for Self-Service Luggage Carts Service Program at the Philadelphia International Airport

IS AMENDED AS FOLLOWS

The Contract Documents for the referenced project are modified as follows:

I. **AMENDED SUBMISSION DATE : CHANGED TO APRIL 27, 2011**
Sealed Proposals will be received until 10:30 AM, Thursday April 27, 2011, prevailing local time in Room 170A, Municipal Services Building, 1401 J.F.K. Blvd, Phila., PA 19102, and will be opened immediately thereafter.

Please sign, date and return this addendum with your proposal, as it now becomes part of the proposal.

Firm Name (type or print)_____

Authorized Signature_____Title_____

Name (type or print)_____Date_____

Procurement Department, City of Philadelphia. Sealed Proposals will be received at the Municipal Services Building, 1401 John F. Kennedy Boulevard, Room 170A, on or before **April 26, 2011** at **10:30** AM for the City of Philadelphia Department of Commerce Division of Aviation. **REQUEST FOR PROPOSAL # C-105-11** for the **Self Service Luggage Carts Program at the Philadelphia International Airport**. Copies of the Proposal document can be obtained by contacting the Procurement Department Public Information Unit at 215-686-4720, and on www.phila.gov/bids. Questions pursuant to the Request for Proposal shall be submitted in writing or emailed to: Marshall Evans, Airport Properties Manager (marshall.evans@phila.org) by the deadline date of 4/14/11, at 3:30 PM. An optional pre-proposal meeting will be held on 4/18/11 at 10 AM, at Div of Aviation Adm Ofcs, Terminal D, 3rd Fl, Phila, PA 19153.

CITY OF PHILADELPHIA

REQUEST FOR PROPOSALS

RFP NO. C 105-11

SELF-SERVICE LUGGAGE CARTS RENTAL PROGRAM AT PHILADELPHIA INTERNATIONAL AIRPORT

MARK E. GALE, A.A.E
CHIEF EXECUTIVE OFFICER
PHILADELPHIA INTERNATIONAL AIRPORT

HUGH ORTMAN
PROCUREMENT COMMISSIONER

PROCUREMENT DEPARTMENT
1st FLOOR, MUNICIPAL SERVICES BUILDING
1401 JOHN F. KENNEDY BLVD.
PHILADELPHIA, PA 19102-1685

PROPOSALS WILL BE RECEIVED UNTIL 10:30 AM PREVAILING LOCAL TIME
ON TUESDAY, APRIL 26, 2011
IN ROOM 170A, MUNICIPAL SERVICES BLDG.,
1401 J.F.K. BLVD., PHILA., PA 19102

AN OPTIONAL PRE-PROPOSAL MEETING IS SCHEDULED AT 10:00 AM
ON MONDAY, APRIL 18, 2011 AT THE
DIVISION OF AVIATION ADMINISTRATIVE OFFICES
PHILADELPHIA INTERNATIONAL AIRPORT
TERMINAL D, THIRD FLOOR
PHILADELPHIA, PA 19153

TABLE OF CONTENTS

SECTION 1 - GENERAL INFORMATION AND REQUIREMENTS

1.1 Solicitation……....1

1.2 Contents of this RFP…….....1

1.3 Submission Date …….2

1.4 Optional Pre-Proposal Meeting…….2

1.5 Term…….....3

1.6 Responses To This RFP…….....3

1.7 Requirement for Two Cart Rental Fee Plans…….....3

1.8 Duration Of Proposals…….....4

1.9 Proposer's Security ……....4

1.10 General Disclaimer …….5

1.11 Confidentiality…….....5

1.12 Publicity …….....6

SECTION 2 - BACKGROUND AND MINIMUM REQUIREMENTS

2.1 Objective…….....7

2.2 Background Information…….....7

2.3 Minimum Qualification……9

SECTION 3 - SCOPE OF SERVICES

3.1 General ……....14

3.2 Luggage Cart Services……...14

3.3 Participation of Disadvantaged Business Enterprises……...15

SECTION 4 - INSTRUCTIONS TO PROPOSERS AND GENERAL CONTRACT REQUIREMENTS

4.1 General ……..16

4.2 Signatures ……16

4.3 Responsibilty of Proposer to Deliver the Proposals……....17
4.4 General City-Wide and Certain Airport Contract Requirements……17

SECTION 5 - SUBMITTAL REQUIREMENTS: PROPOSAL FORMAT AND CONTENT

5.1 Proposal Form ……25
5.2 Qualifications Statement: Company Profile and Business Experience……..26
5.3 Business Organization Statement…….....33
5.4 Proposal for Development and Management of a Self-Service Luggage Carts Rental Program at Philadelphia International Airport……39
5.5 Warranties By Proposer……39

SECTION 6 - PROPOSAL EVALUATION, NEGOTIATION AND SELECTION

6.1 Proposal Evaluation ……...43
6.2 Qualification of Proposers ……43
6.3 Selection of Proposer and Negotiation ……...44
6.4 Disqualification Of Proposers ……...45
6.5 Reservation of Rights……..45

ATTACHMENT A: Airport Layout Plan
ATTACHMENT B : Passenger Traffic Analysis

ATTACHMENT C : ACDBE Requirements

ATTACHMENT D: Insurance Requirements
ATTACHMENT E : Tax Status and Clearance Statement

Section 1

GENERAL INFORMATION AND REQUIREMENTS

1.1 Solicitation:

1.1.1 **Notice of Contract Opportunity**: The City of Philadelphia (the "City"), owner and operator of Philadelphia International Airport ("PHL") is soliciting proposals from experienced firms, with the intention of choosing the most qualified firm offering the best proposal in terms of demonstrated experience, quality of equipment, scope of program, financial proposal and overall expertise in the

Installation, Development, Operation And Management of A Self-Service Luggage Carts Rental Program (the "Program") at PHL.

1.1.2 In addition to the above referenced Program, Proposers may, but are not required to, include proposals for additonal passenger amenities.

1.1.3 The Division of Aviation ("Aviation") and the Deputy Director of Aviation, Property Management and Business Development, or his designee will be responsible for oversight of the concession program resulting from this solicitation.

1.1.4 Any questions regarding this Request for Proposals ("RFP") may be submitted in writing to Mr. Marshall Evans, Airport Properties Manager, Division of Aviation, Philadelphia International Airport, Terminal D, Philadelphia, PA 19153-3275 or via Email at marshall.evans@phl.org. The deadline for submitting questions is April 14, 2011 at 3:30 PM. Oral communications from City personnel or other persons shall not be binding on the City and shall in no way modify the provisions of this RFP.

1.2 Contents of this RFP:

1.2.1 This Request for Proposal, including all Attachments and any written addenda issued by the City are collectively referred to herein as the "RFP". Official responses of the City to inquiries regarding this RFP shall be issued by the City in writing as addenda, and only such written responses shall be binding on the City as modifications to this RFP.

1.2.2 This RFP outlines the City's objectives, describes the general characteristics of the business opportunity, and outlines the principal elements of the proposed business arrangement.

1.2.3 The RFP for this solicitation consists of the following, and any official written addenda issued by the City, which will be posted on www.phila.gov/bids:

- The RFP
- Attachment A – Airport Layout Plan
- Attachment B – Passenger Traffic Analysis
- Attachment C – ACDBE Requirements
- Attachment D – Insurance Requirements
- Attachment E – Tax Status and Clearance Statement

1.3 **Submission Date**: Notice is hereby given that the City's Procurement Commissioner will receive sealed proposals on or before Tuesday, April 26, 2011 at 10:30 AM Eastern Daylight Time, at the City of Philadelphia, Procurement Department, Room 170A, 1st Floor, Municipal Services Building, 1401 John F. Kennedy Blvd., Philadelphia, PA 19102. **Proposers who fail to submit a proposal by prior to the above submission date and time will not be considered for this contract opportunity.**

1.4 **Optional Pre-Proposal Meeting**

1.4.1 An optional pre-proposal meeting will be held for all interested parties on Monday, April 18, 2011 at the Division of Aviation Administrative Offices. The purpose of this meeting will be to review the requirements contained in the RFP and entertain general questions that Proposers may have concerning any of the aspects of services to be provided.

1.4.2 Questions should be submitted in writing by mail or Email, in advance of the meeting by no later than 3:30 PM April 14, 2011 to:

Mr. Marshall Evans,
Airport Properties Manager
Division of Aviation
Philadelphia International Airport,Terminal D
Philadelphia, Pa. 19153-3275
Telephone: (215) 937-5422
marshall.evans@phl.org

1.4.3 Please clearly state the RFP number C-105-11 on your envelope, or in your Email subject line.

1.4.4 All questions at the pre-proposal meeting must be in writing. Any further written questions must be received by no later than 3:30 PM April 19, 2011. All questions that materially impact upon the proposal process will be answered, in writing, in a formal addendum issued by the City. Oral responses by City employees or their representatives are not binding and shall not in any way be a commitment by the City.

1.5 **Term**: The term of the Concession Agreement contemplated by this RFP shall be for one (1) year with three (3) additional one-year options to renew, at the City's sole and absolute discretion.

1.6 **Responses To This RFP**:

1.6.1 Responses to this RFP must be submitted in the form of Proposals in accordance with the instructions and requirements in this RFP. Respondents to this RFP are hereafter referred to as "Proposers".

1.6.2 **Acceptance of RFP Terms And Conditions**: By submitting a Proposal in response to this RFP, the Proposer expressly acknowledges and agrees to accept and be bound by all terms and conditions set forth in this RFP.

1.6.3 The Proposer shall be fully responsible for all costs associated with the development, preparation, transmittal, and submission of any Proposal or material submitted in response to this RFP.

1.6.4 **Submitted Proposals are Property of City**: Any proposal or other materials submitted, or ideas elicited, in response to this RFP, in any form, shall be the sole and absolute property of the City, and the City shall have title thereto and unrestricted use thereof. As such, Proposals submitted to the City in response to this RFP will not be returned to any proposer.

1.7 **Requirement for Two Cart Rental Fee Plans**: Each Proposer responding to this RFP shall submit two distinct and separate Cart Rental Fee Plans in their Proposal in accordance with the following requirements:

1.7.1 **Total Pay Program**: A Cart Rental Fee Plan for a total pay cart program that includes the proposed per cart rental fee charge to passengers in all PHL terminals. The Total Pay Proposal shall include the proposed annual Concession Fee to be paid to the City by the Selected Proposer.

1.7.2 **Combination Program**: A second Cart Rental Fee Plan for a combination free cart program in the U.S. Customs & Border Protection ("CBP") baggage claim area located in the the Federal Inspection Services ("FIS") facility at PHL (described in Section 2 of this RFP) and a pay cart program for the domestic and remaining international terminal areas (described in Section 2 of this RFP). The Combination Proposal shall include the per cart rental fee charge to passengers in the pay terminal areas. The Combination Proposal shall also include the proposed annual Concession Fee to be paid to the City by the Selected Proposer.

1.8 **Duration Of Proposals:** In consideration of the City's evaluation of the submitted proposals, each proposer agrees that its Proposals shall be firm offers to the City to install, operate and maintain luggage carts and related equipment at the Airport in accordance with this RFP, and shall remain open for review and consideration by the City for a period of at least one hundred and twenty (120) days beginning with the Proposals Submission Due Date set forth in Sections 1.5 of this RFP, or as may be revised by addenda issued by the City.

1.9 **Proposer's Security**

1.9.1 The Proposal shall be accompanied by refundable security in the form of a Certified Check or Money Order ("Proposer's Security") made payable to the order of "The City of Philadelphia" in the amount of Five Thousand Dollars ($5,000). Failure to submit the required Proposer's Security with the Proposal will result in the Proposer's disqualification from consideration. Proposer's security will only be refunded, without interest, to the unsuccessful Proposer(s) after execution of a final contract or at the conclusion of this RFP process.

1.9.2 Any Proposer which has not been released from its Proposal by the City or which refuses to execute a contract, deliver performance or other bonds,

insurance, etc. in conformity with the City's requirements, may forfeit some or all of such Proposer's Security as liquidated damages.

1.9.3 In lieu of a check or money order, the City may elect, in it's sole and absolute discretion, to accept a Letter of Credit that is acceptable to the City with limits up to $5,000. The Letter of Credit shall name the City as a beneficiary, evidence of the Letter of Credit shall accompany the Proposer's proposal at the time of the proposal due date.

