



# **Bishop International Airport Authority**

**NOT THE ONLY WAY TO FLY. JUST A BETTER ONE.**

## **Bishop International Airport Authority notice of request for Terminal Advertising Concession Agreement**

Notice is hereby given that the Bishop International Airport Authority is soliciting proposals for a company to operate terminal advertising concessions.

The selected company will maintain advertising displays and concessionaire is prepared to undertake those installations and related expenses.

Proposal requirements and evaluation criteria can be obtained on the Authority's website at <https://bishopairport.org/business-fnt/business-opportunities/public-notices-bid-opportunities>. All addendums will also be posted at that address. It will be the responsibility of each interested proposer to download addendums as they become available. All proposals must be in accordance with any and all issued addendums.

Sealed proposals should be directed to Autumn Perry-MacClaren at Bishop International Airport at 3425 W. Bristol Road, Flint, Michigan 40507. Proposals should be received no later than 5 p.m. eastern standard time on July 15, 2019. The outside of the proposal should be marked "Bishop Airport Advertising Concession Agreement." **Email and facsimile copies of submissions will NOT be accepted and will be automatically disqualified if received. Please include 4 copies of your proposal.** All questions must be submitted via e-mail to Autumn Perry-MacClaren at [amacclaren@bishopairport.org](mailto:amacclaren@bishopairport.org).

The Bishop International Airport Authority reserves the right to reject any and all proposals received.

**Autumn Perry-MacClaren  
Assistant Director of Marketing and Public Relations  
Bishop International Airport Authority**



# ***Bishop International Airport • FNT***

**NOT THE ONLY WAY TO FLY. JUST A BETTER ONE.**

## **Introduction**

Bishop International Airport is one of 15 commercial service airports in Michigan and ranks third in terms of annual enplanements. The Airport, located in Flint, is approximately 50 miles south of Saginaw Bay and approximately 70 miles west of Lake Huron. The Airport is nestled at the southwest corner of the junction of the United States Interstates 69 and 75, approximately 3 miles southwest of Flint's central business district. Bishop International Airport has several distinct advantages for passenger and freight services, including its proximity to the northwest portion of the Detroit region, population centers in and around Genesee and Oakland Counties, convenient access, and several major service providers.

## **Scope of work**

The Authority's mission is to provide the highest level of safety and service to all customers, facilitating development, providing efficient facilities, and practicing financial stewardship that contributes to the overall economic vitality of the region. The Authority's Advertising Concession program must support our mission, provide acceptable design standards, create a comprehensive advertising marketing program that is appealing to the public, conveys a clear image of Bishop International Airport, Genesee County, Oakland County, and generate a strong financial return to the Authority.

## **Advertising Goals**

### **(a) Customer Satisfaction**

- An attractive environment for the traveling public, with minimal visual clutter and minimal distractions from information signage.
- Develop and begin the implementation of a plan to update and incorporate digital signage in a way that will be pleasing to the customer and provide an enhanced customer experience.
- Advertising consistent with community values.

### **(b) Economic Development**

- Promotion of the Flint, Genesee and Oakland County area.
- Maximize the participation of Flint, Genesee and Oakland County companies.
- A quality mix of local, state, national, and international organizations who may be an appropriate fit for BIA.

### **(c) Enhance Revenues**

- Increase the net revenue to Authority on a revenue per enplane passenger and revenue per square foot of advertising space basis.

- Create a strong and sustained financial return on investment for Authority funded advertising changes to the advertising program.

(d) Description of Airport Advertising Areas.

- The BIA terminal building is configured with a linear concept and a parallel gate concourse that are connected by a second level passenger connector (walkway). The terminal building includes three principal components: Landside Area, Passenger Connector, and Airside Concourse. The terminal building is a partial two level building. The ticket and baggage claim lobbies are at ground level within a two story clear space. The remaining portion of the terminal building is two levels. The passenger connector is predominately a second level space that connects the landside area with the airside concourse. The airside concourse is a two-story building that provides an interface with the Aircraft. Spaces on the upper level include gate access corridors, hold room seating areas, gate podiums and queuing areas, and concessions. The approved advertising area map is shown in Exhibit C. The detail of the approved available display types within each area are shown in the listing contained in Exhibit D. Dimensions for the various size backlit displays are also included. There is also a section detailing areas that currently contain advertising but will no longer be permitted after expiration of the current contract.

### **Advertising Firm Responsibilities**

(a) The selected firm will be responsible, at a minimum, for the following:

- The sale, lease, and placement of all advertising (with the exception of backlit panels) in approved areas within the terminal. Backlit panels may be installed by the Authority upon arrangement.
- Costs associated with production of displays. These costs will be borne by the selected firm or the advertiser in accordance with the advertising agreement. Any needed measurements for production of displays will be the responsibility of the firm.
- Providing a diverse mix of advertising. No one advertiser should utilize more than 10% of sold space.
- Presenting for approval advertising clients and content that are in good taste and appropriate for display in a publicly owned setting.
- Obtaining approval of the Authority for any proposed advertising design prior to production.
- Providing the Authority with a copy of all executed advertising agreements. Limiting the placement of advertising to approved areas indicated in Exhibits C and D unless additional areas have been submitted and approved by the Authority. Such approval must be obtained before sale to the client.
- Submitting detailed monthly sales reports and compensation to the Authority in accordance with the agreed upon revenue structure and Minimum Annual Guarantee (MAG).
- Recovering the costs from clients for any repairs needed due to advertising installations.
- Limiting advertising sold to the term of the agreement with the Authority.
- Developing a plan to upgrade advertising displays throughout the terminal facility. Assist the Authority with the implementation of an agreed upon plan.
- Complying with all other contractual terms and conditions.

(b) Authority Responsibilities

- The supply of advertising areas and backlit displays as approved and noted in Exhibit D.
- Cleaning, maintenance, and repair (including replacement of bulbs and ballasts) of airport owned advertising equipment.
- Supplying power, light, and heat to the advertising areas based on connections that currently exist. Connections outside those initially provided will be at the cost of the concessionaire.

- Escorting the concessionaire or potential advertiser in secured areas of the terminal. Visits that require escort will be arranged in advance, with at least 48 hours' notice.
- Installing backlit panels.

(c) Financial Considerations

- The annual fee to be paid by the selected firm will consist of the greater of the Minimum Annual Guarantee (MAG) or the percent of Annual Gross Revenues. The MAG shall be the amount the firm states in its proposal to the Authority. The MAG is the minimum amount the concessionaire agrees to pay the Authority each year during the term of the contract whether or not any advertising is sold. The MAG is divided by 12 to arrive at the minimum amount that must be paid monthly. The MAG will cover the displays and advertising space in the approved advertising areas shown and detailed in Exhibits C and D. Annual Gross Revenue is defined, for purposes herein, as any and all monies paid or payable to the successful Proposer by or on account of sales made and/or services rendered by, at, or from the Airport annually. Should any advertising be approved by the Authority outside the approved areas shown in Exhibits C and D, the revenue will be in addition to the above based on percent of revenue and will be itemized separately in the monthly report. Revenues for sales outside the approved areas may not be comingled or bundled with areas inside the approved areas.
- Revenues will be reported and remitted to the Authority on or before the 20th day of each calendar month to pay for the use advertising areas of the previous month. A detailed monthly report, in a format acceptable to the Authority, shall be provided. A sample format is included in Exhibit E, for the purposes of monthly reporting, the MAG shall be prorated and remitted (when applicable) on a monthly basis and reconciliation will occur at the end of each contract year. The proposer will submit their proposed MAG and % of gross revenues as indicated in the proposal format section.

**In-Terminal Advertising**

The Airport Authority is seeking a company to operate, maintain, and provide the Airport's Terminal Advertising Concession in all advertising space available through the terminal. The agreement will include the passenger terminal building and any future terminals built to expand or replace the existing terminal facility. A successful candidate will design a comprehensive advertising program that is already integrated to meet the design, quality, and content for the Authority. The concessionaire will establish, operate, service, and maintain the existing commercial advertising space, including but limited to self-contained floor exhibits, wall and floor back-lit units, showcases, posters, expo space, car and boat display, direct telephone line hotel and transportation displays, directional clocks, electronic, computer and video displays and other forms of advertising which may be approved to provide, continuously during the period of the contract agreement.

**Advertising Opportunities**

- (a) The chosen company is encouraged to recommend new advertising opportunities in and around the terminal, including an outdoor advertising program and an airport parking advertising program.

