

MASSACHUSETTS PORT AUTHORITY

OUT OF HOME ADVERTISING/SPONSORSHIP/CORPORATE BRANDING, MARKETING AND REVENUE GENERATION PROGRAM

REQUEST FOR PROPOSALS

1.0 Background

The Massachusetts Port Authority (“Massport”) is an independent public authority that provides for the growing transportation needs of Massachusetts and New England by:

- Developing, promoting and managing airports, the Boston seaport, the Tobin Memorial Bridge, (through December, 2009) and other regional transportation infrastructure as customer-oriented gateways to New England, while maximizing safety and sustainability.

Massport is seeking an advertising/sponsorship based agency (the “advertising contractor” or “proposer” or “company”) that will assist Massport in optimizing advertising, sponsorship, corporate branding, and marketing opportunities, primarily at Massport maritime and seaport property locations in South Boston and Charlestown that advance Massport’s objective of increased revenue generation.

The South Boston Seaport District is a dynamic location with new high end condominiums, marinas, hotels, artist’s lofts and world class restaurants. The area houses the acclaimed Institute of Contemporary Art as well as the recently renovated Boston Children’s Museum. The Boston Convention & Exhibition Center is a prominent fixture in the Seaport which draws hundreds of thousands of visitors and conventions each year.

The Seaport District is also home to Cruiseport Boston, one of the fastest growing high-end cruise markets in the country. The Black Falcon Cruise Terminal, located in the Boston Marine Industrial Park serves over 270,000 cruise passengers annually. In 2009, sixteen cruise lines will serve Cruiseport Boston, providing passengers with an attractive mix of cruises to Canada/New England, Bermuda, the Caribbean, and Europe. An average of 2,000 passengers pass through Cruiseport Boston when a ship is in port.

Charlestown contains several places of historical interest drawing many thousands of tourists and visitors year round to such famous locations as the Bunker Hill Monument and the USS Constitution – the oldest commissioned ship in the US Navy at the Charlestown Navy Yard. At Constitution Center, this property offers views of Boston Harbor and the USS Constitution as well as full-service marina with approximately 240 slips. Surface parking for approximately 370 cars is available. Massport’s tenant is currently planning the construction of a new building office building along Constitution Road containing approximately 55,000 square feet.

Massport believes these locations provide significant opportunity and exposure to leverage added revenue potential through the use of approved OOH advertising.

Massport invites proposals from qualified out of home (“OOH”) advertising contractors interested in providing creative media buying/corporate sponsorship strategies and other revenue generating opportunities. Proposer will negotiate contracts with potential advertisers interested in advertising opportunities on Massport owned property and other locations, or interested in sponsorship/naming right opportunities of Massport owned facilities or structures including, but not limited to, potential advertising structures to be constructed by the advertising contractor under the terms of the Contract.

Through this competitive procurement process, Massport is seeking proposers to enter into a contract (“Contract” or “Agreement”) to provide these services for a period of ten years with one five-year option, to be exercised at the sole discretion of Massport.

2.0 Scope of Services

The advertising contractor shall design and implement innovative advertising/sponsorship/corporate branding/marketing-based revenue programs. The scope of services shall include: a) product design, b) sales and promotion, c) sign design, production, delivery, installation and maintenance, and d) billing, collection, and reporting. The advertising contractor shall be responsible for all applicable local, state and federal permitting and shall bear all costs of labor, sales, materials, general administration, and overhead expenses associated with managing this advertising/sponsorship/corporate branding/marketing-based revenue program (“program”). The advertising contractor shall include, in response to this RFP, its detailed proposal for recovering its capital costs associated with its construction of new advertising structures in support of this program.

.2.1 Program Objectives

Massport’s goals in seeking proposals under this RFP are to:

- Maximize potential revenue through innovative out of home advertising, sponsorship, corporate branding, and marketing programs.
- Develop new business opportunities through programs, services, and other creative uses of the physical asset and visibility offered through Massport- owned property and other locations.

2.2 Advertising Space

Visibility locations at the properties, facilities, and other locations listed below may include but are not limited to:

- Construction of out of home advertising vehicles
- Promotional/Sponsorship events and unique marketing programs
- Roadway poles/signage
- Physical structures
- Vehicles
- other visibility points

Proposer shall consider the following property and facility locations where advertising, sponsorship, corporate branding, and marketing opportunities may exist:

- Black Falcon Cruise Ship Terminal
- Boston Fish Pier, 212 Northern Avenue
- Conley Marine Terminal
- Congress Street
- Massport Haul Road
- Summer Street
- World Trade Center Avenue
- Seaport Boulevard
- D Street
- B Street
- Northern Avenue
- Constitution Plaza, Charlestown

Proposers may submit proposals on any or all of the above opportunities. All advertisements and marketing opportunities must comply with applicable federal, state, and local laws, rules and regulations including without limitation M.G.L. c.93D, and implementing regulations, 711CMR 3.00 et seq., 23 U.S.C.131 and implementing regulations, 23 CFR 750.701 et. seq. and the terms of an Agreement between the Federal Highway Administration/Department of Transportation and the Commonwealth of Massachusetts dated December 31,1971 as amended.

Proposers should be prepared through their own research and due diligence to present actual concepts that adhere to the exact federal, state, and local regulations as they pertain to specific Massport assets and facilities.

2.3 Maintenance

The selected advertising contractor, or company, shall maintain all OOH structures at their own cost. The company shall also perform quarterly inspections of each advertisement. The company shall be responsible for the installation, maintenance and repair of all advertisements covered by the Contract. The company shall be responsible for the cost of all labor, materials, equipment, and maintenance needed to repair an advertisement.

2.4 Service Hours

The placement, maintenance, and removal of advertisements shall not disrupt normal business at any Massport property. Installation procedures and times for installation and/or removal of materials must be approved in advance by Massport (no less than forty-eight hours notice).

2.5 Appearance and Character of Advertisements

All advertisements shall be of a reputable character, and the appearance of all advertisements shall be acceptable and in accordance with the Massport's Advertising Policy Guidelines, a copy of which is included as Exhibit B of the standard form of Concession Agreement (Attachment IV). Advertisements shall be submitted in advance to Massport for review and approval in writing before display. If, at any time, Massport determines an advertisement unacceptable, or if the advertising placed under this Agreement is determined to present a hazard to the traveling public by the state police or some other public safety department having jurisdiction, then the advertising contractor shall remove the advertisement within 24 hours of notification of such determination. If the advertising contractor fails to do so, Massport, at the advertising contractor's expense, may immediately remove the advertisement without liability for such removal.

3.0 Selection Process and Criteria

The evaluation of responses to this RFP will be based primarily upon the proposer's qualifications, relevant experience, financial statements, references, two years audited financial statements or other proof of financial stability, external financial reports, a detailed proposed schedule of fees, and such other information as requested by Massport in this RFP.

As part of the evaluation, Massport reserves the right to schedule an interview and/or presentation with any or all proposers, which may include proposer's submission of concept or display examples.

Massport is soliciting competitive proposals pursuant to a determination that such a process best serves the interests of Massport and not because of any legal requirement to do so. Massport reserves the right to accept or reject any or all proposals, for any reason, to withdraw or amend this Request for Proposals at any time, to initiate negotiations with one or more proposers, to modify or amend, with the consent of the proposer, any proposal prior to acceptance, to reject any or all proposals at any time prior to execution of the Agreement, or waive any informality or otherwise to effect any agreement as Massport may, in its sole judgment, deem to be in its best interest. Massport need not select the proposal that provides the maximum financial return to

Massport, but will select the proposal that is most responsive to Massport's needs and deemed to be in the best interest of Massport.

4.0 Contract Term

The term of the Contract shall be ten years, with one five-year option, to be exercised solely at the discretion of Massport. A Contract commencement date of Nov 1, 2009, is anticipated. Proposers should be prepared to justify the term with the level of investment intended.

4.1 No Assignment or Transfers of Contracts for Advertising

The company shall not enter into any contracts with advertisers that extend beyond the expiration date of this Contract unless approved by Massport.

5.0 Project Financials

5.1 Annual Fee and Definition of Gross Billings

Gross revenue shall mean the total dollar amount relating to all invoices issued to advertisers/sponsors and/or their agents that is collected by the company during a specified period for Massport OOH advertising sales, corporate sponsorship, branding, or marketing contracts and commissions or sales and negotiated operating expenses and/or capital reimbursements allowances of any kind for the construction and financing of OOH structures

Massport wishes to maximize the net revenue potential of the OOH advertising and/or naming rights opportunities of Massport owned property and other locations including, but not limited to, its Maritime properties and the South Boston Seaport District. Accordingly, Massport, as part of its evaluation process, reserves the right to set a minimum annual concession fee of sixty percent (60%) of gross revenue. Companies are encouraged to creatively structure their financial proposal to meet this objective. Massport reserves the right to negotiate a minimum annual guarantee. All payments under the Contract will be due on a monthly basis.

The company shall not have the right to accept payment from advertisers in the form of goods, service, or other non-cash reimbursements. The company shall be responsible for paying Massport all revenue whether "collected" or not.

5.2 Annual Accounting

At the close of each Contract year, there shall be an annual accounting, the purpose of which shall be to verify the total amounts due to Massport in the Contract year.

The company shall bear the cost of and provide to Massport a certified, audited financial statement of Gross Revenue. Such statement shall be prepared in conformance with generally accepted auditing standards and accompanied by an opinion rendered by a Certified Public Accountant, for each Contract year.

The company shall maintain, in accordance with Generally Accepted Accounting Principles (GAAP) and with generally accepted auditing standards, such accounts, books, records and data as would reasonably be expected to be examined by an independent certified public accountant in performing an audit or examination of the company's revenue. Such books and records shall contain records of all of the company's pertinent activity under this Contract in a form consistent with good accounting practice (which may include, without limitation, electronic media compatible with the computers available to the Authority, or computer generated hard copies).

The company shall retain and keep available all documents and records relating to this agreement for not less than seven (7) years after each Contract year of the Contract term or any extension thereof. Company agrees to keep such records as required to be maintained on the premises or at another location within the metropolitan Boston area. If the company maintains the books, accounts, and records

in another location outside the metropolitan Boston area, the company shall make these documents available at the company's local office or at an agreed-upon site (i.e. the Logan Office Center) upon reasonable notice from Massport.

5.3 Advertising Limitations

The company shall not give additional advertisements to advertisers or corporate sponsors as an incentive for long-term advertising or sponsorship contracts unless approved by Massport.

Any "make good" advertisements in consideration for any errors, omissions, or mistakes shall be the sole responsibility of the company and shall not limit in any way the revenue due to Massport for the period or periods of time that advertising is displayed on Massport properties

6.0 Qualifications

In order to be eligible for consideration under this RFP, proposer must, at a minimum, complete all questions to the Questionnaire (6.1) and provide a Financial Proposal (6.2) as well as submit a proposed plan. Only proposers that show demonstrated experience and qualifications in performing the scope of services will be considered.