1.9.4 If the City delivers a Concession Agreement to the Selected Proposer, which accepts all of the terms of the Proposal selected by the City, and the Proposer fails to execute the Agreement within fifteen (15) calendar days of the City's delivery of the Agreement to Proposer for execution, the Proposal Security shall be retained by the City as liquidated damages for such failure. The Proposal previously selected by the City shall be deemed rejected, and neither the City nor such Proposer shall have any further rights or liabilities with respect to such Proposal. Notwithstanding the above, the City shall have the right to extend such fifteen (15) day period in its sole and absolute discretion.

1.10 **General Disclaimer**:

1.10.1 This RFP is not binding on the City. The City assumes no contractual or other obligations as a result of the issuance of this RFP. No other party, including any Proposer to this RFP, or any future Proposer to any RFP that may be issued by the City, is intended to be granted any rights hereunder. This RFP and the process it describes are proprietary to the City and are for the sole and exclusive benefit of the City.

1.10.2 This RFP does not commit the City to enter into an agreement. The City assumes no contractual or other obligations as a result of the preparation or submission of a Proposal by anyone responding to this RFP or the evaluation of Proposals by the City or the selection of a Proposer for further negotiations. The City is not liable for any costs associated with the development, preparation, or presentation of any proposal or material submitted in response to this RFP.

1.10.3 Neither the City, nor any of its respective agents, employees or representatives makes any representation or warranty, expressed or implied, as to the accuracy or completeness of any of the information contained in the RFP or any other information (whether communicated in written or oral form) transmitted or made available to prospective Proposers. The City expressly disclaims any and all liability relating to, or resulting from the use of this RFP or such other information by a prospective Proposer. Any prospective Proposer must satisfy itself with respect to verification of information contained in the RFP.

1.11 **Confidentiality**:

1.11.1 The Selected Proposer shall treat all information obtained from the City, which is not generally available to the public as confidential and/or proprietary to the City. The Selected Proposer shall exercise all reasonable precautions to prevent any information derived from such sources from being disclosed to any other person. The Selected Proposer agrees to indemnify and hold harmless the City, its officials and employees, from and against all liability, demands, claims, suits, losses, damages, causes of action, fines and judgments (including attorney's fees) resulting from any use or disclosure of such confidential and/or proprietary information by the Selected Proposer or any person acquiring such information, directly or indirectly, from the Selected Proposer.

1.11.2 Proposer's acknowledge and agree, by submission of any Proposal to this RFP, that the City, as a municipal corporation, is subject to federal, state and local public disclosure laws and, as such, is legally obligated to disclose to the public documents, including Proposals, to the extent required thereunder. Without limiting the foregoing sentence, the City's legal obligations shall not be limited or expanded in any way by an Applicant's request for confidential treatment or nondisclosure of proprietary or other information in its RFP.

1.11.3 The Proposer agrees that the City may make such disclosure or reproduce such information as is deemed necessary by City, in its sole and absolute discretion, to comply with applicable law, including without limitation the Philadelphia Home Rule Charter, the Pennsylvania Right to Know Act and the federal Freedom of Information Act. Proposer expressly waives any cause of action, whether in law or in equity, that it may have against the City respecting such disclosure.

1.12 **Publicity**: All publicity (including, but not limited to, news releases, news conferences, and commercial advertising) relating to this RFP and/or the services or products sought by this RFP and/or any contract entered into as the result of this RFP shall require the prior written approval of the Airport's Chief Executive Officer or his designee.

Section 2

BACKGROUND AND MINIMUM REQUIREMENTS

2.1. Objective:

2.1.1 The City's objective is to enter into negotiations for a Concessions Agreement with an established and responsible business entity (the "Selected Proposer"), who demonstrates expertise in the installation, development, operation and management of an airport self-service luggage carts rental program. Further, the City's objective is to provide for all Airport users the highest caliber self-service luggage carts rental system available. With this objective in mind, the Selected Proposer must always maintain sufficient staffing and inventory of equipment to accommodate the Airport's traveling passengers, as determined by the City.

2.1.2 Rights With Respect to Future Concession Locations: If at any time after the effective date of an agreement between the City and the Selected Proposer, the City identifies any space for future development, which space is not shown on Attachment A to this RFP, the City may offer such space to the Selected Proposer for development. Additionally, the City reserves the right, but not the obligation, in its sole and absolute discretion, to add locations in future terminal buildings which become available due to airport expansion to any Concession Agreement entered into with the Selected Proposer.

2.2. Background Information:

2.2.1 Certain general background information is provided in this RFP (including without limitation Attachments A and B) to assist Proposers in preparing their Proposals. This material is provided for informational purposes only. In accordance with Section 1.11.3, the City cannot and does not make any representation or warranty with regard to the information contained in this RFP, including without limitation, the number of enplanements and deplanements at PHL set forth in Section 2.2.4 below.

2.2.2 The Proposer shall carefully examine the terms of this RFP and shall investigate and inspect the airport facilities at PHL, including without limitation any Airport Layout Plan or Passenger Traffic Analysis information contained in this RFP, and shall judge for itself all of the circumstances and conditions affecting its Proposal. The City will endeavor to present accurate information, but Proposers are advised to independently investigate and verify the accuracy of any information received.

2.2.3 Airport Layout

A. The terminal buildings contain a total of approximately 2,625,000 square feet of space, including seven terminal units (A-West, A-East, B,C,D,E and F), (the "Terminal Buildings"). An airport layout plan is attached as Attachment A. Airport layout information is also available at www.phl.org/terminal_map.html. Proposer acknowledges that, from time to time and at the sole and absolute discretion of the City, the internal layout of the terminals described below may change.

B. Terminal A-West, an 800,000 square foot International Terminal, has four levels, contains twelve (12) widebody gates and one (1) narrowbody gate, a ticketing lobby, baggage handling facilities, concession space and a Federal Inspection Services ("FIS") facility. The International Terminal lies within Tinicum Township, Delaware County.

1. The portion of Terminal A-West known as the FIS, contains an approximately 74,000 square feet U.S. Customs & Border Protection ("CBP") baggage claim area on the third (3rd) level for which a free luggage cart rental program should be included in the Combination Program described in Section 1.8.2.

2. The remaining portion of Terminal A-West for which a pay luggage cart rental program should be included in the Combination Program, consists of approximately 726,000 square feet on two levels and contains thirteen (13) gates.

C. Terminals A-East, B, C, D and E each have a concourse/ gate area, baggage claim area and terminal building. Ticketing and baggage claim operations occupy the ground-level. Food/beverage and retail corridors are located between Terminals B and C and Terminals D and E.

D. Terminal F has three sections for 38 commuter gates capable of accommodating Regional Jet (RJ) aircraft. The ticketing area, baggage handling facilities, and concession space are at ground level. The facility includes second level structures connecting to Terminal E and the parking facilities.

2.2.4 **Passenger Traffic Information**: Historic passenger enplanement information in the form of passenger traffic analysis for the entire airport is attached as Attachment B. Passenger traffic information may also be viewed at. www.phl.org/activity_reports.html. Passenger enplanement information may be different during the contract term. As set forth above and in Section 1.11.3, the City cannot and does not make any representation or warranty with regard to the number of passenger enplanements at any time. In accordance with Section 1.11.3, the City assumes no responsibility or liability with regard to the number of passenger enplanements or any changes in the number of enplanements.

2.3 Minimum Qualifications

2.3.1 **Proposers Restricted**:

A. No Proposal will be accepted or selected from, nor will the City enter into any contract negotiations with, any City employee or official, or any firm in which a City employee or official has a direct or indirect financial interest. No Proposer may be the prime contractor or the Proposer for more than one Proposal, which is submitted pursuant to this RFP. Entities that are legally related to each other or to a common entity may not submit separate Proposals as prime contractors or as the prime Proposer. Any Proposal may be rejected that, in the City's sole judgment, does not comply with these conditions.

B. No Proposal will be accepted or selected from, nor will the City enter into any contract negotiations with, any person, firm, or corporation that is in arrears or is in default of any debt to the City (including without limitation tax delinquencies), any contract obligation, or any surety obligations to the City, or has failed to comply with any existing or previous contract with the City, or has failed to execute a contract that the person, firm, or corporation negotiated with the City.

C. No Proposal will be accepted or selected from, nor will the City enter into any contract negotiations with, any Proposer that is involved in litigation against the City, including but not limited to negotiations to settle a claim against the City.

D. No Proposal will be accepted or selected from, nor will the City enter into any contract negotiations with, any Proposer that has been prohibited by the City from entering into any City contracts.

E. If more than one Proposal is received from any individual, firm, partnership, corporation, or association, under the same or different names, said Proposals will not be considered. If an incomplete Proposal is received from any individual, firm, partnership, corporation, or association, said incomplete Proposal will not be considered.

F. All Proposals submitted by Proposers who have engaged in any form of collusion in the preparation or submission of Proposals in response to this RFP shall be rejected.

2.3.2 **Eligibility**: To be eligible for the City's review, each Proposer and the Proposal submitted must satisfy the minimum qualifications identified in this Section, which recognize and address the described objectives, and reflect a quality self-service luggage carts rental program for PHL. The Selected Proposer will be solely responsible to the City for all skills, resources, and activities required to accomplish the City's objectives, including all financing, planning, design, construction, procurement, marketing, promotion, maintenance, operations, management and staffing of the Program.

2.3.3 **Compliance with Submittal Requirements**: The Proposer must submit one Proposal in accordance with the submittal requirements in this RFP.

2.3.4 **Experience**: The Proposer must have at least three (3) years of experience in the development and management of an airport self-service luggage cart rental program. The Proposer must describe any and all recent airport operating experience. This Section establishes minimum qualification requirements only. Past experience in excess of the minimum requirements specified in this Section will be considered in the selection of a provider for this project.

2.3.5 **Financial Responsibility and Concession Fee**: The Proposer must demonstrate that it has the financial capacity to execute its proposed program and satisfy the City's financial requirement for payment of an annual Concession Fee to the City in twelve (12) monthly installments. The annual Concession Fee will consist of the greater of a Minimum Annual Guarantee ("MAG") and/or a percentage of Annual Gross Revenues. Each Proposal submitted in response to this RFP must contain the terms and conditions for payment of the MAG and/or a percentage of Annual Gross Revenues to the City.

2.3.6 **Insurance Requirement**: The Proposer shall procure and maintain, at its sole cost and expense, during the entire period of the contract (including any renewal periods), the types of insurance required in Attachment D.

2.3.7 **Cart Rental Fee and No Cart Rental Fee Plans for Luggage Carts in FIS**: The Proposer must provide two (2) separate cart rental fee plans: a Total Pay Program for a cart rental fee charged to passengers in all PHL terminals, including the FIS area; and a Combination Pay Program which does not charge any cart rental fee to passengers in the FIS, but charges cart rental fees to passengers in all other PHL terminal areas.

2.3.8 **Equipment Plan**: The Proposer must provide a description of its Equipment Plan, which must include a detailed description of the number, type, design, color scheme and quantity of carts, cart retrieval equipment, cart vending units and cart collectors. Cart vending units need to be secured to the floor, as opposed to freestanding, except when on terrazzo floors. An inventory of equipment in operation must be included in the monthly concessions report provided by the Proposer to the City.

2.3.9 **Development Schedule**: The Proposer must provide a schedule that includes a plan for the design, development and installation of the Program, and the Proposer's plan for meeting the proposed schedule.

2.3.10 **Operations, Staffing, Marketing and Management Plan**: The Proposer must provide plans for the operation, staffing, marketing, and management of the proposed program. An inventory of staff levels and an accounting of cart usage by each cart vending unit must be included in the monthly concessions report provided by the Proposer to the City.

2.3.11 **Nondiscrimination**

A. The Proposer must be determined to be compliant with all nondiscrimination requirements of the US Department of Transportation, the Commonwealth of Pennsylvania and the City of Philadelphia. Accordingly, the Proposer must be compliant with 49 CFR Parts 21, 23 and 26, Act 57 of 1998, 62 Pa.C.S. § 3701, the Fair Practices Ordinance of The Philadelphia Code (Chapter 9-1100), Chapter 17-400 of the Philadelphia Code and the Mayor's Executive Order No. 4-86, as each may be amended from time to time.

B. The Proposer must agree to ensure fair and equal employment of all persons, including the meaningful and substantial employment of disadvantaged persons in all aspects of the prospective agreement with the City, including but not limited to the employment of such persons in maintenance related activities as well as management level and non-management level positions related to management of the facilities. Proposers agree to incorporate this obligation into their subcontracts and to require all their contractors (and approved subcontractors), consistent with this obligation, to adhere to fair and equal employment practices, including the hiring and employment of disadvantaged persons.