**Concession Agreement**

The chosen company will be required to sign a five year contract and the authority grants the right to renew, if desired, for another five years and the date of contract expiration. The Authority encourages proposers to suggest creative ideas for maximizing revenue through advertising. We are open to new ideas and highly encourage them.

## **Proposal Format and Evaluation Process**

- (a) The proposal that the vendor will submit shall contain, at a minimum, the following information:
- Describe your organization and the experience you bring in the operation of an advertising concession. Indicate how your firm will manage and operate the advertising concession at the Bishop International Airport. If relevant, discuss any subcontractor relationships. Provide a list of 3 client references to include the contact information.
  - Provide a resume containing the qualifications and experience of the marketing staff who will be specifically assigned to this project. Detail their areas of responsibility.
  - Include a “Marketing and Sales Plan” for operating the concession with emphasis on measures designed to promote local advertiser participation within the terminal building and maximize and sustain gross sales. Indicate how your plan will align with the Authority’s advertising goals. Include sales projections. Recommend, diagram, and explain any proposed changes to Exhibit C & D as a part of your proposal. Indicate how you would propose to fund these changes. Indicate what your MAG would be for these proposed changes.
  - Include a “Facility Enhancement Plan” to upgrade the terminal to digital displays. The Authority would rely on the concessionaire to assist in this upgrade. Provide a proposed plan for incorporating an upgrade of digital displays in the terminal during this 5-year contract. Prioritize the areas for upgrade, include proposed equipment and anticipated costs by area. Indicate whether your plan requires Authority investment, cost sharing, etc. Indicate how you would market this product line.
  - Provide a transition plan to guide the Authority from the contract award (to be determined) to the contract start date of September 29, 2019). This transition plan should ensure a smooth transition between vendors and advertising clients.
  - Provide the minimum annual guarantee (MAG) that your firm proposes for each of the five years the approved advertising areas outlined in Exhibits C and Exhibits D. Indicate the percentage of gross annual revenues to be paid to the Authority from the sale of advertising space. The annual fee to be paid by the selected firm to the Authority will consist of the greater of the Minimum Annual Guarantee (MAG) or the percent of Annual Gross Revenues. Revenue considerations are further defined in the Financial Considerations section above.
- (b) Evaluation Process
- Proposals will be evaluated and ranked on the basis of the written material submitted. Evaluation criteria will be related to the following and weighted as shown:
    1. Demonstrated experience and expertise of your organization (15%)
    2. Experience and qualifications of staff assigned to the project (15%)
    3. Effectiveness of the Marketing and Sales plan and its likelihood to help the Authority meet our advertising goals (15%)
    4. Reasonableness of the facility enhancement plan (15%)
    5. Transition Plan (15%)
    6. Financial Considerations (25%)
  - The Authority may select a short list of the top related firms for a formal presentation to the evaluation team. If determined to be needed, presentations will take place at the Bishop International Airport the week of September 9, 2019.

## **Terms and Conditions**

- The Concession Agreement that will be executed and approved by the Authority will be similar to the one in Exhibit F. Federal and/or State law requires many of the clauses contained in the agreement. The awarded firm may request additional contract clauses to be incorporated into the contract. If, however, these clauses become a barrier to contract execution, the Authority may proceed to the next highest ranked Offeror for contract consideration.  
In compliance with the State of Michigan public record laws, all proposals will be available for public inspection after award. Trade secrets and proprietary information submitted by a consultant in connection with a proposal shall not be subject to public disclosure provided the Offeror invokes the protection of this section upon submission of the proposal. The specific area or scope of data and materials to be protected must be identified and the reasons for their protections stated. An all-inclusive statement that the entire proposal is proprietary is unacceptable. A statement that costs are to be protected is prohibited and may result in the rejection of your proposal.

## **Key Milestone Dates for RFP**

RFP release	7/3/2019
Vendor questions due	7/11/2019
Response to questions posed by vendors	7/12/2019
RFP due date	7/15/2019
Interviews at FNT (if needed)	8/12/2019
Award Contract	8/28/2019
Projected project start date	9/29/2019 (tentative)

## **EXHIBIT A**

### Bishop International Airport Enplanement Statistics

Year	Enplanements
2019 (forecast)	300,979
2018	360,609
2017	393,261
2016	398,058
2015	411,459
2014	419,758

**EXHIBIT B**

Bishop International Airport Advertising Historical Gross Revenue

	Year Gross Revenue	Authority Revenue
2018	112,901.66	33,870.49
2017	99,165.92	29,749.77
2016	87,495.37	26,248.61
2015	75,885.64	22,765.69
2014	87,964.51	26,389.36

# EXHIBIT C

## Approved Advertising Area Map



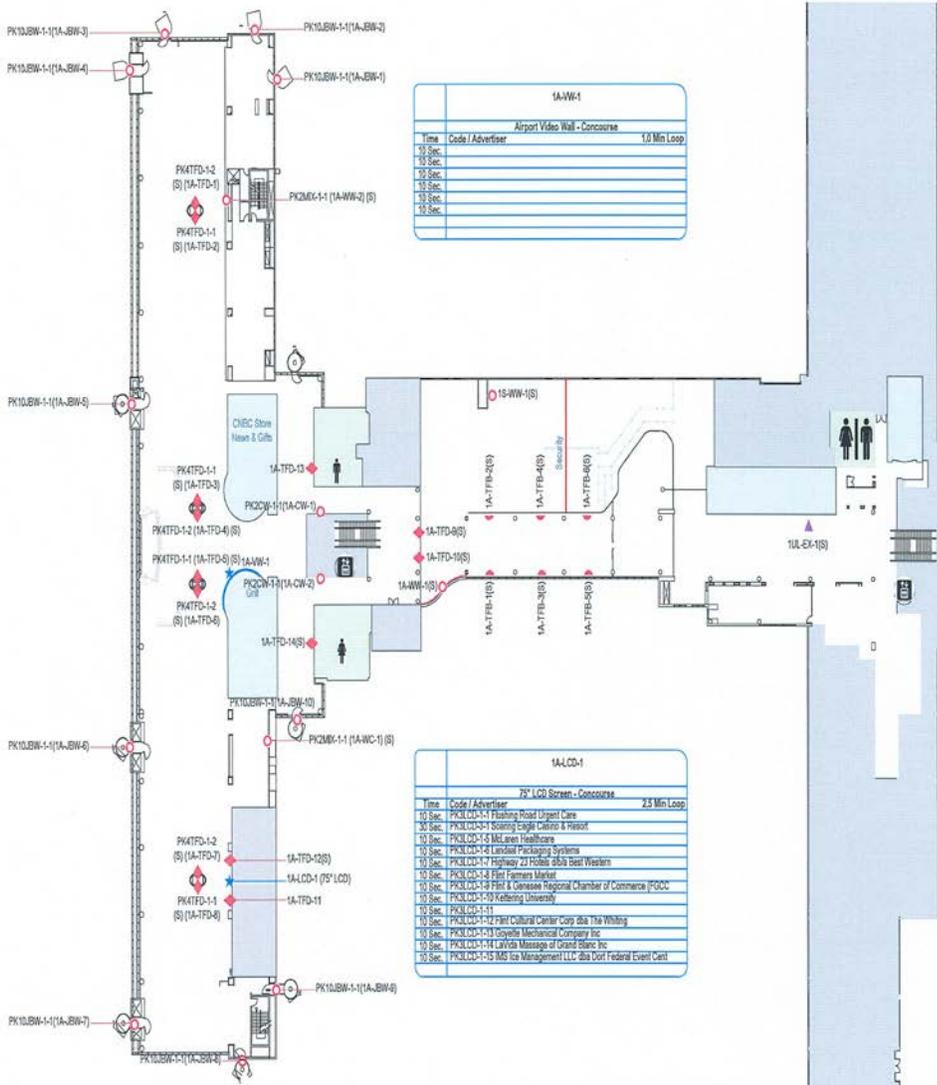
### STANDARD INVENTORY OVERVIEW KEY

- drama
- ▲ other bacelit
- + spectacular
- mini spectacular
- ≡ scrolling unit
- ◆ bacelit tension fabric display
- ★ digital
- visitor information center
- gridwall
- brochure rack
- ▲ showcase
- ▲ exhibit
- FC teexchange station
- ∧ miscellaneous
- ◆ tension fabric display
- ▲ banner
- wrap
- outdoor display

### PAGE INDEX

- Upper Level Refer to Page 2
- Bag Claim & Ticketing Refer to Page 3
- Visitor Information Center Refer to Page 4

