

AIRPORT FACILITIES LEASE AND CONCESSION AGREEMENT CORPUS CHRISTI INTERNATIONAL AIRPORT

This Lease and Concession Agreement is made by and between the City of Corpus Christi, Texas a home-rule municipal corporation ("City"), and Tailwind CRP, LLC a Texas Limited Liability Company with a principal address of 408 Landmark Drive, Wilmington, North Carolina, 28412 ("Lessee").

RECITALS

The parties recite and declare that:

A. The City is the owner and operator of the Corpus Christi International Airport located at 1000 International Drive, Corpus Christi, Nueces County, Texas;

B. The provision of high quality and reasonably priced food and beverage services at the Airport are desirable for the proper accommodation of passengers traveling through the Airport, as well as employees and visitors;

C. The City desires to make such services available at the Airport, and Lessee is qualified and able to perform such services under the terms of this Lease and Concession Agreement.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein, the City grants Lessee the rights set forth herein, subject to the terms and conditions set forth below, with which Lessee agrees to comply.

I. DEFINITIONS

As used in this Lease and Concession Agreement, defined words and terms shall have the following meanings:

1.1 "Airport" is the Corpus Christi International Airport located in Corpus Christi, Texas.

1.2 "Director of Aviation" means the Director of the Airport as may be designated by the City of Corpus Christi, or his or her designee.

1.3 "Effective Date" means the date this Agreement is last signed by the parties hereto.

1.4 "Terminal" is the Passenger Terminal Building at the Airport, as it now exists or may hereafter be modified or expanded.

1.5 "Lease" or "Lease Agreement" is this Airport Facilities Lease and Concession Agreement.

1.6 "Liquor License" shall mean a license to sell alcoholic beverages issued by the Texas Alcohol and Beverage Commission.

1.7 "Premises" refers to the space in the Terminal which is leased to Lessee as further

described and depicted in Exhibits "A" & "B" to this Lease Agreement.

1.8 "Gross Revenue" is the total amount of the actual sales price, whether wholly or partly for cash or on credit, of all sales of food, alcoholic and non-alcoholic beverages, merchandise and services and all other receipts of all business conducted in whole or part on or from the Airport; including all orders taken in or from the Premises, although said orders may be filled elsewhere; catering of aircraft at the Airport, regardless of where the food, beverages or merchandise are prepared or obtained; and sales by any authorized sublessee, sub-concessionaire or subcontractor in or from the Premises, and all without credit to Lessee for uncollected or uncollectible credit accounts. Each sale upon credit shall be treated as a sale for the full price in the month during which such sale shall be made, irrespective of the time when Lessee shall receive payment, whether full or partial, from its customer. There shall be excluded from gross revenue:

- 1.8.1 Any sums collected and paid out for any sales or other tax based on the sale of food, beverages and/or merchandise and required by law, whether now or hereafter in force, to be paid by Lessee or collected from its customers, to the extent that such taxes have been added to and included in the gross sales price, provided however, that any rentals due under this Lease shall not be considered a tax and shall not be added to the approved price of any items sold or to any customer's bill for the sale of such items;
- 1.8.2 Sales for which the food or beverages are later returned, to the extent of any refund or credit is given;
- 1.8.3 The 20% discount taken off the pre-sales-tax portion of the food, beverage or merchandise bill from a retail restaurant, coffee shop, or other business inside the CCIA Airport terminal or gate area for Airport employees, City employees, Airport tenants, Airline employees and vendors who work at the Airport.

II. USE OF AIRPORT FACILITIES

2.1 Operational Rights. Subject to the terms and conditions of this Lease Agreement, Lessee is granted the non-exclusive right to conduct and operate a food, beverage, and other merchandise concession on the Premises at the Airport as identified in **Exhibits "A" and "B"** attached hereto and incorporated herein by reference.

- 2.1.1 Lessee shall have the right to sell to the public in the Terminal and gate areas, and to cater elsewhere in or on the Airport as provided in this Lease Agreement.
- 2.1.2 Lessee shall not sell food, beverage, or other merchandise on the Leased Premises at prices above those prices advertised in the menus located at the restaurants, bars, coffee shops, or cafes on the Leased Premises. Lessee shall not charge prices for food, beverage, or other merchandise on the Leased Premises that are 15% or higher than "street prices" in the City of Corpus Christi, Texas. "Street prices" are defined as those prices charged by restaurants, bars, coffee shops, convenience stores, grocery stores, or other retail outlets in Corpus Christi, Texas for similar food, beverage, or other merchandise sold by Lessee at the Airport.

- 2.1.3 Lessee's Menus should address all parts of the day including breakfast, lunch, and dinner.
- 2.1.4 Most food and beverages offered by Lessee on the Leased Premises should be available "to go" in convenient, environmentally friendly packaging.
- 2.1.5 "Grab and Go" selections on the Premises should include pre-packaged sandwiches, salads, and wraps with both hot and cold selections.
- 2.1.6 Menu offerings shall be of high quality and offer good value to the consumers.
- 2.1.7 Portion sizes should be reflective of price and consistent with similar non-Airport retail locations in the City.
- 2.1.8 Menus should include selections specifically oriented to and priced for children and senior citizens.
- 2.1.9 Menus should include items to address dietary restrictions, which may include but are not limited to "gluten-free", "vegetarian" and "vegan" options.
- 2.1.10 Lessee must set up and operate a "free unmanned coffee stand" for the secure side or gate side of the Airport Terminal. This stand should be open on Monday starting when the TSA checkpoint opens and lasts at least until 9:00 a.m.
- 2.1.11 Lessee shall provide live music during mutually agreed times and deduct those performance fees on the following months invoice (up to \$500 per performance). The exact location for the live music performances will be determined at a later date. The location for the live music and the music genre must be pre-approved by the Aviation Director or designee. This can be halted at any time if mutually agreed by the lessee and airport director.
- 2.1.12 Lessee shall provide free Mimosa drinks every Saturday and Sunday during the term of this Lease Agreement, for two hours every Saturday and Sunday. There shall be a one-free Mimosa drink limit per flying customer. This can be halted at any time if mutually agreed by the lessee and airport director.
- 2.1.13 Lessee will be permitted to use other designated locations, including the second-floor Visitor Tiki Booth for special pop-up events and during the Airport Terminal construction project. These locations must be pre-approved by the Aviation Director.

2.2 Terminal Building Space and Equipment. The City shall deliver the Premises, fixtures, equipment, and furnishings specified herein to Lessee as they exist on the Effective Date of this Lease Agreement. Lessee shall accept the same "**AS IS, WHERE IS, WITH ALL FAULTS.**" The City will have no obligation to alter or improve the same, except as expressly provided herein. In consideration of the monthly rental payment to be paid by Lessee and other terms and covenants set out in this Lease Agreement, the City grants Lessee exclusive use of the color-coded areas identified and depicted in **Exhibit "B"** attached hereto and incorporated by reference consisting of approximately 6,918 square feet and related fixtures and equipment (the "Premises").

2.3 Alcoholic Beverages.

2.1.2 Lessee shall have the right to sell beer, wine, and other alcoholic beverages (collectively "Alcoholic Beverages") in the Terminal with the appropriate license issued by TABC at the prices set forth in **Exhibit C**, as may be amended from time to time by the parties in accordance with paragraph 2.1.2 above.

2.1.3 Lessee shall take all reasonable steps to ensure that Alcoholic Beverages are sold, dispensed, and consumed only in the areas approved by the TABC-issued license. Lessee agrees to abide by all applicable laws, rules, and regulations existing or hereinafter enacted pertaining to the selling of Alcoholic Beverages including the laws, regulations, and license requirements of the Texas Alcoholic Beverage Commission ("TABC").

2.4 No Exclusive Right. Nothing in this Lease shall be construed as granting Lessee any exclusive right to operate food, non-alcoholic beverage, or alcohol concessions at the Airport or in the Terminal. The City retains the right to enter into leases and/or agreements with others for the provision of food, non-alcoholic beverages, Alcoholic Beverages, or vending services in areas other than those set aside herein for Lessee's operations.

2.5 Right of Ingress and Egress. Subject to the requirements of Section 3.13 below and the Airport's security plan as it now exists or may hereafter be amended, Lessee shall have at all times the full and unrestricted right of ingress to and egress from the Premises and facilities referred to herein for Lessee, its employees, contractors, agents, customers, guests and other invitees.

2.6 Public Address and Paging System. Lessee and others similarly authorized shall have the right to use the public address and paging system in the Terminal for paging, and similar purposes, at no charge subject to reasonable policies established by the Director of Aviation.

2.7 Parking. In common with all other Airport tenants, Lessee's employees shall be entitled to use Airport employee vehicle parking areas which are designated as such from time to time, during times and on days when they are actively employed on the Premises, subject to such rules and policies as may be adopted by the Director of Aviation. If the City in its discretion establishes reserved parking spaces or areas for use by managers of Terminal tenants, then Lessee shall be assigned one (1) such parking space for its use.

2.8 Limitation on Uses. Lessee's use of the Premises and the Airport Terminal authorized and granted in this Lease Agreement shall be limited to providing services at the Airport expressly described herein, including a food and beverage service, gift shop, vending machines, and activities reasonably necessary to support such activities.

