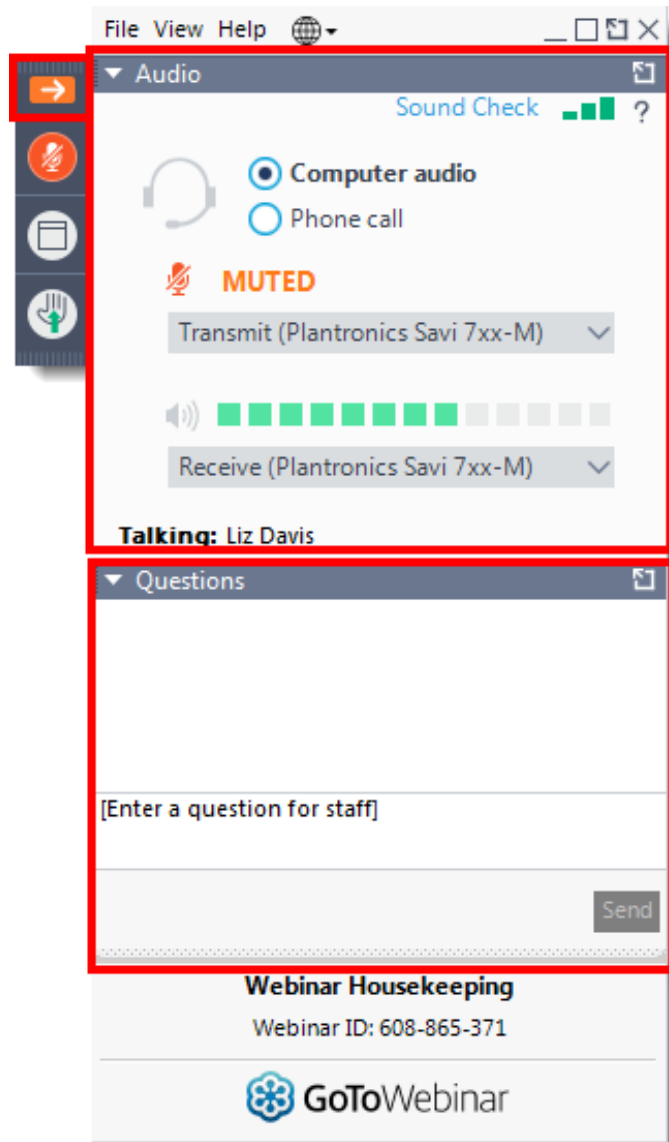


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# Dallas Fort Worth International Airport Pre Proposal Conference COVID-19 Testing

January 25, 2021

# Go To Webinar Housekeeping



## Your Participation

Open and close your control panel

Join audio (attendees will be in listen only mode):

- Choose **Computer Audio** to use VoIP
- Choose **Phone Call** and dial using the information provided

Submit questions via the Questions panel during the presentation.

**Note:** Today's presentation is being recorded and will be provided.

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# Airport Concessions Disadvantaged Business Enterprise (ACDBE) Program



Tamela Lee

Vice President, Business Diversity and Development

Cathy Jackson

Business Development Manager

# Joint Venture Agreement Template Guidance

Presented by Dallas Fort Worth International Airport & ACC Consulting, LLC.



# Agenda

- I. Welcome
- II. Key Components of a DFW Joint Venture Agreement
- III. Joint Venture Template Guidance
- IV. Annual Compliance Documentation Required
- V. Dissolution and liquidation of joint ventures
- VI. Q&A











Cathy Jackson  
Business Diversity Development Manager  
BDDD

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# Key Components of a DFW Joint Venture Agreement

# Key Components of a DFW Joint Venture Agreement

-  Identify joint venture participants
-  Identify single for-profit business enterprise
-  Joint venture terms and factors
-  Capital contribution
-  Accounting methods
-  Overall management
-  Joint venture administration
-  Dissolution



Cindy Olivares  
ACC Consulting LLC

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# Joint Venture Template Guidance



# Joint Venture - Organization

- Name of Joint Venture
- Ownership interests
- Term of Joint Venture
- Purpose (must be a single purpose)



# Joint Venture - Organization

*For example:*

*Name. The business of the Company shall be conducted under the name of \_\_\_\_\_.*