# EXHIBIT D



Bishop International Airport • FNT\_048 • Area of Detail: Upper Level

### Tension Fabric Display

- CODE ADVERTISER  
 PK4TFD-1-2(1A-TFD-1) Destination to Travel LLC  
 PK4TFD-1-1(1A-TFD-2) Community Foundation of Greater Flint  
 PK4TFD-1-1(1A-TFD-3) Community Foundation of Greater Flint  
 PK4TFD-1-2(1A-TFD-4) Destination to Travel LLC  
 PK4TFD-1-1(1A-TFD-5) Community Foundation of Greater Flint  
 PK4TFD-3(1A-TFD-7) Destination to Travel LLC  
 PK4TFD-1-1(1A-TFD-8) Community Foundation of Greater Flint  
 1A-TFD-9 Hurley Medical Center  
 1A-TFD-10 University of Michigan - Flint  
 1A-TFD-11  
 1A-TFD-12 McCredie Insurance Agency  
 1A-TFD-13  
 1A-TFD-14 Michigan State University - College of Human Medicine

### 75" LCD

CODE ADVERTISER

### Airport LED Display

CODE ADVERTISER

### Tension Fabric Banner

- CODE ADVERTISER  
 1A-TFB-1 University of Michigan - Flint  
 1A-TFB-2 Acom Wealth Advisors  
 1A-TFB-3 City of Lapeer  
 1A-TFB-4 Flushing Road Urgent Care  
 1A-TFB-5 McCredie Insurance Agency  
 1A-TFB-6 Sagino Japanese Bldg

### Floor Exhibit

- CODE ADVERTISER  
 1UL-EX-1 Brookhaven Lake (Suzanne Johnson Sculpture Jewelry)

### Wall Wrap

- CODE ADVERTISER  
 PK2MW-1(1A-CW-2) Kettering University  
 1A-WW-1 Flint & Genesee Regional Chamber of Commerce (FOCC)  
 1S-WW-1 Flint & Genesee Regional Chamber of Commerce

### Column Wrap

- CODE ADVERTISER  
 PK2CW-1(1A-CW-1)  
 PK2CW-1(1A-CW-2)

### Interior Jet Bridge Wrap

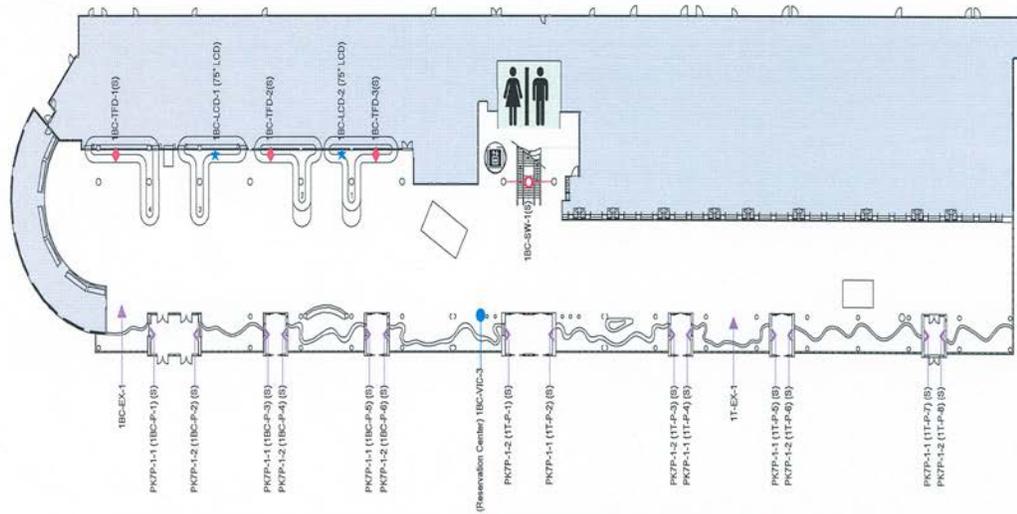
- CODE ADVERTISER  
 PK10.BW-1(1A-BW-1)  
 PK10.BW-1(1A-BW-2)  
 PK10.BW-1(1A-BW-3)  
 PK10.BW-1(1A-BW-4)  
 PK10.BW-1(1A-BW-5)  
 PK10.BW-1(1A-BW-6)  
 PK10.BW-1(1A-BW-7)  
 PK10.BW-1(1A-BW-8)  
 PK10.BW-1(1A-BW-9)  
 PK10.BW-1(1A-BW-10)

### Window Cling

- CODE ADVERTISER  
 PK2MW-1(1A-WC-1) Kettering University

### KEY PLAN



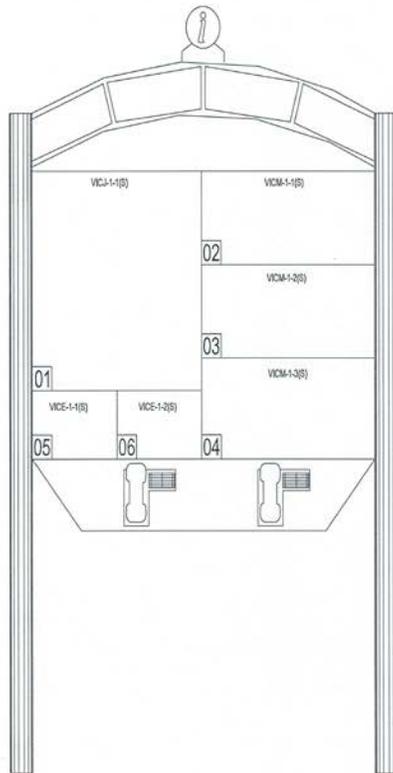


IBC-LCD-1 and IBC-LCD-2		
75" LCD Screen - Baggage Claim		
Time	Code / Advertiser	2.5 Min Loop
10 Sec.	PKLCD-1-1 Flashing Road Urgent Care	
10 Sec.	PKLCD-1-2 Flashing Road Urgent Care	
10 Sec.	PKLCD-1-3 Flashing Road Urgent Care	
10 Sec.	PKLCD-1-4 Flashing Road Urgent Care	
10 Sec.	PKLCD-1-5 McLaren Healthcare	
10 Sec.	PKLCD-1-6 Lend Lease Packaging Systems	
10 Sec.	PKLCD-1-7 Highway 23 Hotels & Best Western	
10 Sec.	PKLCD-1-8 Palm Frangier Market	
10 Sec.	PKLCD-1-9 Palm Frangier Market	
10 Sec.	PKLCD-1-10 Palm Frangier Market	
10 Sec.	PKLCD-1-11 Palm Frangier Market	
10 Sec.	PKLCD-1-12 Palm Cultural Center Corp dba The Whiting	
10 Sec.	PKLCD-1-13 Coyote Mechanical Company Inc	
10 Sec.	PKLCD-1-14 LAVA Massage of Grand Blanc Inc	
10 Sec.	PKLCD-1-15 M&S Ice Management L.L.C. dba Don Federal Event Cent	

- ♦ **Tension Fabric Display**  
 CODE-ADVERTISER  
 IBC-TFD-1 McLaren Healthcare  
 IBC-TFD-2 Flashing Road Urgent Care  
 IBC-TFD-3 Flashing Road Urgent Care & Resort
- ★ **75" LCD (See Grid for Details)**  
 CODE-ADVERTISER
- ▲ **Exhibit**  
 CODE-ADVERTISER  
 IT-EX-1  
 IBC-EX-1
- **Reservation Center (See Page 4 for Details)**  
 CODE-ADVERTISER
- ▲ **Poster Panel**  
 CODE-ADVERTISER  
 PKTP-1-1 (IBC-P-1) Genesee Cty COGIC Alliance  
 PKTP-1-2 (IBC-P-2) Genesee Cty COGIC Alliance (New Life Church)  
 PKTP-1-3 (IBC-P-3) Genesee Cty COGIC Alliance (New Life Church)  
 PKTP-1-4 (IBC-P-4) Genesee Cty COGIC Alliance (New Life Church)  
 PKTP-1-5 (IBC-P-5) Genesee Cty COGIC Alliance (New Life Church)  
 PKTP-1-6 (IBC-P-6) Genesee Cty COGIC Alliance (New Life Church)  
 PKTP-1-7 (IT-P-1) Genesee Cty COGIC Alliance (New Life Church)  
 PKTP-1-8 (IT-P-2) Genesee Cty COGIC Alliance (New Life Church)  
 PKTP-1-9 (IT-P-3) Genesee Cty COGIC Alliance (New Life Church)  
 PKTP-1-10 (IT-P-4) Genesee Cty COGIC Alliance (New Life Church)  
 PKTP-1-11 (IT-P-5) Genesee Cty COGIC Alliance (New Life Church)  
 PKTP-1-12 (IT-P-6) Genesee Cty COGIC Alliance (New Life Church)  
 PKTP-1-13 (IT-P-7) Genesee Cty COGIC Alliance (New Life Church)  
 PKTP-1-14 (IT-P-8) Genesee Cty COGIC Alliance (New Life Church)
- **Soffit Wrap**  
 CODE-ADVERTISER  
 IBC-SW-1 McLaren Healthcare