6.1 Questionnaire

1) Please describe your company and include information about your business including: the location of your business, whether licensed to do business in Massachusetts, number of employees, date of incorporation, and a list of key commercial clients and dates including dates of each client relationship. Proposers must have some references/partnerships that include advertising placement, corporate branding, creative development, and sponsorship relationships

2) Provide names, titles, qualifications and experience of key company personnel. Identify, and include resumes, of personnel anticipated to be assigned to this Contract.

3) Provide at least three (3) references from past clients utilizing your services, including name, address and phone number. State the nature of the service you provided, as well as the revenue your company generated for that client. Include at least three (3) reference contacts for the commercial accounts listed below in number five (5) that Massport may contact.

4) Describe your company's qualifications and experience in fulfilling the scope of services.

5) Describe three commercial accounts your company or key partners and qualified sub contractors currently service. These accounts should be similar to those services anticipated by Massport. Please identify:

- Client (or general description of company)
- Scope of services
- Length of time as a client
- Subcontract work, if any
- Annual value of contract

6) State whether or not you intend to subcontract any of your services. If yes, describe the nature of such a subcontract.

7) Specify whether your company, or any sub-contractors, are a minority or women-owned business enterprise (MBE or WBE).

8) Identify the location of the primary office from which the majority of the services will be provided.

9) Describe your approach for selling/marketing the locations/programs and any packaged selling material which will support this.

10) Describe the various intended target markets and your understanding/experience in marketing to such.

6.2 Financial Proposal

1) Describe your company's proposed payment and financial structure for this Contract

- Provide financial statements and statements of conditions for each of the last three (3) years. If financial statements are consolidated with an affiliated company, submit both the consolidated financial statements and the separate financial statements. If not applicable, provide individual financial statement.
- Has the company filed for bankruptcy within the last five years? If so, please describe current status.
- Does the company have any present overdue indebtedness to a government unit or agency, or any outstanding claim or demand or indebtedness? If so, please specify. Please outline if your company has ever been disqualified from a public bid or terminated on an awarded public contract including any pending defaults of such.

2) Detail all unit costs, if any, and any fee by unit, if any, for each proposed service or opportunity.

3) Complete a Financial Proposal including a Financial Proposal Summary Sheet. (See Attachment I).

4) Include a detailed proposal for recovering any capital costs associated with the construction of new advertising structures in support of this program.

5) Provide a detailed financial statement of your company for the last three years.

6) Submit a pro-forma income statement tied to proposed locations/programs.

7.0 Non-Discrimination Policy

In accordance with policies adopted by the Massachusetts Port Authority, company shall agree with respect to its exercise of all uses, rights, privileges and obligations granted or required herein as follows:

Company shall not discriminate against any person, employee, or applicant for employment because of that person's membership in any legally protected class, including but not limited to their race, color, gender, religion, creed, national origin, ancestry, age being greater than forty years, sexual orientation, handicap, genetic information, or veteran status. Company shall not discriminate against any person, employee, or applicant for employment who is a member of, or applies to perform service in, or has an obligation to perform service in, a uniformed military service of the United States, including the National Guard, on the basis of that membership, application, or obligation. Company shall undertake affirmative action measures designed to guarantee and effectuate equal employment opportunity for all persons.

Company shall provide all information and reports pertinent to Massport's Diversity Policies as may be requested by Massport. Although Massport has not established a specific goal for this Contract, participation by MBE and WBE firms and inclusion of MBE and WBE sub-contractors is strongly encouraged.

7.1 Minority and Women Business Enterprise Participation

Massport encourages participation by Minority Business Enterprises (MBEs) and Woman Business

Enterprises (WBEs) firms. Accordingly, advertising contractor shall be required to provide information related to MBE and WBE participation, if any, during the term of this Contract. Massport is committed to ensure full participation of diverse businesses in all of Massport's economic activities, including its purchases of goods and services. Massport encourages its contractors, vendors, and tenants to promote business diversity in all of their business activities by providing MBEs and WBEs with equal opportunity to participate in contracts, and to provide Massport with information regarding their proposed utilization of MBEs and WBEs under this Contract. The terms Minority Business Enterprise and Women Business Enterprise refer to businesses that meet the certification criteria of, and are certified by, the Massachusetts State Office of Minority and Women Business Assistance (SOMWBA), as set forth in 425 CMR section 2.2 et. seq., or that meet the certification criteria of, and are certified by, the New England Minority Supplier Development Council (NEMSDC). Company shall provide a SOMWBA or NEMSDC certification letter for each MBE and WBE proposed to be utilized.

Accordingly, Massport requires its contractors, vendors, and tenants, to comply with nondiscrimination laws and encourages them to promote diversity within their workplace.

7.2 Affirmative Action

With respect company's exercise of all uses, rights and privileges herein, company agrees to comply with affirmative action policies of Massport, and comply with all federal and state laws, rules and regulations pertaining to Civil Rights and Equal Opportunity, including but not limited to Title 49, Subtitle A, Part 21; 49 CFR Part 23; and 14 CFR Part 152, Subpart E, Executive Orders 11246 and 11478 and Section 504 of the Rehabilitation Act of 1973, to the extent applicable, and as such laws, rules, regulations and orders may be amended. Company agrees that it shall comply with any affirmative action plans submitted pursuant to the directives of any federal agency and in accordance with federal law.

7.3 Impacted Community Business Participation

Massport encourages and supports economic opportunities for residents and businesses located within those communities most directly impacted by the operation of Massport's facilities. Those communities are Charlestown, Chelsea, East Boston, Revere, South Boston, and Winthrop (ICBs). Massport encourages companies to use ICBs in the award of subcontracts and in the procurement of materials, equipment, and services and to provide Massport with information regarding their voluntary efforts to contact and to use ICBs.

8.0 Clarifications to Request for Proposals

Proposers seeking clarification to this Request for Proposals must submit questions via email no later than **4:00 pm on, October 1, 2009**, to Timothy D. Saccoia (tsaccoia@massport.com) (the "Project Manager"). Massport will provide via email to all companies that have expressed interest and submitted questions to this RFP, a listing of all questions received prior to such deadline and an e-mail response to each question **by 4:00 pm on October 6, 2009**.

8.1 Submission Requirements

All submissions must be received by 4:00 pm on **October 15, 2009**. Any submissions received after 4:00 pm will be deemed non-responsive, will not be considered and will be returned unopened. Responses submitted by facsimile or email will not be considered.

Each response to this RFP must be accompanied by:

1. A complete response to all questions contained in Section 6 of this RFP.;
2. A Financial Proposal Sheet as referenced in Section 6.2 (attached hereto as Attachment I)
3. A Proposal Acknowledgment Form (attached hereto as Attachment II);
4. A Workforce Composition Form (attached hereto as Attachment III) (optional);

The proposer's response to the Qualifications section (Section 6) of this RFP must include a response to every question. .

Responses must be prepared on letter sized, white paper and be bound with all pages sequentially numbered. Responses must contain one original, five copies, and one CD of your company's submission and must be received by the Authority at or prior to 4:00 pm, on Thursday, October 15, 2009 to:

Timothy D. Saccoia
Senior Marketing Manager
Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, MA 02128

ALL PROPOSALS MUST BE DELIVERED IN SEALED ENVELOPES BEARING ON THE OUTSIDE THE NAME AND ADDRESS OF THE RESPONDENT AND THE NAME OF THIS RFP.

8.2 Ownership and Use of Responses

All responses to this RFP shall become the property of Massport. Information submitted to Massport may be subject to disclosure pursuant to M.G.L. c. 66 and M.G.L. c.4, Section 7, cl. (26), the state public record statutes. Any proposal or other material received by Massport may be considered a public record after the selection by Massport of the advertising agency and will be available for inspection and copying by any person at that time. It is understood that Massport will have no liability for disclosure of information provided in any proposal or related attachments and exhibits.

Costs for developing the response to this RFP are entirely the responsibility of the proposer and shall not be reimbursed in any manner by Massport.

Massport reserves the right to use any or all ideas or concepts presented in any response submitted in response to the RFP whether accepted or not. Selection or rejection of the response shall not affect this right.

Massport reserves the right to seek additional information from any and all proposers and to schedule interviews with the finalists. In addition, by submission of its response to this RFP, proposer authorizes Massport to contact any and all parties having knowledge of proposer's operations and financial history and hereby authorizes all such parties to communicate such knowledge or information to Massport.

Massport is soliciting competitive proposals pursuant to a determination that such a process best serves the interests of Massport and not because of any legal requirement to do so. Massport reserves the right to accept or reject any or all proposals, for any reason, to withdraw or amend this Request for Proposals at any time, to initiate negotiations with one or more proposers, to modify or amend, with the consent of the proposer, any proposal prior to acceptance, to reject any or all proposals at any time prior to execution of the Agreement, or waive any informality or otherwise to effect any agreement as Massport may, in its sole judgment, deem to be in its best interest. Massport need not select the proposal that provides the maximum financial return to Massport, but, will select the proposal that is most responsive to Massport's needs and deemed to be in the best interest of the Authority.

Massport shall not be obligated to respond to any proposal submitted, nor shall any correspondence, discussions, meetings or other communications between any proposer and Massport impose any obligation on Massport to include such proposer in any further procedures which Massport may utilize in its evaluation and selection process.

Massport reserves the right to withdraw its RFP at any time. In such event, Massport shall not be liable to any proposer for costs or expenses incurred by them in preparation of a response to this proposal.

Proposer acknowledges that there is an advertising contract in effect for all of Massport's facilities which provides for third-party advertising and that the services described herein shall not conflict with the third-party advertising contract in effect.

8.3 Acceptance of Responses

It is the intent of Massport to award a Contract on the basis of the response to this RFP. However, Massport, at its sole discretion, reserves the right to accept or reject any or all responses received as a result of this request, to negotiate with any qualified source, or to cancel this procurement, in whole or in part. Massport may request additional information from the proposers during the course of the selection process.

The successful proposer shall be expected to execute an Agreement substantially in the form of the standard form of Concession Agreement (Attachment IV) which shall substantially incorporate the *Scope of Services*, described herein and in successful proposer's response to this RFP. Any proposer that believes modification of the stated *Scopes of Services* is necessary or appropriate or any proposer that takes exception to any provision of Massport's standard form of Concession Agreement, attached hereto as Attachment IV, must so indicate at the time of submission. Otherwise, it will be assumed that the terms of the *Scope of Services* and the attached Agreement are acceptable. Massport reserves the right, in its sole discretion, to accept or reject any proposed changes.

Any proposer that is currently providing goods or services to Massport as a vendor, consultant, contractor or subcontractor, or in any other capacity, should disclose all projects or contracts that proposer is performing or has entered into with Massport, and proposer's plan to address and resolve such conflicts of interest, if any.

Massport reserves the right, in its sole discretion, to request additional information from a proposer on potential conflicts of interest and to limit or prohibit the participation of any proposer due to any conflict of interest.

To the extent that M.G.L. c. 268A may be applicable, proposers and their officers, agents, and employees shall be fully responsible for ensuring their compliance with the requirements of said Chapter 268A.

By submitting a response to this RFP, including the required Proposal Acknowledgement Form, proposer agrees to accept award of a Contract to provide services to Massport, as described herein.

Neither the members of Massport, nor any individual member, nor any officer, agent or employee of Massport, shall be charged personally by the proposer or any third party with any liability or be held liable to proposer under any term or provision of this RFP or any statements made herein.