C. Outreach Plan: In furtherance of this obligation, Proposers should submit with their proposals, although the City reserves the right to request this as well as any clarifying information at any time prior to any execution of a Concession Agreement, a plan containing a description of any outreach activities (i.e., job fairs, training seminars, media outreach) or other methods consistent with an obligation of fair and equal employment under this paragraph. Such plan may also contain projected employment hours of disadvantaged persons and copies of contract/subcontract agreements incorporating this fair employment policy.

2.3.12 **Completion of Airport Concession Disadvantaged Business Enterprise ("ACDBE") Participation Schedules and Certifications**:

A. Pursuant to 49 CFR Part 23, as amended, each Proposer must certify that it shall not discriminate against any business owner on the basis of the owner's race, color, national origin or sex in connection with the selection of Proposer or performance of any concession agreement entered into as the result of Proposer's selection by City, or management contract, or subcontract, purchase or lease agreement covered by 49 CFR Part 23.

B. Each Proposer must complete the following documents in Attachment C, either: (i) the Schedule for ACDBE Participation; or (ii) the Request for Good Faith Efforts Review documents in Attachment C, including the Schedule for Partial Participation by ACDBEs and the Certification of the Unavailability of ACDBEs.

C. Proposal instructions for ACDBE Participation and completion of the required ACDBE Participation forms are included in Attachment C to this RFP entitled "INSTRUCTIONS, FORMS AND CONTRACT PROVISIONS RELATING TO PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISES IN CITY AIRPORT CONCESSIONS CONTRACTS," and made a part of this RFP. Proposers are advised to carefully review these special instructions. Compliance with this Section and Attachment C are a material part of this RFP.

2.3.13 **Philadelphia Tax Status and Clearance Statement**

A. It is the policy of the City of Philadelphia to ensure that each contractor and subcontractor has all required licenses and permits and is current with respect to the payment of City taxes or other indebtedness owed to the City (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), and is not in violation of other regulatory provisions contained in The Philadelphia Code.

B. To assist the City, through its Department of Revenue and Department of Licenses and Inspections, in determining this status, each Proposer is required to complete and return with its Proposals, a City of Philadelphia Tax Status and Clearance Statement Form (included with this RFP as Attachment E).

C. If the Proposer is not in compliance with the City's tax and regulatory codes, an opportunity will be provided to enter into satisfactory arrangements with the City. If satisfactory arrangements cannot be made within a week of being notified of their non-compliance, Applicants will not be eligible to enter into contract negotiations with the City, as contemplated by this RFP.

D. The selected Proposer will also be required to assist the City in obtaining the above information from its proposed subcontractors (if any). If a proposed subcontractor is not in compliance with City Codes and fails to enter into satisfactory arrangements with the City, the non-compliant subcontractor will be ineligible to participate in the contract contemplated by this RFP and the selected Proposer may find it necessary to replace the non-compliant subcontractor with a compliant subcontractor. Proposers are advised to take these City policies into consideration when entering into their contractual relationships with proposed subcontractors.

E. If a Proposer or a proposed subcontractor is not currently in compliance with the City's tax and regulatory codes, please contact the Revenue Department to make arrangements to come into compliance at 215-686-6600 or revenue@phila.gov. Proposers who do not have a City of Philadelphia Business Privilege Tax Account Number and Business Privilege License Number will be required to obtain both if selected to enter into contract negotiations as contemplated by this RFP.

F. Applications for a Business Privilege Tax Account Number or a Business Privilege License may be made on line by visiting the City of Philadelphia Business Services Portal at http://business.phila.gov/Pages/Home.aspx and clicking on "Register Your Business." If you have specific questions, call the Department of Revenue at 215-686-6600 for questions related to City of Philadelphia Business Privilege Tax Account Number or the Department of Licenses and Inspections at 215-686-2490 for questions related to the Business Privilege License.

2.3.14 **Ethics**: All Proposers must disclose any potential conflict under or violation of Sections 10-100 and 10-102 of the Philadelphia Home Rule Charter relating to the prohibition of City employees soliciting or benefiting from or having a financial interest in, either directly or indirectly, any City contract.

Section 3

SCOPE OF SERVICES

3.1 **General**: The Selected Proposer will be solely responsible to the City for all skills, resources, and activities required to accomplish the City's objectives, including all financing, planning, design, construction, procurement, marketing, promotion, maintenance, operations, management and staffing of the Program.

3.1.2 The Selected Proposer must develop and implement a comprehensive and coordinated plan to develop and manage the Program at PHL. In addition, the Selected Proposer must ensure the development of the Program on an aggressive schedule in conjunction with existing construction schedules and coordinate the implementation of the Program with the existing luggage cart provider.

3.1.3 The Selected Proposer must also make every effort to obtain meaningful and substantial participation of disadvantaged business enterprises in all aspects and phases of the Program, including but not limited to employment, marketing/promotion, operations, maintenance, and management, as required in Section 3.3 below and Attachment C.

3.2 **Luggage Cart Services:** The City seeks to enter into contract negotiations with a Selected Proposer for the installation, development, operation and management of a comprehensive airport Self-Service Luggage Carts Rental Program at PHL. The services required from the Selected Proposer for the Program shall include, but shall not be limited to:

3.2.1 Maintaining adequate staffing levels to professionally operate and manage the program at all times.

3.2.2 Providing a sufficient number of luggage carts, cart vending units, and supporting equipment to meet the needs of PHL's large hub passenger traffic volume.

3.2.3 Installing state of the art, high caliber luggage cart equipment and on an aggressive schedule including design and installation of electrical service.

3.2.4 Coordinating the implementation of the Program with the current luggage carts provider.

3.2.5 Providing each luggage cart with non-marking wheels, along with braking mechanisms.

3.2.6 Providing cart vending units that accept U.S. cash and at least three major credit cards for payment.

3.2.7 Providing cart vending units in the FIS area that make change for international passengers and/or providing designated employees, in identifiable uniforms of the Selected Proposer, who have the ability to make change for international passengers in the FIS area.

3.2.8 Providing usage instructions to passengers in multiple languages.

3.2.9 Maintaining equipment in good operating condition and promptly removing or replacing broken equipment.

3.2.10 Physically monitoring and sweeping the airport property according to a mutually agreed upon daily reclamation schedule by Selected Proposer's staff for the retrieval and return of used carts to cart vending units.

3.2.11 Maintaining the insurance coverage required by this RFP at all times including any insurance necessary during equipment installation and/or de-installation periods.

3.2.12 Paying an annual Concession Fee to the City in twelve (12) monthly installments.

3.2.13 Providing the City with monthly and annual financial reports, and ACDBE Reports, as required.

3.2.14 Providing the City with monthly reports on the accounting of revenue, staffing levels, equipment inventory, and cart usage, by each cart vending unit.

3.3 Participation of Disadvantaged Business Enterprises

3.3.1 This RFP is issued under the regulations of the U.S. Department of Transportation ("U.S. DOT"), 49 C.F.R. Parts 23 and 26, as amended. It is the policy of the City of Philadelphia and U.S. DOT that certified Airport Concession Disadvantaged Business Enterprises ("ACDBE(s)"), as defined in 49 CFR Part 23, as amended), shall have a fair opportunity to participate in the performance of airport concessions contracts, which relate to Federal funds received by Philadelphia International Airport since 1988 and which funds were authorized under Title 49 of the United States Code.

3.3.2 Proposers must use their best efforts, as evidenced by completion of the mandatory forms in Attachment C, to include services in their Proposals, which represent meaningful participation by ACDBEs. Said ACDBE Participation must comply with the requirements of 49 CFR Parts 23 and 26, Section 2.3.12 of this RFP and Attachment C of this RFP.

Section 4

INSTRUCTIONS TO PROPOSERS AND GENERAL CONTRACT REQUIREMENTS

4.1 **General:**

4.1.1 Proposals must be prepared on the forms provided in Section 5 of this RFP. Proposers are warned against making erasures or alterations of any kind in their Proposals. Proposals that contain omissions, erasures, alterations, conditions, or additions may be rejected, in the City's sole and absolute discretion.

4.1.2 Failure to answer all questions completely and furnish all information required in this RFP may result in disqualification of the Proposer. The City reserves the right to thoroughly investigate the financial status and experience of the Proposer.

4.1.3 Eight (8) original Proposals must be submitted in a sealed envelope or envelopes addressed to the Procurement Commissioner, at the location specified in Section 1.3 of this RFP, with the words "SELF-SERVICE LUGGAGE CARTS RENTAL PROGRAM AT PHILADELPHIA INTERNATIONAL AIRPORT" plainly written on the face of a sealed envelope. The name and address of the Proposer must also appear on the face of the envelope.

4.2. **Signatures**: All Proposals must include the following information and be signed (at the end of Section 5) as follows:

4.2.1 **Individuals**: If the Proposal is made by an individual, the Proposal must be signed by the individual, the individual's full name must be typed or printed under the signature line and the Proposal must include the individual's mailing address;

4.2.2 **Partnerships**: If the Proposal is made by a partnership, the Proposal must:

A. be signed by at least one of the general partners with authority to bind the partnership and the name of the general partner must be typed or printed under the signature line;

B. include the name and mailing address of the partnership; and

C. attach a copy of the partnership agreement, or other document authorizing the general partner to sign the Proposal to bind the partnership;

4.2.3 **Corporations**: If a corporation makes the Proposal, the Proposal must:

A. be signed by the president or vice president of the corporation, and the secretary or treasurer must attest the signature and the names of the corporate officers must be typed or printed under the signature lines;

B. include the name and mailing address of the corporation; and

C. attach a copy of the corporation's bylaws or a corporate resolution authorizing the corporate officer signing the Proposal to bind the corporation.

4.2.4 **Joint Ventures**: If the Proposal is made by a joint venture, the Proposal must:

A. be signed by all joint venture partners and the names of the joint venture partners must be typed or printed under the signature lines;
B. include the name and mailing address of the joint venture; and
C. attach a copy of the joint venture agreement or other documentation signed by each member of the joint venture and, if applicable, any documentation necessary to show that the individuals signing on behalf of each joint venture partner are authorized to bind the joint venture.

4.3 **IT SHALL BE THE RESPONSIBILITY OF THE PROPOSER TO DELIVER THE PROPOSAL AND ALL OTHER REQUIRED ITEMS PRIOR TO 10:30 AM EASTERN STANDARD TIME ON TUESDAY, APRIL 26, 2011. LATER DELIVERY FOR ANY REASON MAY DISQUALIFY THE PROPOSER.**

4.4 **General Citywide and Certain Airport Contract Requirements**

4.4.1 Any Proposer selected to enter into contract negotiations for a Concession Agreement as the result of this RFP will be expected to enter into a contract with the City containing terms acceptable to the City for the installation, development, operation and management of a self-service luggage cart rental program at PHL as required by this RFP and, including without limitation, terms which are substantially similar to the City-wide provisions set forth in this Section 4 and Attachment D. The terms and conditions provided or described in this Section 4 and Attachment D are generally required by the City in contracts for services of the type sought by this RFP. The City reserves the right, however, to require or negotiate different and/or additional terms and conditions in any final contract resulting from this RFP if, in the sole and absolute judgment of the City, it is in the best interest of the City to do so, without notice to other Proposers and without affording other Proposers any opportunity to revise their Proposals based on such different or additional terms. Any reference in the provisions below in this Section 4 to the "Agreement" or the "Contract" refer to any Concession Agreement which may result from this RFP.

4.4.2 **Certificate of Non-Indebtedness:** The Concessionaire hereby certifies and represents that the Concessionaire and the Concessionaire's parent company (ies) and subsidiary (ies) are not currently indebted to the City and will not, if an Agreement is executed with Concessionaire, at any time during the term of the Contract (including any extensions or renewals thereof) be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees

or other debts for which no written Concessionaire payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, the Concessionaire acknowledges that any breach or failure to conform to this certification may, at the option of the City, result in the withholding of payments otherwise due to the Concessionaire under the Agreement and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments and/or the termination of this Agreement for default (in which case the successful Concessionaire shall be liable for all excess costs and other damages resulting from the termination).

4.4.3 **Business Interests In Northern Ireland**:

A. In accordance with Section 17-104 of The Philadelphia Code, the Concessionaire by execution of this Agreement certifies and represents that (i) the Concessionaire (including any parent company, subsidiary, exclusive distributor or company affiliated with Concessionaire) does not have, and will not have at any time during the term of this Agreement (including any extensions thereof), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (ii) no product to be provided to the City under this Agreement will originate in Northern Ireland, unless Concessionaire has implemented the fair employment principles embodied in the MacBride Principles.