*Purpose. The purpose of the Company is to \_\_\_\_\_.*

*Ownership. Each member's interest in the Company shall be as follows:*

	<i>Percentage</i>
	<u><i>Interest</i></u>
<i>Company A:</i>	<i>75%</i>
<i>Company B:</i>	<i>25%</i>

*Term. The Company shall commence on the date on which its Certificate of Formation is filed with the Secretary of State. The Company shall continue for the term of the \_\_\_\_\_ lease agreement.*

# Capital Contributions

- Initial
  - Proportionate to ownership interest

## *Sample Language:*

*Each member's interest in the company and estimated initial capital contribution shall be as follows:*

	<i><u>Initial Capital</u></i>	<i><u>Percentage</u></i>
	<i><u>Contribution</u></i>	<i><u>Interest</u></i>
<i>Company A:</i>	<i>\$750,000</i>	<i>75%</i>
<i>Company B:</i>	<i>\$250,000</i>	<i>25%</i>



# Capital Contributions

- Additional
  - Proportionate to ownership interest
  - Purpose
  - Conditions
  - Limits

## *Sample Language:*

*In the event that additional Capital Contributions are required to fund construction or operations of the Company, the Managing Member will notify each Member of the amounts required. Each Member will contribute additional capital in the same proportion as its Percentage Interest. Each Member acknowledges and agrees that the Master Lease requires additional investments in the Facilities.*



# Capital Contributions

- Source of Funds
  - Potential for loans
  - Loan requirements

## *Sample Language:*

*A Member's failure to contribute required capital within thirty (30) days of notice shall be considered an Event of Default; provided, however, that any other Member may, in that Member's sole discretion, cure such default by contributing on behalf of the noncontributing Member up to 90% of the noncontributing Member Capital Contribution. Such capital contribution shall be considered a loan to the noncontributing Member amortized over the remaining Term. Any such loan shall comply with the FAA ACDBE Regulation and FAA Joint Venture Guidance.*



# Accounting Procedures

- Method of Accounting
  - Standard method acceptable to all parties

## *Sample Language:*

*Accounting Methods. In all accounting matters pertaining to this agreement, generally accepted accounting principles (GAAP) set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession shall be used.*



# Accounting Procedures

- Distributions
  - Timing
  - Amount
  - Reserves

## *Sample Language:*

*Distributions of Net Cash Flow. The Company shall distribute available net cash flow to the members in proportion to their ownership interest not less than quarterly. Payment shall be made within 15 days of final determination of net cash flow for the period. Available net cash flow shall be defined as net cash flow that is not required to meet contingencies. Net Cash Flow is defined as:*

- *the Gross Revenue of the Company for the period for which the calculation of Net Cash Flow is being made less*
- *all operating costs and expenses incurred or attributed to Company operations for the period, consistent with GAAP less*
- *any Member payments on any Company debts.*