**KEY PLAN**





● Visitor Info Center

CODE ADVERTISER  
 VIC-1-1: Holiday Inn  
 VICM-1-1: Highway 23 Hotels dby Best Western  
 VICM-1-2: Holiday Inn Express  
 VICM-1-3: Hampton Inn & Suites First Grand Blanc  
 VICE-1-1: Red Roof Inn - Bishop Airport  
 VICE-1-2: First Preferred Inns Inc DBA Quality Inn & Suites

KEY PLAN



Bishop International Airport • FNT\_048 • Area of Detail: Visitor Info Center





## EXHIBIT F

### BISHOP INTERNATIONAL AIRPORT AUTHORITY AIRPORT ADVERTISING CONCESSION AGREEMENT FOR BISHOP INTERNATIONAL AIRPORT

This Concession Agreement (herein "Agreement"), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between the **BISHOP INTERNATIONAL AIRPORT AUTHORITY**, a Michigan municipal corporation ("Authority"), and \_\_\_\_\_, an \_\_\_\_\_ corporation ("Concessionaire"); by which the Concessionaire is hereby granted the exclusive right, to the extent allowed by law and subject to the terms hereof, to the advertising concession for all displayed advertising displays inside the Bishop International Airport terminal (terminal) located in Flint, Michigan.

#### ARTICLE 1 EXHIBITS

- 1.1 The exhibits listed below and attached to this Agreement are incorporated herein by this reference:  
Exhibit "A"; Description and layout of approved advertising areas within the Terminal building

#### ARTICLE 2 TERM

- 2.1 Concessionaire shall provide the services associated with certain advertising displays listed in Exhibit "A" inside the Airport Terminal for a term of five years, commencing on the \_\_\_\_\_, 2019 and terminating on the 30th<sup>th</sup> day of \_\_\_\_\_ 2024 unless terminated earlier by either party under the conditions contained herein subject to earlier termination or extension as provided below.

#### ARTICLE 3 ADVERTISING AREAS

- 3.1 AUTHORITY does hereby grant Concessionaire the exclusive right, to the extent allowed by law and the terms and conditions of this Agreement, to the Airport Terminal building advertising concession and the right to lease advertising displays in accordance with the terms and conditions of this Agreement.
- 3.2 Concessionaire acknowledges that the Bishop International Airport Authority along with partner, \_\_\_\_\_, have the right to seek sponsorship(s) for the Business Center(s) at the Airport.
- 3.3 Concessionaire shall not use the Advertising Areas, nor permit others to use the Advertising Areas, for any purpose other than the installation of advertising displays, unless AUTHORITY authorizes Concessionaire, in writing, to use the Advertising Areas for additional purposes.
- 3.4 If Concessionaire desires to lease advertising outside the approved advertising areas shown in Exhibit A, such approval shall be subject to the approval of the Executive Director of Airports. Such approval would also apply to other airport properties to include outdoors.

**ARTICLE 4  
CONCESSION PAYMENT**

- 4.1 Concessionaire shall pay to AUTHORITY the greater of the Minimum Annual Guarantee (MAG) or the percent of the Annual Gross Revenues. The MAG is the minimum amount the concessionaire agrees to pay the Authority each year during the term of the contract whether or not any advertising space is sold. The MAG is divided by 12 to arrive at the minimum amount that must be paid monthly. The MAG will cover the displays and advertising space in the approved advertising areas shown in Exhibit A and shall be \$ \_\_\_\_\_. The MAG shall be prorated on a 12-month basis compared against the Gross Revenues in the monthly report. In the event that the prorated monthly MAG exceeds the Gross Revenues owed for the month, the Concessionaire shall remit the MAG. Reconciliation of the MAG with Gross Revenues will occur at the end of the contract year. Only Gross Revenues for approved areas listed in Exhibit A will be compared against the MAG. Revenues for advertising outside Exhibit A will be itemized separately in the monthly report and will not contribute to fulfillment of the MAG. Revenues for sales outside the approved area may not be comingled or bundled with areas inside the approved areas.
- 4.2 The term "Gross Revenues" as used herein shall be defined as any and all monies paid or payable to the Concessionaire by or on account of sales made and/or services rendered by, at, or from the Bishop International Airport.
- 4.3 Gross Revenue will be disbursed within Approved Areas Identified in Exhibit A as follows:
- For Gross Revenue each month, Concessionaire will pay AUTHORITY \_\_\_\_\_ % percent \_\_\_\_\_% or the MAG, whichever is greater.
- For Approved Areas Outside Exhibit A
- For Gross Revenue each month, Concessionaire will pay AUTHORITY \_\_\_\_\_% percent
- 4.4 Concessionaire shall, on or before the 20th day of each calendar month, pay for the use during the previous month of the Advertising Areas and the attendant rights and privileges granted by AUTHORITY according to the terms herein set forth, by submitting to AUTHORITY a statement showing its Gross Revenue for such calendar month, and by remitting the required payment with such statement based on this Article 4. Said statement shall show such reasonable detail and breakdown as may be required by the AUTHORITY, but AUTHORITY shall not be bound by any presumption as to the correctness of such statement. If requested by AUTHORITY, Concessionaire shall furnish an affidavit verifying the accuracy of the monthly statement referenced above.
- 4.5 All sums due hereunder, and the report of percentage of Gross Revenue, hereof, shall be forwarded to AUTHORITY at the Bishop International Airport Authority, G-3425 W. Bristol Rd. Flint, MI 48507, during regular business hours of the AUTHORITY.
- 4.6 At the end of each twelve (12) month Agreement cycle, the Concessionaire shall review all payments made during the previous twelve (12) months. Should Concessionaire's aggregate payments during the preceding twelve (12) month period be less than the percentage outlined above of the total Gross Revenues, such deficiency shall be paid by Concessionaire to AUTHORITY within thirty (30) days of the end of the Agreement yearly cycle, without demand or offset. Should the Concessionaire's aggregate payment exceed the greater of the MAG or the percent of the Annual Gross Revenues due, the Authority will issue a credit, which may be taken by the Concessionaire when they remit their payment for the next billing cycle. If such credit due is at the end of the contract, The Authority will remit a refund.

- 4.7 If this Agreement is terminated under the provisions stated in Articles 15 or 16 hereof, the monies due hereunder shall be prorated to the date of termination on a monthly basis.
- 4.8 In the event that Airport should temporarily close for a period exceeding ten (10) consecutive days, Concessionaire may at its discretion, and in lieu of other remedies granted herein, claim an abatement of payments in an amount proportionate to the length of the temporary closure for any month or months in which the Airport is closed. In the event that Concessionaire exercises this option, all other terms and provisions of this Agreement shall remain in full force and effect.
- 4.9 Without waiving any other right available to AUTHORITY in the Event of Default in Concessionaire's payment(s) under this Agreement, in the event that Concessionaire is delinquent in paying AUTHORITY, Concessionaire shall pay AUTHORITY interest thereon, from the date such payments become due to the date of payment, at an annual interest rate of eighteen percent (18%) per annum (1.5% per month). Such interest shall not accrue with respect to disputed items being contested in good faith by Concessionaire.

## **ARTICLE 5 STATEMENTS AND RECORDS**

- 5.1 Concessionaire shall keep full and accurate books and records reflecting all of its Ad Revenue at the Airport, and the AUTHORITY shall have the right, through its designated representatives, and with seventy-two (72) hour advance notice to Concessionaire, to inspect, during normal business hours, all such records as may be necessary to verify the Gross Sales as reported; and
- 5.2 Concessionaire shall furnish AUTHORITY, on demand, within thirty (20) days after the end of each Agreement year, a statement, signed by a Certified Public Accountant, stating that, in his/her opinion, the annual payments by Concessionaire to AUTHORITY during the preceding Agreement year, were made in accordance with the terms and conditions of this Agreement. Such statement shall show all Gross Revenue as shown on the books and records of Concessionaire as they relate to the Advertising Concession at the Airport.
- 5.3 Concessionaire shall provide to the Authority a copy of each signed agreement for sale and/or services rendered by, at, or from the Airport.