ATTACHMENT I

**Financial Proposal
Contract Year 1**

Company: _____
 Address: _____

 Telephone: _____
 Fax: _____
 Email: _____
 Signed: _____
 Title: _____

| ADVERTISEMENTS | ESTIMATED GROSS ANNUAL REVENUE FROM ADVERTISERS/COMPANY | ESTIMATED NET ANNUAL REVENUE TO MASSPORT |
|----------------|---|--|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

*** Please list any rush charges or attach a rate card. ***

ATTACHMENT II

PROPOSAL ACKNOWLEDGEMENT FORM

The Proposer acknowledges that it has received and read the RFP and other attachments to the Request for Proposals, and the terms thereof are incorporated by reference in this Proposal. The Proposer agrees that if its Proposal is accepted, the Proposer will enter into an Agreement with the Authority substantially in the form attached hereto (Attachment IV) subject to modification as may be negotiated in response to objections presented as part of the Proposal and as deemed necessary or desirable by the Authority's Chief Legal Counsel.

By submission of its response to this Request for Proposal, the Proposer authorizes Massport to contact any and all parties having knowledge of the Proposer's operations and financial history, and hereby authorizes all parties to communicate such knowledge or information to Massport.

This Proposal constitutes a firm offer. A certified copy of the Proposer's corporate resolution or other proof of authority to make this proposal as a firm offer must be attached. This offer shall be held firm and open for a period of 90 days.

Massport is soliciting competitive proposals pursuant to a determination that such a process best serves the interests of Massport and not because of any legal requirement to do so. Massport reserves the right to accept or reject any or all Proposals, for any reason, to withdraw or amend this Request for Proposals at any time, to initiate negotiations with one or more Proposers, to modify or amend, with the consent of the Proposer, any Proposal prior to acceptance, to reject any or all Proposals at any time prior to execution of the Agreement, or waive any informality or otherwise to effect any agreement as Massport may, in its sole judgment, deem to be in its best interest.

Signature _____

Printed Name _____

Company Name _____

Date _____

ATTACHMENT III

WORKFORCE COMPOSITION FORM

Proposer's
Name: _____

TOTAL COMPANY WORKFORCE

| Employment Categories | Total Employment | Total Males | Minority Males | Total Females | Minority Females | Residents of Impacted Communities* |
|---|-------------------------|--------------------|-----------------------|----------------------|-------------------------|---|
| Professionals and Managers | | | | | | |
| Service Personnel | | | | | | |
| Clerical Office Workers (non-exempt employees) | | | | | | |
| Total Workers | | | | | | |

Note: The employment categories may be adapted to fit the individual firm.

* **Impacted Communities: East Boston, South Boston, Charlestown, Revere, Winthrop, and Chelsea**

How many new Employees will be added to the workforce if you are awarded this contract?

| | Full-Time | Part-Time |
|----------------------------|----------------------|----------------------|
| Professionals and Managers | <input type="text"/> | <input type="text"/> |
| Service Personnel | <input type="text"/> | <input type="text"/> |
| Clerical, Office Workers | <input type="text"/> | <input type="text"/> |
| Total All Categories | <input type="text"/> | <input type="text"/> |

MPA Agreement # PP-_____

**OOH
ADVERTISING/SPONSORSHIP/CORPORATE
BRANDING
MARITIME/SO. BOSTON**

CONCESSION AGREEMENT

MASSACHUSETTS PORT AUTHORITY

and

The submission of this form of Agreement for examination does not constitute an offer to enter into a binding contract, nor shall it be construed to (a) be binding in any way on the Massachusetts Port Authority the ("Authority"), or (b) constitute an amendment to any of the terms and provisions of the RFP. The Authority reserves the right to make changes to any of the terms and conditions set forth in this form in its sole and absolute discretion, and the Authority shall make changes in order to conform this form to the terms of the selected proposal and any other terms and conditions related to or in connection with the selection of a proposal. The successful proposer shall be bound by this form Agreement except to the extent specific objections are raised in the Proposal submitted in response to the RFP.

Table of Contents

| | |
|---|----|
| ARTICLE 1 SUMMARY OF BASIC PROVISIONS | 1 |
| 1.1 Introduction | 1 |
| 1.2 Basic Data | 1 |
| 1.3 Exhibits | 2 |
| 1.4 Definitions | 2 |
| ARTICLE 2 REPRESENTATIONS OF CONCESSIONAIRE | 4 |
| 2.1 Existence | 4 |
| 2.2 Valid Obligations | 4 |
| ARTICLE 3 CONCESSION LOCATIONS AND PERMITTED USE | 5 |
| 3.1 Concession Locations | 5 |
| 3.2 Permitted Use of Concession Locations | 5 |
| 3.3 Service Standards | 5 |
| ARTICLE 4 TERM | 6 |
| 4.1 Term | 6 |
| 4.2 Surrender | 7 |
| 4.3 Authority's Termination Right | 7 |
| ARTICLE 5 PAYMENTS | 7 |
| 5.1 Concession Fee | 7 |
| 5.2 Time and Manner of Payments | 7 |
| 5.3 Additional Fees | 7 |
| 5.4 No Abatement | 7 |
| 5.5 Late Payment Charge | 8 |
| 5.6 Taxes | 8 |
| 5.7 Application of Payments; No Accord and Satisfaction | 8 |
| 5.8 Certified Statements and Annual Adjustments | 8 |
| 5.9 Annual Business Plan | 9 |
| 5.10 Books and Records | 9 |
| 5.11 Authority's Inspection and Audit Rights | 9 |
| ARTICLE 6 COMPLIANCE | 10 |
| 6.1 Compliance With Laws | 10 |
| 6.2 Hazardous Waste Representation and Disclosure | 11 |
| 6.3 Nuisance; Waste | 11 |
| 6.4 Authority Rules | 11 |
| 6.5 A.D.A. Compliance | 11 |
| ARTICLE 7 UTILITIES/SERVICES | 11 |
| 7.1 Utilities | 12 |
| 7.2 Rubbish Removal | 12 |
| 7.3 Security | 12 |
| ARTICLE 8 INSTALLATIONS | 12 |
| 8.1 Advertisements and Promotions | 12 |
| 8.2 Plans and Specifications | 12 |
| 8.3 Work in Harmony | 12 |
| 8.4 Concessionaire's Upkeep | 13 |

| | |
|---|----|
| ARTICLE 9 TRANSFER OF INTEREST | 13 |
| 9.1 Limitation | 13 |
| 9.2 Reimbursement | 13 |
| ARTICLE 10 INDEMNIFICATION AND INSURANCE | 13 |
| 10.1 Indemnification..... | 13 |
| 10.2 Insurance..... | 14 |
| 10.3 Concessionaire's Risk..... | 14 |
| ARTICLE 11 DEFAULT AND REMEDIES | 14 |
| 11.1 Event of Default | 14 |
| 11.2 Remedies, Self-Help | 15 |
| 11.3 Default by the Authority..... | 15 |
| ARTICLE 12 NON-DISCRIMINATION & EQUAL EMPLOYEMENT OPPORTUNITY..... | 16 |
| 12.1 Compliance..... | 16 |
| ARTICLE 13 MISCELLANEOUS PROVISIONS | 16 |
| 13.1 Waiver..... | 16 |
| 13.2 Cumulative Remedies..... | 16 |
| 13.3 Notices..... | 16 |
| 13.4 When Agreement Becomes Binding | 17 |
| 13.5 Certificate of Compliance with Laws | 17 |
| 13.6 Trust Agreement | 17 |
| 13.7 No Personal Liability | 17 |
| 13.8 Limitations on Damages | 17 |
| 13.9 Governing Law; Amendment | 18 |

**MARITIME/SO. BOSTON ADVERTISING
CONCESSION AGREEMENT**

This Agreement (the "Agreement") dated as of _____, 20____, is entered into by and between the **Massachusetts Port Authority**, a body politic and corporate established and operating pursuant to Chapter 465 of the Acts of 1956 of the Commonwealth of Massachusetts, as amended, with a principal place of business at One Harborside Drive, Suite 200S, Boston, Massachusetts (the "Authority" or "Massport") and _____, a _____ corporation with a principal place of business at _____ (the "Concessionaire" or "Advertising Contractor").

The Authority and Concessionaire hereby agree as follows:

**ARTICLE 1
SUMMARY OF BASIC PROVISIONS**

1.1 Introduction

The following sets forth the basic data pertaining to this Agreement, and, where appropriate, constitutes the definitions of the terms listed.

1.2 Basic Data

Authority: Massachusetts Port Authority

Authority's Address: One Harborside Drive, Suite 200S
Boston, MA 02128

Address for Payment: PO Box 3471, Boston MA 02241, or as otherwise
directed by the Authority

Concessionaire: _____

Concessionaire's Address: _____

Commencement Date: _____, 20____

Term: Ten (10) years, with an additional five-year option period to
be exercised at the sole discretion of the Authority.

Expiration Date: 11:59 P.M. on _____, 20____, unless extended as provided herein.
Concession Fees:

A. Annual Guarantee \$_____, payable monthly as stated in section 5.1.

B. Percentage Fee Payment: _____% of Gross Revenues, as stated in section 5.1.

Permitted Uses: Installation and maintenance of approved advertising, sponsorship, corporate branding, and marketing displays and other advertising services, as more fully described in Section 3.2.

1.3 Exhibits

The exhibits listed below are incorporated in this Agreement by reference.

| | |
|------------|--|
| Exhibit A: | Monthly Gross Revenue Report |
| Exhibit B: | Guidelines Regulating Advertising on Massport Facilities |
| Exhibit C: | Certificate of Compliance of Laws |

1.4 Definitions

Capitalized terms used in this Agreement and not otherwise defined shall have the following meanings:

(a) "Annual Certified Statement" shall mean a statement setting forth the Gross Revenues for any year or portion thereof during the Term in such detail as may be reasonably required from time to time by the Authority, certified by a person authorized to sign for Concessionaire, and certified by a financial officer of Concessionaire and stating (a) that all revenues derived from Concessionaire's activities related to this Agreement, which are required to be included in Gross Revenues under the terms of this Agreement have been included, and (b) that to the best knowledge and belief of the individual providing such certification, the schedules are true, accurate and complete, in all material respects. Additional requirements may be stated in Section 5.8.

(b) "Commencement Date" shall mean _____, 20____.

(c) "Concession" shall mean the right to sell promotional, sponsorship and certain advertising opportunities at the Concession Locations as hereinafter described.

(d) "Concession Fee" shall mean, for each year of the Term, the greater of the Annual Guarantee or the Percentage Fee Payment.

(e) "Concession Locations" shall mean visibility locations at Authority Maritime and South Boston properties and facilities, and other locations as may be identified by Concessionaire and approved by the Authority.

(f) "GAAP" shall mean generally accepted accounting principles consistently applied.