B. In the performance of this Agreement, the Concessionaire agrees that it will not utilize any suppliers, subcontractors or sub-consultants at any tier (i) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland or (ii) who will provide products originating in Northern Ireland unless said supplier, sub-consultant or subcontractor has implemented the fair employment principles embodied in the MacBride Principles. The Concessionaire further agrees to include the provisions of this subparagraph, with appropriate adjustments for the identity of the parties, in all subcontracts and supply agreements that are entered into in connection with the performance of this Agreement.

C. The Concessionaire agrees to cooperate with the City's Director of Finance in any manner, which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of The Philadelphia Code. The Concessionaire expressly understands and agrees that any false certification or representation in connection with this Paragraph and/or any failure to comply with the provisions of this Paragraph shall constitute a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise available in law (including, but not limited to, Section 17-104 of The Philadelphia Code) or equity. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A Section 4904.

4.4.4 **Termination for Convenience**: The City shall have the right to terminate this Contract at any time during the term of the Contract, for any reason, including, without limitation, its own convenience. If the Contract is terminated solely for the City's convenience, the City shall issue a written Termination Notice, which shall set forth the effective date of the termination.

4.4.5 **Non-Discrimination**:

A. Concessionaire must comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d - 2000d.7), Section 504 of the Federal Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975, (42 U.S.C. §§6101 - 6107), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), and 45 C.F.R. Part 92, as they may be amended from time to time, which together prohibit discrimination on the basis of race, color, national origin, sex, handicap, age and religion.

Further, the Contract is entered into under US DOT federal regulations 49 CFR Parts 21 and 23 and the terms of the Philadelphia Home Rule Charter, as each may be amended from time to time, and in performing the Contract, Concessionaire shall not discriminate or permit discrimination against any person because of race, color, religion, national origin, or sex. In the event of such discrimination, the City may, in addition to any other rights or remedies available under the Contract, at law or in equity, terminate the Contract forthwith. Concessionaire agrees, in performing this Contract, to comply with the provisions of the Fair Practices Ordinance of The Philadelphia Code (Chapter 9-1100) and the Mayor's Executive Order No. 4-86, as they may be amended from time to time, both of which prohibit, inter alia, discrimination against persons with AIDS in employment and services.

B. In accordance with Chapter 17-400 of The Philadelphia Code, as it may be amended from time to time, Concessionaire agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes, without limiting the generality of the Default and Remedies sections of this Agreement, is a substantial breach of the Contract entitling the City to all rights and remedies provided in the Contract or otherwise available at law or equity.

C. Concessionaire agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner, which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Failure to so cooperate shall constitute, without limiting the applicability of the Default and Remedies sections of this Agreement, termination for default, a substantial breach

of the Contract entitling the City to all rights and remedies provided herein or otherwise available at law or equity.

4.4.6 **Americans With Disabilities Act**: Concessionaire understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in the Contract or from activities or Services provided under the Contract. As a condition of accepting and executing the Contract, Concessionaire shall comply with all provisions of the Americans With Disabilities Act (the "Act"), 42 U.S.C. §§12101 - 12213, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Concessionaire, (b) to the benefits, Services, activities, facilities and programs provided in connection with the Contract, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities, facilities and programs of the City or of the Commonwealth, and, if any funds under the Contract are provided by the federal government, which are applicable to the federal government and its benefits, services, activities, facilities and programs. Without limiting the applicability of the preceding sentence, Proposer shall comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Part 35.130, and all other regulations promulgated under Title II of "The Americans With Disabilities Act," as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

4.4.7 **Limited English Proficiency**: Concessionaire understands and agrees that no individual who is limited in his or her English language proficiency shall be denied access to Services provided under this Contract on the basis of that limitation. As a condition of accepting and executing this Contract, Proposer shall comply with all provisions of Title VI of the Civil Rights Act of 1964, the President of the United States of America Executive Order No. 12250, the Mayor of the City of Philadelphia Executive Order No. 04-01, “Access to Federally Funded City Programs and Activities for Individuals with Limited English Proficiency” dated September 29, 2001, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Proposer, (b) to the benefits, services, activities and programs provided in connection with this Contract, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities and programs of the City or of the Commonwealth, and if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its benefits, services, activities and programs. Without limiting the applicability of the preceding sentence, Concessionaire shall comply with 45 C.F.R. 80 et. seq. and all other regulations promulgated under Title VI of the Civil Rights Act of 1964, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

4.4.8 **Ethics Requirements**:

A. To preserve the integrity of City employees and maintain public confidence in the selection process for non-competitively bid contracts, the City shall vigorously enforce the various ethics laws as they relate to City employees in the selection of Proposers, negotiation and execution of City contracts, including but not limited to the the Pennsylvania Ethics Act, 65 Pa. Stat Section 401 et seq; Chapter 20-600 of the Philadelphia Code and Article X of the Philadelphia Home Rule Charter.

B. The Concessionaire and its sub-licensees, contractors, and subcontractors must not offer or give, directly or indirectly, anything of value to any City official, officer or employee, including any gift, gratuity, favor, entertainment or loan, the receipt of which would violate Executive Order No. 002-04 issued by the Mayor of Philadelphia on August 12, 2004. Similarly, the Concessionaire and its sub-licensees, contractors, and subcontractors must not offer or give, directly or indirectly, anything of value to any City officer, director, or employee which if received by any City official, officer, or employee would violate Executive Order No. 002-04.

C. Any person who offers or gives anything of value to any City official, officer, or employee, the receipt of which violates Executive Order No. 002-04 or any of the various ethics laws applicable to City contracts, is subject to sanctions. The sanctions may range from disqualification from participation in particular City contract(s), to debarment, depending on the nature of the particular violation. The terms and duration of the sanctions will be pursuant to any rules the Procurement Commissioner promulgates with respect to contracts subject to competitive bidding, or as the Director of Finance promulgates with respect to all other contracts.

D. If the Concessionaire or its sub-licensees, contractors, and subcontractors offer or give, directly or indirectly, anything of value to any City officer, director, or employee in violation of this Section 4.4.8, the Concessionaire will commit an Event of Default under the Concession Agreement. In addition, the City shall return or discard the item given to the City officer, director, or employee.

4.4.9 **Tax Requirements**:

A. This Concession Agreement is entered into in the City of Philadelphia, and the Concessionaire's delivery of goods into the City, or performance of services in the City, is "doing business" in the City and subjects the Concessionaire to the City's tax requirements, including without limitation one or more of the following taxes: (i) Business Privilege Taxes; (ii) Net Profits Tax; and (iii) City Wage Tax. At all times during the contract Term, Concessionaire shall timely pay and be in compliance with the City's tax requirements.

B. In addition to the City's tax requirements, the Concessionaire shall timely pay all federal, state, and local taxes, assessments, and levies, however characterized (collectively, "**Assessments**") that apply to the Concession, the Concession Agreement, and the Concessionaire's activities under the Concession Agreement. The Concessionaire is solely liable for all late charges, interest, penalties, and fees arising from the Concessionaire's failure to timely pay all Assessments. The City is not obligated at any time during the Term to pay any Assessments related to the Concession, the Concession Agreement, or the Concessionaire's activities under the Concession Agreement.

C. The Concessionaire's failure to comply with the requirements of the Concession Agreement regarding payment of Assessments, or Concessionaire's failure to otherwise pay an Assessment as required by applicable law, is an Event of Default of the Concession Agreement.

4.4.10 **Philadelphia 21st Century Minimum Wage Standard**: Concessionaires that are subject to Philadelphia Code Chapter 17-1300, as specified therein, shall comply with the minimum compensation standards by providing its employees with an hourly wage, excluding benefits, at least 150 percent of the federal or state minimum wage, whichever is higher, as more fully set forth at Philadelphia Code Chapter 17-1300. Concessionaire shall promptly provide to the City all documents and information verifying its compliance with the requirements of Section 17-1300. Furthermore, Concessionaire shall notify each affected employee what wages are required to be paid. The Office of Labor Standards may grant a partial or total waiver of Section 17-1300 based on specific stipulated reasons elaborated in Section 17-1304 of the Philadelphia Code.

4.4.11 **Business, Corporate and Slavery Era Insurance Disclosure**: In accordance with Section 17-104 of The Philadelphia Code, Concessionaire, after execution of this Agreement, will complete an affidavit certifying and representing that Concessionaire (including any parent company, subsidiary, exclusive distributor or company affiliated with Concessionaire) has searched any and all records of the Concessionaire or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit. Concessionaire expressly understands and agrees that any false certification or representation in connection with this Paragraph and/or any failure to comply with the provisions of this Paragraph shall constitute a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise available in law (including, but not limited to, Section 17-104 of The Philadelphia Code) or equity and the contract will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. Section 4904.

4.4.12 **Confidential and Proprietary Information of the City**: The Concessionaire shall treat all information it obtains from the City that is not

generally available to the public as confidential and proprietary to the City. The Concessionaire shall exercise all reasonable precautions to prevent any confidential and propriety information it obtains from the City from being disclosed to any other person or entity. The Concessionaire shall promptly indemnify, defend, and hold harmless the City from and against all liabilities, demands, claims, suits, losses, damages, causes of action, fines and judgments (including attorney's fees) resulting from or related to any use or disclosure of any City confidential or proprietary information by the Concessionaire or its employees, or by any person acquiring that information, directly or indirectly, from the Concessionaire or its employees. The Concessionaire's obligations under this Section survive the Concession Agreement ending date.

4.4.13 **Sales and Use Tax; Federal Excise Tax:**

The City is not subject to federal, state or local sales or use tax, or federal excise tax. Contractor hereby assigns to City all it's rights, title and interest in any sales or use tax which may be refunded as a result or the purchase of any materials in connection with the Contract, and the contractor, unless directed by the City, shall not file a claim for any sales or use tax refund subject to this assignment. The contractor authorizes the City, or it's agent, in it's own name or in the name of the contractor, to file a claim for a refund of any sales or use tax subject to this assignment. To the extent it may be applicable to the work under this contract, the contractor covenants and agrees that it shall not bill the City for or otherwise pass-through to the City for payment any Federal Excise Tax paid in connection with the work under this Contract; in consideration of the Contractor's foregoing covenant, the City hereby consents to any filing by the Contractor for a refund of any Federal Excise Tax paid in connection with the work under this contract.

The Contractor agrees to include the above referenced Paragraph in any Subcontracts with Subcontractors.

4.4.14 **Indemnification**: As more specifically required in any Concession Agreement entered into as the result of this RFP, the Concessionaire shall indemnify, defend (with attorneys approved in writing in advance by the City) and hold harmless the City, its officers, employees and agents, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees), claims, suits, actions, damages, liability and expenses occasioned wholly or in part by the Concessionaire's act or omission or negligence or fault or the act or omission or negligence or fault of the Concessionaire's agents, Subcontractors, employees or servants in connection with the Contract, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, failure to pay such Subcontractors and suppliers, any breach of the Contract, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret). This obligation to indemnify, defend and hold harmless City, its officers, employees and agents, shall

survive the termination of any Concession Agreement entered into by City as the result of this RFP.

4.4.15 **Performance Bond**: The Selected Concessionaire may be required to provide the City with a performance bond for the initial contract term as security for the faithful performance of and compliance with all the terms and conditions of the Concession Agreement. The City will inform the Concessionaire, in writing, of its intent to renew the contract, and the Concessionaire will be required to renew the performance bond for any subsequent renewal period(s). Failure to secure such bonding, if required, for the term and any
renewal period may be considered a breach of the contract and will entitle the City to all rights and remedies under the law. In lieu of the performance bond, the City may elect, in it's sole discretion, to accept a "Letter of Credit" as security for the faithful performance of and compliance with all the terms and conditions of the Concession Agreement.

4.4.16 **Contract Preparation Fee:** Furthermore and pursuant with Section 17-702 of the Philadelphia Code, charges by the Law Department, in connection with the preparation of the contract, or any amendment thereto, are as follows:

Contract Value	Preparation Fee
$0-$20,000	$0
$20,001-$50,000	$120
$50,001-$100,000	$170
$100,001-$250,000	$260
$250,001-$500,000	$340
$500,001-$1,000,000	$520
Over $1,000,000	$1,000

Section 5

SUBMITTAL REQUIREMENTS: PROPOSAL FORMAT AND CONTENT

[PLACE THIS SECTION AT THE FRONT OF YOUR PROPOSAL PACKAGE]

5.1 Proposal Form

INSTRUCTIONS: The information and materials requested in this Section 5 must be completed in accordance with the terms and conditions of this RFP. Eight (8) original Proposals must be submitted to the address listed in Section 1.3.