III. OBLIGATIONS OF LESSEE

3.1 Rentals and Charges. Lessee agrees to pay City a percentage of gross revenue for the use of the Premises identified in **Exhibit A and B**, and for services and privileges granted under this Lease Agreement, as follows:

- 3.1.1 Lessee shall be responsible for the remittance of a percentage of gross revenue derived from operations on the Leased Premises every month during the term of this Lease Agreement, or any extensions thereof, at the rates set out in the table below:

Percentage of Monthly Gross Sales Due	
First \$100,000	20%
\$100,001 - \$200,000	12%
\$200,001 - \$300,000	10%
\$300,001 +	7%

- 3.1.2 Minimum Monthly Rent – In any month that Lessee generates less than \$100,000 in gross sales for the month, then Lessee shall pay City \$20,000 minimum rent for that month.
- 3.1.3 Utilities. Lessee shall pay the City each calendar month during the term of this Lease Agreement, and any extensions of this Lease Agreement, for Lessee’s use of utilities on the Premises, which are separately metered, including but not limited to water and electricity. For metered utilities, Lessee will be billed by the City at the rate provided to the City, due upon receipt. Lessee shall arrange for and pay the cost of installation and usage of telephone service, internet service and/or Wi-Fi services for the Premises, and any other utilities Lessee desires or requires for the Premises, which are not provided to the Premises as of the date of this Lease.
- 3.1.4 Liquidated Damages. The parties recognize that the Airport operates to serve the public interest, no other food and beverage concession is currently located in the vicinity of the Terminal, and the City has an interest in assuring that food, beverage, and gift shop/merchandise services are available to airline passengers in accordance with the terms of this Lease. Therefore, if Lessee fails to keep one of its restaurants, bars, coffee shops, or other businesses open and operational at the Terminal during the days and times called for in this Lease Agreement during the initial term of this Lease Agreement or any renewal of the Lease Agreement, then Lessee agrees to pay City liquidated damage of \$100/day which will be in addition to any other remedies that City has available to it for Lessee’s breach of the Lease Agreement. The liquidated damage fee will increase to \$200/day for the second day and each additional day that Lessee’s businesses or operations under this Lease Agreement remain closed during the term of this Lease Agreement and any extensions thereof, which will be in addition to any other remedies that City has available to it for Lessee’s breach of the Lease Agreement.
- 3.1.5 City will invoice Lessee for any liquidated damages which accrue under this Lease Agreement and Lessee shall pay the invoice for Liquidated Damages in full within 20 calendar days of the date that City sends the Invoice to Lessee in accordance with the Notice Section of this Lease Agreement. Such liquidated damages shall be considered to be actual damages suffered by the City and not a penalty.

3.1.6 Lessee has 5 Business Days to Appeal Assessment of Liquidated Damages. Lessee may contest the imposition of liquidated damages by filing a written protest with the Airport Advisory Board within five (5) business days of receipt of the invoice for liquidated damages. The protest shall be heard by the Airport Advisory Board at its next regularly scheduled meeting, and payment of the liquidated damages by Lessee shall be stayed pending decision by the Airport Advisory Board. The Airport Advisory Board has the authority to affirm, modify or rescind the liquidated damages assessed by the City. There are no further appeals beyond the Airport Advisory Board. THE LIQUIDATED DAMAGES AUTHORIZED BY THIS SECTION SHALL BE IN ADDITION TO THE OTHER REMEDIES FOR DEFAULT DESCRIBED IN SECTION 6.3 BELOW, ANY OR ALL OF WHICH MAY BE EXERCISED BY THE CITY IN ITS DISCRETION.

3.1.7 If City has paid any sum or has incurred any obligation which Lessee had agreed to pay or reimburse City for, or if the City is required or elects to pay sum(s) or ensure obligation(s) or expense(s) by reason of the failure, neglect or refusal of Lessee to perform any of the conditions or agreements contained in the Lease, or as a result of an act or omission of Lessee contrary to said conditions and agreements, Lessee shall pay the City the sum(s) so paid or the expense(s) so incurred, including all interest, costs, damages and penalties, and the same may be added to any installment of the fees and charges thereafter due hereunder.

3.2 Terms and Conditions of Payment/Late Fees/Interest on Past Due Amounts.

3.2.1 On or before the 15th day of each month (or if that day shall fall on a Saturday, Sunday, or holiday, the following business day), Lessee shall furnish the Director of Aviation, or his designee a statement of Gross Revenues received under Section 3.1 above for the previous month and shall simultaneously pay the City amounts due thereunder in accordance with Section 3.1 of this Agreement. If any such gross revenue statement and/or the gross revenue payment is not furnished and/or made to City by the date due, Lessee shall pay City an additional \$200 per day as a late fee, and not as liquidated damages or penalty. All such payments shall be made by Lessee to City without notice or demand at its offices in the Terminal.

3.2.2 Payments due City for liquidated damages, as described under section 3.1.3 above, shall be paid to the City by the first day of the month and shall be considered "late" if payment is not received by the City by the first day of the month.

3.2.3 If any rent payment, charge, or other fee due under this Lease Agreement remains unpaid more than twenty (20) days beyond the due date, as provided in this Lease Agreement, then the Lessee agrees to pay the City 10% interest (or the highest interest rate allowed under Texas law, whichever is less) every month on the amount past due until the past due amount is paid in full. This subsection shall not impede or interfere with the City's other legal remedies for breach of this Lease Agreement by Lessee.

3.3 Annual Reports, Maintenance of Financial Records, Audits:

- 3.3.1 On or before the 30th day of January in each calendar year during the term of this Lease Agreement or any extensions thereof, the year following the expiration of the initial term, and the year following the end of the renewal term (or if that day shall fall on a Saturday, Sunday or holiday, the following business day), Lessee shall furnish City a statement of Gross Revenue, un-audited expenses and other information on Lessee's operations from the immediately preceding Calendar year on such forms as the Director of Aviation may reasonably require. All information provided by Lessee, other than its statement of gross revenues, which Lessee believes to constitute confidential financial information, shall be clearly and conspicuously designated as such by Lessee, and the City agrees to keep such information confidential to the maximum extent permitted by law and not to release such information to any third party unless ordered to do so by the Texas Attorney General's Office, Open Records Division, or a court of competent jurisdiction. If any third party seeks access to such information, the City agrees to promptly give notice to Lessee.
- 3.3.2 Lessee shall, during the Lease Term, and any extensions thereof, retain and have available on the Premises or at a location made known to City for a period of twenty four (24) consecutive months following the end of each month during the Lease Term, or any extensions thereof, complete and accurate records of all purchases and sales of food and beverages, all expenses and costs of operation, all revenue derived from business conducted on or from the Premises for such month, all original sales records and sales slips or sales checks, cash register tapes and other pertinent original sales records. Lessee shall ensure that records shall easily distinguish between or separately identify alcoholic beverage sales, and sales to customers outside the Terminal.
- 3.3.3 The City shall have the right at any reasonable time, and upon reasonable notice, to examine all records maintained by Lessee under Article III of this Lease Agreement and to have an audit prepared, at City expense, by an independent Certified Public Accountant. Provided, however, that in the event there is a discrepancy in excess of five percent (5%) of Gross Revenues between Lessee's statements, required by Article III of this Lease Agreement, and such independent audit, Lessee shall bear the cost of such audit and Lessee shall reimburse City for any audit expenses paid.
- 3.3.4 Lessee shall prepare a description of its cash handling and sales recording systems and equipment, which shall be submitted to the City or its designee for approval. When so approved, such systems and equipment, including any approved revisions, shall be utilized by Lessee in its operations at the Airport.
- 3.3.5 Lessee shall accurately record each sale on a point-of-sale register system acceptable to the City, which acceptance shall not be unreasonably withheld. Such systems and equipment shall be non-resettable and sufficient to supply an accurate record of all sales, on tape or otherwise. Such register shall have a display visible to the customer.

3.4 Maintenance, Cleaning, and Replacement of Premises and Equipment. Except as expressly provided to the contrary herein, Lessee shall clean and maintain the Premises, the furnishings, fixtures, and equipment in the Leased Premises including but not necessarily limited to the following:

- 3.4.1 Ensuring that trash generated by its operations, within the Premises, shall be disposed of promptly and properly in containers designated by the Director of Aviation, emptying trash containers located on the Premises as required, during regular business hours, and not permitting such trash containers to overflow or to remain so full as to be unusable, and otherwise at the request of the Director of Aviation made to Lessee's manager. Lessee shall empty all trash containers on the Premises when they are 75% full.
- 3.4.2 Lessee shall provide stainless steel trash receptacles in all of the Leased Premises as well as recycling receptacles.
- 3.4.3 Lessee shall make a good faith effort to recycle, but at a minimum shall cause all cardboard waste, plastic waste, glass waste and newspaper waste to be recycled.
- 3.4.4 Cleaning and maintaining the Premises, including but not limited to the flooring, walls, counters, furniture, interior glass, fixtures, and equipment installed therein and thereon, all in good order, condition and repair, in clean condition and appearance at all times, and otherwise at the request of the Director of Aviation or his designee, made to Lessee's manager, and upon termination of this Lease delivering up the Premises to the City in good order, condition and repair, normal wear and tear excluded. Lessee shall also bus and clean tables in the Premises as needed, and vacuum and/or mop as appropriate the floors of the Premises not less than daily.
- 3.4.5 Spot Cleaning- Lessee shall spot clean the Premises once every hour to remove food and beverage trash that accumulates within the footprint of their TABC license which encompasses most of the secured second-floor secured area. There will be an increased volume of trash produced with the new concession venues. Airport staff will continue to clean and monitor the area as well.
- 3.4.6 Establishing an adequate preventative maintenance program for the Premises which shall be subject to periodic review by the Director of Aviation. The program shall include, without limitation, the cleaning of the Premises doors/gates inside and outside, cleaning and repair of all floors, interior walls, ceilings, lighting, décor, and Equipment located on the Premises as identified in **Exhibit B**, and the routine maintenance of all such Equipment. Regardless of Lessee's compliance with its preventive maintenance program, Lessee shall clean such surfaces and equipment on the Premises immediately upon being instructed to do so by the Director of Aviation or by other governmental agencies having authority.
- 3.4.7 Lessee shall provide, maintain, repair and/or replace all equipment, at Lessee's sole expense, necessary for Lessee's operation of its businesses located in the Leased Premises. Lessee shall promptly replace any and all equipment located

in the Leased Premises at such time that the equipment is no longer serviceable. Prior to replacing any equipment on the Leased Premises, Lessee shall notify the City's Aviation Director so that the City may verify that the equipment being purchased by Lessee is adequate for the needs of the business and the Airport.