(g) "Gross Revenues" shall mean all revenues received or receivable by the Concessionaire in connection with the Concession including, without limitation, all rents, payments, sales and receipts from sub-contracts, licenses and other agreements related to the Concession, regardless of when or where received and all fees, income and revenues of any type arising out of or in connection with the operations of the Concessionaire at the Concession Locations, whether for cash or credit. The term "Gross Revenues" shall include without limitation any fees, income or revenue derived from the sale of products or the provision of any other services permitted herein. The following shall be excluded or deducted, as the case may be, from the computation of "Gross Revenues" provided that appropriate support documentation has

been provided to the Authority and the exclusion or deduction approved within the Authority's reasonable discretion:

(i) The actual costs incurred by the Concessionaire for third party fees for all advertising materials and installations which are separately stated to and paid by advertisers; and

(ii) Any and all retail sales taxes, excise taxes, or related direct taxes collected and paid to proper taxing authorities by the Concessionaire in the course of making such sales.

(iii) Utility charges billed under Section 5.3(a) hereof.

(iv) Promotional events, as set forth below, which are specially negotiated between the parties and are each the subject of an executed amendment to this Agreement.

Concessionaire shall have the right to conduct all or any portion of its operation on a credit basis, provided that the attendant risk of such operation shall be borne solely by Concessionaire.

In no event shall the Annual Guarantee or Percentage Fee Payment or any other amounts payable under this Agreement be deducted from Gross Revenues under the foregoing provisions.

Any "make good" advertisements in consideration for any errors, omissions or mistakes due to actions or inadvertence on the part of the Concessionaire shall be the responsibility of Concessionaire and shall not limit in any way the revenue due to the Authority for the period or periods of time that advertising is displayed.

(h) "Interest Rate" shall mean interest at the monthly rate of 1 1/2% or the highest rate permitted by law, whichever is less. The Authority may change the Interest Rate from time to time upon notice to Concessionaire, provided that such revised Interest Rate does not exceed the maximum interest rate permitted by law.

(i) "Annual Guarantee" shall mean the Annual Guarantee payment required under Article 5 hereof.

(j) "Monthly Gross Revenues Report" shall mean the statement, which sets forth Concessionaire's calculation of its Gross Revenues for the prior calendar month or portion thereof during the Term in the form attached hereto as **Exhibit A** (provided by Concessionaire and approved by the Authority). The Monthly Gross Revenues Report shall be signed by a person authorized to sign for Concessionaire and certified by a financial officer of Concessionaire. The Authority may require a change to the form of Monthly Gross Revenues Report from time to time upon thirty (30) days prior notice to Concessionaire. Additional requirements may be stated in Section 5.8

(k) "Percentage Fee Payment" shall mean the payment required under Article 5.1 hereof.

(l) "Promotional Events" shall mean unique advertising opportunities that would be the subject of a separate amendment to this Agreement.

(m) "Proposal" shall mean the proposal submitted by Concessionaire to the Authority that was the basis for the award of this Agreement. The Proposal, where not inconsistent with the terms of this Agreement, is hereby incorporated by reference into this Agreement.

(n) "Rules and Regulations" shall mean the Authority's regulations at 740 CMR 21.00 *et seq.*, as the same may be amended from time to time, and any other rules and regulations presently in effect or promulgated from time to time by the Authority.

(o) "Term" shall have the meaning ascribed in Article 4.

ARTICLE 2
REPRESENTATIONS OF CONCESSIONAIRE

Concessionaire hereby represents and warrants to the Authority as follows:

2.1 Existence

Concessionaire is a corporation validly existing under the laws of _____ and has full power and authority to execute, deliver and perform its obligations under this Agreement.

2.2 Valid Obligations

Concessionaire has taken all necessary action and has complied with all provisions of federal, state and local law, required to make this Agreement the valid obligation of Concessionaire which it purports to be; and, when executed and delivered by Concessionaire and the other parties thereto, this Agreement will constitute the valid and binding agreement of Concessionaire and is enforceable in accordance with its terms. There is no action, suit, proceeding or investigation at law or in equity before or by any court or public board or body pending or, to the knowledge of Concessionaire, threatened against it, wherein an unfavorable decision, ruling or finding would in any material respect adversely affect the validity of any of this Agreement.

ARTICLE 3
CONCESSION LOCATIONS AND PERMITTED USE

3.1 Concession Locations

Concessionaire shall have a license to use the Concession Locations for advertising displays and promotions, subject to the Authority's approval process as described in Article 8 and Article 3.3 (c) and (d). The Concession Locations are made available to the Concessionaire and the Concessionaire accepts such locations in their present condition, "as is", it being agreed that the Concessionaire has had the opportunity to examine and inspect such locations in all respects, that the Authority has made no representations or warranties of any kind with respect to such conditions and that the Authority shall have no obligation to do any work on, or make any improvements to or with respect to, the Concession Locations or the condition thereof.

3.2 Permitted Use of Concession Locations

Concessionaire shall also have a license to install and maintain advertising and promotional displays at the Concession Locations in the manner as designated by the Authority from time to time, and such rights of reasonable access during non-peak traffic hours to the Concession Locations as the Authority may from time to time designate. Peak traffic hours are 5:30 – 10:30 AM and 3:30 – 7:30 PM, Monday – Friday. Such use shall be subject to such reasonable rules, regulations and security directives from time to time established by the Authority by suitable notice. The Concessionaire is prohibited from any use of the Concession Locations not specifically permitted under this Agreement or without the prior written approval of the Authority, which approval may be withheld in the Authority's sole discretion. Any approval of an additional use may be conditioned upon an increase in the Annual Guarantee and other fees and charges and the inclusion of additional provisions in this Agreement.

3.3 Service Standards

The Concessionaire's activities authorized by this Agreement shall satisfy the following standards of service:

- (a) Facilities. Concessionaire shall keep the Concession Locations clean, neat and orderly and in good repair at all times.
- (b) Personnel. Concessionaire shall employ staff, appropriate in number, skill and expertise, assigned to this Concession, sufficient to handle the obligations of Concessionaire under this Agreement. All personnel shall be courteous and cooperative and present a neat, clean and professional appearance at all times. The Concessionaire shall require all personnel to wear visibly on their person, at all times while on duty, a distinctive name tag, identifying the individual by name, title, if appropriate, and as an employee of the Concessionaire.
- (c) Advertising Content. Concessionaire shall assure that the advertising that it accepts for Concession Locations conforms to the Guidelines Regulating Advertising on Massport Facilities, a copy of which is attached as **Exhibit B**.
- (d) Advertising Placement. Concessionaire shall insure that neither the installation nor maintenance of advertising or promotional displays shall interfere with bridge operations. Further, Concessionaire shall insure that all advertisements installed or placed at the Concession's locations comply with all applicable state and federal roadway beautification laws, including without limitation, M.G.L. c.93D, and implementing regulations, 711 CMR 3.00 *et seq.*, and implementing regulations, 23 U.S.C. 131, 23 CFR 750.701 *et seq.* and the terms of an agreement between the Federal Highway Administration/Department of Transportation and the Commonwealth of Massachusetts dated December 31, 1971, as amended.

(e) Complaints. In the event that Concessionaire receives any written complaint concerning its operations, Concessionaire shall respond to such complaint in writing within 30 days after receipt thereof and shall make a good faith effort to explain, resolve or rectify the cause of such complaint. If the Authority receives the original of such complaint and forwards the same to Concessionaire or if the Authority receives a copy of such complaint, Concessionaire shall send to the Authority a copy of its response thereto.

(f) Emergency Contact. Concessionaire shall assure that a representative of Concessionaire is available at all times on a 24 hour per day, seven days per week basis in case of emergencies. Concessionaire shall notify the Authority of the name and telephone number of such representative and shall update such information as necessary.

(g) Concession Monitoring Program. To ensure that the Concessionaire is in compliance with quality and standards identified in this Agreement and that the Authority's objectives are met, the Authority may perform audits of the Concession at any time during the Term of this Agreement. The results of such audits may be employed by the Authority to enforce the obligations in this Agreement.

(h) Signs, Corporate Identification. Other than the displays expressly permitted under this Agreement, Concessionaire shall not place on the exterior of walls of the Concession Locations (including both interior and exterior surfaces of windows and doors) or on any part of the Concession Locations, any corporate signs, symbols, advertisements or the like visible from outside of the Concession Locations without the prior written consent of the Authority, which consent may be withheld in the Authority's sole discretion.

ARTICLE 4 TERM

4.1 Term

The Term of this Agreement shall be the period specified in Section 1.2, unless sooner terminated or extended as herein provided.

4.2 Surrender

Concessionaire covenants and agrees to remove advertising and promotional displays upon termination of this Agreement (whether by termination, expiration or otherwise) and to restore Concession Locations to the same condition as on the Commencement Date.

4.3 Authority's Termination Right

The Authority shall have the right without cause to terminate this Agreement at any time and require Concessionaire to fulfill its removal, restoration and surrender obligations hereunder by giving Concessionaire ninety (90) days prior written notice and paying to Concessionaire the then applicable "Termination Amount" (as defined herein) within thirty (30) days of the date on which Concessionaire vacates the Concession Locations in accordance with this Agreement. As used herein, the term "Termination Amount" shall mean the amount of Concessionaire's percentage revenue of Authority approved advertising contracts which are in existence at the time of such early termination. The Authority shall not be obligated to pay Concessionaire a Termination Amount if this Agreement expires or is terminated because of Concessionaire default.

ARTICLE 5 PAYMENTS

5.1 Concession Fee

Concessionaire shall pay to the Authority the Concession Fee, as set forth herein, without notice or demand and without reduction or set-off, an amount which shall consist of the greater of:

- (a) Annual Guarantee: \$_____; **or**
- (b) Percentage Fee Payment, which shall be _____ percent (____ %) of Gross Revenues.

5.2 Time and Manner of Payments

For each and every year of the Term, Concessionaire shall make its payments to the Authority's Address for Payment set forth in Section 1.2, or as otherwise directed by the Authority, as follows:

- (a) Annual Guarantee. The Annual Guarantee shall be paid in advance in equal monthly installments.
- (b) Percentage Fee Payment. No later than the 10th day of each calendar month after the first calendar month or portion thereof during the Term (and including the first month after termination of this Agreement), Concessionaire shall pay to the Authority, the Percentage Fee Payment set forth in Section 1.2, determined in the Monthly Gross Revenues Report.

5.3 Additional Fees

Concessionaire shall pay as Additional Fees to the Authority all of Concessionaire's insurance costs, utility charges, excise, revenue or personal property taxes or other costs and expenses relating to the Concession Locations ("Additional Fees"), and all other charges and amounts whether payable initially to the Authority or a third party pursuant to this Agreement and, in the event of any non-payment thereof, the Authority shall have the right to collect such Additional Fees from the Concessionaire in the same manner as Concession Fees under this Article. Upon the Authority's request, Concessionaire shall promptly deliver to the Authority receipts or other evidence reasonably satisfactory to the Authority evidencing payment of any Additional Fees payable directly to third parties.

- (a) Utility Charges. Concessionaire shall pay to the Authority on a pro-rata wattage basis, or on a metered basis where metering is possible, for all utilities supplied by the Authority to the Concession Locations at charges which will reflect fully compensatory non-discriminatory rates established by the Authority.

5.4 No Abatement

The Concession Fee and Additional Fees shall be paid by Concessionaire without set-off, deduction, demand or abatement except as otherwise specifically provided herein.