5.1.1 Financial Consideration

The Consideration to be paid to the City will be the greater of :
$_____: Minimum Annual Guarantee ("MAG"); or
_____percent (##%) of Annual Gross Revenues.
Please submit a Business Plan or Proforma to support the Financial Consideration figures.

Submitted by:

[Please type or print]

Name: _____

Company: _____

Address: _____

_____

_____

Telephone: _____

Facsimile: _____

E-mail: _____

The Undersigned Proposer hereby submits to the City of Philadelphia, through its Procurement Department, this Proposal for the right and obligation to develop a

Self Service Luggage Carts Rental Program at Philadelphia International Airport as described herein and in the attached documents.

5.2 Qualifications Statement: Company Profile and Business Experience

The undersigned gives the following assurances, representations and covenants that the Proposer is fully qualified to develop a Self Service Luggage Carts Rental Program at PHL. The undersigned further swears and affirms that the following information is true, accurate and complete.

5.2.1 Company Profile

A. Provide a brief history of your organization and an executive summary that describes your company's qualifications. This summary shall include number of employees and number of years in business.

B. Indicate any parent or subsidiary relationships with other businesses.

C. Corporate office organizational structure.

D. If you are a partnership or a joint venture, in Section 5.3 below give the date of agreement, County and State where agreement was filed, and name and address of each partner and complete all other information requested in Section 5.3. If you are a corporation, in Section 5.3 give the date and state of organization and the names and addresses of the officers and complete all other information requested in Section 5.3.

5.2.2 Business Experience and References

A. The Proposer has developed and managed a Self Service Luggage Carts Rental Program in the United States for a period of _____ continuous years.

B. The Proposer has operated under its current name since _____, a period of _____ years, and the Proposer (if such be the case) formerly operated under the name:

_____.

C. List all contracts your company, related companies or subcontractors have had with the City or its related agencies in the last five years.

D. List any experiences in the last five years in which you, your company or related companies and/or subcontractor failed to successfully complete a contract. List any contractual arrangements, which were canceled or not renewed for poor performance.

E. **Detailed Listing of Proposer's Self Service Luggage Carts Rental Program(s) for Calendar Years 2008, 2009 and 2010.**

Indicate location, and number of years Proposer has developed and/or managed a Self Service Luggage Carts Rental Program. Include any other information deemed appropriate. Proposer should include a reference contact at the submitted locations, and this contact should have direct, specific responsibility for the oversight of the program.

F. The Proposer submits herewith the following list of five (5) persons or businesses who have knowledge of the Proposer's ability to successfully perform the agreement for which this Proposal is submitted. At the discretion of the City, these persons may be contacted for references in order to assist in the evaluation of your Proposal.

REFERENCE NO. 1

Name: _____

Company: _____

Title: _____

Address: _____

_____

Telephone: _____

Facsimilie: _____

E-Mail: _____

Nature of Association: _____

REFERENCE NO. 2

Name: _____

Company: _____

Title: _____

Address: _____

_____

Telephone: _____

Facsimilie: _____

E-Mail: _____

Nature of Association: _____

REFERENCE NO. 3

Name: _____

Company: _____

Title: _____

Address: _____

_____

Telephone: _____

Facsimilie: _____

E-Mail: _____

Nature of Association: _____

REFERENCE NO. 4

Name: _____

Company: _____

Title: _____

Address: _____

_____

Telephone: _____

Facsimilie: _____

E-Mail: _____

Nature of Association: _____

REFERENCE NO. 5

Name: _____

Company: _____

Title: _____

Address: _____

_____

Telephone: _____

Facsimilie: _____

E-Mail: _____

Nature of Association: _____

5.2.3 Financial Information

A. The undersigned herewith submits an audited financial statement for the three (3) most recently completed fiscal years. Each such statement bears the certification of the independent Certified Public Accountant (CPA) who originally audited and certified such statements. The CPA's certification must

certify and attest to the accuracy of such statements and that the statements represent the results of the application of generally accepted accounting principles.

B. In the absence of audited financial statements, the Proposer should submit the best available information, which will permit the City to assess the Proposer's financial capability and current fiscal operating position.

C. List the Surety companies which have heretofore issued performance bonds to you for prior contracts. Give names and addresses of each Surety company, amount of each bond and the term of each bond. List any performance bonds that were called the last five years due to unsuccessful completion of the contract. Complete the following:

The Proposer has never ( ) has ( ) [check one] had a bond or surety canceled or forfeited. If the Proposer has had a bond or surety canceled, state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture.

D. The Proposer has never ( ) has ( ) [check one] been adjudged bankrupt (Chapter 7), or petitioned the court for relief under the Bankruptcy Code or Act for either business reorganization (Chapter 11) or the Wage Earner's Plan (Chapter 13). If the response is in the affirmative, provide the following information:

(1) Date petition filed

(2) Case No. and jurisdiction

(3) Amount of liabilities and debts

(4) Date of discharge or successful completion of reorganization or wage earner's plan

E. The Proposer submits herewith the following list of at least three (3) persons or firms with whom the Proposer has conducted significant financial transactions during the past two (2) years and who may be contacted by the City. If firms are used, give the name of the department and/or person whom we may contact. Proposers must attach a letter of reference from each of the persons or firms listed below.

REFERENCE NO. 1

Name: _____ Phone: _____

Firm: _____ Facsimilie: _____

Title: _____ E-Mail: _____

Department: _____

Address: _____

REFERENCE NO. 2

Name: _____ Phone: _____

Firm: _____ Facsimilie: _____

Title: _____ E-Mail: _____

Department: _____

Address: _____

REFERENCE NO. 3

Name: _____ Phone: _____

Firm: _____ Facsimilie: _____

Title: _____ E-Mail: _____

Department: _____

Address: _____

F. The Proposer‘s bank references are:

	Name	Address
1.	_____	_____
2.	_____	_____
3.	_____	_____

The undersigned herewith submits a letter from _____

_____ indicating that the Proposer has an
(name of financial institution)

available working line of credit of no less than One Million Dollars ($1,000,000.), or other evidence of Proposer's capital sufficient to permit it to meet the obligations contemplated by its Proposal.

5.2.4 **Felony Convictions**

A. Attached hereto on a separate sheet, the Proposer submits information concerning any felony convictions (for the individual if Proposer is an individual, for each general partner if Proposer is a partnership, for each corporate officer and major shareholder if Proposer is a corporation).

FELONY CONVICTIONS

Name	Date	Offense	Disposition

B. The Proposer agrees that the City's evaluation of the Proposer's responsibility under this Proposal will include an evaluation of the information furnished above for the purpose of determining whether the Self Service Luggage Carts Rental Program as proposed by the Proposer would be developed, managed and operated in a law-abiding manner and in a manner not subjecting the City or members of the traveling public to risk of harm or criminal, deceitful, or otherwise unethical practices.

C. The undersigned hereby affirms that the Proposer is authorized to conduct business in the Commonwealth of Pennsylvania and City of Philadelphia, or will obtain proper authorization to do so before executing an agreement and furnishing the required performance bond or letter of credit.

5.2.5 General Litigation Disclosure

Proposer must describe any pending, contemplated or ongoing administrative or judicial proceedings material to Proposer's business, finances, services or products including, but not limited to, any litigation, consent orders, debarment or contracts with any local, state or federal regulatory agency issued to Proposer or to any parent or subsidiary of Proposer.

5.3 Business Organization Statement

5.3.1 General Information

Name of Firm [Exactly as it would appear on an agreement; if operating under a fictitious name, so indicate.]

_____

_____

Principal Office Address:

_____

_____

_____

Telephone Number:

Form of Business Entity [check one]

( ) Corporation

( ) Partnership

( ) Individual

( ) Joint Venture

5.3.2 Corporation Statement

If a corporation, answer the following:

Date of Incorporation: _____

Location of Incorporation: _____

Is the corporation authorized to do business in Pennsylvania? Yes ( ) No ( )

If so, as of what date? _____

The corporation is held: Publicly ( ) Privately ( )

Furnish the name, title, and address of each director and officer of the corporation.

DIRECTORS

	Name	Address	Principal Business Affiliation Other than Proposer's Directorship
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

SHAREHOLDERS

	Name	Address	Number of Shares Owned
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

OFFICERS

	Name	Position
1.		
2.		
3.		
4.		

5.3.3 Partnership Statement

If a partnership, answer the following:

Date of organization: _____

General Partnership ( ) Limited Partnership ( )

Partnership Agreement recorded? Yes ( ) No ( )

Date	Book	Page	County	State

Has the partnership done business in the Commonwealth of Pennsylvania?

Yes ( ) No ( )

When? _____

Name, address, and ownership share of each general partner owning more than five percent (5%) of the partnership:

	Name	Address	% of Ownership
1.			%
2.			%
3.			%
4.			%
5.			%
6.			%

5.3.4 Joint Venture Statement

If a joint venture, answer the following:

Date of organization: _____

Joint Venture Agreement recorded? Yes ( ) No ( )

Date	Book	Page	County	State

Has the joint venture done business in the Commonwealth of Pennsylvania?

Yes ( ) No ( )

When? _____

Name, address of each joint venturer and percent of ownership of each:

	Name	Address	% of Ownership
1.			%
2.			%
3.			%
4.			%
5.			%

5.4 **Proposal for Development and Management of a Self Service Luggage Carts Rental Program at Philadelphia International Airport**

5.4.1 **Proposed Development Plan**

Please attach your proposed development plan, consistent with the Objectives in Section 2. and the Scope of Services in Section 3 for a Self Service Luggage Carts Rental Program. Include the following with your Proposal:

A. A schematic floor plan showing the proposed cart vending unit locations throughout the airport.

B. A specification sheet or design drawing of each type of equipment proposed.

C. A phasing plan including a schedule for installation.

5.4.2 **Proposed Management Plan**

Please attach your proposed management plan for the management of the Program, which addresses, at the least, all of the items set forth below in the order listed.

A. A description of the proposed management structure and schedule of personnel, including resumes of the management personnel that would be assigned to PHL, along with their experience and qualifications.

B. A description of the proposed scope of operation, including a detailed plan with an inventory of equipment, i.e., luggage carts, cart vending units, collector units, tug units, etc. and a description of the cart reclamation process and schedule the Proposer intends to use.

C. A description of the marketing program the Proposer intends to use, including an estimated annual budget.

D . A description of the Proposer's service philosophy and how it will be implemented at PHL.

5.4.3 **Proposed Equal Employment (Nondiscrimination) and ACDBE Plans**

Please attach your proposed Equal Employment (Nondiscrimination) Outreach Plan and ACDBE Plan as required by this RFP including Attachment C.

5.5 **Warranties By Proposer**: Proposer warrants and represents that all of the following is true and correct:

5.5.1 The Proposer warrants and represents that Proposer's Qualifications Statement has been completed to the best of the Proposer's ability, and the Proposer swears that all information contained herein is true, correct and complete to the best of the Proposer's knowledge, information and belief.

5.5.2 By submission of its Proposal, the Proposer acknowledges and agrees that the City has the right to make any inquiry or investigation it deems appropriate to substantiate or supplement information contained in the Proposal, including without limitation the Qualifications Statement, and Proposer authorizes the release to the City of any and all information sought in such inquiry or investigation.

5.5.3 The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the Proposal is genuine and not collusive or sham; that the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded or agreed with any Proposer or anyone else to put in a sham Proposal or to refrain from proposing; that the Proposer has not directly or indirectly sought by agreement or communication to secure any advantage against the City; anyone interested in the Proposal as principal are named within the Proposal; that all statements contained in the Proposal are true; that the Proposer has not directly or indirectly divulged information or data relative to the Proposer's Proposal to any other person, partnership, corporation, or association, except to such person or persons as have a direct financial interest in the Proposer's general business.

5.5.4 The Proposer is organized and existing in good standing under the laws of the state of its creation and is certified to do business in the Commonwealth of Pennsylvania and the City of Philadelphia.

5.5.5 The undersigned is an officer of the Proposer with the requisite power and authority to bind the Proposer to the terms and conditions of this RFP and the submitted Proposal. The Proposer agrees that the RFP for which this Proposal is submitted shall consist of the following documents, referred to collectively as the RFP: The RFP and Attachments A, B, C D and E and all addenda issued prior to the deadline for receipt of Proposals.

5.5.6 No City employee or other Proposer responding to this RFP has any interest in Proposer or any Proposals submitted by it in response to this RFP.

5.5.7 Proposer has not been prohibited by the City from participating in any City contracts.

5.5.8 Proposer has not been delinquent in its performance of any City contract.

5.5.9 Proposer is financially capable and has all the technical, professional and other expertise required to provide the goods and services required by this RFP.