- 3.4.8 Repairing and maintaining all piping and plumbing from the wall out and within the Premises, assuming responsibility for all material deposited in the plumbing system from the Premises inspecting the grease trap at least monthly and cleaning and maintaining it as necessary. Any damage caused to the Terminal as a result of lack of maintenance as outlined will be billed back to Lessee and due and payable upon demand without the ability to contest.

3.5 Insurance, Performance Bond, and Indemnity.

- 3.5.1 Liability Insurance. Lessee must secure and maintain at Lessee's sole cost and expense during the term of this Agreement and any extensions thereof, insurance coverage with the limits and requirements shown in the Insurance Requirements Exhibit attached hereto and incorporated herein as **Exhibit "C"**. The Certificate of Insurance must be sent to the City's Risk Manager and Director of Aviation and must provide thirty (30) days written notice of cancellation, intent not to renew, or material change of any coverage required herein. Lessee will provide copies of all insurance policies to the City Attorney upon the City Manager's written request.
- 3.5.2 The City and its elected officials, officers, and employees shall be carried as an additional insured on all insurance policies obtained by Lessee and where required by the terms of this Lease Agreement or in the Insurance Requirements exhibit attached hereto and incorporated herein by reference.
- 3.5.3 The amount of all required Insurance policies are not deemed to be a limitation on Lessee's agreement to indemnify and hold harmless City, its elected officials, officers, and employees, and in the event Lessee or City becomes liable in an amount in excess of the amount or amounts of the policies, then Lessee must save City harmless from the whole liability.
- 3.5.4 City shall have no liability for any premiums charged for such coverage, and the inclusion of City as a named insured is not intended to, and shall not, make City a partner or joint venturer with Lessee in its operations at the concession Premises.
- 3.5.5 Future Insurance Requirements. Lessee and City understand and agree that the minimum limits of the insurance herein required may become inadequate, and Lessee agrees that it shall increase such minimum limits upon receipt of notice in writing from City.
- 3.5.6 Adjustment of Claims. Lessee shall provide for the prompt and efficient handling of all claims for bodily injury, property damage, or theft arising out of the activities of Lessee under this Lease Agreement.

- 3.5.7 Conditions of Insurance Default. City may terminate this Agreement in accordance with this agreement if Lessee fails to consistently maintain insurance levels.
- 3.5.8 Performance Bond. Lessee has provided the City with a Performance Bond for Calendar Year 2023 in the amount of \$117,000 which names the City as beneficiary and is conditioned on performance of all of the Lessee's covenants set forth in the Lease Agreement. On or before the expiration date of the current year performance bond, Lessee shall purchase a new performance bond for the following calendar year of this Lease Agreement and for every calendar year during the initial term of this Lease Agreement or any extensions thereof in an amount equal to 85% percent of the previous calendar year's actual Gross Revenue generated from the Leased Premises. Failure to provide this annual performance bond to the City will be considered a material breach of this Lease Agreement.
- 3.5.9 The Performance Bond shall be (i) issued by a Surety or Insurance Company which has been approved by the Department of Treasury to issue performance bonds on Federal Government Contracts, and is licensed to conduct business in the State of Texas; (ii) in the form approved by the City; (iii) payable to City of Corpus Christi, Aviation Department and (iv) delivered to the Office of the Director of Aviation. In the event of cancellation of the Performance Bond, and the Lessee's failure to provide a substitute financial guarantee first approved by the Director within 15 days from the date of the cancellation, then such failure is a substantial default by the Lessee.
- 3.5.10 **INDEMNITY.** Lessee agrees to indemnify, protect, defend, and hold harmless the City, and any successors, assigns, agents, officers, directors, employees, and affiliates of City, (collectively referred to herein as "**indemnitees**") for, from, and against any and all liabilities, damages, claims, suits, losses, causes of action, liens, judgments, and expenses (including court costs, attorneys' fees, and costs of investigation) of any nature, kind or description arising or alleged to arise by reason of injury to or death of any person or damage to or loss of property (1) occurring on, in, or about the Leased Premises, or (2) by reason of any other claim whatsoever of any person or party occasioned or alleged to be occasioned in whole or in part by any act or omission on the part of Lessee or any invitee, licensee, employee, director, officer, servant, Contractor, or subcontractor, or (3) by any breach, violation, or non-performance of any covenant of Lessee under this Agreement (collectively referred to herein as "**liabilities**"), even if such liabilities arise from or are attributed to the concurrent negligence of any indemnitee. The only liabilities with respect to which Lessee's obligation to indemnify the indemnitees does not apply is with respect to liabilities resulting solely from the negligence or willful misconduct of an indemnitee. If any action or proceeding shall be brought by or against any indemnitee in connection with any such liability or claim, Lessee, on notice from City, shall defend such action or proceeding, at Lessee's expense, by or through attorneys reasonably satisfactory to City. The provisions of this paragraph shall apply to all activities of Lessee with

respect to the Leased Premises, building or complex, whether occurring before or after the commencement date of the Agreement Term, or before or after the expiration or termination of this Agreement. Lessee's obligations under this paragraph shall not be limited to damages, compensation, or benefits payable under insurance policies, workers' compensation acts, disability benefit acts, or other employees' benefit acts. The terms of this provision shall survive the termination of this Agreement to the extent any such damage occurs prior to such termination.

3.6 Operation of Lessee's Businesses on the Premises.

3.6.1 Hours of Operation. Lessee hereby covenants and agrees, that with respect to operations authorized under this Lease, Lessee shall be open for business seven (7) days a week including all Holidays, during the following hours:

- Location 1- Secured Side Restaurant and Bar: from TSA checkpoint opening in the morning until the last scheduled departure has boarded (does not include delayed flights).
- Location 2- Concourse Bar: As allowed by TABC permit (generally 12:00 noon until last scheduled departure).
- Location 3 – Coffee shop and Retail Space: from TSA checkpoint opening time in the morning until the last flight has boarded.
- Location 4 – Landside Restaurant: 8:00 a.m. until 6:00 p.m. or later.
- Gate 6 Development: shall be open during mutually agreed times.
- Location 6 – VIP Lounge/Other Concept: shall be open during mutually agreed times.

3.6.2 The City may grant exemptions from the schedule set forth above if the City in its discretion determines that as a result of unanticipated circumstances, such hours of operation are not necessary to serve the traveling public.

3.6.3 Upon written request from Lessee, the Director of Aviation may grant changes to the above-referenced hours of operation upon the Director's determination that said change of hours would be in the best interest of the City. Any changes to hours of operation shall be set out in writing and signed by authorized representatives of both the City and Lessee.

3.6.4 Pricing. Lessee shall charge fair and reasonable prices for each unit or service provided on the Premises. "Reasonable prices" shall be judged primarily by comparison with other restaurants, bars, coffee shops, and concession operations at airports of comparable character under similar conditions, with due consideration for length of seasons, availability and costs of labor and materials, a reasonable rate of return on capital invested, and other factors affecting pricing at the Airport. Lessee shall not sell food, beverage, or other essential merchandise at prices greater than 15% above "street pricing." Street pricing is defined as retail establishments located in the Corpus Christi city limits that are selling similar items as Lessee's operations on the Airport premises.

3.6.5 Initial prices to be charged by Lessee on the Premises shall be equivalent to those menu prices set forth in **Exhibit "C."** Thereafter, Lessee may adjust prices as appropriate to account for changes in wholesale prices or shipping costs. Before raising retail prices on the Leased Premises, Lessee shall notify the Airport Director, or his designee and obtain their written approval to the retail price change.

3.6.6 Quality of Foods and Beverages. All foods and beverages offered for sale by Lessee must be of high quality and comparable to first-class food and beverage facilities of a similar type in the Corpus Christi area. The Director of Aviation shall determine if Lessee is providing the quality of food and beverage service acceptable at the Airport.