5.5 Late Payment Charge

In the event any payment required to be paid to the Authority hereunder is not made when due, Concessionaire shall pay interest on such overdue amount at the rate of one and one-half percent (1 1/2%) per month or the highest rate permitted by law, whichever is less, commencing on the date that such payment is due.

5.6 Taxes

Concessionaire shall be solely responsible for payment of any taxes, fees or charges, whether in existence on the date hereof or becoming applicable during the Term, which may be assessed against Concessionaire or the Authority in relation to the Concession Locations, the occupation or operation thereof, the revenue derived there from, or any personal property or fixtures located thereon (collectively referred to as "Taxes"). Concessionaire shall pay all Taxes directly to the taxing authority before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for their nonpayment. Such payments shall constitute Additional Fees hereunder. Concessionaire may contest, in good faith for its own account and at its own expense, the validity or amount of any Tax, provided Concessionaire shall indemnify the Authority against any resulting loss, cost and expense.

5.7 Application of Payments; No Accord and Satisfaction

All payments received by the Authority shall be credited to the amounts first then due. No statement or endorsement on any check or in any letter shall be deemed an accord and satisfaction of any debt or obligation hereunder. The Authority hereby reserves its right to accept any payment without prejudicing in any way its right to recover the balance due after such payment or to pursue any other remedy provided in this Agreement or by law.

5.8 Certified Statements and Annual Adjustments

Concessionaire shall provide Monthly Gross Revenues Reports and Annual Certified Statement, as provided in Section 1.4 hereof, without demand and at its own cost and expense, in accordance with the following:

(a) Monthly Gross Revenues Report. No later than the 10th day of each calendar month after the first calendar month or portion thereof during the Term (and including the first month after termination of this Agreement), Concessionaire shall deliver to the Authority at the Authority's address for Payment as set forth in Section 1.2, a Monthly Gross Revenues Report ("Report") in the form attached as **Exhibit A**, as to the preceding calendar month. Such Report shall be submitted for every month during the Term, even if no Monthly Percentage Fee Payment is required for the month in question. Such Report shall be signed by a person authorized to sign for Concessionaire and shall be certified by a financial officer of Concessionaire. Such Report shall also be sent via facsimile to the Authority's _____ office at 617-_____, or to such other facsimile number as may from time to time hereafter be designated by the Authority. The Authority may change the form of the Monthly Certified Statement upon thirty (30) days prior written notice.

(b) Annual Certified Statements. No later than sixty (60) days after the end of each year of the Term, Concessionaire shall deliver to the Authority an Annual Certified Statement as to the preceding year that shall include all items necessary to calculate Concession Fee, including an itemization of Gross Revenues generated on, at or from the Concession Locations. The Annual Certified Statement shall state that (i) the Statement has been prepared in accordance with the terms of this Agreement, (ii) all revenues derived from the Concession Locations under this Agreement which are required to be included under this Agreement have been so included and (iii) to the best knowledge and belief of the individual providing such certification, the information is true, accurate and complete in all material respects. In addition, the certification of an independent public accountant shall state that the Annual Certified Statement has been prepared in accordance with generally accepted accounting principles consistently applied ("GAAP").

(c) Adjustments Based Upon Annual Certified Statements. In the event that the Annual Certified Statement required under this Section indicates an underpayment for any year or portion thereof during the Term, Concessionaire shall pay the difference between the amounts paid under Section 5.1 and the amount due based upon the Annual Certified Statement, together with interest at the Interest Rate from the date or dates when such amount was originally due. Such payment shall be made no later than the time that the Annual Certified Statement is due under this Section.

5.9 Annual Business Plan

The Concessionaire shall, by _____ 1st of each year of the Term, present an Annual Business Plan to the Authority for review and approval. The Concessionaire's proposal submitted for this Concession shall constitute the Annual Business Plan for the first year of the Term. Such plan shall contain the following at a minimum:

- (a) Review of prior year's performance including achievement of sales projections, financial results and other goals and objectives;
- (b) Establish new operational goals and objectives for the coming year, including identification of sales opportunities, projection of sales and payments to the Authority;
- (c) Any changes or improvements in operations, such as marketing efforts, training or service;

5.10 Books and Records

Concessionaire shall maintain within the Metropolitan Boston Area in a true and accurate manner and in accordance with GAAP, such accounts, books, records and data as would reasonably be expected to be examined by an independent certified public accountant in performing an audit or examination of the Concessionaire's Gross Revenues in accordance with GAAP and with generally accepted auditing standards. This includes, but is not limited to: general ledgers, subsidiary books of record, sales journals, periodic summary reports, inventory and purchasing records, bank statements, tax report files with federal, state, county, city or other agencies, discount or rebate agreements, and records of refunds, contractual agreements with Concessionaire's licensees and advertisers, or other third parties relating to this Agreement. Such books and records shall contain records of all of Concessionaire's pertinent activity under this Agreement in a form consistent with good accounting practice (which may include, without limitation, electronic media compatible with the computers available to the Authority, computer generated hard copies or legible microfiche or microfilm copies).

Concessionaire shall keep the books and records required under this Section 5.10 for a period of no less than 7 years from the date of expiration or earlier termination of this Agreement. Such records shall be segregated from books and records of Concessionaire relating to matters outside of the scope of this Agreement. In the event of a conflict between the terms of this Agreement and GAAP or generally accepted auditing standards, this Agreement shall govern even where this Agreement references GAAP or such auditing standards.

5.11 Authority's Inspection and Audit Rights

(a) Inspections and Audits of Books and Records: Concessionaire's books and records relating to its operations under this Agreement (including, without limitation, the books and records required to be maintained under Section 5.10) shall be available for inspection by the Authority or its duly authorized representative upon 72 hours advance notice and during normal business hours (9:00 a.m. to 5:00 p.m.). In addition, the Authority shall have the right, upon such notice and during such business hours to cause an audit to be made of such books and records in order to determine Concessionaire's compliance with the provisions of this Agreement governing amounts owed, paid or payable to the Authority and compliance with the remaining terms and conditions of this Agreement.

Concessionaire agrees to reasonably accommodate the Authority's representatives by providing adequate workspace (including electrical outlets and phone access), allowing photocopying of any records and documents, and allowing the interviewing of such employees as the representative deems necessary to conduct and support the audit. The Concessionaire shall not charge the Authority for the reasonable use of Concessionaire's photocopy machine while conducting the audit, nor for any cost of retrieving, downloading to diskette, and/or printing any records or transaction stored in magnetic, optical, microform or other media. Concessionaire shall provide all records and retrievals requested with seven calendar days. If such records are not received within fourteen calendar days, the Concessionaire shall pay the Authority as liquidated damages the sum of one hundred dollars per day.

(b) Underpayment: If, as a result of the reviews performed under Section 5.10 (a), any payment deficiency is disclosed, the Authority shall notify Concessionaire of such determination and the basis thereof. Concessionaire shall within 30 days pay to the Authority the balance due together with interest at the Interest Rate from the date or dates when such amount was originally due, plus liquidated damages equal to two percent (2%) of the difference between the amount originally paid by Concessionaire and the amount that is determined through the Audit should be paid, plus interest. Additionally, if, as a result of such reviews, it is determined that Concessionaire has understated its Gross Revenues or underpaid its Concession Fee Payment in any year or portion thereof by 15% or more, then the Authority's entire expense of such reviews, whether internal or external, shall be paid by Concessionaire.

(c) Overpayment: If the Audit establishes that Concessionaire has overpaid the Authority, then such overpayment shall be credited to the Concessionaire within thirty (30) days of the approval of such credit by the Authority.

ARTICLE 6 COMPLIANCE

6.1 Compliance With Laws

Concessionaire shall, at its sole cost and expense, comply with all present and future laws, statutes, ordinances, rules and regulations, orders, judgments, decrees, licenses and permits including all "Environmental Laws", of all applicable federal, state and local governmental or quasi-governmental authorities, subdivisions, departments, agencies and the like, including the regulations of the Authority codified at 740 CMR 1.00 et seq., which impose any duty upon the Authority or Concessionaire with respect to the use, occupancy or alteration of the Concession Locations and with the rules, regulations and requirements of the Authority's and Concessionaire's insurance underwrites with respect to the concession Locations. Concessionaire shall obtain, at its sole cost, any permits necessary to occupy the Concession Locations for the Permitted Use and shall promptly pay all fines, penalties and damages that may arise out of or be imposed because of its failure to comply with the provisions of this Section.

The term "Environmental Laws" shall mean any and all federal, state and local ordinances, statutes, laws, regulations, rules, orders, judgments, decrees, licenses, permits and policies relating to the natural environment including but not limited to laws regarding clean air, clean water, storm water and/or sewage disposal, underground storage tanks, drinking water use, transportation and/or disposal of soil and hazardous materials or wastes, and federal or state environmental reporting or oversight.

6.2 Hazardous Waste Representation and Disclosure

Concessionaire shall not generate, store, handle or dispose of any oil or any hazardous waste or hazardous substances in, on or about Authority property in any manner contrary to federal, state or local environmental laws and regulations, including, without limitation, Chapters 21C and 21E of Massachusetts General Laws and the regulations promulgated thereunder. Concessionaire is, to the best of its knowledge, not aware of the generation, storage, handling or disposal of any such substance in, on or about Authority property by any person or entity in any fashion contrary to any of such law or regulation, and agrees to notify the Authority promptly in the event that it becomes aware of any such improper generation, storage, handling or disposal. For purposes of this Section, the terms "oil", "hazardous waste" and "hazardous substance" shall have the meanings ascribed to them in such Chapters 21C and 21E.

Notwithstanding the above, Concessionaire, upon execution of this Agreement, shall furnish the Authority with a copy of any MSDSs and any updates thereto or any list of substances listed on the so-called Massachusetts Substance List, established pursuant to M.G.L. Ch. 111F which Concessionaire is required to prepare, file or maintain pursuant to said Ch. 111F. If said MSDSs or lists should be changed or updated during the Term, Concessionaire shall promptly furnish a copy of such updated or changed MSDSs or list to the Authority.

The Authority reserves the right to conduct on an annual basis an environmental audit of the Concession Locations and the Concessionaire's operations, equipment, facilities and fixtures thereon. This Section 6.2 shall survive the expiration or earlier termination of the Agreement.

6.3 Nuisance; Waste

Concessionaire shall not injure, deface or otherwise harm the Concession Locations, nor commit any nuisance, nor commit any act or practice which may constitute a menace to any other invitees or persons in the terminals nor permit the emission or any objectionable noise, vibration or odor, nor overload the floor of the Concession Locations nor make, allow or suffer any waste, nor permit any use of the concession Locations which is improper, offensive or contrary to any law or ordinance or which will invalidate or increase the premiums on any of the Authority's insurance.

6.4 Authority Rules

Concessionaire shall faithfully observe and comply, and shall cause all employees to observe and comply, with any rules which the Authority may from time to time make and communicate in writing to Concessionaire.