## **ARTICLE 6 BASIC SERVICES**

- 6.1 Concessionaire's basic service is to utilize certain space within the approved Advertising Areas provided by the AUTHORITY and to sell, design, and install advertising within the Advertising Areas and to lease such advertising space to others. The Concessionaire certifies it is qualified, experienced and willing to perform the services requested by the AUTHORITY.
- 6.2 Concessionaire hereby agrees to pay all expenses for the installation of advertising display artwork, shall stock brochures if applicable and shall be responsible for repair of any damages to walls and/or building due to its installation or removal of any artwork. Concessionaire agrees to notify AUTHORITY within twenty-four (24) hours of any noted repairs needed to any Advertising Area or advertising equipment.
- 6.3 Concessionaire shall obtain all applicable permits, shall furnish all applicable Labor, equipment, accessories and materials, and shall perform all work necessary in full compliance with stated rules and regulations under law, those of the AUTHORITY, and this Agreement.

- 6.4 Concessionaire shall market only the types and numbers of Advertising Areas as reflected in Exhibit "A" in the Airport unless otherwise agreed to by the parties or addressed herein.
- 6.5 The exact size, number, placement of advertising display artwork will be subject to final approval of the AUTHORITY. Concessionaire shall be responsible to insure that all advertising materials and displays shall be in good taste and to refuse any materials, which through its subject, content or presentation are political, obscene or illegal. AUTHORITY shall have final approval over all advertising displays and content prior to the production of such.
- 6.6 Concessionaire hereby agrees that any Advertising Area that has not been rented, as permitted herein, shall not remain empty or without a display for a maximum period of thirty (30) days. Concessionaire shall be permitted to place advertising by the AUTHORITY or an AUTHORITY-approved local non-profit organization, or display public service announcements until the space is leased. In no case shall a display remain empty or blank for a period of longer than thirty (30) days.
- 6.7 Concessionaire agrees that no signs, logos, or advertising displays shall be painted on or erected in any manner upon the Airport, outside of the specifically designated Advertising Areas without the prior written approval of the Executive Director of Airports or other designee.

#### **ARTICLE 7 AUTHORITY RESPONSIBILITIES AND RIGHTS**

- 7.1 The AUTHORITY owns and shall continue to own the advertising display cases and other advertising media as specified on Exhibit "A". The AUTHORITY shall be responsible for the cleaning, maintenance and repair (including replacement of bulbs and ballasts) of such advertising equipment during the term of this Agreement and any extension thereof. Should repair of any such advertising equipment no longer be cost effective or feasible as determined solely by the AUTHORITY, AUTHORITY shall determine if replacement equipment will be installed.
- 7.2 AUTHORITY shall provide, at its expense, power, lighting, and heat to the Advertising Areas. AUTHORITY shall provide electrical power to each portion of the Advertising Areas. Specific electrical connections and wall outlets other than those provided initially by AUTHORITY shall be at the sole cost of Concessionaire.
- 7.3 The right of the AUTHORITY to allow the advertising and promotion of public and business locations and events, which are of general public interest.
- 7.4 The right of the AUTHORITY to allow community information to be displayed at any location within the Airport.

#### **ARTICLE 8 RIGHTS GRANTED TO CONCESSIONAIRE**

- 8.1 During the term hereof, Concessionaire shall have, and AUTHORITY hereby gives and grants to Concessionaire, the following rights:
- 8.2 The right as defined herein to develop, operate and manage advertising displays in and about the Airport terminal and to provide the service of advertising displays inside the Advertising Areas;
- 8.3 The right, at Concessionaire's sole expense and subject to reasonable regulations of the AUTHORITY, to sell attractive and presentable illuminating and/or non-illuminating advertising displays at designated places in the Airport as may be mutually agreed upon by the parties hereto; and

- 8.4 The right upon any termination of this Agreement, and within a reasonable time, not to exceed thirty (30) days, thereafter, to remove such items as may have been installed in or upon the Airport by Concessionaire, provided Concessionaire is not in default in payment in performance of its obligations under this Agreement and provided such installation received the prior written consent of the AUTHORITY. Concessionaire shall not sell advertising beyond their contract termination date.

## **ARTICLE 9 OBLIGATIONS OF CONCESSIONAIRE**

Concessionaire hereby covenants and agrees:

- 9.1 To furnish good, prompt and efficient service, adequate to meet all reasonable demands for providing advertising displays at the Airport, on a fair and reasonable basis, and to charge prices for such services which shall be based on the rates charge for like services at other Airports of similar size and service conditions. AUTHORITY, in order to assure adequate service to businesses, requires that Concessionaire shall provide to the Authority a copy of each signed agreement for sale and/or services rendered by, at, or from the Airport.
- 9.2 That Concessionaire shall be liable for any damage to the Airport, including any improvements and additions thereon, caused by Concessionaire, its officers, agents, employees, contractors subcontractors, assigns, subtenants, or anyone acting under its direction and control, ordinary wear and tear excepted.
- 9.3 That any of Concessionaire's personnel performing services at the Airport hereunder shall be neat, clean and courteous, and Concessionaire shall not permit its agents, servants, or employees so engaged, to conduct business in a loud, noisy, boisterous, offensive or objectionable manner.
- 9.4 That Concessionaire shall abide by and be subject to all reasonable rules and regulations, which are now, or may from time to time be formulated by AUTHORITY or by any regulatory body with lawful jurisdiction concerning Management operation or use of the Airport and advertising therein.
- 9.5 That it will not permit any lien for labor or materials or any other lien to become attached to or to be foreclosed upon the Advertising Areas or improvement thereto or thereon, or any part or parcel thereof.
- 9.6 That in the event Concessionaire willfully falsifies any of its records or figures so as to deprive the AUTHORITY of any of its rights under the terms of this Agreement, such action shall be grounds for cancellation of this Agreement, at the option of the AUTHORITY. In the event Concessionaire or any of its agents, officers, or employees shall willfully falsify any records or willfully divert business from the Airport so as to deprive the AUTHORITY of any revenues due it under this Agreement, Concessionaire agrees to pay to AUTHORITY as liquidated damages, three (3) times the amount due AUTHORITY which was diverted away from AUTHORITY, together with reasonable attorneys' fees which may be incurred by AUTHORITY to prove its right to recover such liquidated damages.

## **ARTICLE 10 DESIGNATED REPRESENTATIVE**

- 10.1 The AUTHORITY designates the Executive Director of Airports or other designee, as its representative in connection with this Agreement. This representative shall be available as often as may be necessary for inspecting and approving the services or authorizing changes and for approving all records pertinent to this Agreement.
- 10.2 Concessionaire shall designate a local representative to provide the on-site services outlined herein.

**ARTICLE 11  
LIENS**

- 11.1 Concessionaire shall not suffer any mechanics' or materialmen's lien to be filed against the fee of the Airport or against the Concessionaire's interest in the Advertising Areas by reason of work, labor, services or materials supplied or claimed to have been supplied to the Concessionaire. If any such lien shall at any time be filed as aforesaid, and Concessionaire shall fail to remove same within thirty (30) days thereafter, it shall constitute a default under the provisions of this Agreement. However, it shall not be an event of default so long as such lien is being defended in good faith with reasonable diligence by the Concessionaire, and such defense is, in AUTHORITY'S opinion, likely to be successful.

**ARTICLE 12  
WAIVER**

- 12.1 Concessionaire shall indemnify and hold AUTHORITY harmless from suits, actions, damages, liability and expense in connection with loss of life, bodily or personal injury or property damage arising from or out of any occurrence in, upon or at or from the Advertising Areas or the occupancy or use by Concessionaire of said Advertising Areas or any part thereof, or occasioned wholly or in part by any act or omission of Concessionaire, its agents, contractors, employees, servants, invitees or licensees.
- 12.2 Concessionaire shall store its property in and shall occupy the Advertising Areas at its own risk, and releases AUTHORITY to the full extent permitted by law from all claims of every kind resulting in loss of life, personal or bodily injury or property damage.
- 12.3 AUTHORITY shall not be responsible or liable at any time for any loss or damage to Concessionaire's equipment, fixtures or other personal property of Concessionaire or to Concessionaire's business.
- 12.4 AUTHORITY shall not be responsible or liable to Concessionaire or to those claiming by, through or under Concessionaire for any loss or damage to either the person or property of Concessionaire that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting or adjoining areas.
- 12.5 AUTHORITY shall not be responsible for any defect, latent or otherwise, of which the Advertising Areas are a part, or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall AUTHORITY be responsible or liable for any injury, loss or damage to any person or to any property of Concessionaire or other person caused by or resulting from bursting, breakage, leakage, running, backing up, seepage, or the overflow of water, sewerage, steam, snow or ice, in, any part of the Advertising Areas or for any injury or damage caused by or resulting from acts of God or the elements.