# Accounting Procedures

- Company Records
  - Access to financial records
  - Location

## *Sample Language:*

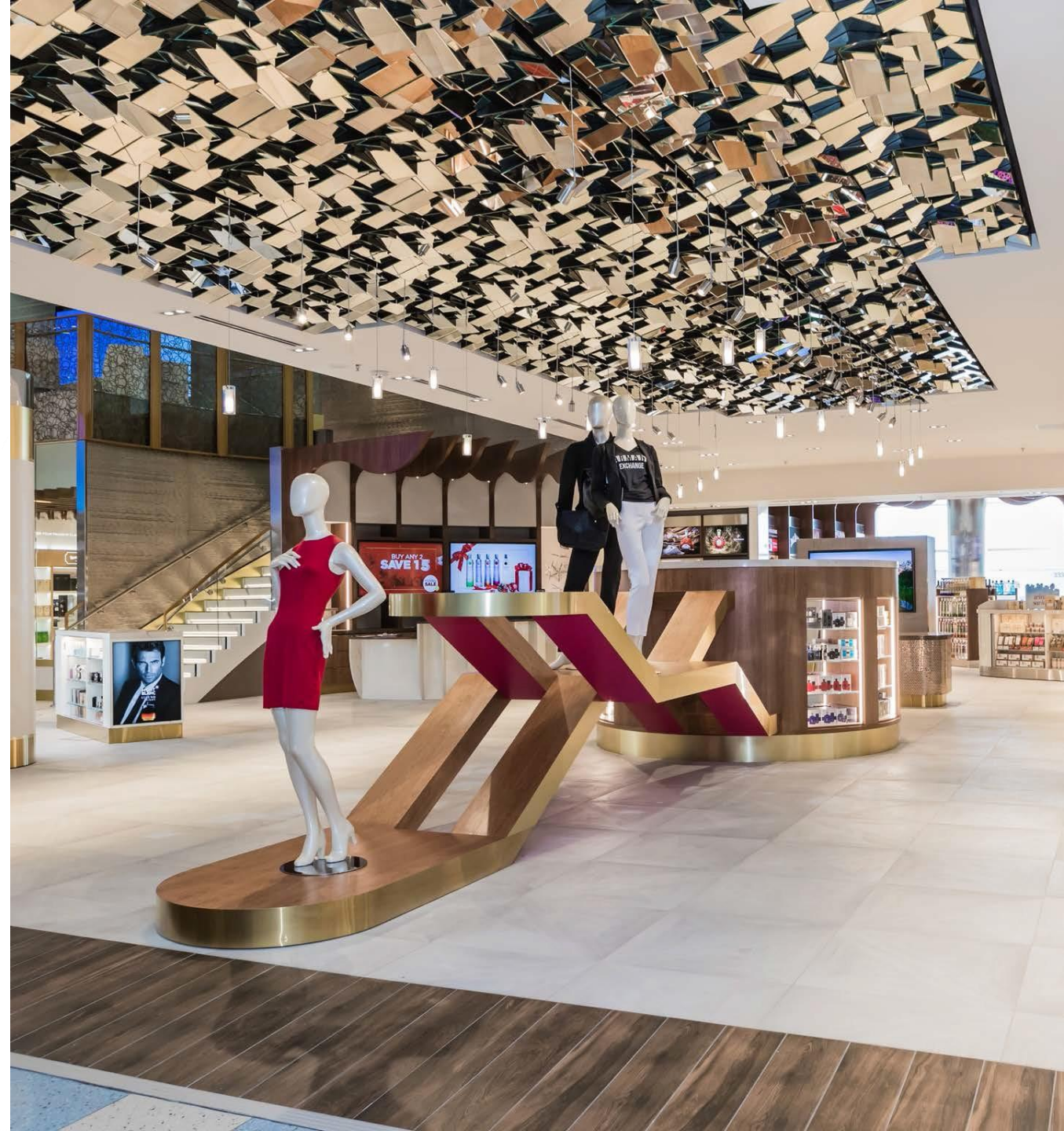
- *Financial Statements.* The Managing Member shall provide to the other Member(s) as soon as practicable after the close of each month a Profit & Loss Statement. In addition, the Managing Member shall, within 15 days of the close of each quarter, provide to the other Member(s) a Balance Sheet, a Statement of Operations and a Statement of Changes in Partners' Capital for the current fiscal quarter and year-to-date information.
- *Tax Returns.* The Managing Member will prepare a United States Partnership Return of Income, and appropriate state tax returns and will file such Returns within the time prescribed by law for such filing. The Managing Member will send copies of the Returns and of tax form Schedule K-1 to each Member within ninety (90) days after each fiscal year, or as soon thereafter as is practicable.
- *Location of records.* Records should be located in a place that is accessible and agreeable to the parties. In the event that records are located in a remote location, such as a different state, reasonable access to records should be made available electronically.





# Overall Management

- Management or Governance Committee
  - Voting
  - Quorum
  - Unanimous Decisions
  - Timing/frequency of meetings
  - Documentation
- Joint Venture Manager
  - Powers and Duties
  - Limits on Powers



# Overall Management

## **SAMPLE LANGUAGE:**

*Joint Venture Manager - Powers and duties, Limits on powers.* *The joint venture may appoint or vote upon a member to act as the managing member. The managing member should be assigned reasonable powers and duties and should not be responsible for management of the work assigned to the ACDBE unless the managing member is the ACDBE. The managing member's powers should be limited, and they should not have unilateral authority to take actions or make decisions that would have a major impact on the other partner, such as making capital calls not previously anticipated, deciding when distributions will be made, establishing reserves, etc.*