6.5 A.D.A. Compliance

Concessionaire agrees that, with respect to its operations within the Concession Locations, it shall be responsible for compliance with the Americans with Disabilities Act (42 U.S.C. sec. 12101 et seq.), and the regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto. Concessionaire recognizes that the Authority is a public entity subject to Title II of the ADA. To the extent permitted by law, Concessionaire shall assume and comply, and cause its agents, licensees and contractors to comply, with any obligations to which the Authority may be subject under Title II of the ADA with respect to Concessionaire's alterations or construction conducted in the Concession Locations or in the operation of programs, services or activities relating to this Agreement.

Within five (5) days after receipt, Concessionaire shall advise the Authority in writing and provide copies of (as applicable), any notices, claims made or threatened, or any governmental or regulatory actions or investigations instituted or threatened alleging violations of the ADA or any other Law pertaining to accessibility for disabled persons which relates to any portion of the Concession Locations or operations or activities relating thereto.

ARTICLE 7 UTILITIES/SERVICES

7.1 Utilities

The Authority shall have no obligation to provide utility services to the Concession Locations except for electricity by utility systems, connections and related equipment existing as of the Commencement Date (the "Utility Systems"). The Authority shall have no obligations to provide telephone or data communication services to the Concession Locations. The Utility Systems shall be available to service the Concession Locations herein described. Concessionaire has inspected the Utility Systems, accepts them in their "as is" condition, and agrees that Concessionaire's use of the Concession Locations shall not exceed the capacity of the Utility Systems. Failure of any Utility Systems shall not constitute a breach of this Agreement, and the Authority shall not be liable for any loss to Concessionaire nor be in default hereunder as the result of the failure of any Utility System. Concessionaire shall be solely responsible for installation of any additional utility system required by services needs, which exceeds the capacity of the Utility System. If it is mutually agreed that certain types of light and signage requiring utility systems and/or connections not existing at the time of the Commencement Date is otherwise desirable, then the Authority and the Concessionaire may reach a separate agreement as to responsibilities for the obligations described therein.

7.2 Rubbish Removal

Concessionaire shall be responsible for the removal of rubbish and refuse or any other material from the Concession Locations at times and in a manner which will cause the minimum of interference with the use of the Authority's facilities by the traveling public, other concessionaires, invitees and authorized persons. The Concessionaire shall remove such rubbish, refuse and any such material and make any and all deliveries only at such times and at such locations as the Authority in its discretion might from time to time determine. The Authority reserves the right to require the Concessionaire to contract for a dumpster, providing adequate space can be identified, and to participate in the Authority's recycling program, as appropriate.

7.3 Security

Concessionaire shall be solely responsible for providing security at the Concession Locations, with no right of reimbursement from the Authority. Notwithstanding the foregoing, Concessionaire shall take such reasonable security precautions with respect to the Concession Locations and Concessionaire's operations and personnel, as the Authority in its sole discretion may from time to time require.

ARTICLE 8 INSTALLATIONS

8.1 Advertisements and Promotions

The Concessionaire, at its sole cost, shall fabricate, construct, equip and complete the advertisement and promotional displays to be located on the Concession Locations, modifications to the Initial Display Inventory (the "Improvements") on or before the Completion, in accordance with the plans and specifications (the "Plans and Specifications") approved through the Authority's _____ Department.

8.2 Plans and Specifications

The Plans and Specifications, and each installation, addition or modification thereto, shall be submitted to and approved by the Authority's _____ Department prior to installation. If the Plans and Specifications so approved are preliminary in form, they shall be developed, subject to like approval, into final working plans and detailed specifications, which shall thereafter herein be referred to as the Plans and Specifications.

8.3 Work in Harmony

All contracts for construction or installation of advertisements and promotional displays shall require shall that all contractors and subcontractors provide labor that can work in harmony with other elements of labor employed or to be employed at Authority facilities.

8.4 Concessionaire's Upkeep

Concessionaire shall develop and implement an Advertisement Upkeep Plan for the maintenance, repair and upkeep of Concessionaire's advertising displays.

ARTICLE 9 TRANSFER OF INTEREST

9.1 Limitation

Concessionaire shall not assign, mortgage, pledge, or otherwise transfer this Agreement or Concessionaire's interest herein and shall not sublet the Concession Locations, any part thereof, or any right or privilege appurtenant thereto, nor allow any other person (the employees, agents and invitees of Concessionaire excepted) to occupy or use the said Concession Locations, or any portion thereof, without the prior written consent of the Authority, which may be withheld in the Authority's sole discretion. If Concessionaire is a partnership, a transfer of a majority interest of a general partner or a withdrawal of any general partner from the partnership, or the dissolution of the partnership shall be deemed a transfer of this Agreement. If Concessionaire is a corporation, unless Concessionaire is a public corporation whose stock is regularly traded on a national stock exchange, or is regularly traded in the over-the-counter market and quoted on NASDAQ, any merger, consolidation, or other reorganization of Concessionaire or sale or other transfer of a percentage of capital stock of Concessionaire which results in a change of controlling persons shall be deemed a transfer of this Agreement. Any dissolution, sale or other transfer of substantially all of the assets of Concessionaire also shall be deemed a transfer of this Agreement. Any such transfer, assignment or subletting without such consent shall be void, and shall, at the option of the Authority, constitute a default under the terms of this Agreement.

9.2 Reimbursement

In the event that the Authority shall consent to an assignment hereunder, Concessionaire shall reimburse Authority its reasonable attorneys' fees incurred in connection with the processing of documents necessary to effectuate the same in accordance with this Agreement.

ARTICLE 10 INDEMNIFICATION AND INSURANCE

10.1 Indemnification

The Concessionaire at its sole cost and expense shall defend and shall indemnify and hold harmless the Authority, its members, officers and employees from and against all claims, causes of action, suits, losses, damages and expenses (including without limitation, attorneys' fees and costs of investigation and litigation) of whatever nature to any person or property based upon or arising out of the use or occupancy of the Concession Locations, the operations of the Concessionaire hereunder, and/or the actions of Concessionaire, including but not limited to the presence of or release of oil or hazardous wastes or hazardous materials, any infringement of copyright, trademark or patent or denial of so-called "First Amendment" rights, failure to comply with any requirement of any public authority or with any state, federal or local statute, ordinance or regulation applicable to its use of the Bridge for advertising space, provided that the Concessionaire shall not be liable for any loss caused solely by the willful misconduct or gross negligence of the Authority. The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the Authority which would exist at common law or under other provisions of this Agreement, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this Agreement. Further, Concessionaire shall indemnify and hold harmless the Authority against and from all costs, reasonable counsel and expert fees, expenses and disbursements incurred in connection with or in defending any such claim or any action or proceedings brought thereon; and in case any action or proceeding is brought against the Authority by reason of any such claim, Concessionaire, upon notice from the Authority, agrees to resist or defend such action or proceeding with counsel reasonably acceptable to the Authority. The Authority

shall give the Concessionaire prompt written notice of any claims threatened or made or suit instituted against it which could result in a claim of indemnification hereunder.

10.2 Insurance

Concessionaire shall, at its sole cost and expense, provide and keep in force during the Term the following insurance:

(i) workers' compensation insurance, as required by law; (ii) employer's liability insurance in an amount of not less than One Million Dollars (\$1,000,000); (iii) professional liability insurance coverage for errors, omissions and negligent acts in an amount of not less than One Million Dollars (\$1,000,000); and (iv) commercial general liability insurance (including automobile liability insurance covering all owned, hired and non-owned vehicles) for bodily and personal injury and property damage in the combined single limit of One Million Dollars (\$1,000,000). On all policies of liability insurance required hereunder, except professional liability insurance, the Authority shall be named as an additional insured. Consultant's insurance shall be primary, over and above any other insurance held by the Authority. Consultant shall furnish Certificates of Insurance evidencing the insurance coverage required hereunder prior to commencement of this Agreement and upon each renewal of the insurance required herein. Each policy of insurance required herein shall (a) be in a form and with a company that is authorized to do business in the Commonwealth of Massachusetts having a Best rating of B+ or better; (b) provide that it shall not be materially altered or cancelled by the insurer during the policy's term without first giving at least thirty (30) days prior written notice to the Authority; (c) provide that any act or omission of Consultant or the Authority shall not prejudice the rights of the Authority as a party insured under said policy; and (d) be subject to a deductible in an amount reasonably acceptable to the Authority, which amount shall be stated on the policy or certificate of insurance. Upon the Authority's request, Consultant shall deliver copies of such insurance policies to the authority. The Authority may from time to time require that the amount of the general liability insurance to be provided by Concessionaire be reasonably increased.

In the defense of any claim, demand, expense or liability which is to be covered under insurance policies obtained by Consultant as described in this Agreement (even if such claim, demand, expense or liability is groundless, false or fraudulent), Consultant agrees on its own behalf that it shall not and shall cause its insurers to agree that they shall not, without obtaining express advance written permission from the Chief Legal Counsel of the Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Authority, the immunity of the Authority, its members, officers, agents or employees, the governmental nature of the Authority or the provisions of any statutes respecting suits against the Authority.

10.3 Concessionaire's Risk

To the fullest extent permitted by law, Concessionaire agrees to use and occupy the Concession Locations and any other areas that Concessionaire is herein given the right to use, at Concessionaire's sole risk, and the Authority shall have no responsibility or liability for any loss of or damage to, fixtures, equipment or other personal property of Concessionaire, or of those claiming by, through or under the Concessionaire.

ARTICLE 11 DEFAULT AND REMEDIES

11.1 Event of Default

Each of the following events shall constitute an "Event of Default" hereunder:

- (a) Failure to pay any installment of the Annual Guarantee, the Percentage Fee Payment, any Additional Fee, or any part thereof, when due, and such failure continues for a period of ten (10) days after written notice thereof from the Authority to Concessionaire; provided, however, the Authority shall not be obligated to give such written notice more than two times in any twelve (12) month period; or
- (b) Failure to immediately cure any condition that interferes with public safety or the safe and efficient operations of the Authority's properties and facilities;

(c) Failure to perform or observe any other material requirement of this Agreement and such failure is not cured within three (3) days after written notice thereof; or

(d) Concessionaire is insolvent or unable to pay its debts generally or is the subject of a voluntary or involuntary bankruptcy, which is not dismissed within 60 days, insolvency, liquidation or reorganization proceeding or makes an assignment for the benefit of its creditors; or

(e) Failure to aggressively pursue advertising revenue such that Concessionaire generates less than that _____ Dollars (\$ _____) in revenues to the Authority in any one-year period.

11.2 Remedies, Self-Help

Upon the happening of any one or more Events of Default, the Authority may do any one or more of the following:

(a) Terminate this Agreement by giving Concessionaire notice thereof, in which event this Agreement and the Term, as well as any and all of the right and interest of the Concessionaire hereunder, shall wholly cease and expire on the date set forth in such notice as if such date were the date originally specified herein for the expiration of the Term, and Concessionaire shall then quit and surrender the Concession Locations under Section 4.2, and

(b) Without being under any obligation to do so and without thereby waiving such default, remedy such default at the expense of Concessionaire, immediately and without notice in case of emergency, with 24 hours notice in the case of unlawful, immoral, improper, offensive, misleading or deceptive advertising displays or in any other case, if Concessionaire shall fail to remedy such default within the time set forth in Section 11.1. In the event the Authority exercises such right, Concessionaire shall pay to the Authority immediately upon demand, all of the Authority's cost of performing the same, including reasonable attorney's fees, plus an administrative charge equal to 50% of such costs. Such payment shall constitute Additional Fees hereunder.