**ARTICLE 13  
LIABILITY INSURANCE REQUIREMENTS**

- 13.1 Concessionaire assumes all risk of loss or injury to property or persons arising from any of its operations under this Agreement, and agrees to save and keep the AUTHORITY from all claims, demands, suits, judgments, costs or expenses arising from any such loss or injury. It is expressly understood that the foregoing provisions shall not in any way limit the liability of the Concessionaire.
- 13.2 AUTHORITY agrees to save and keep Concessionaire harmless from any and all loss, expense or liability resulting from negligence of AUTHORITY or any of its employees or agents in the maintenance or operation of the Airport to the extent allowed by the state of Michigan.

- 13.3 Concessionaire agrees to carry insurance in the minimum amounts as follows:
- 13.4 Liability insurance, which shall include commercial general and automobile liability insurance, to insure against risks customarily insured against by similar businesses engaged in services of the type to be transacted under this Agreement.
- 13.5 Concessionaire agrees to carry comprehensive public liability and property damage insurance during the term of this Agreement, covering the Concessionaire and naming the AUTHORITY as an additional named insured, with terms and companies satisfactory to the AUTHORITY, for limits of not less than \$1,000,000.00 for bodily injury, including death, and personal injury for any one (1) occurrence, \$1,000,000.00 property damage insurance, or a combined single limit of \$1,000,000.00. Such dollar amounts shall be increased upon thirty (30) days' notice to Concessionaire by the AUTHORITY. The policies shall be written by reputable companies authorized to write such insurance in the State of Michigan, and satisfactory to the Authority. Concessionaire's insurance will include contractual liability coverage recognizing this Agreement, products and/or completed operations liability and providing that the AUTHORITY and Concessionaire shall be given a minimum of thirty (30) days' written notice by the insurance company prior cancellation, termination, or change in such insurance. Concessionaire shall provide the AUTHORITY a certificate evidencing that said insurance is in full force and effect and stating the terms thereof, on an annual basis. Concessionaire acknowledges that it shall bear the risk of loss for all of the personal property, including trade fixtures, located on the Airport, as well as the risk of loss associated with business interruption due to casualty to the Airport.
- 13.6 AUTHORITY and Concessionaire and all parties claiming under them mutually release and discharge each other from all claims and liabilities arising from or caused by any casualty or hazard covered or required hereunder to be covered in whole or in part by insurance on the Airport or in connection with property on or activities conducted on the Airport, and waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof. Provided, however, that such release shall not operate in any case where the effect is to invalidate or increase the costs of such insurance coverage (provided, that in the case of increased costs, the other party shall have the right, within thirty (30) days following written notice, to pay such increased costs, thereby keeping such release and waiver in full force and effect).
- 13.7 Concessionaire's carrying of the insurance required by this Agreement shall not relieve Concessionaire of any other of its obligations under this Agreement.

#### **ARTICLE 14 INDEMNIFICATION**

- 14.1 Concessionaire agrees to protect, defend, indemnify, and hold harmless Genesee County and the City of Flint, and the Bishop International Airport Authority, its Board, Directors, officers, officials, agents and employees from and against any and all liability, damages, claims, suits, liens, and judgments, of whatever nature, including claims for contribution and/or indemnification, for injuries to or death of any person or persons, or damage to the Airport or other rights of any person or persons, caused by Concessionaire's operations hereunder. Concessionaire's obligation to protect, defend, indemnify, and hold harmless, as set forth herein, shall include any matter arising out of any actual or alleged infringement of any patent, trademark, copyright, or service mark, or any actual or alleged unfair competition, disparagement of product or service, or other business tort of any type whatsoever, or any actual or alleged violation of trade regulations. Concessionaire further agrees to protect, defend, indemnify, and hold harmless the AUTHORITY, its Board, Directors, officers, officials, agents and employees from and against any and all claims, liability for compensation under the Worker's Compensation Act arising out of injuries sustained by any employee of Concessionaire.

**ARTICLE 15  
TERMINATION BY AUTHORITY**

- 15.1 AUTHORITY may cancel this Agreement by giving Concessionaire thirty (30) days advance written notice, upon or after the happening of any of the following events (herein "Event of Default"):
- 15.2 The filing by Concessionaire of a voluntary petition in bankruptcy;
- 15.3 The adjudication of Concessionaire as bankrupt pursuant to involuntary bankruptcy proceedings;
- 15.4 The appointment of a receiver of Concessionaire's assets if he is not removed within thirty (30) days;
- 15.5 The divestiture of Concessionaire's estate herein by other operation of law;
- 15.6 The abandonment by Concessionaire of its conduct of display advertising at the Airport, which shall be defined as Concessionaire's failure to conduct regular and continuing operations at the Airport in accordance with the requirements of this Agreement for one (1) month.
- 15.7 The default by Concessionaire in the performance of any covenant or agreement herein required to be performed by Concessionaire and the failure of Concessionaire to remedy such default for a period of thirty (30) days after receipt from AUTHORITY of written notice to remedy the same; or
- 15.8 The default by Concessionaire, on three (3) separate occurrences throughout the term of this Agreement, for nonpayment of monies due on or before the thirtieth (30<sup>th</sup>) day of each month and issuance of a written notice to remedy such default within ten (10) days after receipt from AUTHORITY;
- 15.9 Provided, however, that no notice of cancellation, as above provided, shall be of any force or effect if Concessionaire shall have remedied the default prior to receipt of AUTHORITY's notice of cancellation.
- 15.10 No waiver of default by AUTHORITY of any of the terms or conditions hereof to be performed, kept and observed by Concessionaire, shall be construed to be or act as a waiver of any subsequent default of any of the terms and conditions herein contained to be performed, kept and observed by Concessionaire.
- 15.11 If Concessionaire is considered in default of this Agreement, AUTHORITY may utilize any remedy available to it under the laws of the State of Michigan. In the event of default by Concessionaire, Concessionaire shall be responsible for any and all attorney's fees, costs of collection, and costs incurred by the AUTHORITY as a result of Concessionaire's default.

**ARTICLE 16  
TERMINATION BY CONCESSIONAIRE**

- 16.1 In addition to all other remedies available to Concessionaire, this Agreement shall be subject to cancellation by Concessionaire should any one or more of the following events occur:
- 16.2 The permanent abandonment of the Airport by AUTHORITY; or
- 16.3 The issuance by any court of competent jurisdiction of any injunction preventing or restraining the use of the Airport in such a manner as to substantially restrict Concessionaire from conducting its business and the remaining in force of such injunction for at least thirty (30) days.

- 16.4 The breach by AUTHORITY of any of the terms, covenants, or conditions of this Agreement to be kept, performed, and observed by AUTHORITY, and the failure of AUTHORITY to remedy such breach for a period of thirty (30) days after written notice from Concessionaire of the existence of such breach.
- 16.5 The assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport and its facilities in such a manner as to substantially restrict Concessionaire from conducting its business if such restriction be continued for a period of thirty (30) days or more.

**ARTICLE 17**  
**AIRPORT MASTER PLAN AND AIRPORT EXPANSION**

- 17.1 Concessionaire agrees that no liability shall attach to AUTHORITY by reason of any efforts or action taken toward implementation of any present or future master plan for the modification, enlargement or relocation of the Airport, and, for and in consideration of the granting of the rights and privileges herein granted Concessionaire waives any right to claim damages or other consideration which may arise there from.
- 17.2 In the event that the United States Government or any of its agencies shall occupy the Airport or any substantial part thereof to such an extent as to materially interfere with Concessionaire's operations, or in the event of destruction by fire or other cause at all, of a material proportion of the Airport or Airport facilities, or if Concessionaire's operations shall for any reason, similar or dissimilar, be materially interfered with for a period in excess of thirty (30) days, then, and in any of those events, Concessionaire shall have the right upon written notice to AUTHORITY to terminate this Agreement and Concessionaire's further obligations hereunder, or at its option to suspend this Agreement for the periods of such disability, in which cases payment shall not be paid or payable from the effective date of such notice until normal operations shall have been restored and AUTHORITY shall return to Concessionaire a just proportion of any payment which may have been paid in advance for a month or portion thereof which falls within the period of disability.