*Designation of the Managing Member.* *The Managing Member shall be designated by a vote of all of the Members and shall serve until removed by a vote of all members. Upon removal of the Managing Member, its interest converts to that of a non-Managing Member and it shall continue to be entitled to its share of the distributions and profits as provided hereunder.*

*Managing Member Powers and Responsibilities.* *Subject to the terms and conditions of this Agreement, the Managing Member shall have authority over, and be responsible for, the day-to-day management, conduct, operation and control of the business, properties and affairs of the Company except for those duties assigned to the ACDBE member.*



# Day-to-Day Management

- Roles and Responsibilities
- Distinct, clearly-defined portion of the work
- Burden of Proof
- Employees
- Independence
- Relationship

# Roles and Responsibilities

## *Sample Language*

<b>Operations</b> <b>(1/3 of the business effort)</b>	<b>Product</b> <b>(1/3 of the business effort)</b>	<b>Administration/Corporate Support</b> <b>(1/3 of the business effort)</b>
<p><b>Human Resources</b> (Supervise on-site operations staff, hire/fire staff, scheduling, training, etc.)</p> <p><i>Tip: Supervision of on-site staff is the greatest portion of this category. An organization chart listing the number of staff at each level and how the reporting structure works should be provided. Dotted line relationships should be clearly explained. Do not confuse what independence and direct reporting relationship mean. Dotted line relationships on paper that look like solid line relationships in practice will be revealed through compliance reviews and could cause approval to be withdrawn.</i></p>	<p><b>Purchasing</b></p> <p><i>Tip: Purchasing of product is one of the most important tasks in this category for a non-franchised retail location. In this sense, purchasing means from a vendor as opposed to from the non-ACDBE. If the ACDBE has the autonomy to perform this role independently, it could be a significant role. If the ACDBE has the ability to select items from the non-ACDBE's warehouse, that is not purchasing and should not be described as such.</i></p>	<p><b>Accounting/Payroll/Taxes</b></p> <p><i>Tip: This is the most significant task in this category and is rarely assigned to the ACDBE.</i></p>

# Roles and Responsibilities

*Sample Language (continued)*

<b>Operations (1/3 of the business effort)</b>	<b>Product (1/3 of the business effort)</b>	<b>Administration/Corporate Support (1/3 of the business effort)</b>
<p><b>Loss Prevention</b></p> <p><i>Tip: Depending on the type of operation, responsibility for loss prevention could be a somewhat significant role or a relatively meaningless role. Loss prevention is much more critical in a retail operation and you will rarely see it in a food operation. It is not typically a full-time job and, unless there is a significant issue with loss or it is a very large operation, it is often handled by corporate or regional staff rather than local staff.</i></p>	<p><b>Inventory Management</b></p> <p><i>Tip: Inventory Management should be defined in the agreement if it is assigned to one of the parties. Inventory Management may include managing the open-to-buy, making decisions about when and how to move stock through transfers or mark-downs, assortment decisions, determining stock levels on the shelves, etc. Many agreements assign inventory management as a role without defining what it means in the context of the agreement. Make sure you know what it involves before assigning credit.</i></p>	<p><b>Legal Services</b></p> <p><i>Tip: Also rarely assigned to the ACDBE. Be aware of clauses that indicate that the Joint Venture will pay for legal services on behalf of only one of the parties.</i></p>

# Roles and Responsibilities

*Sample Language (continued)*

<b>Operations (1/3 of the business effort)</b>	<b>Product (1/3 of the business effort)</b>	<b>Administration/Corporate Support (1/3 of the business effort)</b>
<p><b>Safety/Security</b></p> <p><i>Tip: This is not a very large role, especially in a retail operation. It is more common in a food setting. This task may involve weekly or monthly reviews, audit of practices, and training.</i></p>	<p><b>Pricing</b></p> <p><i>Tip: Pricing is a critical element in the merchandise/product area if there is not a market basket or street pricing approach. Do not confuse pricing in an unrestricted setting with pricing in a restricted setting. One takes much more effort. If pricing means simply conducting the market basket survey once or twice a year, it is not a significant role. If pricing means determining the selling price of every item, it is a much more significant role.</i></p>	<p><b>Business Development/ Landlord Relations</b></p> <p><i>Tip: This may be assigned to either party and is not a significant portion of the work. Be aware that business development work should be business development for the joint venture and not on behalf of only one of the involved parties.</i></p>