5.5.10 Receipt of the following addenda is acknowledged, if applicable:

The foregoing Proposal is hereby submitted by the entity signing below in accordance with all terms and conditions as set forth in the Request for Proposal issued by the City of Philadelphia, Procurement Department, for the Installation, Development, Operation and Management of a Self Service Luggage Carts Rental Program at Philadelphia International Airport.

PROPOSER:

DATE: _____ _____

(Corporate Seal if Applicable) Name of Proposer

By: _____

(signature)

Name:

_____

Title:

_____

Attest:

_____

(signature)

Name:

_____

Title:

_____

[Add signature lines as

necessary below.)]

Mailing Address:

_____

_____

_____

Section 6

PROPOSAL EVALUATION, NEGOTIATION AND SELECTION

6.1 Proposal Evaluation

6.1.1 Proposals submitted by responsible Proposers and which the City determines, in it's sole and absolute discretion, are responsive to this RFP will be reviewed by a Selection Committee consisting of representatives selected by the Procurement Commissioner and Philadelphia International Airport's Chief Executive Officer.

6.1.2 The City reserves the right to request Proposers to make one or more presentations to the Selection Committee, in City offices, addressing their ability to achieve the objectives of this RFP, and reserves the further right to conduct on-site investigations of the proposer's facilities.

6.1.3 Payment of concession fees to the City is a material factor, but not the sole or necessarily the determining factor in Proposer selection. The City may, at it's sole and absolute discretion, enter into a contract resulting from this RFP with a person or entity other than the responsible Proposer offering the highest concession fee. The City will enter into a contract with the Proposer whose Proposal the City determines, in it's sole and absolute discretion, to be in the best interest of the City.

6.1.4 Evaluation factors to be considered include, but are not necessarily limited to, those set forth in Sections 2 and 3 of this RFP, and may also include any other factors which the City considers relevant to the evaluation of the Proposal. Accordingly, in evaluating the proposals, the City will consider the demonstrated experience, quality of equipment, scope of program, and financial Proposal of each Proposer in developing and managing a Self-Service Luggage Carts Rental Program of the type contemplated in Section 3 at PHL. No particular order of importance or other priority is intended by the order of the factors listed in Sections 2 and 3 of this RFP.

6.2 Qualification of Proposers

6.2.1The City will carefully consider the Proposer's qualifications, experience, proposed financial consideration, financial responsibility, equipment plan, operations, marketing and management plan, and ACDBE plan in evaluating each Proposal. In the City's evaluation, the Proposal as a whole may bear more weight than the individual parts. Proposers must have successfully developed and managed a self-service luggage cart rental program in at least one other site for at least three (3) years.

6.2.2 Following the City's review of the submitted Proposals by the Selection Committee, the City may select one or more Proposers with which to negotiate. The City shall notify Proposer(s) of selection for negotiations. The date that the Proposer's receipt of the notification of selection for negotiation is confirmed by the City, is referred to herein as the "Selection Notification Date."

6.2.3 Within ten (10) calendar days of the Selection Notification Date or such longer period as the City may authorize in writing, the Proposer(s) shall meet with the City's designated representative(s) at the places and at such times designated by the City, to negotiate, in good faith, the terms and conditions of an agreement in accordance with the terms of this RFP.

6.2.4 If within thirty (30) calendar days of the Selection Notification Date (or such later date as the City may authorize verbally or in writing), the City and the selected Proposer have not agreed to the terms of an agreement, the City may reject the Proposal submitted by the selected Proposer and if, in the City's sole and absolute judgement, the Proposer did not negotiate in good faith, the Proposal Security shall become the property of the City as liquidated damages, and not as a penalty. Otherwise, the Proposal Security will be returned to the Proposer.

6.2.5 As set forth in the Reservation of Rights in Section 6.5 of this RFP, upon rejection of the Proposal of a Selected Proposer, the City, at its option, may either: (a) proceed to negotiate an agreement with any other Proposer(s), or (b) reject all remaining Proposals submitted in response to this RFP with or without issuing another RFP.

6.3 Selection of Proposer and Negotiation

6.3.1 Selection of a Proposer by City does not mean a Concession Agreement will be successfully negotiated and executed between the City and the Selected Proposer.

6.3.2 The selection of a Proposer means that the City has decided to enter into negotiations for a Concession Agreement and as set forth in the Reservation of Rights in Section 6.5 of this RFP does not preclude the City from simultaneously negotiating with another Proposer.

6.3.3 The determination of the Selected Proposer shall be made by the City, in its sole and absolute discretion, which decision shall be final. The City may employ such analysis techniques and professional consultants for Proposal evaluation as it deems necessary.

6.3.4 The City may request submission of additional information to assist it in evaluating any Proposal, and all Proposers responding to this RFP shall cooperate fully with such request.

6.4 Disqualification Of Proposers

6.4.1 **Interest in More Than One Proposal**: Reasonable grounds for believing that any Proposer has an interest in more than one Proposal for installing, developing, operating and managing the Self Service Luggage Carts Rental Program, will cause the rejection of all Proposals in which such Proposer is interested.

6.4.2 **Collusion**: If the City has reason, in its sole and absolute judgment, to believe that collusion exists among any Proposers responding to this RFP, none of the participants in such collusion will be considered.

6.4.3 No Proposal shall be received from, or agreement entered into with, any City employee or official who may have any direct or indirect interest in such submitted Proposal or agreement.

6.4.4 In the event that only one Proposal is received by the City in response to this request, the City reserves the right to reject the Proposal and to begin the proposal process anew.

6.5 Reservation of Rights:

6.5.1 The City reserves the right to reject as informal or non-responsive any Proposal that, in the City's sole judgement, is incomplete, is not in conformity with applicable law, is not responsive to this RFP, or contains erasures, alterations, ambiguities or items of work not called for by this RFP.

6.5.2 Without limiting the generality of any other provision of this RFP, the City reserves the right, at any time prior to execution of an agreement with the Selected Proposer, to exercise all or any one or any combination of the following rights and options, which rights and options the City may exercise to the extent that City, in its sole and absolute discretion, deems to be in the City's best interests:

A. To reject the Proposal of any Proposer that submits an incomplete or inadequate proposal;

B. To reject any Proposal submitted from Proposers who fail to meet the minimum qualification criteria or who fail to satisfy the submission requirements;

C. To accept or reject, at any time prior to its execution of an agreement, any or all Proposals or any part thereof submitted in connection with this RFP;

D. To accept or reject any and all Proposals in the best interest of the City;

E. To re-issue this RFP without change or modification;

F. To supplement, amend, substitute or otherwise modify this RFP or to re-issue this RFP. In any RFP for similar services that may be issued subsequent to this RFP, to require terms and conditions that are substantially different from the terms and conditions set forth in this RFP;

G. To cancel this RFP with or without issuing another RFP;

H. To request additional or clarifying information or more detailed information from any firm at any time, including information inadvertently omitted in the proposal;

I. To request that some or all of the Proposers modify Proposals or provide additional information following evaluation by the City;

J. To negotiate any or all of the terms of a Proposer's Proposal, or more than one Proposer's Proposal;

K. To negotiate for acceptable terms in an otherwise unacceptable Proposal, such negotiations may result in changes to material terms of this RFP; in such event, the City shall not be obligated to inform other Proposers of the changes, or permit them to revise their Proposals, unless the Cty, in its sole and absolute discretion, determines that doing so and permitting such is in the City's best interest;

L. To terminate any negotiations at any time and initiate negotiations with another firm and/or conduct simultaneous, competitive negotiations with multiple firms or to negotiate with several Proposers seriatim;

M. Through negotiations, to enlarge or reduce the scope of services or to change other items that are material to the RFP. In that event, the City shall not be obligated to inform other Proposers of the changes, unless the City, in its sole and absolute discretion, determines that doing so is in the City's best interest;

N. To enter into a contract, in whole or in part, or enter into multiple agreements, or pursue initiatives on its own;

O. To reject the Proposal of any Proposer that, in the City's sole judgment, has been delinquent or unfaithful in the performance of any contract with the City, is financially or technically incapable of satisfying the requirements in the RFP, or that is otherwise not a responsible Proposer;

P. To rescind its rejection of any Proposal(s) and negotiate (or resume negotiations) with a previously rejected Proposer;

Q. To waive any informality, technicality, defect, non-responsiveness, or deviation from the requirements of this RFP;

R. To not proceed with the process described in this RFP, or to change any time schedules set forth herein, including without limitation the deadline for submitting Proposals in response to this RFP;

S. To permit, reject, or require, in the City's absolute discretion, amendments (including information inadvertently omitted), modifications, alterations and/or corrections to Proposals by some or all of the Proposers following their submission of Proposals;

T. To conduct such investigations as the City considers appropriate with respect to the financial, technical or qualifications of each Proposer responding to this RFP and any information contained in its Proposal; including without limitation on-site investigations of the facilities of any one or more Proposers, or the facilities where any Proposer performs its services, or any projects performed by any Proposer;

U. To decide not to enter into an agreement pursuant to this RFP;

V. To require any one or more Proposers to make one or more presentations to the City at the City's offices or other location as determined by the City, at the Proposer's sole cost and expense, addressing the Proposer's Proposal and its ability to achieve the objectives of this RFP;

W. To do any of the foregoing without notice to Proposers or others, except such notice as the City, in its sole and absolute discretion, elects to post on www.phila.gov/bids.

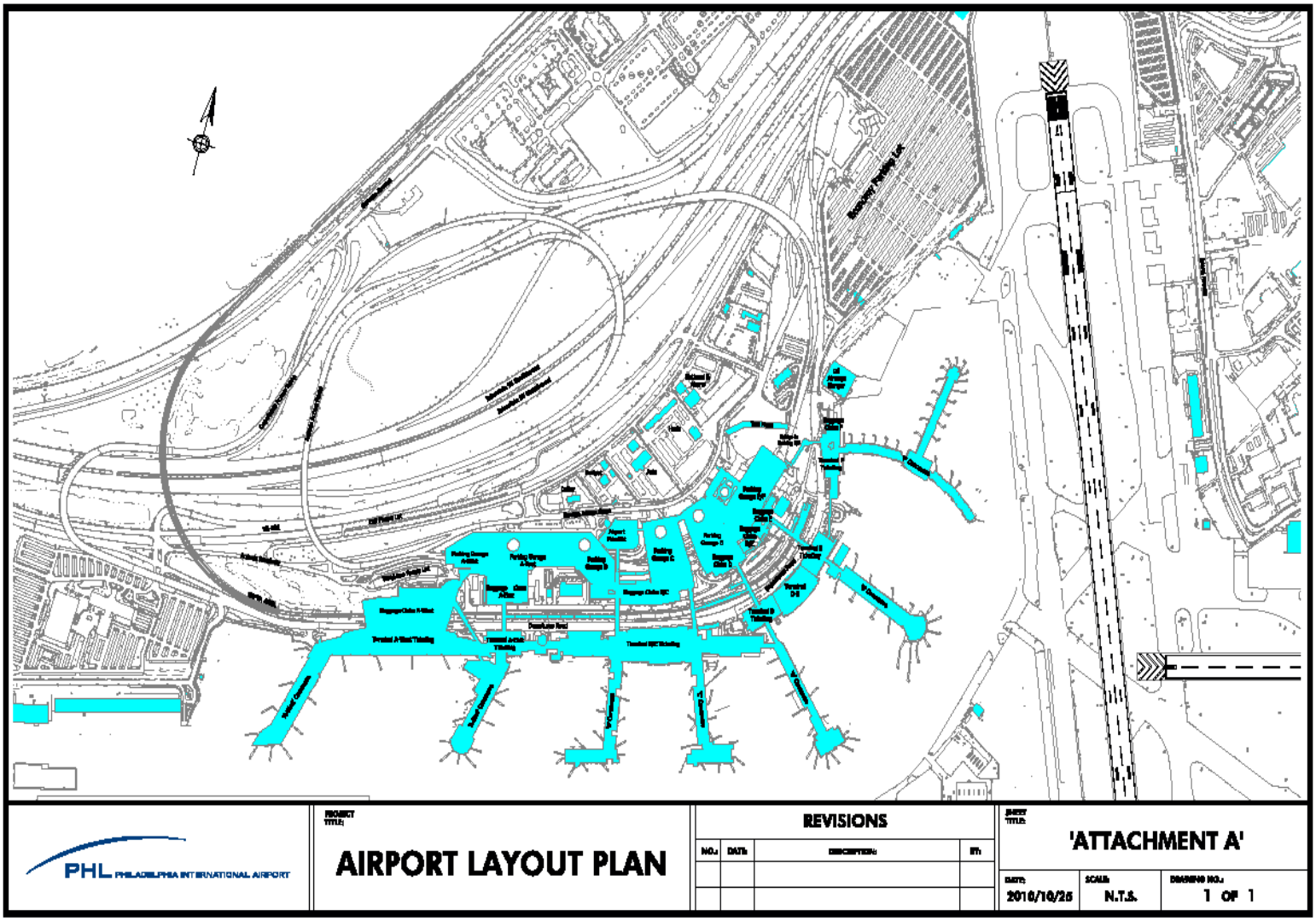
.