Force Majeure: Neither the Authority nor Concessionaire shall be deemed to be in violation of this Agreement for reason of failure to perform any of its obligations hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of public authority, flight restrictions, weather conditions, riots, rebellion, accidents, sabotage or any other events, conditions or circumstances for which they are not responsible and/or which are not within their control

- 17.3 Concessionaire recognizes that from time to time during the term of this Agreement should growth and expansion of the Airport require, it may be necessary for the AUTHORITY to initiate and carry forward extensive programs of construction, expansion, relocation, maintenance and repair in order that the Airport and its facilities may be suitable for the volume and character of air traffic and flight activity which will require accommodation, and that such construction, reconstruction, expansion, relocation, maintenance and repair may inconvenience or temporarily interrupt the Concessionaire in its operations at the Airport. The Concessionaire agrees that no liability shall attach to the AUTHORITY, its Board, Directors, officers, agents, employees, contractors, subcontractors, and representatives by reason of such inconvenience or interruption, so long as the same are reasonable under the circumstances, and for and in further consideration of the Airport, the Concessionaire waives any right to claim damages or other consideration therefore, except that the monies payable under Article 4 shall abate during and for such period that access to the Terminal building and/or access to the Advertising Areas by Concessionaire or by passengers from commercial aircraft is denied by reason of construction.
- 17.4 If extensive expansion should require, AUTHORITY reserves the right to relocate all advertising displays within the Airport Terminal building.

**ARTICLE 18  
NOTICE**

- 18.1 All notices from Concessionaire to the Authority required or permitted by any provision of this Agreement shall be directed to Authority as follows:

Bishop International Airport Authority  
Attention: Airport Director  
G-3425 W. Bristol Rd.  
Flint, Michigan 48507

All notices from Authority to Concessionaire required or permitted hereunder shall be directed as follows:

*Insert contact information for Concessionaire*

All notices to be given hereunder by either party shall be written and sent by certified mail, return receipt requested, postage prepaid, addressed to the party intended to be notified at the address set forth above. Either party may, at any time, or from time to time, notify the other in writing of a substitute address or substitute person to whose attention the notice is to be sent for that set forth above, and, thereafter, notices shall be directed to such substituted address or substituted person. Notice given as aforesaid shall be sufficient service thereof and shall be deemed given as of the date received, as evidenced by the return receipt of the registered or certified mail.

**ARTICLE 19  
APPLICABLE LAWS**

- 19.1 This Agreement shall be construed under the laws of the State of Michigan and to all applicable laws, ordinances, statutes, rules, regulations or orders of any governmental authority, federal, state, or municipal, lawfully exercising authority over the Airport or Concessionaire's operations hereunder, including the Federal Aviation Administration (FAA).
- 19.2 In addition to, and not to the exclusion of all other applicable rules promulgated by the FAA, Concessionaire agrees to conduct its operations in compliance with the Federal Aviation Regulations, including all amendments hereafter made, and embodied in 49 C.F.R. Parts 1542 and 1544.

**ARTICLE 20  
LIEN**

- 20.1 In addition to any other rights or remedies allowed by law, the AUTHORITY shall have a lien on all of the property of the Concessionaire used or situated in the Advertising Areas, to secure payment of amounts owed hereunder by the Concessionaire to the AUTHORITY at any time during the existence of this Agreement, and in default of payment may take possession of and sell such of said property as may be sufficient to pay the delinquent indebtedness. Notwithstanding anything contained herein to the contrary, Concessionaire agrees that it shall have no property rights in the Terminal.

**ARTICLE 21  
SUCCESSORS AND ASSIGNS**

- 21.1 The AUTHORITY and the Concessionaire, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.
- 21.2 Neither the AUTHORITY nor the Concessionaire shall assign or transfer any interest in this Agreement without the written consent of the other.
- 21.3 If an assignment is made, Concessionaire shall continue to be liable, jointly and severally, with the Assignee for the fulfillment of all terms and conditions arising under this Agreement subsequent to the Assignment, unless AUTHORITY specifically releases Concessionaire from future liability, in writing.

**ARTICLE 22  
VERBAL AGREEMENT OR CONVERSATION**

- 22.1 No verbal agreement or conversation with any director, officer, agent, or employee of the AUTHORITY, either before, during, or after the execution of this Agreement, shall affect or modify any of the terms or obligations herein contained, nor shall such verbal agreement or conversation entitle the Concessionaire to any additional payment whatsoever under the terms of this Agreement.

**ARTICLE 23  
INDEPENDENT CONTRACTOR**

- 23.1 Neither the Concessionaire nor the Concessionaire's employees are considered to be employees of the AUTHORITY for any purpose whatsoever. Concessionaire is considered as an independent contractor at all times in the performance of the Basic Services described in Article 6. Concessionaire further agrees that neither Concessionaire nor its employees are entitled to any benefits from the AUTHORITY under the provisions of the Workers' Compensation Act of the State of Michigan. It is understood that the AUTHORITY or the Airport is not in any way or for any purpose a partner or joint venture with, or agent of, Concessionaire in the use of the Advertising Areas for any purpose.

**ARTICLE 24  
WAIVER**

- 24.1 Should Concessionaire breach any of its obligations hereunder, AUTHORITY, nevertheless, may thereafter accept from Concessionaire any payment or payments due hereunder, and continue this Agreement in effect, without in any way waiving AUTHORITY'S right to exercise its default rights hereunder, or any other remedies provided by law for said breach. In addition, any waiver by either Party of any default, breach or omission under this Agreement shall not be construed as a waiver of any subsequent or different default, breach, or omission.

**ARTICLE 25  
PARTIAL INVALIDITY**

- 25.1 If any term or condition of this Agreement or the application thereof to any person or event shall to any extent be invalid and unenforceable, the remainder of this Agreement and the application of such term, covenant or condition to persons or events other than those to which it is held to be invalid or unenforceable shall not be affected and each term, covenant and condition of this Agreement shall be Considered severable and shall be valid and enforceable to the fullest extent permitted by law.

**ARTICLE 26  
TAXES AND ASSESSMENTS**

- 26.1 Concessionaire shall pay all personal property taxes and other taxes related to Concessionaire's property or Concessionaire's use of the Advertising Areas under the terms of this Agreement. Concessionaire shall have the right, by giving written notice to AUTHORITY of its intention to do so, to resort to any available legal or administrative proceeding to contest or obtain the review of any such tax, charge or assessment at any time before such tax, charge, or assessment becomes a lien against AUTHORITY'S property. At Concessionaire's request, AUTHORITY shall join in such proceeding. The expenses of such proceeding, including all of AUTHORITY'S costs and attorney's fees incurred in protecting its own interests in such proceeding and in assisting Concessionaire in such proceeding, shall be paid by Concessionaire.

**ARTICLE 27  
SURRENDER UPON TERMINATION**

- 27.1 Upon the expiration or sooner termination of this Agreement, Concessionaire, at its own expense, shall:
- 27.2 Remove from the Advertising Areas, any improvements it constructed, except for those transferred to AUTHORITY as provided herein;
- 27.3 Restore the Advertising Areas to its original condition following any such removal.
- 27.4 Concessionaire shall have the right to remove its advertising displays and other items of personal property from the Advertising Areas within thirty (30) days of the day of expiration or sooner termination of this Agreement. Should Concessionaire fail to remove its personal property within said time, AUTHORITY shall have the right to remove said personal property and to place it into storage on Concessionaire's behalf and at Concessionaire's sole cost and expense. AUTHORITY shall also be entitled to collect reasonable monies from Concessionaire for the use of the Advertising Areas until the AUTHORITY places said property into storage.
- 27.5 At least sixty (60) days prior to the end of the Term or termination of this Agreement, Concessionaire agrees to cooperate with AUTHORITY by providing detailed records regarding the current advertisers and the status of their agreements with Concessionaire. All such agreements shall be assigned to AUTHORITY; and
- 27.6 Concessionaire will provide AUTHORITY a detailed list of the companies it has contacted within the prior six (6) months that at the date of termination had not signed an agreement with Concessionaire.

**ARTICLE 28  
SUBSTITUTION OF ADVERTISING AREAS**

- 28.1 AUTHORITY has the right to take any part of the Advertising Areas if, at the sole discretion of AUTHORITY, such areas are required for Airport Purposes. If such action is taken, AUTHORITY shall, to the extent possible, substitute a comparable location permitting comparable public access and visibility to, Concessionaire's advertising displays and equal desirability to Concessionaire's clients. AUTHORITY shall bear all expenses of moving Concessionaire's advertising displays to the substituted location. If such relocation is unacceptable to Concessionaire's advertising client or, if such alternate location is unavailable, AUTHORITY shall reimburse Concessionaire for all costs of removing the Advertising display and graphics. Also, if applicable, if such alternate location is unavailable, AUTHORITY shall take possession of and reimburse Concessionaire for the advertising display fixture at the then current depreciated cost. It is the specific intent of this Article that Concessionaire be

placed, to the extent possible, in the same position it would have been had AUTHORITY not substituted new Advertising Areas for the existing Advertising Areas; provided, however, that AUTHORITY shall not be obligated to reimburse Concessionaire for lost profits due to such substitution.