# Roles and Responsibilities

*Sample Language (continued)*

<b>Operations (1/3 of the business effort)</b>	<b>Product (1/3 of the business effort)</b>	<b>Administration/Corporate Support (1/3 of the business effort)</b>
<p><b>Cash Management (check-out, banking)</b></p> <p><i>Tip: An individual would have to be on-site in the operation regularly during the check-out hours. However, there may be a significant amount of time between check-outs, so it is not practical to have this task performed by someone who is not on-site for some other reason. If this task is assigned to a company, you should ask if there will be someone on-site during all check-outs and how the banking is actually handled (e.g. on-site bank, off-site bank, daily deposits, etc.)</i></p>	<p><b>Décor/Display</b></p> <p><i>Tip: Display is a significant role in both merchandise and some food operations. If display is defined as displaying product according to a plan-o-gram that is developed by someone at a corporate office, it is not a very large role. If display includes developing the plan-o-gram and continually monitoring and revising the plan to accommodate merchandise changes and promotions, it is a larger role.</i></p>	<p><b>Human Resources/ Training Program</b></p> <p><i>Tip: This is also a significant role. Be aware that this role may be assigned but only performed in part by the assigned party. For example, training may be assigned to an ACDBE for their staff, however the training may entail primarily video or interactive computer training utilizing the training program developed by the non-ACDBE. This task should be broken down into numerous elements, including recruiting, interviewing, hiring, discipline, firing, training program development, hands-on training, etc.</i></p>

# Roles and Responsibilities

*Sample Language (continued)*

<b>Operations</b> <b>(1/3 of the business effort)</b>	<b>Product</b> <b>(1/3 of the business effort)</b>	<b>Administration/Corporate Support</b> <b>(1/3 of the business effort)</b>
<p><b>Day-to-Day Landlord Relations</b></p> <p><i>Tip: This is usually the responsibility of all management but may be assigned to one individual company. It is not a major task unless there are lots of problems with the operation. Ask questions regarding specific tasks under this category.</i></p>	<p><b>Product Assortment (retail)/ Menu Development (food)</b></p> <p><i>Tip: This is an important role in both food and merchandise. Basically, it is making the determination of what you are going to sell. As with purchasing, it is not as significant of a role if the ACDBE is selecting a product assortment for your store based on a plan-o-gram developed by the non-ACDBE firm.</i></p>	<p><b>Policies/Procedures</b></p> <p><i>Tip: Frequently the policies and procedures used in a joint venture are the standard policies and procedures of the non- ACDBE firm. If this role is assigned to an ACDBE, they should be developing the policies and procedures and not merely implementing someone else's policies/ procedures.</i></p>



# Roles and Responsibilities

*Sample Language (continued)*

<b>Operations (1/3 of the business effort)</b>	<b>Product (1/3 of the business effort)</b>	<b>Administration/Corporate Support (1/3 of the business effort)</b>
<p><b>Maintenance/Cleaning</b></p> <p><i>Tip: This may be assigned as a separate task, usually in food operations. Sometimes it involves only weekly or monthly inspections. It is important to understand what is being cleaned, who is doing the actual cleaning, and how often it is done.</i></p>	<p><b>Negotiation of Special Programs, Rebates, Display Allowances, etc.</b></p> <p><i>Tip: This is usually handled at the corporate level by larger firms. Be aware of clauses that allow one of the partners to keep incentives, rebates, display allowances, etc.</i></p>	<p><b>Other Corporate Support</b></p> <p><i>Tip: Do not accept a vague definition. Require any corporate support to be detailed and specific, including related tasks and time requirements.</i></p>

# Roles and Responsibilities

*Sample Language (continued)*

<b>Operations (1/3 of the business effort)</b>	<b>Product (1/3 of the business effort)</b>	<b>Administration/Corporate Support (1/3 of the business effort)</b>
<p><b>Budgeting/Monitoring Performance</b></p> <p><i>Tip: All participants in the joint venture should be participating in this activity. It is really more of an “overall management” role than a distinct, clearly-defined portion of the work.</i></p>	<p><b>Budgeting/Monitoring Performance</b></p> <p><i>Tip: All participants in the joint venture should be participating in this activity. It is really more of an “overall management” role than a distinct, clearly-defined portion of the work.</i></p>	<p><b>Budgeting/Monitoring Performance</b></p> <p><i>Tip: All participants in the joint venture should be participating in this activity. It is really more of an “overall management” role than a distinct, clearly-defined portion of the work.</i></p>