6.5.3 **Interpretation; Order of Precedence:** In the event of conflict, inconsistency or variance between the terms of this Reservation of Rights and any term, condition or provision contained in any notice of contract opportunity, the terms of this Reservation of Rights shall govern.

6.5.4 **Headings:** The headings used in this Reservation of Rights do not in any way define, limit, describe or amplify the provisions of this Reservation of

Rights or the scope or intent of the provisions, and are not part of this Reservation of Rights.

ATTACHMENT A



ATTACHMENT B

City of Philadelphia Aviation Division Passenger Traffic Analysis

Total Passengers

Calendar Year	Total Passenger Traffic
2005	31,495,385
2006	31,768,272
2007	32,211,439
2008	31,834,725
2009	30,669,564
2010	30,775,961

Enplanements

Calendar Year	A-East	A-West	B	C	D	E	F	Total Enplanements
2005	1,243,395	1,707,479	3,009,750	2,972,786	2,024,072	2,408,490	2,303,608	15,669,580
2006	1,184,929	1,846,105	2,576,463	2,416,074	2,351,191	1,943,667	3,450,695	15,769,124
2007	1,343,159	1,798,545	2,629,233	2,699,958	2,475,085	2,080,143	3,012,060	16,038,183
2008	1,919,530	1,919,710	2,162,044	3,668,969	2,286,163	1,496,129	2,385,971	15,838,516
2009	1,772,678	1,954,652	2,016,342	3,529,646	2,038,893	1,474,865	2,488,926	15,276,002
2010	1,446,959	1,879,245	2,466,493	3,255,918	1,982,064	1,871,582	2,445,914	15,348,175
	8,910,650	11,105,736	14,860,325	18,543,351	13,157,468	11,274,876	16,087,174	93,939,580

Deplanements

Calendar Year	A-East	A-West	B	C	D	E	F	Deplanements
2005	1,243,087	1,664,164	3,172,599	2,984,969	2,056,575	2,441,333	2,263,078	15,825,805
2006	1,157,459	1,848,335	2,706,495	2,411,150	2,452,481	2,037,822	3,385,406	15,999,148
2007	1,384,259	1,772,476	2,676,285	2,698,011	2,547,212	2,148,178	2,946,835	16,173,256
2008	1,955,557	1,858,086	2,150,616	3,692,973	2,391,165	1,578,509	2,369,303	15,996,209
2009	1,824,560	1,887,827	1,985,106	3,519,093	2,134,712	1,576,390	2,465,874	15,393,562
2010	1,522,475	1,837,717	2,444,469	3,224,981	2,008,565	1,981,355	2,408,224	15,427,786
	9,087,397	10,868,605	15,135,570	18,531,177	13,590,710	11,763,587	15,838,720	94,815,766

ATTACHMENT C

INSTRUCTIONS, FORMS AND CONTRACT PROVISIONS RELATING TO PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISES IN CITY AIRPORT CONCESSIONS CONTRACTS

1. **Policy**. This invitation and proposal is issued under the Regulations of the U.S. Department of Transportation ("U.S. DOT"), 49 C.F.R. Parts 23 and 26, as amended. It is the policy of the City of Philadelphia and U.S. DOT that airport concession disadvantaged business enterprises ("ACDBE(s)"), as defined in 49 CFR Part 23, as amended, shall have a fair opportunity to participate in the performance of airport concessions contracts. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23 and 26, which concerns participation by airport concessionaire disadvantaged business enterprises (ACDBEs) in the concession activities of airports receiving Federal financial assistance from the Federal Aviation Administration, which funds were authorized and issued under Title 49 of the United States Code since 1988. All forms, information and documentation submitted are subject to the penalties of 18 U.S.C.S. 1001 relating to false statements and 18 Pa.CS.A 4904 relating to unsworn falsification to authorities.

2. **49 CFR Part 23 Nondiscrimination and Assurances**. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Proposer 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 successful proposer agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

3. **ACDBE Participation**. There is no numeric ACDBE Goal established for this Request for Proposal ("RFP"), but Proposers are required to use good faith efforts to include ACDBE participation in this proposal. Proposers are required to submit the following with their proposal:

a. A Schedule For Participation demonstrating any ACDBE participation commitments that Proposer has achieved; or

b. A Request For Good Faith Efforts Review, demonstrating that Proposer has made good faith efforts to include ACDBEs in its proposal.

The Schedule For Participation or, when necessary, a Request For Good Faith Efforts Review, become part of the Proposer's proposal and is an element of responsiveness to the proposal. **The failure to submit either a Schedule For Participation or a Request For Good Faith Efforts Review shall result in rejection of the proposal.** The City reserves the right to permit the proposer to submit a Request For Good Faith Efforts Review at any time prior to award of a contract in order to evaluate whether the proposer made good faith efforts.

4. **Counting ACDBE Participation**. The Schedule For Participation (if any) must contain the name and address of each ACDBE, a detailed description of the work (including a supply effort) to be performed by each named ACDBE and the percentage and dollar amount of participation. An entity wishing to participate as a joint venture ACDBE shall, in addition to the Schedule For Participation, complete and submit all required joint venture information forms available at the City of Philadelphia DBE Program Office. Listing of an ACDBE on the Schedule For Participation or a Schedule For Partial Participation accompanying a Request For Good Faith Efforts Review, constitutes a representation by the Proposer that the ACDBE is certified under the Pennsylvania Uniform Certification Program (PaUCP), as indicated below, and capable of completing the subcontract with its own work force and that the Proposer has made a binding commitment, in writing, with such firm prior to submission of the proposal. A copy of the binding commitment must be submitted with the Proposal. The written commitment must describe the work to be formed by the ACDBE, which must be a commercially useful function as required by 49 CFR Parts 23 and 26. Such a listing is also a representation that if the Proposer is selected, the Selected Proposer will subcontract with the listed ACDBE(s) for the work described and dollar/percentage amount(s) set forth in the proposal submission and produce a copy of the executed subcontract within thirty (30) days of the execution of a concession agreement between City and the Proposer or submit a request for Good Faith Efforts Review if the Proposer is unable to execute a subcontract with the ACDBE.

a. Any ACDBE listed on the Schedule For Participation or the Schedule For Partial Participation accompanying a Request For Good Efforts Review **must be certified by the PaUCP before the time of proposal submission**. Proposers may list on the Schedule For Participation **only** firms that are currently certified as an ACDBE for the work described in their written commitment. PaUCP maintains a directory of certified ACDBEs classified according to NAIC codes. This Directory is accessible online at www.paucp.com. Proposer shall not receive credit towards ACDBE participation or good faith efforts by using other certification directories (e.g., OEO Directory of Certified Firms, Pennsylvania Department of General Services BMWBO Directory).

b. Pursuant to 49 CFR Part 23.55, if a firm is determined to be an eligible ACDBE, the dollar value of the contract awarded to the ACDBE is counted toward ACDBE participation as follows:

i. **Commercially Useful Function:** Only expenditures to the ACDBE that relate to a commercially useful function performed by the ACDBE under the ACDBE's contract with the Proposer are counted toward ACDBE participation. An ACDBE is considered to perform a commercially useful function in accordance with 49 CFR Part 23.55 when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved.

ii. **Joint Ventures:** Only that portion of the total dollar value of a contract with a joint venture equal to the percentage of ACDBE ownership and control in the joint venture is counted toward ACDBE participation. The ACDBE joint venture partner must be responsible for a clearly defined portion of the work and must share in the risks and profits of the joint venture commensurate with its ownership interest in the joint venture as required by 49 CFR Part 23 and the FAA's Joint Venture Guidance (July 2008).

iii. **Management Contract:** The total dollar value an ACDBE earns under a management contract may be counted toward ACDBE participation.

iv: **Subconcessionaire or Subcontractor:** When an ACDBE performs under a subconcessionaire agreement or a subcontract with a non-ACDBE, only that portion of the monies earned by the ACDBE under its subagreement may be counted toward ACDBE participation.

v. **Bona Fide Services:** The entire amount of fees or commissions charged by an ACDBE for Bona Fide services may be counted toward ACDBE participation, as long as the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.

vi. **Goods**:

(1) **Manufacturers and Regular Dealers:** One hundred percent (100%) of the expenditures for goods required under the contract and obtained from an ACDBE manufacturer, as defined in 49 CFR 26.55(e)(1)(ii), or purchased or leased from an ACDBE regular dealer, as defined in 49 CFR 26.55(e)(2)(ii).

(2) **Other goods suppliers:** For an ACDBE that is neither a manufacturer or a regular dealer, count toward ACDBE participation the entire amount of fees or commissions for assistance in the procurement of goods for the concession and the entire amount of fees or transportation charges for the delivery of goods to the concession, as long as such fees, commissions or charges are reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the goods themselves.

c. **Build-Out Costs Are Not Counted:** Pursuant to 49 CFR 23.55 (k), costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the ‘‘build-out’’) are not counted toward ACDBE participation.

5. Good Faith Efforts Review and Proposer Appeal.

a. If the Proposer does not make any ACDBE participation commitments, it must file a Request For Good Faith Efforts Review as indicated above, documenting its good faith efforts to include ACDBE participation commitments in the proposal. Good faith efforts are those efforts undertaken by Proposer, which, by their scope, intensity and appropriateness, can reasonably be expected to achieve ACDBE participation. Factors to be considered shall include, but not be limited to, soliciting interest of ACDBEs at pre-proposal meetings; negotiating in good faith with interested ACDBEs; providing interested ACDBEs with adequate information about the plans, specifications, and requirements of the contract in an expeditious manner; and, selecting portions of work or material

needs consistent with the available ACDBE subcontractors and suppliers.

b. If the City determines that the Proposer failed to make good faith efforts the Proposer will be notified and may file a written appeal for administrative reconsideration to the City within forty-eight (48) hours of the date of notification; Proposer is not permitted to submit new or additional documentation of good faith efforts in connection with its appeal. Reconsideration will be made by a City official who did not participate in the original determination that Proposer failed to make good faith efforts. The result of the reconsideration process is final and is not administratively appealable to the U.S. Department of Transportation.

6. **Post Award Obligation**. All contractors and subcontractors are hereby advised that their compliance with the requirements for participation by ACDBEs is material to the contract. Failure to carry out the requirements herein constitutes a substantial breach of contract and, after notification to the U.S. DOT, may result in termination of the contract, suspension, being barred from proposing on and/or participating in City and U.S. DOT funded contracts for up to three (3) years, and/or any other remedy available in law or equity.

a. The successful Proposer is required to make good faith efforts to replace an ACDBE subcontractor that is unable to perform successfully with another ACDBE. All such substitutions require the prior written approval of the City. Similarly, in the event the successful Proposer's contract is increased by change order (sometimes referred to as a modification) and/or amendment, the successful Proposer is required to make good faith efforts to include ACDBE participation on such change order or amendment.

b. The successful Proposer is required to make prompt payment to each subcontractor for satisfactory performance of its contract. Any delay or postponement of payment may occur only for good cause following written approval of the Procurement Department and the Division of Aviation. This provision applies to both ACDBE and non-ACDBE subcontractors. In the event that successful Proposer is found to be in noncompliance with this directive, the City may exercise appropriate legal remedies which may include suspension and debarment of Proposer. Any issue or dispute, which may affect the prompt payment of subcontractors, should be brought to the attention of the Airport contract manager, as well as to the attention of the City of Philadelphia DBE Program Liaison Officer in situations involving ACDBE subcontractors, before a state of noncompliance is reached.

7. **Post Award Compliance Monitoring**. The City reserves the right to conduct post-award compliance reviews to ensure that contractors are in compliance with the contract requirements for ACDBE participation. The successful Proposer agrees to cooperate with the City in its compliance monitoring efforts and to submit, within the time limits prescribed by the City, all documentation that may be requested by the City, including, but not limited to, copies of subcontracts with the ACDBEs listed in the proposal, purchase orders, monthly ACDBE reports, canceled checks, etc. Unreasonable failure or refusal to furnish information or to cooperate in any compliance review shall constitute a substantial breach of contract.