## **ARTICLE 29 LAWFUL AND REASONABLE USE**

- 29.1 Concessionaire may not do anything in or upon the Airport, nor bring or keep anything therein, which will unreasonably increase or tend to increase the risk of fire, cause a safety hazard to persons, obstruct or interfere with the rights of any other concessionaire(s) or in any way injure or annoy them, or which violates or causes violation of any applicable health, fire, environmental, or other regulation of any level of government.
- 29.2 All display advertising fixtures installed by Concessionaire shall meet the design requirements of the American's with Disabilities Act (ADA). AUTHORITY may but is not required to inform Concessionaire of any violation and set a date for abatement.

## **ARTICLE 30 GENERAL CIVIL RIGHTS PROVISIONS**

- 30.1 The Concessionaire and its transferee agree to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the Concessionaire or its transferee for the period which Federal assistance is extended to the airport through the Airport Improvement Program. In cases where Federal assistance provides, or is in the form of personal property; real property or interest therein; structures or improvements thereon, this provision obligates the party or any transferee for the longer of the following periods:
- (a) The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
  - (b) The period during which the airport sponsor or any transferee retains ownership or possession of the property.
- 30.2 During the performance of this contract, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:
1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
  2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
  3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each

potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### **Title VI List of Pertinent Nondiscrimination Acts and Authorities**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);

- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et. Seq.).

**ARTICLE 31**  
**ACDBE PARTICIPATION**

- 31.1 The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, apply to this Agreement. It is the policy of Authority to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. While an ACDBE specific goal has not been established for this agreement, Authority encourages ACDBE participation in this contract. It is also possible that the 5-year program for FFY 2019-2024 will include a contract goal for this concession. If so, an amendment incorporating the goal and good faith efforts to meet this goal would be required under the Required Modifications Clause contained in Article 17.
- 31.2 The following information has been submitted and approved by Authority: (1) the names and addresses of ACDBE firms and suppliers that will participate, (2) a description of the work that each ACDBE will perform, (3) the dollar amount of the participation of each ACDBE firm participating, (4) written and signed documentation of commitment to use and ACDBE whose participation it submits to meet a contract goal; and (5) written and signed confirmation from the ACDBE that it is participating as provided in Contractor's commitments hereunder.
- 31.3 Contractor shall make good faith efforts to replace and approved ACDBE that is terminated or has otherwise failed to complete its agreement or subcontract with another certified ACDBE, to the extent needed to meet the specific goal. Good faith efforts are defined in Appendix A, 49 CFR Part 26. The Contractor must notify the Operations Manager immediately of the ACDBE's inability or unwillingness to perform and provide reasonable documentation. In this situation, the Contractor must obtain Authority approval of the substitute ACDBE and provide copies of new or amended subcontracts of documentation of good faith efforts. If the contractor fails to comply, the Operations manager may issue a termination for default proceeding
- 31.4 Changes to the approved ACDBE listing must receive prior approval of Authority. Contractor will be required to report participation on the form included in Exhibit G on a quarterly basis.

**ARTICLE 32  
MISCELLANEOUS**

- 32.1 AUTHORITY agrees that all design rights of the advertising displays are the property of Concessionaire unless AUTHORITY purchases such displays from Concessionaire as herein provided.
- 32.2 Nothing contained in this Agreement shall be construed to create a partnership or joint venture between the AUTHORITY and the Concessionaire or between the AUTHORITY and any other party, or cause the AUTHORITY to be responsible in any way for the debts or obligations of the Concessionaire or any other party.
- 32.3 AUTHORITY is entitled to accept, receive and cash or deposit any payment made by Concessionaire for any reason or purpose or in any amount whatsoever, and apply the same at AUTHORITY'S option to any obligation of Concessionaire and the same shall not constitute payment of any amount owed except that to which AUTHORITY has applied the same. No endorsement or statement on any check or letter of Concessionaire shall be deemed an accord and satisfaction or otherwise recognized for any purpose whatsoever. The acceptance of any such check or payment shall be without prejudice to AUTHORITY'S right to recover any and all amounts owed by Concessionaire hereunder, and AUTHORITY'S right to pursue any other available remedy.
- 32.5 Concessionaire shall pay, all of the costs, charges and expenses, including court costs and reasonable attorneys' fees incurred by AUTHORITY in enforcing its rights under this Agreement or incurred by AUTHORITY in any litigation, negotiation or transactions relating to, or arising out of, this Agreement in which AUTHORITY, without fault, becomes involved or concerned.
- 32.6 There are no representations, covenants, warranties, promises, agreements, conditions or undertakings, oral or written, between AUTHORITY and Concessionaire other than herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon AUTHORITY or Concessionaire unless in writing and signed by them.
- 32.7 If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure material, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under this Agreement, the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.
- 32.8 This Agreement shall be construed without reference to titles of articles and sections, which are inserted only for convenience of reference.
- 32.9 The use herein of a singular term shall include the plural and use of the masculine, feminine or neutral gender shall include all others.
- 32.10 If Concessionaire is a partnership or other business organization, the members of which are subject to personal liability, the liability of each such member shall be deemed to be joint and several.
- 32.11 If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

- 32.12 This Agreement shall inure to the benefit of and be binding upon the AUTHORITY or Concessionaire and their respective heirs, executors, administrators, successors and such assigns and subtenants as may be permitted hereunder.
- 32.13 Each individual executing this Agreement on behalf of a corporation represents and warrants that he has the authority to do so.
- 32.14 Concessionaire shall comply with all laws, orders or regulations of any governmental authority relating to the use of the Advertising Areas, including, but not limited to, the regulations and rules adopted by AUTHORITY, the Federal Aviation Administration (and specifically, without limitation, Federal Aviation Regulations, Parts 139 and Transportation Security Regulation Part 1542), and any other entity having authority applying to or affecting the Airport. Any violation by Concessionaire, its employees, suppliers, guests, business invitees, or agents of any rule or regulation which results in the assessment of a fine against AUTHORITY by the Federal Aviation Administration shall be the responsibility of Concessionaire, and the fine shall be paid by Concessionaire.
- 32.15 AUTHORITY reserves for the use and benefit of the public a right of flight for the passage of aircraft in the air space overlying the Airport, together with the right to cause in that air space such noise as is inherent in the operation of aircraft using the air space for landing at, taking off from, or operating at the Bishop International Airport. Concessionaire shall not erect or allow the erection or maintenance of any structure or object or permit any growth which violates federal or state law regarding tall structures, including, but not limited to, 14 C.F.R. Part 77 and Ind. Code '8-21-10-1, et seq., and any amendments thereto.

### **ARTICLE 33 AUTHORIZATION**

- 33.1 AUTHORITY represents that it has the authority to enter into this Agreement and grant the rights contained herein to Concessionaire.
- 33.2 The undersigned signatory on behalf of Concessionaire warrants and represents that:
- 33.3 He/she is an agent of Concessionaire;
- 33.4 He/she is authorized to execute this Agreement on Concessionaire's behalf; and,
- 33.5 Concessionaire shall be bound as a signatory to this Agreement as a result of his/her execution of this Agreement.

### **ARTICLE 34 HEADINGS**

- 34.1 The headings contained in this Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provision of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

**EXHIBIT G**

Date: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

% ACDBE Goal: \_\_\_\_\_

Current Period – From: \_\_\_\_\_ To: \_\_\_\_\_

<u>Name of ACDBE Firm</u>	<u>Description of services provided</u>	<u>Subcontractor?</u> "X" = Yes	<u>Service Provider</u> "X" = Yes	<u>Supplier</u> "X" = Yes	<u>ACDBE Payments or Gross Receipts this Period (if applicable)</u>	<u>ACDBE Payments or Receipts Year-To-Date</u>

Total service/supplier payments by Contractor Year to Date (if applicable): \_\_\_\_\_

Total Gross Receipts Year to Date: \_\_\_\_\_

**I HEREBY CERTIFY THAT THE ABOVE STATEMENT IS TRUE AND CORRECT AND SUPPORTING DOCUMENTATION IS ON FILE AND IS AVAILABLE FOR INSPECTION AT ANY TIME.**

\_\_\_\_\_  
Signature & Title