# Management Fees

- Reimbursement of costs
- Clearly defined tasks
- Method of charging
  - % of sales
  - \$ reimbursement
- Method of reconciliation
- Royalty/License Fees



# Events of Default

- Loss of certification
- Limitations on ACDBE Change of Control



Airport Concessionaire Disadvantaged  
Business Enterprise (ACDBE)

## ABC Company

has filed with the Agency an Affidavit as defined by NCTRCA Airport Concessionaire Disadvantaged Business Enterprise (ACDBE) 49 CFR Part 26 and is hereby certified to provide service(s) in the following areas:

NAICS 451212: NEWS DEALERS AND NEWS STANDS  
NAICS 453220: GIFT, NOVELTY, AND SOUVENIR STORES  
NAICS 722310: FOOD SERVICE CONTRACTORS, CONCESSION OPERATOR (E.G., CONVENTION FACILITIES, ENTERTAINMENT FACILITIES, SPORTING FACILITIES)  
NAICS 722515: BAKERIES, CAFES, OR PREPARED BAKING AND SWEETENERS FOR IMMEDIATE CONSUMPTION

This Certification expires May 24, 2019 and supersedes any registration or listing previously issued. This certification must be updated annually by submission of an Annual Update Affidavit. At any time there is a change in ownership, control of the firm or operation, notification must be made immediately to the North Central Texas Regional Certification Agency for eligibility evaluation.

Certification Expiration: May 31, 2020  
Issued Date: May 24, 2019  
CERTIFICATION NO.