ATTACHMENT C

SCHEDULE FOR PARTICIPATION BY
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES (ACDBEs)

Proposal Number: Name of Proposer _____

ACDBE		Detailed Description of Work or Supply Effort or Joint Venture responsibilities	ACDBE Participation	
			Dollar Amount $ (or ownership % for joint ventures)	Type of Contract
Name				
Address				
Contact Person	Phone			
Name				
Address				
Contact Person	Phone			

PLEASE NOTE:

1. If the Proposer is an ACDBE, it is still required to complete this form and must describe, in detail, the work that it will perform, with its own workforce and the dollar amount of the fees, charges or commissions for the work or goods (if a

manufacturer or regular dealer) and the type of contract or a description of joint venture responsibilities and the percentage of joint venture ownership held by the ACDBE.

2. A binding commitment must have been achieved with the ACDBE for the detailed work and dollar amount of participation as reflected by the ACDBE's quotation listed on this Schedule for Participation.
3. ACDBEs listed above must be certified by the PaUCP prior to proposal opening in order to count towards ACDBE participation.

ATTACHMENT C

REQUEST FOR GOOD FAITH EFFORTS REVIEW

Name of Proposer:_____ Proposal Number:_____

Date:_____

I,_____, have not been able to achieve participation from any Airport Concession Disadvantaged Business Enterprises (ACDBEs). I represent, under penalty of law and as evidenced by the attached documentation, that I have made good faith efforts prior to proposal opening to achieve ACDBE participation in accordance with the criteria set forth in 49 C.F.R. Section 26.53, but have been unable to achieve such participation for the following reasons*:

*You may attach supplemental pages and documentation if necessary.

ATTACHMENT C

REQUEST FOR GOOD FAITH EFFORTS REVIEW
SCHEDULE FOR Partial PARTICIPATION
BY
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES (ACDBE)

Proposal Number Name of Proposer _____

ACDBE		Detailed Description of Work or Supply Effort or Joint Venture responsibilities	ACDBE Participation	
			Dollar Amount $ (or ownership % for joint ventures	Type of Contract
Name				
Address				
Contact Person	Phone			
Name				
Address				
Contact Person	Phone			

PLEASE NOTE:

1. If the Proposer is an ACDBE, it is still required to complete this form and must describe, in detail, the work that it will perform, with its own workforce and the dollar amount of the fees, charges or commissions for the work or goods (if a

manufacturer or regular dealer) and the type of contract or a description of joint venture responsibilities and the percentage of joint venture ownership held by the ACDBE.

2. A binding commitment must have been achieved with the ACDBE for the detailed work and dollar amount of participation as reflected by the ACDBE's quotation (and the percentage of ownership for ACDBE joint venture owners) listed on this Schedule for Participation.
3. ACDBEs listed above must be certified by the PaUCP prior to proposal opening in order to count towards ACDBE participation.

ATTACHMENT C

Name of Proposer:_____ Proposal Number:_____

A. CONTRACTOR'S ADVERTISEMENTS FOR PARTICIPATION

Have you advertised in general circulation media, trade association publications and minority or female focused media concerning subcontracting opportunities in general? If so attach copies of all such advertisements published by you within the past six months. If copies are not available, explain why and state the text of the advertisement(s) and the publications where they were printed.

B. NOTIFICATION TO ACDBEs

(1) Did you contact in writing any certified Airport Concession Disadvantaged Business Enterprise(s) to solicit their participation in this contract? If so, attach dated copies of all such solicitations.

(2) Identify by name, address, date and telephone number each certified Airport Concession Disadvantaged Business Enterprise that you

contacted orally, and name the person with whom you spoke. If your company maintains a telephone log, please attach relevant entries.

ATTACHMENT C

Name of Proposer: _____ Proposal Number:_____

C. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES UNAVAILABLE TO PARTICIPATE IN CONTRACT

Of those Airport Concession Disadvantaged Business Enterprises listed in answer to Subpart B above, identify those which were interested in the contract but which were unavailable to work on this contract or were unable to prepare a quote. State the reasons for the unavailability of each ACDBE. The attached certification of unavailability form should be completed by the ACDBE and submitted for each unavailable firm whenever possible.

D. INFORMATION AND ASSISTANCE PROVIDED TO AIRPORT CONCESSION DISADVANTAGED BUSINESSES

Of those Airport Concession Disadvantaged Business Enterprises listed in answer to Subpart B above, identify those which you provided with plans, specifications and requirements of the contract. Detail all assistance you provide to interested certified ACDBEs and all efforts at negotiation to specific sub-proposals below.

ATTACHMENT C

I HEREBY VERIFY THAT THE FOREGOING STATEMENTS ARE TRUE. THIS VERIFICATION IS MADE SUBJECT TO THE PENALTIES SET FORTH IN 18 Pa.C.S.A. 4904 RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES, AND 18 U.S.C.S. 1001, RELATING TO FALSE STATEMENTS. I UNDERSTAND THAT THIS REQUEST FOR GOOD FAITH EFFORTS REVIEW WILL BE CONSIDERED AND APPROVED OR DISAPPROVED SOLELY ON THE BASIS OF THE INFORMATION HEREIN PROVIDED.

_____

Name (Signature)

_____

Title:

ATTACHMENT C

Name of Proposer:_____
Proposal Number:_____

CERTIFICATION OF UNAVAILABILITY OF AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES

I, _____
do hereby certify that I am a certified Airport Concession Disadvantaged Enterprise ("ACDBE") under the PaUCP and I was offered an opportunity to particpate in the above referenced proposal

for_____
(Describe Work or Supply Effort Solicited)

by _____
(Name of Prime Proposer's Representative Making Solicitation)

on
_____
(Give Date of Solicitation)

but was unavailable to participate/unable to prepare a quote (strike inappropriate term) for the following reasons:

_____
Name of ACDBE

ATTACHMENT C

_____

Signature of Principal of ACDBE

_____

Title

_____

Date

ATTACHMENT D

Self Service Luggage Cart Rental RFP

Insurance.

A. Unless otherwise approved by the City's Risk Management Division in writing, Concessionaire shall, at its sole cost and expense, procure and maintain in full force and effect, during the term and any extension or renewal thereof, the types and minimum limits of insurance specified under the Agreement, or such greater amounts as the City shall, from time to time require:

(1) Workers' Compensation and Employers' Liability.

(a) Workers' Compensation: Statutory Limits

(b) Employers' Liability: $500,000 Each Accident - Bodily Injury by Accident; $500,000 Each Employee - Bodily Injury by Disease; and $500,000 Policy Limit - Bodily Injury by Disease.

(c) Other states' insurance including Pennsylvania.

(2) General Liability Insurance.

(a) Limit of Liability: $1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; $1,000,000 advertising injury; $2,000,000 general aggregate and $2,000,000 aggregate for products and completed operations.

(b) Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations).

(3) Automobile Liability Insurance.

(a) Limit of Liability: $1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.

(b) Coverage: Owned, non-owned, and hired vehicles.

(4) Umbrella Liability Insurance with limits totaling $5,000,000 per occurrence when combined with insurance required under (1) Employer's Liability, (2)General Liability and (3)Automobile Liability above.

(5) Property Insurance.
All risk property insurance covering all all improvements, betterments, equipment, trade fixtures, merchandise, business personal property and any other property in Concessionaire's care, custody and control in the amount equal to the full replacement value of the property with no penalty for coinsurance, including coverage during any construction or renovation period.

B. With respect to the insurance listed above the following shall apply:

(1) All of the foregoing policies shall be provided on an "occurrence" basis and not a "claims-made" basis.

(2) The City of Philadelphia, its officers, employee and agents, shall be named as additional insureds on all liability insurance policies required hereunder except Worker Compensation and Employers' Liability and Property. The City of Philadelphia shall also be named as loss payee on the Property Insurance. All such policies shall include an endorsement stating that the coverage afforded these parties as additional insureds will be primary to any other coverage available to them.

(3) Certificates of insurance evidencing the required coverages shall be submitted by Concessionaire to the Divison of Aviation (Philadelphia International Airport, Terminal "E", Philadelphia, Pennsylvania, 19153, Attention: Airport Properties Manager), and the City's Risk Manager (1515 Arch Street, 14th Floor, Philadelphia, Pennsylvania 19102-1595), at least ten

(10) days before commencement of the Term or the Renewal Term. Concessionaire's failure to furnish certificates of insurance as required herein shall be considered as a default with a cure period of five (5) days after receipt of written notice thereof. Thereafter, and without further notice to Concessionaire, City may exercise any and all remedies set forth in this Agreement and at law or equity.

(4) Concessionaire shall furnish copies of the original policies of all insurance required under the Agreement at any time within ten (10) days after written request by City.

(5) All insurance policies shall provide for at least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, canceled or not-renewed. At least ten (10) days prior to the expiration of each policy . Concessionaire shall deliver to City a certificate of insuarnce or certificates of insurance evidencing a replacement policy to become effective immediately upon the termination of the previous policy.

(6) From time to time during the Term of the Agreement and in any event not more frequently then every year, the City may adjust the amounts, types and deductibles of insurance required to reflect changed circumstances affecting the insurance requirement.

(7) If Concessionaire fails to cause such insurance to be maintained, City shall not be limited in the proof of any damages which City may claim against Concessionaire or any other person or entity to the amount of the insurance premium or premiums not paid or incurred and which would have been payable upon such insurance, but City shall also be entitled to recover as damages, expenses of suit and costs, including without limitation, reasonable cancellation fees, suffered or incurred during any period when Concessionaire shall have failed or neglected to provide insurance as

required herein.

(8) The insurance requirements set forth herein shall in no way be intended to modify, limit or reduce the indemnifications made in the Agreement by Concessionaire to City or to limit Concessionaire's liabiity under this Agreement to the limts of the policies of insurance required to be maintained by Concessionaire hereunder.

C. Concessionaire shall not do or suffer to be done, any matter or thing whereby, or in consequence whereof, the policy or policies of insurance shall become voided or suspended, or which increase the risk or hazard of fire in or on the Airport unless, in the latter case only, such increased risk or hazard is adequately insured in City's sole discretion and the use creating such increased risk or hazard is permitted hereunder.

D. Concessionaire shall not permit separate insurance to be carried which relates to the Airport and is concurrent in form or contributing, in the event of loss, with that required to be maintained under this Agreement, or increase or permit to increase the amounts of any then existing insurance relating to the Airport by securing an additional policy or additional policies, without including the applicable parties required in this Section as insured parties or additional insured. Concessionaire immediately shall notify City whenever such separate insurance is obtained and deliver to the City certificates evidencing such policies and, upon request, certified copies or duplicate originals of the same (as required in this Section and in accordance with the procedures set forth herein).

ATTACHMENT E

City of Philadelphia Tax Status and Clearance Statement

For Applicants

THIS IS A CONFIDENTIAL TAX DOCUMENT NOT FOR PUBLIC DISCLOSURE

This form must be completed and returned with Applicant's proposal in order for Applicant to be eligible for award of a contract with the City. Failure to return this form will disqualify Applicant's proposal from further consideration by the Contracting Department. The City of Philadelphia, acting through its Department of Revenue and the Department of Licenses and Inspections, will utilize the information contained in the completed form to review the tax and Philadelphia Code compliance records of the person and/or entity identified below as part of the proposal evaluation process and will report their findings to the Contracting Department and the City's authorized investigatory agents. By signing the certification statement below as Applicant or an authorized representative of Applicant, you represent that Applicant is current and in compliance with, or has made or intends to make satisfactory arrangements with the City to come into compliance with the tax and regulatory provisions of The Philadelphia Code.

Applicant Name	
Contact Name and Title	
Street Address	
City, State, Zip Code	
Phone Number	
Federal Employers Identification Number or Social Security Number:	
Philadelphia Business Tax Account Number (if none, state "none") 1	
Business Privilege License Number (if none, state "none") 2	

I certify that the Applicant named above has all required licenses and permits and is current or has made satisfactory arrangements with the City to become current with respect to the payment of City taxes or other indebtedness owed to the City (including, but not limited to, taxes collected by the City on behalf of

the School District of Philadelphia), and is not in violation, or has made satisfactory arrangements to cure any violation, of other regulatory provisions applicable to Applicant contained in The Philadelphia Code.

Authorized Signature Date

Print Name and Title [1] To apply for a City of Philadelphia Business Tax Account Number, please go to http://business.phila.gov/Pages/Home.aspx and look for how to register your business.

[2] To apply for a Business Privilege License, please go to http://business.phila.gov/Pages/Home.aspx and click on"Obtain a Business Privilege License" or "Register Your Business."