3.7 Lessee Agrees to Make Capital Improvements to the Premises. Lessee hereby covenants and agrees to that it will make at least \$1,600,000 of capital improvements to the Leased Premises during the first 18 months of this Lease Agreement.

3.7.1 Lessee must obtain written approval from the City's Aviation Director, or his authorized designee of all plans and specifications related to Lessee's capital improvements to be made to the Leased Premises.

3.7.2 Lessee must also submit all plans and specifications for the capital improvements to the City's Development Services Department for review, approval, and permitting prior to beginning construction of the capital improvements.

3.7.3 Lessee shall pay all costs and expenses related to the capital improvements to be made on the Leased Premises, including all architectural and design fees, engineering fees, construction costs, plan review fees, permit fees, and inspection fees.

3.7.4 Lessee will commence the construction of the capital improvements on the Leased Premises within 6 months of the Effective Date of this Lease Agreement and shall complete construction of the capital improvements within 18 months of the Effective Date of the Lease Agreement.

3.8 Lessee's Other Obligations. Lessee hereby covenants and agrees that with respect to operations authorized under this Lease Agreement, Lessee will provide the highest quality of services and products to the public. Lessee further covenants and agrees that:

3.8.1 Lessee will operate the Premises for the use and benefit of the public and furnish service on a fair, equal, and non-discriminatory basis to all customers; Lessee will offer an employee discount of percent (20%) to all airport tenants, City employees, and airline employees with respect to food and non-alcoholic beverages.

3.8.2 Lessee will provide Airport with \$1,000 in coupons each year, in \$5, \$10, and \$20 denominations that can be awarded to Airport employees or badge holders as awards or recognition. Lessee will donate such coupons to the Aviation

Department each year of this Lease Agreement beginning on October 1st after the Effective Date of this Lease Agreement. These coupons will be deducted from the following months invoice to the airport.

- 3.8.3 Lessee will adhere to all standards, rules, and regulations at the Airport, including all TSA regulations, City ordinance regulations, and the Airport Terminal Operations Manual.
- 3.8.4 Lessee will provide, maintain, train, and always supervise a staff of employees adequate to fulfill Lessee's obligations under this Lease Agreement. Failure to maintain sufficient staff at all food, beverage, and retail locations on the Premises may constitute a material breach of this Agreement.
- 3.8.5 Lessee will provide and install sufficient additional fixtures, furniture, and equipment, if necessary to meet reasonably anticipated public demand for services offered.
- 3.8.6 Lessee will notify the Aviation Director or his designee whenever Lessee makes significant changes in prices to the food, beverages, and retail products sold on the Premises.
- 3.8.7 Lessee will provide hands-free ordering and payment options for food, beverage, and retail service at all locations.
- 3.8.8 Lessee will obtain and maintain all necessary certificates required by the Texas State Board of Health and City Health Department and any and all other permits and licenses required for its operations hereunder.
- 3.8.9 Lessee will display only advertising matter which markets the authorized business of Lessee at the Airport, which must be in good taste and is compatible with Terminal décor and will obtain the prior approval of the Director of Aviation of all advertising material, including the use of brand name products on its packaging, which approval shall not unreasonably be withheld.
- 3.8.10 While performing services on the Premises or while in the Airport Terminal building, Lessee's employees shall be neat, appropriately attired, clean, and courteous; Lessee shall not permit its contractors, agents, or employees to conduct business in a loud, noisy, boisterous, offensive or objectionable manner, to smoke on duty in public view or while preparing food, or to solicit business outside the Premises in any manner whatsoever except through the use of authorized signs.
- 3.8.11 Lessee will timely pay all charges and expenses in connection with the use of the Premises and the rights and privileges herein granted, including without limitation, taxes, permit fees, license fees, and assessments lawfully levied or assessed upon the Premises or structures and improvements situated thereon, and that it will secure all such permits and licenses.

- 3.8.12 Lessee shall not interfere with free access and passage of Airport customers or employees in the Premises or in the Terminal generally; Lessee shall not interfere with the effectiveness of heating or ventilating systems; except as permitted by this Lease Agreement, Lessee shall not install locks on any door or window, a key to which has not been provided to the Director of Aviation; Lessee shall not permit loitering or sleeping on the Premises; nor do any act which would invalidate, suspend or increase the rate of fire, property or liability insurance required by this Lease or carried by the City.
- 3.8.13 Lessee will operate at the Airport only under the name "Tailwind Hospitality, Inc." "Tailwind CRP, LLC" or "Tailwind" or such other name or names approved by the Director of Aviation from time to time.
- 3.8.14 New Government Regulation. In the event City is required to make additional direct expenditures in connection with the implementation of any future federal regulation imposed upon the City as a result of Lessee's operation during the term of this Lease, City may call a conference for the purpose of discussing and determining methods of compliance and recovery from the City and affected Lessees of costs so incurred, and Lessee and City agree to attend and negotiate in good faith regarding its participation in recovery of such costs by all involved parties.
- 3.8.15 Manager. Lessee shall select and appoint a person or persons who shall serve as manager(s) of Lessee's operations at the Airport. Such person(s) must be vested with full power and authority to accept service of all notices provided for herein, including those regarding the quality and prices of foods and beverages and the appearance, conduct, and demeanor of Lessee's agents and employees. A manager or assistant manager shall be available during regular business hours, either on the Premises or by telephone.

3.9 Liquor License. Lessee shall take all actions necessary to maintain the Liquor License in continuous and full force and effect; shall submit renewal applications on a timely basis to renew the Liquor License; and shall hold and operate the Liquor License in accordance with all applicable federal and state laws and regulations, during the entire term of this Lease and any exercised option terms hereof, all at its own cost and expense.

- 3.9.1 Lessee shall at all times be qualified and capable of holding and renewing the Liquor License and performing the alcoholic beverage services required under this Lease Agreement. If Lessee shall be deemed unqualified or incapable of performing such alcoholic beverage services by TABC or by determination of a regulatory agency having jurisdiction, the same shall constitute a default hereunder if not remedied within thirty (30) days following receipt of written notice.

3.10 Security Requirements.

- 3.10.1 Lessee shall provide approved escort for vendor employees and delivery personnel requiring access to the secure area of the Terminal.

- 3.10.2 Lessee shall comply with any applicable provisions of the City's Airport Security Plan (ASP) Security Directives issued by TSA, and any applicable rules and regulations which may be promulgated by TSA from time to time, which have been provided to Lessee ("Security Requirements" hereinafter). Lessee shall submit to inspections by TSA, the City, and/or their security screening contractor, to ensure compliance with Security Requirements.
- 3.10.3 Any violation of conformance with Security Requirements will be documented in writing and a copy of the violation notice provided to the Lessee's Manager in writing. Lessee will investigate the violation and provide a written response and/or corrective action within twenty-four (24) hours. A copy of the response will be provided to the City through the Aviation Director's Office.
- 3.10.4 To the extent that any action or omission by Lessee, its officers or employees, to follow Security Requirements results in the City being fined, including any type of monetary assessment or penalty (collectively, a "Fine"), by TSA or any other governmental entity having jurisdiction, Lessee shall promptly reimburse the City for any such Fine, together with the reasonable costs incurred by the City in defending against the proceeding or actions which has resulted in the Fine. The City shall notify Lessee if any such Fine has been proposed and give Lessee the opportunity to join in the defense of any such proceeding. Lessee shall promptly pay any Fine levied directly against Lessee by TSA or any other governmental entity having jurisdiction, no later than five (5) days after any protest or appeal process have run or the time for taking them has expired.
- 3.10.5 Lessee acknowledges that all products delivered and transported to the secure portion of the Terminal are subject to inspection. All Lessee employees, officers and escorted visitors in the secure area of the Terminal are subject to search and may be required to provide appropriate identification and credentials.
- 3.10.6 Lessee acknowledges that all Security Requirements which are shown or provided to it under paragraph 3.12.3 above, are sensitive security information ("SSI") in accordance with 49 CFR Part 1520, that Lessee and any involved persons are required to protect the same from unauthorized disclosure, and that civil penalties may be imposed for failure to do so. The Lessee's general manager (the "Manager") is the designated primary point of contact for receiving any SSI that the Lessee receives. The Manager will acknowledge receipt of SSI to the City, and confirm any actions taken by Lessee as required by the SSI. All SSI materials shall be stored in secured areas, or locked in secured cabinets, within the Lessee's Premises at the Airport. Materials marked as containing SSI shall be disposed of by shredding.

IV. OBLIGATIONS OF CITY

4.1 Quiet Enjoyment. The City covenants that upon Lessee paying the rent and performing the terms and covenants herein contained, Lessee shall peacefully and quietly have, hold, and enjoy the rights granted herein for the agreed term.

4.2 Maintenance and Utilities.

- 4.2.1 During the term of this Lease Agreement and any extensions thereof, City shall maintain and keep in good repair so much of the Terminal Building, which is not under the control and use of Lessee pursuant to this Lease Agreement, or under control and use of other tenants or lease holders in the Airport Terminal Building.
- 4.2.2 The City shall also be responsible for washing the outside of exterior windows.
- 4.2.3 The City shall provide dumpsters or similar containers into which trash collected from Lessee's normal operations, and other Airport operations may be deposited, and shall arrange and pay for at its expense the periodic collection of the same.