If this Agreement is terminated or if the Authority shall re-claim the Concession Locations as set forth above, Concessionaire shall pay and be liable for all Concession Fees and Additional Fees and to pay said amounts pursuant to the terms of this Agreement, as if this Agreement had not been terminated. In the event the Authority participates in any court proceeding in order to enforce any of its rights under this Agreement, including actions to collect payments, if the Authority is the prevailing party, Concessionaire shall pay all of the Authority's out-of-pocket expenses, including attorneys' fees incurred in connection with such proceeding. If the Concessionaire is the prevailing party, the Authority shall pay all of the Concessionaire's out-of-pocket expenses, including attorney's fees incurred in connection with such proceeding.

Except as otherwise set forth herein, any obligations of Concessionaire as set forth herein (including, without limitation, rental and other monetary obligations, repair obligations and obligations to indemnify the Authority) shall survive the expiration or earlier termination of this Agreement, and Concessionaire shall immediately reimburse the Authority for any expense incurred by the Authority in curing Concessionaire's failure to satisfy any obligation (notwithstanding the fact that such cure might be effected by the Authority following the expiration or earlier termination of this Agreement).

11.3 Default by the Authority

The Authority shall not be in default of any obligation under this Agreement unless it has received written notice thereof from Concessionaire and has failed to cure such default within thirty (30) days, or in the event of a default which is not susceptible of being cured within thirty (30) days, fails to commence such cure within the thirty (30) day period and thereafter diligently proceeds to cure such default.

ARTICLE 12
NON-DISCRIMINATION & EQUAL EMPLOYMENT OPPORTUNITY

12.1 Compliance

In accordance with federal and state law and policies adopted by the Authority, the Concessionaire agrees with respect to all rights and privileges granted herein as follows:

(a) Concessionaire shall not discriminate against any person, employee, or applicant for employment because of that person's membership in any legally protected class, including but not limited to their race, color, gender, religion, creed, national origin, ancestry, age being greater than forty years, sexual orientation, handicap, genetic information, or veteran status. Concessionaire shall not discriminate against any person, employee, or applicant for employment who is a member of, or applies to perform service in, or has an obligation to perform service in, a uniformed military service of the United States, including the National Guard, on the basis of that membership, application, or obligation. Concessionaire shall undertake affirmative action measures designed to guarantee and effectuate equal employment opportunity for all persons.

(b) Concessionaire shall comply with all federal and state laws and applicable Massport policies pertaining to Civil Rights, Discrimination, and Equal Opportunity, including executive orders and rules and regulations of appropriate federal and state agencies unless otherwise exempt therein.

(c) Although the Authority has not established a specific Minority Business Enterprise ("MBE") Woman Business Enterprise ("WBE") utilization goal for this Agreement, participation by MBE and WBE firms, and the inclusion of MBE and WBE subcontractors, is strongly encouraged. Upon request by the Authority from time to time, the Concessionaire shall deliver to Authority's Compliance Department or as otherwise directed, a Workforce Composition Report delineating the number of minority employees, female employees, impacted community residents (those communities are Charlestown, Chelsea, East Boston, Revere, South Boston and Winthrop) employed at the site or such other classifications as contained in such request by the Authority to Concessionaire.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 Waiver

Failure on the part of the Authority or Concessionaire to complain of any action or non-action on the part of the other, no matter how long the same may continue, shall never be a waiver by the Authority or Concessionaire, respectively, of its rights hereunder. Further, no waiver of any of the provisions hereof by the Authority or Concessionaire shall be construed as a waiver of any of the other provisions hereof or as a waiver at any subsequent time of the same provisions. The consent or approval of the Authority or Concessionaire to any action by the other requiring such consent or approval shall not be construed to waive or render unnecessary the Authority's or Concessionaire's consent or approval to any subsequent similar act by the other.

13.2 Cumulative Remedies

The specific remedies to which the Authority and Concessionaire may resort under the terms of this Agreement are cumulative and are not intended to be exclusive of any other remedies or means of redress which it may be lawfully entitled to seek in case of any breach or threatened breach by Concessionaire or the Authority of any provisions of this Agreement.

13.3 Notices

Whenever, by the terms of this Agreement, notice shall or may be given either to the Authority or to Concessionaire, such notices shall be in writing and shall be hand-delivered or sent by registered or certified mail, postage prepaid:

If intended for the Authority, addressed to:

The Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, MA 02128
Attn: Director of the Tobin Bridge

with a copy to:

Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, MA 02128
Attn: Chief Legal Counsel

(Or, to such other address or addresses as may from time to time hereafter be designated by the Authority by like notice.)

If intended for Concessionaire, addressed to Concessionaire at the address set forth in Section I.2 of this Agreement (or, to such other address or addresses as may from time to time hereafter be designated by Concessionaire by like notice) with a copy to _____,

All such notices shall be effective upon receipt or failure to accept delivery.

13.4 When Agreement Becomes Binding

Employees or agents of the Authority have no authority to make or agree to make an agreement or undertaking in connection herewith. The submission of this document for examination and negotiation does not constitute an offer to Agreement, or a reservation of, or option for, the Concession Locations, and this document shall become effective and binding only upon the execution and delivery hereof by both the Authority and Concessionaire.

13.5 Certificate of Compliance with Laws

Upon execution of this Agreement, Concessionaire shall furnish the Authority a signed statement as to compliance with certain Massachusetts General Laws, a form for which is attached hereto as **Exhibit C**.

13.6 Trust Agreement

Concessionaire acknowledges that the Authority is a party to a Trust Agreement dated as of the first day of August 1978, between the Authority, the holders of bonds issued by the Authority, and State Street Bank and Trust Company as trustee. Concessionaire agrees to consent to amendments or modifications to this Agreement reasonably required in the opinion of legal counsel to the Authority, who shall have recognized expertise in bond matters to assure the Authority's compliance with its obligations thereof, or with the obligations of successor or additional Trust Agreements into which the Authority may enter in the course of issuing additional or refunding bonds as permitted by law.

13.7 No Personal Liability

No member, director, officer or employee of the Authority nor _____ shall be charged personally or held contractually liable under any term or provision of this Agreement, or because of any breach thereof or because of the execution or attempted execution of this Agreement.

13.8 Limitations on Damages

Neither the Authority nor the Concessionaire shall be liable to the other for any loss of business or any indirect, incidental, special, consequential or exemplary damages or lost profits.

13.9 Governing Law; Amendment

No alteration, amendment, change or addition to this Agreement shall be binding upon the Authority or Concessionaire, unless reduced to writing and signed by the party or parties to be charged therewith. If any provisions of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

EXECUTED as of the date set forth above.

The Authority:

Concessionaire:

MASSACHUSETTS PORT AUTHORITY

[_____]

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

G:\Legal\Misc\DALTON\ADVERTISING\OOH RFP Attachment IV.doc

EXHIBIT A

MONTHLY GROSS REVENUES REPORT

EXHIBIT B

GUIDELINES REGULATING ADVERTISING ON MASSPORT FACILITIES

I. Purpose

Through these Guidelines, the Massachusetts Port Authority (“Massport”) intends to establish reasonable, uniform and viewpoint-neutral standards for the display of advertising on or in all Massport facilities including, but not limited to, Logan International Airport, L.G. Hanscom Field, the Tobin Bridge, the Fish Pier, Black Falcon Cruise Terminal, and Conley Terminal and the terminals, buildings, structures, and Massport owned or operated vehicles that are a part of such facilities or used in connection therewith (the “Facilities”). In setting its advertising standards, Massport seeks to fulfill the following goals and objectives:

- (a) preserve its facilities for the purposes for which they were designed and dedicated;
- (b) maximization of revenue generated by advertising;
- (c) maintaining the safe and orderly operation of the Facilities;
- (d) maintaining a safe and welcoming environment for those who employed at or utilize the Facilities, including minors; and
- (e) avoiding the unauthorized identification of Massport or the Commonwealth of Massachusetts with advertisements, or the viewpoints of the advertisers.

By resolution of the Members of Massport (the “Board”) and as permitted by law, Massport reserves the right, from time to time, to suspend, modify, or revoke the application of any or all of these Guidelines as it deems necessary to comply with legal mandates, to accommodate its mission, and to fulfill the goals and objectives referred to herein. All the provisions of these Guidelines shall be deemed severable.

Notwithstanding any other provision contained herein to the contrary, these guidelines do not apply to any parks owned or operated by Massport, including but not limited to, Piers Park and the South Boston Maritime Park. Massport intends that its Facilities, except for any parks owned or operated by Massport, constitute nonpublic forums.

II. Advertising Program and Administration

(a) Massport shall, from time to time, select one or more advertising contractors (hereinafter referred to as the "Advertising Contractor"), who shall be responsible for the daily administration of Massport's advertising program, in a manner consistent with these Guidelines and the terms of its agreement with Massport. The advertising program shall include, but not be limited to, promotion, solicitation, sales, accounting, billing, collections, and posting of advertising displays on or in all Massport facilities.

(b) The Advertising Contractors shall provide, or shall subcontract for, all employees and equipment necessary to perform the work and provide the services required by Massport.

(c) Massport shall designate one or more employees as its contract administrators (hereinafter referred to as the "Contract Administrator") to be the primary contact for the Advertising Contractor. Questions regarding the terms, provisions, and requirements of these Guidelines shall be addressed initially to the Contract Administrator.

III. Massport Operations and Public Service Announcements

Massport has the unqualified right to display, on or in the Facilities, advertisements and notices that pertain to Massport operations, facilities, services and public service announcements, consistent with the provisions of its agreement with the Advertising Contractor.

IV. Disclaimer

Massport reserves the right, in all circumstances, to require that an advertisement on or in its Facilities include a prominent disclaimer indicating that it is not sponsored by, and does not necessarily reflect the views of, Massport or the Commonwealth of Massachusetts.

V. Advertising Standards

(a) Massport intends that its Facilities constitute nonpublic forums that are subject to the reasonable, uniform and viewpoint-neutral restrictions set forth below. Certain forms of paid and unpaid advertising will not be permitted for placement or display on or in the Facilities. Massport also reserves the right to disapprove the placement of advertising in certain locations if in its judgment such placement would risk damage or injury to the Facilities, or if such placement would risk distracting the users of the Facilities and such distraction would risk injury or bodily harm, or if such placement would risk interference with Massport operations.

(b) Massport shall not display or maintain any advertisement that falls within one or more of the following categories:

(i) Demeaning or disparaging. The advertisement contains material that demeans or disparages an individual or group of individuals. For purposes of determining whether an advertisement contains such material, the decision maker acting on behalf of Massport in accordance with these Guidelines will determine whether a reasonably prudent person, using prevailing community standards, would believe that the advertisement contains material that ridicules or mocks, is abusive or hostile to, or debases the dignity or stature of, an individual or group of individuals.

(ii) Tobacco. The advertisement promotes the sale or use of tobacco or tobacco-related products, including depicting such products.

(iii) Profanity. The advertisement contains profane language.