**VOID**

\_\_\_\_\_  
Certification Administrator



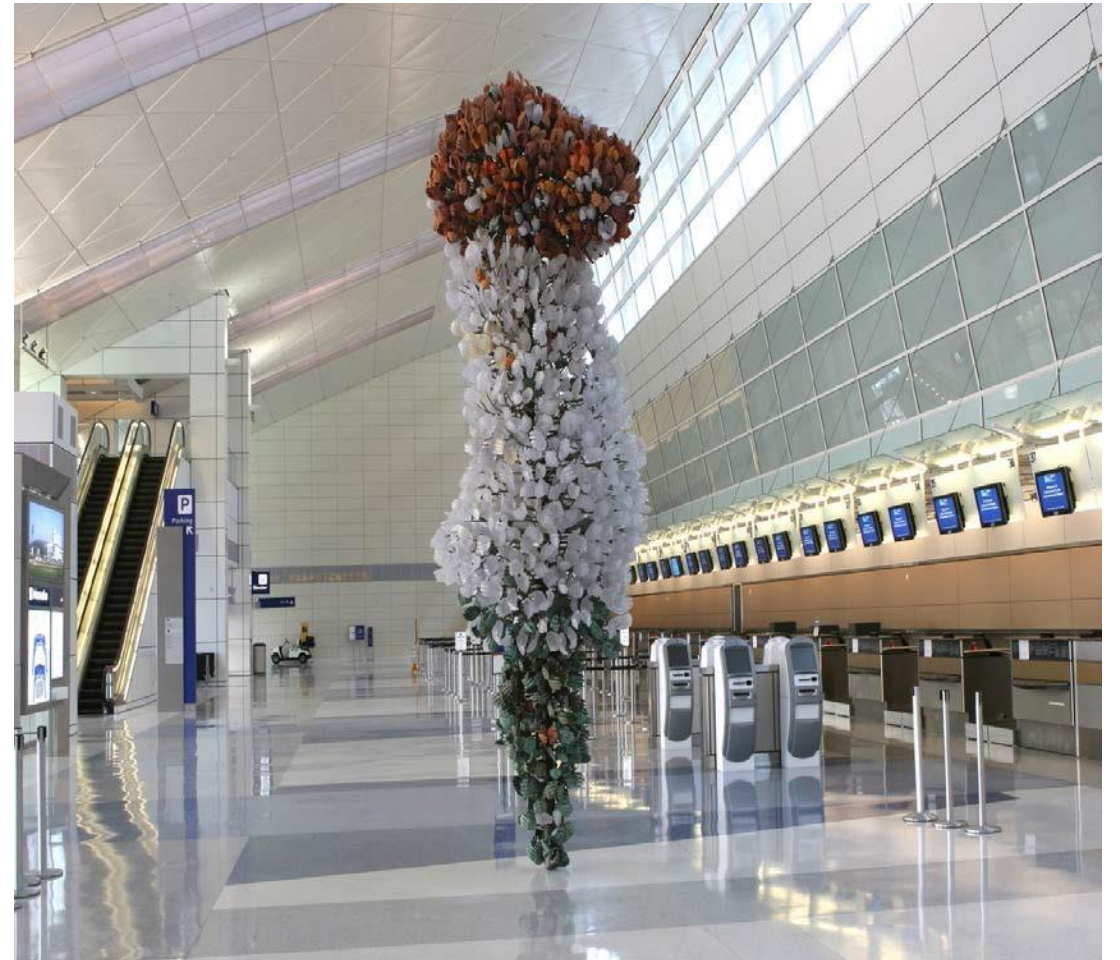
# Non-Compete Clauses

- Not overly broad
- Should not limit ACDBE control of its other businesses or ability to work



# Transfer of Interest

- ACDBE interest, if transferred, may be required to go to another ACDBE
- Other than that, not more restrictive for ACDBE than for non-ACDBE





# Dissolution

- Procedures for winding up and dissolving the business, including:
  - Provisions for disposing of assets
  - Final distributions







Tamela Lee  
Vice President  
BDDD

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# Compliance Documents

# Compliance Documents

Document / Action	Due
Fully executed Joint Venture Operating Agreement and corresponding organizational chart.	At the time of joint venture approval.
Executed loan agreement, including the repayment agreement and guaranty documents.	Within 10 days of execution.
Schedule of management committee meetings and minutes of such management committee meetings.	Within 30 days of such meetings.
Distribution statements of profits and losses.	Within 30 days of issuance.
Joint venture activity reports by the ACDBE partner and acknowledged by the non-ACDBE partner detailing the activity of the ACDBE partner in relation to its assigned role in the operation and a detailed summary of its activities for the preceding quarter.	Within 30 days of the end of each quarter commencing on the opening date of said location.

# Compliance Documents (continued)

Document / Action	Due
Documentation of all capital contributions made by the ACDBE joint venture partners and non-ACDBE joint venture partner including any promissory notes.	Promptly as they occur.
Amendments to the Joint Venture Operating Agreement.	Prior to its effective date.
Changes to roles and responsibilities of the joint venture partners.	Prior to their effective date.
Submittal of reconciliation of Administrative Fees by all parties and verification and documentation.	Annually

Thank You

# Questions

# Closing

Presentation will be available on the DFW Concessions website RFP page along with other resources.

For any and all questions:

**Ms. Sonji Brown-Killyon**  
Contracts Manager  
[sbkillyon@dfwairport.com](mailto:sbkillyon@dfwairport.com)  
972-973-5648

	Attachment 1 Package Documents	Attachments and Exhibits	Resources	Addenda	
<b>COVID-19 Testing</b>	Request for Proposals	Attachment 1: Package Document	Attachment 2: Sales Expectation Information Attachment 3: Draft Concessions Operating Permit Attachment 4: COVID-19 Testing Centers Exhibit A: Proposal Acknowledgment Form Exhibit B: Business Disclosure Form Exhibit C: Estimated Investment Exhibit D: Pro Forma Exhibit E: Summary of Financial Statements Exhibit F-1: ACDBE Commitment Form Exhibit F-2: ACDBE Intent to Perform Exhibit F-3: Good Faith Effort Exhibit F-4: Airport Concessions Disadvantaged Business Enterprise Exhibit F-5: M-WBE Commitment Form Exhibit F-6: Joint Venture Agreement Template Exhibit G: Workforce Composition Exhibit H: Proposer Checklist Submittal Label	DFW Departure Locations Insurance Provisions	

[dfwairport.com/concessions](https://dfwairport.com/concessions)



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