V. TERM

5.1 Term. Subject to earlier termination as hereinafter provided, the initial term of this Lease Agreement shall be for ten (10) years commencing on the Effective Date of this Lease Agreement. At the end of the initial term, City and Lessee may agree in writing to extend this Lease Agreement for one additional six (6) year renewal term.

5.2 Holding Over. Holding over or failure to vacate the Premises at the end of the initial term or renewal term shall not be construed to be the granting or exercise of an additional term but shall create only a month-to-month tenancy under the other terms and conditions of this Lease, which may be terminated by either party upon thirty (30) days notice to the other.

VI. TERMINATION, DEFAULT, SURRENDER AND DAMAGES

6.1 Termination by Lessee. Lessee shall have the right, upon written notice to City, to terminate the Lease upon the happening of one or more of the following events if said event or events shall then be continuing:

- 6.1.1 The issuance by any court of competent jurisdiction of an injunction, order, or decree against the City which remains in force for a period of at least one hundred and twenty (120) consecutive days, preventing or restraining the use by Lessee of all or any substantial part of the Premises, or preventing or restraining the use of the Airport for normal airport purposes or the use of any part thereof which may be used by Lessee, and which is necessary for Lessee's operations in the Airport.
- 6.1.2 If the City shall materially default in fulfilling any of the terms, covenants, or conditions to be fulfilled by it under this Lease and shall fail to cure said default within thirty (30) days following receipt of a written demand from Lessee to do so, or if such default shall reasonably take more than thirty (30) days to cure, City shall not have commenced the same within the sixty (60) days and diligently prosecuted the same to completion.
- 6.1.3 If all or a material part of the Airport Terminal building shall be destroyed by fire, explosion, earthquake, or other casualty, or acts of God, and same cannot be repaired and reopened within one hundred and twenty (120) days.

- 6.1.4 If the United States Government or any of its agencies shall occupy the Airport or any substantial part thereof to such an extent as to interfere materially with Lessee's operation for a period of ninety (90) consecutive days or more.
- 6.1.5 If all commercial air service is suspended at the Airport for a period of more than ninety (90) consecutive days without just cause.

6.2 Default by Lessee. The following shall be considered an act of default by Lessee under this Lease:

- 6.2.1 Failure by Lessee to make full payment due hereunder within ten (10) business days following receipt of written notice of past due amount owed to the City.
- 6.2.2 Failure by Lessee to keep open and to conduct business at all restaurants, bars, coffee shops, gift shops, and other businesses on the Premises identified in this Lease Agreement for a period of seven (7) consecutive days without reasonable cause including, but not limited to airport closure due to fire, natural disaster, man-made disaster, work stoppage which suspends all commercial air travel into and out of the Airport for more than 7 consecutive days, or power outage which lasts more than 7 consecutive days.
- 6.2.3 Material default in the performance of any covenant or agreement in this Lease Agreement required to be performed by Lessee, other than the payment of money, and the failure of Lessee to remedy such default for a period of thirty (30) days after receipt from the City of written notice to remedy the same, or if such default shall reasonably take more than thirty (30) days to cure, Lessee shall not have provided the City with documents evidencing such cure, and commenced the same within the thirty (30) days and diligently prosecuted the same to completion.
- 6.2.4 The occurrence of any act or omission by the Lessee resulting in suspension or revocation of Lessee's ability to provide liquor service under the Liquor License for a period exceeding thirty (30) days, or any default under said License by Lessee.
- 6.2.5 Failure to timely submit monthly gross revenue reports to the City, and/or failure to maintain and submit timely annual financial reports and supporting documents to the City, as required by Sections 3.2 or 3.3 of this Lease Agreement.
- 6.2.6 An act occurs which results in the suspension or revocation of any right, power, license, permit, or authority necessary for the conduct and operation of business authorized herein for a period of more than fifteen (15) days.
- 6.2.7 The interest of Lessee under this Agreement is transferred, passes to, or devolves upon, by operation of law or otherwise, any other person, firm, or corporation without the prior written consent of the City which consent shall not be unreasonably withheld.

- 6.2.8 An attachment or execution is levied, a receiver is appointed, or any other process of any court of competent jurisdiction is executed, which is not vacated, dismissed, or set aside within a period of thirty (30) days, and which does, or as a direct consequence of such process will interfere with Lessee's use of the Premises or with its operations under this Lease.
- 6.2.9 Lessee becomes insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any state, or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property or its property located within the Premises.
- 6.2.10 Lessee fails to provide services and/or products required to be provided under this Lease Agreement for any period which, in the reasonable opinion of the City, materially and adversely affects the City's Airport customer and/or the City's interest in operating a first-class airport in Corpus Christi.
- 6.2.11 Any lien is filed against the Premises because of any act or omission of Lessee and such lien is not removed, released, enjoined or a bond for satisfaction of such lien is not posted within thirty (30) days to the satisfaction of the City.
- 6.2.12 Lessee voluntarily abandons, deserts, vacates, or discontinues its operation of the business herein authorized, including by acts described in the section above.

6.3 Remedies of the City. Upon the occurrence of any event of default under section 6.2 above, the City shall have the right at any time thereafter to pursue one or more of the following remedies with or without notice or demand. Pursuit of any remedy shall not preclude pursuit of any other remedy, or any other remedies provided by law, nor shall pursuit of any such remedy constitute a forfeiture or waiver of any rents due to the City hereunder or of any damages accruing to the City by reason of the Lessee's violation of any term, condition, or covenant of this Lease. **All property on the Premises is hereby subjected to a contractual landlord's lien to secure payment of delinquent rent and other sums due and unpaid under this Lease, any and all exemption laws are hereby expressly waived in favor of such landlord's lien; and it is agreed that such landlord's lien is not a waiver of any statutory or other lien given or which may be given to the City but is in addition thereto.** Lessee agrees that if it defaults, the City Manager may, on thirty (30) days' prior written notice, sell Lessee's property found on the Premises at a public or private sale with proceeds of the sale applied first to the cost of the sale, then to the cost of storage of the property, if any, and then to the indebtedness of Lessee, with the surplus, if any, to be mailed to Lessee at the address provided herein. **Lessee further agrees to hold harmless from and indemnify the City including its officers, agents, and employees against any loss or damage or claim arising out of the City's action in collecting monies owed it under this paragraph, except for any loss, damage, or claim caused by the willful misconduct of the City or its employees.**

- 6.3.1 City may also terminate this Lease Agreement, in which event Lessee shall immediately surrender the Premises to the City, and if Lessee fails to do so, the City may, without prejudice to any other remedy which it may have for possession

or arrearage in rents, enter upon and take possession of the Premises and expel or remove Lessee and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim for damages therefore. Lessee agrees to pay to the City on demand the amount of all loss and damage which the City has suffered by reason of such termination, up to the date of such termination.

6.3.2 City may demand that payment for any amounts due be made by certified check, cashier's check, or money order.

6.3.3 City may file a claim against the Performance Bond as referenced in Subsection 3.5.8 of the Lease Agreement for Lessee's default to require the Surety to supply a new tenant and operator of the Leased Premises until such time that Surety and City agree that Lessee is able to resume operations of the Leased Premises.

6.4 Non-Waiver. No waiver, condoning, excusing or overlooking by the City of any default or breach by Lessee at any time or times in respect of any covenant, provision or condition contained in this Lease Agreement shall operate as a waiver of the City's rights hereunder in respect of any continuing or subsequent default, breach or nonobservance, or so as to defeat or affect such continuing or subsequent default or breach, and no waiver shall be inferred from or implied by anything done or omitted by the City, except only an express waiver in writing. All rights and remedies of the City under this Lease shall be cumulative and not alternative.

6.5 Surrender of Possession.

6.5.1 On the expiration or other termination of this Lease as provided herein, Lessee's rights to use of the Premises, facilities, and described herein shall cease and Lessee shall vacate the Premises without unreasonable delay.

6.5.2 Lessee shall remove any personal property that Lessee brought onto the Premises except for those items which are considered fixtures or improvements to the Leased Premises. Lessee shall remove all personal property from the Premises within 10 days following termination of the Lease Agreement, whether it be by expiration of the term of the Lease or termination for default or termination for other reasons set out in this Lease Agreement. Lessee shall not cause any damage to the Premises when removing their personal property. Any damages caused, shall be repaired by Lessee at Lessee's sole expense within 5 calendar days of causing the damage. Any and all personal property not so removed by Lessee shall become a part of the Premises and title thereto shall vest with the City. The City may, however, at its option, require and accomplish the removal of said personal property at the expense of Lessee.

6.6 Force Majeure. Neither the City nor Lessee shall be deemed in violation of this Lease if it is prevented from performing any of its obligations hereunder, other than the payment of monthly rent, utility bills and other fees, or production of gross revenue reports or production of annual financial reports to the City, by reason of strikes, boycotts, labor disputes, embargoes, shortage of aircraft or fuel or tires as the direct result of governmental decree, acts of God, acts of the public enemy, acts of superior governmental authority, weather condition, riots, rebellion, sabotage or any other circumstances for which it is not responsible and which is not under its control.