(iv) Weapons. The advertisement either (a) contains an image of a weapon in the foreground of the main visual, or (b) contains image(s) of weapon(s) that occupy 15% or more of the overall advertisement.

(v) Violence. The advertisement contains an image or description of graphic violence, including, but not limited to (1) the depiction of human or animal bodies or body parts, or fetuses, in states of mutilation, dismemberment, decomposition, or disfigurement, and (2) the depiction of weapons or other implements or devices used in the advertisement in an act or acts of violence or harm on a person or animal.

(vi) Unlawful goods or services. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, the use or possession of unlawful or illegal goods or services.

(vii) Unlawful conduct. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, unlawful or illegal behavior or activities.

(viii) Obscenity or nudity. The advertisement contains obscene material or images of nudity. For purposes of these Guidelines, the terms "obscene" and "nudity" shall have the meanings contained in Massachusetts General Laws ch. 272, §31, as it may be amended from time to time.¹

(ix) Prurient sexual suggestiveness. The advertisement contains material that describes, depicts, or represents sexual activities or aspects of the human anatomy in a way that the average adult, applying contemporary community standards, would find appeals to the prurient interest of minors or adults in sex. For purposes of these Guidelines, the term "minor" shall mean a person under eighteen (18) years of age.

¹ Mass. Gen. Laws ch. 272, §31, defines "obscene" as follows: "matter is obscene if taken as a whole it (1) appeals to the prurient interest of the average person applying the contemporary standards of the county where the offense was committed; (2) depicts or describes sexual conduct in a patently offensive way; and (3) lacks serious literary, artistic, political, or scientific value" Mass. Gen. Laws ch. 272, §31, defines "nudity" as follows: "uncovered or less than opaquely covered human genitals, pubic areas, the human female breast below a point immediately above the top of the areola, or the covered male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple or areola only are covered."

(x) “Adult”-oriented goods or services. The advertisement promotes or encourages, or appears to promote or encourage, a transaction related to, or uses brand names, trademarks, slogans or other materials which are identifiable with, films rated “X” or “NC-17,” adult book stores, adult video stores, nude dance clubs and other adult entertainment establishments, adult telephone services, adult Internet sites, and escort services.

(xi) Political campaign speech. The advertisement contains political campaign speech. For purposes of these Guidelines, the term “political campaign speech” is speech that (1) refers to a specific ballot question, initiative petition, or referendum, or (2) refers to any candidate for public office.

(xii) Endorsement. The advertisement, or any material contained in it, implies or declares an endorsement by Massport or the Commonwealth of Massachusetts of any service, product, or point of view, without prior written authorization of Massport or a duly authorized representative of the Commonwealth of Massachusetts, respectively.

(xiii) False, misleading, or deceptive speech. The advertisement proposes a transaction, and the advertisement, or any material contained in it, is false, misleading, or deceptive.

(xiv) Libelous speech, copyright infringement, etc. The advertisement, or any material contained in it, is libelous or an infringement of copyright, or is otherwise unlawful or illegal or likely to subject Massport to litigation.

(xv) Special provisions regarding web addresses and telephone numbers. The advertisement is such that (1) the message or sponsorship of the advertisement cannot reasonably be determined without accessing a website or telephone number that is listed in the advertisement, or (2) the website prominently contains, or that telephone number directs callers to, material that violates these Guidelines.

(c) Advertisement of Alcoholic Beverages. Advertisements related to the sale of alcoholic beverages shall contain a statement, occupying at least 3% of the area of the advertisement, that indicates the legal drinking age in Massachusetts and warns of the dangers of alcohol consumption during a pregnancy, or in connection with the operation of heavy machinery, or while driving, and shall not depict individuals appearing to be minors in the advertisement and shall not be targeted to appeal to minors.

(d) Review of advertisements. The Advertising Contractor shall review each advertisement submitted for display on or in the Facilities to determine whether the advertisement falls within, or may fall within, one or more of the categories set forth in (b) above. If the Advertising Contractor determines that an advertisement falls within, or may fall within, one or more of the categories set forth in (b) above, then:

(i) Referral to Contract Administrator. The Advertising Contractor shall promptly send the advertisement along with the name of the advertiser, the size and number of the advertisements, and the dates and locations of display to the Contract Administrator for review of the advertisement by Massport.

(ii) Initial Review by Massport. Upon the Contract Administrator’s receipt of the advertisement and supporting information, the Contract Administrator shall review the advertisement and supporting information to determine whether the advertisement falls within one or more of the categories set forth in (b) above. In reaching this determination, the Contract Administrator may consider any materials submitted by the advertiser and may consult with the Advertising Contractor. In the event that the Contract Administrator determines that the advertisement does not fall within any of the categories set forth in (b)

above, the Contract Administrator shall advise the Advertising Contractor that the advertisement is in conformity with Massport's Advertising Guidelines.

(iii) Subsequent Review by Massport. In the event that the Contract Administrator determines that the advertisement falls within, or may fall within, one or more of the categories set forth in (b) above, then the Contract Administrator shall, in writing, specify which of the categories the advertisement falls within, or may fall within, and shall refer the advertisement and supporting information to the Chief Legal Counsel. Likewise, the Chief Legal Counsel shall review the advertisement and supporting information to determine whether the advertisement falls within one or more of the categories set forth in (b) above. In reaching this determination, the Chief Legal Counsel may consider any materials submitted by the advertiser and may consult with the Contract Administrator. In the event that the Chief Legal Counsel determines that the advertisement does not fall within any of the categories set forth in (b) above, the Contract Administrator shall advise the Advertising Contractor that the advertisement is in conformity with Massport's Advertising Guidelines.

(iv) Final Review by Massport. In the event that the Chief Legal Counsel determines that the advertisement falls within, or may fall within, one or more of the categories set forth in (b) above, then the Chief Legal Counsel shall, in writing, specify which of the categories that advertisement falls within, or may fall within, and shall refer the advertisement and supporting information to the Executive Director/Chief Executive Officer ("CEO"). Likewise, the CEO shall review the advertisement and supporting information to determine whether the advertisement falls within one or more of the categories set forth in (b) above. In reaching this determination, the CEO may consider any materials submitted by the advertiser and may consult with the Contract Administrator and the Chief Legal Counsel. In the event that the CEO determines that the advertisement does not fall within any of the categories set forth in (b) above, the Contract Administrator shall advise the Advertising Contractor that the advertisement is in conformity with Massport's Advertising Guidelines. In the event that the CEO determines that the advertisement falls within one or more of the categories set forth in (b) above, then the CEO shall, in writing, specify which of the categories the advertisement falls within and the Contract Administrator shall advise the Advertising Contractor that Massport has determined that the advertisement is not in conformity with its Advertising Guidelines.

(v) Opportunity for Revision by Advertiser. In the event that Massport determines that the advertisement falls within one or more of the categories set forth in (b) above, the Advertising Contractor may, in consultation with the Contract Administrator, discuss with the advertiser one or more revisions to the advertisement, which, if undertaken, would bring the advertisement into conformity with Massport's Advertising Guidelines. The advertiser shall then have the option of submitting a revised advertisement for review by Massport.

(vi) Formal Determination by Massport. In the event that Massport and the advertiser do not reach agreement with regard to a revision of the advertisement, the advertiser may request that Massport memorialize its formal determination in the form of a final written notice of its decision, which shall then be delivered to the advertiser. Massport's formal determination shall be final.

(vii) Removal of Non-Complying Advertisements. Notwithstanding the foregoing, if the Contract Administrator, the Chief Legal Counsel, and the CEO determine at any time that an advertisement already accepted for display by the Advertising Contract falls within one or more of the categories set forth in (b) above, they shall (1) in writing, specify which of the categories the advertisement falls within, (2) notify the advertiser that Massport has determined that the advertisement is not in conformity with

its Advertising Guidelines and that the advertisement shall be promptly removed, and (3) instruct the Advertising Contractor to remove the advertisement. Upon such instruction, the Advertising Contractor shall promptly remove the advertisement, shall provide the advertiser with a copy of these Guidelines, and may, with the Contract Administrator, discuss with the advertiser one or more revisions to the advertisement, which, if undertaken, would bring the advertisement into conformity with Massport's Advertising Guidelines.

The advertiser shall then have the option of submitting a revised advertisement for review by Massport. In the event that Massport and the advertiser do not reach agreement with regard to a revision of the advertisement, the advertiser may request that Massport memorialize its formal determination in the form of a final written notice of its decision, which shall then be relayed to the advertiser. Massport's formal determination shall be final.

VI. Public Service Announcements

Massport may, from time to time, make unsold advertising space available for public service announcements proposed by non-profit corporations that are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by federal, state or local government agencies or subdivisions thereof. Each such non-profit corporation shall provide the Advertising Contractor or Massport with documentation demonstrating that it currently qualifies under the above-referenced provision of the Internal Revenue Code. A public service announcement cannot contain a message that is retail or commercial in nature and shall comply with the Advertising Standards set forth in these Guidelines. A public service announcement may be required to bear the following legend if the sponsor is not readily or easily identifiable from the content or copy of the proposed advertisement: "This message is sponsored by _____."

EXHIBIT C

CERTIFICATE OF COMPLIANCE WITH LAWS

Massachusetts Employment Security Law

Pursuant to M.G.L.c. 151A, §19A(b), the undersigned hereby certifies* under the penalties of perjury that Concessionaire, with D.E.T. ID Number _____, has complied with all laws of the Commonwealth relating to unemployment compensation contributions and payments in lieu of contributions.

* Compliance may be certified if Concessionaire has entered into and is complying with a repayment agreement satisfactory to the Commissioner, or if there is a pending adjudicatory proceeding or court action contesting the amount due pursuant to M.G.L.c. 151A, §19A(c).

Massachusetts Child Care Law

Pursuant to Chapter 521 of the Massachusetts Acts of 1990, as amended by Chapter 329 of the Massachusetts Acts of 1992, the undersigned hereby certifies that Concessionaire:

1. ___ Employs fewer than fifty (50) full-time employees; or
2. ___ Offers either a dependent care assistance program or a cafeteria plan whose benefits include a dependent care assistance program; or
3. ___ Offers childcare tuition assistance, or on-site or near-site subsidized childcare placements.

Revenue Enforcement and Protection Program

Pursuant to M.G.L.c. 62C, §49A, the undersigned hereby certifies that Concessionaire's Social Security **or** Federal Identification No. is _____ and that to the best of his/her knowledge and belief, Concessionaire has filed all state tax returns and paid all state taxes required by law.

Certification Regarding Companies Doing Business with or in Northern Ireland

Pursuant to G.L. c. 7, §22C, the undersigned hereby certifies under the pains and penalties of perjury that Concessionaire is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or gas bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland, and that Concessionaire (check applicable item):

1. _____ does not employ ten or more employees in an office or other facility located in Northern Ireland; or
2. _____ employs ten or more employees in an office or other facility located in Northern Ireland, but such office or other facility in Northern Ireland (a) does not discriminate in employment, compensation or the terms, conditions and privileges of employment on account of religious or political belief; and (b) promotes religious tolerance within the workplace, and the eradication of any manifestation of religious and other illegal discrimination.

Signed this _____ day of _____, 20____.

Authorized Signature