6.7 Damage or Destruction of Premises.

- 6.7.1 In the event the Premises are substantially destroyed for any reason, this Lease shall terminate without further liability to the City, other than refund of any prepaid rent, unless the City elects, within thirty (30) days thereof, to restore or rebuild the Premises, in which case this Lease will be suspended until the Premises are restored or rebuilt, and if applicable, a Certificate of Occupancy issued.
- 6.7.2 In the event that the Terminal is damaged or remodeled in such a manner that the Premises or any part thereof must be temporarily closed, Lessee may, subject to City approval, relocate their airport businesses to another part of the Terminal building until the Leased Premises are reopened to Lessee.
- 6.7.3 Notwithstanding any of the foregoing, in the event any damage or destruction is caused by a negligent act or omission by Lessee, its sub-lessees, contractors, agents or employees, Lessee shall reimburse the City for its actual costs incurred in repairing the Premises. Nothing in this Lease shall be construed as a waiver of the right of the City to recover damages from Lessee arising out of the fault or negligence of Lessee.

VII. NOTICES

7.1 Notices. Notices and demands provided for herein shall be sufficient if hand-delivered to Lessee's manager on the Leased Premises or to the Director of Aviation at the Airport. Notice shall also be sufficient if sent by Certified Mail, Return Receipt Requested, postage prepaid; or sent via nationally recognized overnight courier service to the addresses set forth below or to such other addresses as the parties may from time to time designate in writing. Notices given in accordance with these provisions shall be deemed received when hand-delivered, and if not hand-delivered on the day after they are mailed or deposited with the courier service.

Notice to City: **Director of Aviation**
 Corpus Christi International Airport
 1000 International Drive
 Corpus Christi, TX 78406

With a Copy to: **City Attorney's Office**
 P.O. Box 9277
 Corpus Christi, TX 78469-9277

Notice to Lessee: **Tailwind CRP, LLC**
 408 Landmark Drive
 Wilmington, NC 28412
 switzer@tailwindconcessions.com

VIII. ASSIGNMENT AND SUBLETTING

8.1 Assignment and Subletting. Lessee shall not at any time assign, sublet, or subcontract its rights under this Lease without the written consent of the City Manager or their authorized designee, which consent shall not be unreasonably withheld. No such assignment, subletting, or

subcontracting shall release Lessee from its obligations to pay any and all of the rentals and charges and to otherwise perform Lessee's obligations under this Lease.

8.2 Successors to City. The rights and obligations of the City under this Lease maybe assigned by the City, at the option of the City, without the necessity for the concurrence of the Lessee in any such assignment.

IX. ADDITIONAL PROVISIONS

9.1 Rules and Regulations. Lessee agrees to observe and obey all laws, ordinances, rules and regulations presently existing or hereafter promulgated with respect to Lessee's operations and use of the Airport and Premises. Lessee shall read all Airport Policies and keep up to date on any amendments to Airport Policies and Procedures. A copy of the Airport's current Policies and Procedures will be kept on file in the Director of Aviation's office at the Airport and available to Lessee during normal business hours.

9.2 Lease Subordinate.

9.2.1 This Lease Agreement shall be subordinate to any existing or future agreement between the City and the United States relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition to the expenditure of federal funds for the development of the Airport.

9.2.2 The City shall be free, now and in the future, to renegotiate any of the terms or provisions of any Contracts, Leases, or Agreements between the United States of America, or any Agency of the United States of America and the City on such terms and conditions as it deems appropriate and in the public interest, without any consent or approval of Lessee or any other person, and Lessee shall be bound by the terms of such renegotiated agreement.

9.3 Non-Discrimination. Lessee, in its operations at and use of the Leased Premises and the Airport, shall not, on the grounds of race, color, national origin, or sex, discriminate or permit discrimination against any person or group of persons in any manner prohibited by applicable law; Lessee shall abide by the provisions of the nondiscrimination provision contained in this Agreement; and shall abide by the provisions of Part 21 of the Rules and Regulations of the Office of the Secretary of Transportation effectuating Title VI of the Civil Rights Act of 1964.

9.4 Inspection by City. The City, through its authorized employees and agents, shall have the right at all reasonable times to enter upon the Premises to inspect, to observe the performance by Lessee of its obligations hereunder, and to do any act which the City may be obligated to do or have the right to do under this Lease, or under any other agreement to which the City is a party or under applicable law. As to the non-public portions of the Premises, except in the event of an emergency, the City shall give Lessee prior notice of such inspections.

9.5 Service Entrances. The City shall have no obligation to provide any special service entrances for Lessee, including those for utilities, other than those which presently exist in the Leased Premises and in the Terminal.

9.6 Improvements to the Premises

- 9.6.1 Lessee shall provide construction plans, specifications, budgets, and schedules for any and all improvements which it proposes to build on the Premises. Such plans and specifications shall be subject to prior City approval, which approval shall not be unreasonably withheld. The City may reject submissions which are not in accordance with applicable codes, rules, regulations, ordinances, and statutes, and which, in its judgment, are inadequate or incompatible with Airport conditions or inconsistent with Airport architectural style and design or with uses not typically made of public use airports.
- 9.6.2 Prior to any construction of improvements, Lessee shall submit to the Director of Aviation a Certificate of Insurance that satisfies the Insurance Requirements contained in the Lease Agreement. Lessee must also obtain all necessary building permits from the City Development Services Department prior to beginning any construction of Improvements.
- 9.6.3 Any and all improvements placed or constructed on the Premises by Lessee shall, upon expiration of the primary or an exercised option term, or sooner termination of this Lease, be considered part of the Terminal and shall become the sole property of the City.

9.7 Airport Concessionaire Disadvantaged Business Enterprise ("ACDBE").

- 9.7.1 It is the policy of the City that disadvantaged business enterprises, including firms owned and controlled by minorities and/or women as defined in 49 C.F.R. Part 23, shall have maximum opportunity to participate in the performance of its leases.
- 9.7.2 In the performance of this Lease, Lessee hereby assures that no person shall be excluded from participation, denied benefits, or otherwise discriminated against by Lessee in connection with the award and performance of any contract, including leases, covered by 49 C.F.R. Part 23 on the grounds of race, color, national origin, or sex.
- 9.7.3 Lessee assures that it will include Sections 8.7.1 and 8.7.2 in all City approved subleases and cause all sub-lessees to similarly include clauses in further subleases.

9.8 Compliance with State and Federal Laws. The following provisions are in this contract for compliance with state and federal law, and the City does not opine on their validity or enforceability. Lessee shall bear the entire sole burden for complying with any of these clauses. Prior to the enforcement of any of the following clauses, the City will give at least 30 days' notice of alleged violation thereof and an opportunity for the Lessee to be heard concerning the alleged violation, effect thereof on the City, and proposed remedial measures:

- 9.8.1 Lessee warrants that it is and will continue to be an equal opportunity employer and hereby covenants that no employee or customer will be discriminated against because of race, religion, sex, age, disability, creed, color, or national origin.

- 9.8.2 Lessee shall provide all services and activities required to comply with the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504, and with the provisions of the Americans with Disabilities Act of 1990, Public Law 101-336 [S.933].
- 9.8.3 Lessee agrees to comply with Tex. Gov't Code § 2252.908 and submit Form 1295 to the City with the signed agreement. The Parties agree that the City is not responsible for the information contained in Form 1295.
- 9.8.4 In accordance with Tex. Gov't Code Sec. 2252.909, Lessee must include in each contract for the construction, alteration or repair of an improvement to the leased premises a condition that the contractor execute a payment bond that conforms to Subchapter I, Chapter 53, Texas Property Code and a performance bond equal to the amount of the contract and conditioned on the faithful performance of the contractor's work in accordance with the plans, specifications and contract documents. Lessee must provide the City with a notice of commencement (of work) at least 90 days prior to the start of construction, alteration or repair that complies with Texas Gov't Code Sec. 2252.909

9.9 Bankruptcy. Notwithstanding anything herein to the contrary, and the maximum extent permitted by applicable law and applicable court orders, in the event that a petition for relief under Title 11 of the United States Code or under any similar or successor federal, state, or local statute is filed by or against the Lessee (a "Filing"):

- 9.9.1 Lessee shall give the City immediate written notice of the Filing; Lessee will promptly confirm the outstanding amount of any obligations hereunder due the City as of the date of Filing; and Lessee will fully and timely perform all obligations arising hereunder commencing as of the date of the Filing.
- 9.9.2 Thereafter, Lessee will promptly determine whether it intends to assume or reject the unexpired term of this Lease, if any, and shall promptly advise the City of such determination; and Lessee will not seek to delay the date by which it will make the determination under this subsection and obtain any necessary third-party authorization (including court approval) therefore beyond the 60th day following the date of the Filing without the prior express consent of the City.
- 9.9.3 If Lessee determines that it wishes to assume this Lease, the Lessee will cure all defaults, compensate the City for all damages incurred as a result of such defaults, provide the City with adequate assurances of future performance, and comply with any and all other statutory or legal requirements prior to the effective date of such assumption.
- 9.9.4 If Lessee determines that it wishes to assume this Lease and assign it to a third-party, Lessee will give the City not less than sixty (60) days' notice of such intention, provide to the City all pertinent information with respect to the proposed assignee concurrently with the notice, cure all defaults, compensate the City for all damages incurred as a result of such defaults, provide the City with adequate assurances of future performance through the proposed assignee and comply with any and all other statutory or legal requirements prior to the effective date of such

assumption and assignment.

- 9.9.5 If Lessee wishes to reject the unexpired term of the Lease, if any, Lessee will not seek to have the effective date of such rejection determined to be a date earlier than the date on which Lessee shall return control and possession of the Premises to the City in the condition and on the terms set forth herein relevant to the redelivery of possession to the City, and shall fully and timely pay all rent and other charges through the date of such rejection.
- 9.9.6 Lessee shall be deemed to have expressly consented to the modification of the stays of proceedings in any filing in the event of any post-filing default by the Lessee under the terms of this Lease for the purpose of allowing the City to exercise any default rights or remedies arising from such default.

9.10 Reservation of City's Rights. Notwithstanding anything herein to the contrary, the City reserves the following rights:

- 9.10.1 For the use and benefit of the public, the right of flight for the passage of aircraft in the air space above the surface of the Premises, together with the right to cause in that air space such noise as may be inherent in the operation of aircraft utilizing the Airport.
- 9.10.2 During times of war or national emergency, the right to lease the Airport or any part thereof, including the Premises or any part thereof, to the United States Government for military purposes, and, in the event of such lease to the United States for military purposes, the provisions of this Lease shall be suspended insofar as such provisions may be inconsistent with the provisions of the lease to the United States.
- 9.10.3 The right to direct all activities of Lessee at the Airport in the event of an emergency.
- 9.10.4 The right to grant other leases, licenses, permits or rights to occupancy or use of the Airport so long as such other grants do not unreasonably interfere with or impair Lessee's rights hereunder or Lessee's occupancy or use of the Premises, and the right to direct changes in the way Lessee conducts its Airport operations in the event that the City determines, in the exercise of its reasonable judgment, that one or more aspects of Lessee's method of operation is unreasonably interfering with the lawful and proper occupancy or use by others of the Airport. Provided, that this reserved right is not intended to allow the City to deny Lessee the basic right to use the Premises for any of the uses permitted hereunder.
- 9.10.5 The right to further develop and/or improve the Airport as the City deems appropriate, without interference or hindrance by Lessee, and the City shall have no liability hereunder to Lessee by reason of any interruption to its operations on the Premises occasioned by such development and/or improvement of the Airport; provided, that if Lessee shall be unable to conduct reasonably normal business operations on the Premises by reason of any such development and/or improvement of the Airport, then rent and other fees payable by Lessee hereunder

shall be subject to an equitable adjustment during the period of such interruption.

9.10.6 Terminal Remodel and Reconfiguration. The parties acknowledge that the City operates the Airport to serve the public interest and must accommodate many activities in a limited space. In the event that during the term of this Lease, the City determines that the public interest requires modification of the Terminal, which would eliminate or modify all or any part of the Premises, or the City constructs a substitute Terminal Premises, then to the extent reasonably requested by the City, Lessee agrees to consult and cooperate in the design of substitute Premises in such a remodel; and

- At the City's option, and providing that any such substitute Premises are at least 90% as large (in square footage) as the current Premises, this Lease shall apply to such substitute Premises and Lessee agrees to conduct its operations therein pursuant to this Lease Agreement;
- The City shall bear all reasonable costs of relocation of Tenant to such substitute location and moving, reinstalling or replacing the Lessee Improvements, provided, however, that the City shall have no liability to Lessee with respect to any business interruption or loss as a result of such relocation;
- If either party does not elect to continue operations in such substitute Premises under this Lease, then either party may terminate this Lease upon one hundred eighty (180) days written notice of its intention to do so, provided, however, that Lessee, if it is not in default in any of the terms and conditions of this Lease Agreement, shall have the first right of refusal with respect to any proposed contract or lease for similar food and beverage services or coffee shop or gift shop service in the modified Terminal building.

X. MISCELLANEOUS PROVISIONS

10.1 Headings. The section headings contained in this Lease are for convenience in reference and are not intended to define or limit the scope of any provision.

10.2 Time of Essence. Time is of the essence in this Lease Agreement.

10.3 Attorneys' Fees. Lessee agrees to pay reasonable legal fees or costs incurred by City, to the extent the City is a prevailing party in any legal action brought by the City to enforce the provisions of this Lease. Lessee shall not be responsible for such fees or costs if a court of competent jurisdiction finds that the City's action was brought without substantial merit or in bad faith.

10.4 Non-Waiver. Waiver by either party of or the failure of either party to insist upon the strict performance of any provision of this Lease shall not constitute a waiver of the right or prevent any such party from requiring the strict performance of any provision in the future.

10.5 Limitation of Benefit. This Lease does not create in or bestow upon any other person or entity not a party to this Lease any right, privilege, or benefit unless expressly provided in this Lease.

This Lease does not in any way represent, nor should it be deemed to imply any standard of conduct to which the parties expect to conform their operations in relation to any person or entity not a party.

10.6 Severability. Any covenant, condition, or provision herein contained that is held to be invalid by any court of competent jurisdiction shall be considered deleted from this Lease, but such deletion shall in no way affect any other covenant, condition or provision herein contained so long as such deletion does not materially prejudice the City or Lessee in their rights and obligations contained, in valid covenants, conditions or provisions.

10.7 Effect of Lease. All covenants, conditions, and provisions in this Lease shall extend to and bind the successors of the parties hereto, the assigns of the City, and to the permitted assigns, sub-lessees, and/or subcontractors of Lessee.

10.8 Governing Law and Venue. This Lease shall be governed by and construed in accordance with the laws of the State of Texas, and any action to enforce or interpret its provisions shall be brought in a court in and for Nueces County, Texas.

10.9 Entire Agreement. This Lease, together with its Exhibits, embodies the entire agreement between the parties hereto concerning the subject matter hereof and supersedes all prior conversations, proposals, negotiations, understandings, and agreements, whether written or oral.

10.10 Nature of Relationship. Nothing contained herein 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 the City and Lessee, it being expressly understood and agreed that neither the method of computation of rent nor any other provisions contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship between the City and Lessee other than the relationship of landlord and tenant.

10.11 Modification of Agreement. This Lease may not be altered, modified, or changed in any manner whatsoever except by a writing signed by both parties.

EXECUTED IN DUPLICATE ORIGINALS on the dates indicated below.

CITY OF CORPUS CHRISTI

TAILWIND CRP, LLC

Heather Hurlbert, Assistant City Manager

Jess Backhaus

Printed Name

Printed Name

Date: _____

Title

Date: _____

ATTEST:

Rebecca Huerta, City Secretary

_____ AUTHORIZED BY

Date: _____

COUNCIL ON _____

Approved as to form: _____

Assistant City Attorney for
Miles Risley, City Attorney



Retail, Food & Beverage Concessions



Not to Scale

EXHIBIT A
Retail, Food & Beverage Concessions Site
1000 International Drive

Sheet No. 1 of 1

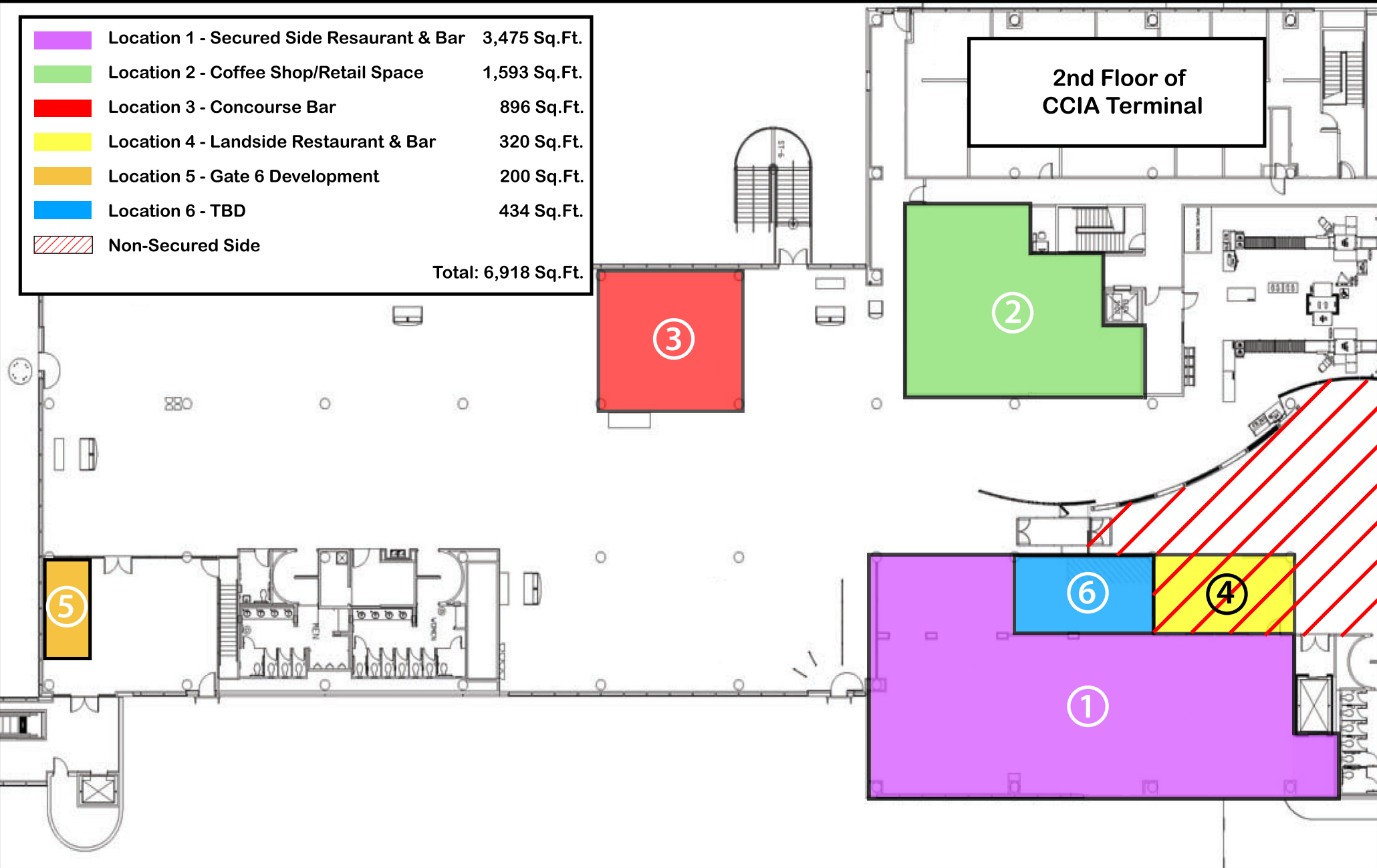
Prepared by: Randy Schumann

Approved by: Kevin Smith

Date: 08/03/2023

- Location 1 - Secured Side Restaurant & Bar 3,475 Sq.Ft.
- Location 2 - Coffee Shop/Retail Space 1,593 Sq.Ft.
- Location 3 - Concourse Bar 896 Sq.Ft.
- Location 4 - Landside Restaurant & Bar 320 Sq.Ft.
- Location 5 - Gate 6 Development 200 Sq.Ft.
- Location 6 - TBD 434 Sq.Ft.
- Non-Secured Side

Total: 6,918 Sq.Ft.



Not to Scale

EXHIBIT B
Retail, Food & Beverage Concessions Locations
1000 International Drive

Sheet No. 1 of 1

Prepared by: Randy Schumann

Approved by: Kevin Smith

Date: 08/03/2023

**EXHIBIT C
INSURANCE REQUIREMENTS**

I. LESSEE’S LIABILITY INSURANCE

- A. Lessee must not commence work under this agreement until all insurance required has been obtained and such insurance has been approved by the City. Lessee must not allow any subcontractor to commence work until all similar insurance required of any subcontractor has been obtained.
- B. Lessee must furnish to the City’s Risk Manager and Contract Administer one (1) copy of Certificates of Insurance (COI) with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City’s Risk Manager. The City must be listed as an additional insured on the General Liability and Auto Liability policies **by endorsement**, and a waiver of subrogation is required on all applicable policies. **Endorsements** must be provided with COI. Project name and/or number must be listed in Description Box of COI.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
Commercial General Liability Including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$2,000,000 Per Occurrence <input checked="" type="checkbox"/> \$5,000,000 Per Occurrence <input type="checkbox"/> \$10,000,000 Per Occurrence <input type="checkbox"/> Required <input checked="" type="checkbox"/> Not Required <input type="checkbox"/>
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$1,000,000 Combined Single Limit Required <input checked="" type="checkbox"/> Not Required <input type="checkbox"/>
WORKERS’ COMPENSATION EMPLOYER’S LIABILITY	Statutory \$1,000,000 /\$1,000,000 /\$1,000,000 Required <input checked="" type="checkbox"/> Not Required <input type="checkbox"/>
LIQUOR LIABILITY (Required When Selling Liquor/Alcohol)	\$1,000,000 Per Occurrence Required <input checked="" type="checkbox"/> Not Required <input type="checkbox"/>
CRIME/EMPLOYEE DISHONESTY Lessee shall name the City of Corpus Christi, Texas as Loss Payee (Insurance Limit Subject to Change Based on Risk Management Annual Review of Actual Receipts)	\$50,000 Per Occurrence Required <input checked="" type="checkbox"/> Not Required <input type="checkbox"/>

PERSONAL PROPERTY INSURANCE	Lessee, at their own expense, shall be responsible for insuring all owned, leased or rented personal property. Required <input checked="" type="checkbox"/> Not Required <input type="checkbox"/>
<p><i>Subcontractors</i> Lessee shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Lessee shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.</p> <p style="text-align: right;">Required <input checked="" type="checkbox"/> Not Required <input type="checkbox"/></p>	

C. In the event of accidents of any kind related to this agreement, Lessee must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

II. ADDITIONAL REQUIREMENTS

A. Applicable for paid employees, Lessee must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in an amount sufficient to assure that all workers' compensation obligations incurred by the Lessee will be promptly met.

B. Lessee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Lessee's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.

C. Lessee shall be required to submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Lessee shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi
 Attn: Risk Manager
 P.O. Box 9277
 Corpus Christi, TX 78469-9277

D. **Lessee agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**

- List the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations, completed operation and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies must provide a waiver of subrogation in favor of the City; and

- Provide 30 calendar days advance written notice directly to City of any, cancellation, non-renewal, material change or termination in coverage and not less than 10 calendar days advance written notice for nonpayment of premium.
- E. Within 5 calendar days of a cancellation, non-renewal, material change or termination of coverage, Lessee shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Lessee's performance should there be a lapse in coverage at any time during this agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this agreement.
- F. In addition to any other remedies the City may have upon Lessee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Lessee to remove the exhibit hereunder, and/or withhold any payment(s) if any, which become due to Lessee hereunder until Lessee demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Lessee may be held responsible for payments of damages to persons or property resulting from Lessee's or its subcontractor's performance of the work covered under this agreement.
- H. It is agreed that Lessee's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

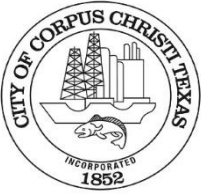
2023 Insurance Requirements Exhibit

Airport Facilities Lease and Concession Agreement – Tailwinds CRP, LLC

08/03/2023 Risk Management – Legal Dept.

Version 3; Exhibit revised to reflect modifications to the original scope of work.

Note: This Exhibit applies to the lease agreement only, and does not apply to any construction. A separate review of insurance requirements and separate Exhibit will be required for construction operations, if applicable.



ATTACHMENT D: DISCLOSURE OF INTEREST FORM

**CITY OF CORPUS CHRISTI
DISCLOSURE OF INTEREST**

Corpus Christi Code § 2-349, as amended, requires all persons or firms seeking to do business with the City to provide the following information. Every question must be answered. If the question is not applicable, answer with "NA". See next page for Filing Requirements,

COMPANY NAME: _____

P. O. BOX: _____ STREET ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____ -

FIRM IS: 1. Corporation 2.Partnership 3.Sole Owner
 4. Association 5.Other

DISCLOSURE QUESTIONS

If additional space is necessary, please use the reverse side of this page or attach separate sheet.

1. State the names of each "employee" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Job Title and City Department (if known)
_____	_____
_____	_____
_____	_____

2. State the names of each "official" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Title
_____	_____
_____	_____

3. State the names of each "board member" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Board, Commission or Committee
_____	_____
_____	_____

4. State the names of each employee or officer of a "consultant" for the City of Corpus Christi who worked on any matter related to the subject of this contract and has an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Consultant
_____	_____
_____	_____
_____	_____

FILING REQUIREMENTS

If a person who requests official action on a matter knows which the requested action will confer an economic benefit on any City official or employee which is distinguishable from the effect which the action will have on members of the public in general or a substantial segment thereof, you must disclose which fact in a signed writing to the City official, employee or body which has been requested to act in the matter, unless the interest of the City official or employee in the matter is apparent. The disclosure must also be made in a signed writing filed with the City Secretary. [Ethics Ordinance Section 2-349 (d)]

CERTIFICATION

I certify which all information provided is true and correct as of the date of this statement, which I have not knowingly withheld disclosure of any information requested; and which supplemental statements will be promptly submitted to the City of Corpus Christi, Texas as changes occur.

Certifying Person: _____ Title: _____

Signature of
Certifying Person: _____ Date: _____

DEFINITIONS

- a. "Board member." A member of any board, commission, or committee of the city, including the board of any corporation created by the city.
- b. "Economic benefit". An action which is likely to affect an economic interest if it is likely to have an effect on which interest which is distinguishable from its effect on members of the public in general or a substantial segment thereof.
- c. "Employee." Any person employed by the city, whether under civil service or not, including part-time employees and employees of any corporation created by the city.
- d. "Firm." Any entity operated for economic gain, whether professional, industrial or commercial, and whether established to produce or deal with a product or service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust, and entities which for purposes of taxation are treated as non-profit organizations.
- e. "Official." The Mayor, members of the City Council, City Manager, Deputy City Manager, Assistant City Managers, Department and Division Heads, and Municipal Court Judges of the City of Corpus Christi, Texas.
- f. "Ownership Interest." Legal or equitable interest, whether actually or constructively held, in a firm, including when such interest is held through an agent, trust, estate, or holding entity. "Constructively held" refers to holdings or control established through voting trusts, proxies, or special terms of venture or partnership agreements.
- g. "Consultant." Any person or firm, such as engineers and architects, hired by the City of Corpus Christi for the purpose of professional consultation and recommendation.