

**SAN LUIS OBISPO COUNTY REGIONAL AIRPORT  
GIFT SHOP/SNACK BAR CONCESSION AGREEMENT**

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THIS GIFT SHOP/SNACK BAR CONCESSION AGREEMENT (“Agreement”) is made and entered into by and between County of San Luis Obispo (hereinafter referred to as "County") and Achievement House, Inc., a California 501c 3 non-profit corporation (hereinafter referred to as "Concessionaire") in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

**Article 1**

**Premises**

The County hereby authorizes Concessionaire, subject to the terms, conditions and covenants hereinafter set forth, the non-exclusive use of approximately five hundred and fifty (550) square feet of retail, food preparation and limited storage space in the airline passenger terminal at the San Luis Obispo County Regional Airport, hereinafter referred to as "Premises" **as described in Exhibit “A”**. Concessionaire’s equipment and/or supplies, including but not limited to tables, chairs, stools, displays, or miscellaneous items shall not extend beyond the snack bar/gift shop area boundaries, as described in Exhibit A.

**Article 2**

**Obligations of Concessionaire**

2.1 **Specified Operations**. Concessionaire shall use the Premises for the sole purpose of operating a combined snack bar and gift shop to meet the needs of terminal patrons and the general public, and associated and related storage and business activities (the “Snack Bar and Gift Shop”). Concessionaire shall not employ the use of any type of vending machine within the Premises. Concessionaire shall solely be responsible for providing of all services, equipment, supplies, and personnel for the operation and maintenance of the Snack Bar and Gift Shop. The Snack Bar and Gift Shop activities shall be substantially similar to that described in Concessionaire’s Proposal dated November 16, 2012, **attached as Exhibit B**. Concessionaire agrees to make monetary change for passengers and patrons in the Airport terminal. Concessionaire agrees not to engage in any other activities or business on the Premises or within the confines of the Airport property other than those activities specifically permitted under this Agreement or agreed to, in advance and in writing, by the General

Services Agency Director, or Director's designee, (hereinafter referred to as "Director").

Concessionaire agrees that Concessionaire will provide the described services in a first class manner equal to or exceeding the standard met by comparable business providing similar services during the entire term of this Agreement. Concessionaire, at its own cost and expense, will maintain and operate the Premises in a clean, safe, wholesome and sanitary condition, free of trash, garbage or obstruction of any kind, and in compliance with any and all present and future laws, rules, or regulations of any governmental authority, now or any time during the term of this Agreement in force, relating to sanitation or public health, safety or welfare.

The Director shall have access to, and the right to inspect the schedule of prices and rates for goods sold or services rendered or performed upon the Premises, which are not set by the Board of Supervisors. If the Director determines that any price or prices are unreasonable or inappropriate for the services rendered, or the item sold, the same shall be modified as directed by the Director provided that Concessionaire prior to such modification shall be given a reasonable opportunity to confer with the Director and justify such prices.

The Director reserves the right to prohibit the sale of any item which it deems objectionable or beyond the scope of merchandise deemed necessary for proper service to the public.

2.2 Hours and Days of Operation. The Snack Bar and Gift Shop shall be well stocked and with attendants on duty seven (7) days per week, 365 days a year. Concessionaire will operate the Snack Bar and Gift Shop, as follows:

Monday through Friday - 4:30 a.m. until 5:00 p.m.

Saturday and Sunday - 5:00 a.m. until 4:30 p.m.

The above hours of operation are mutually agreed upon by Concessionaire and County to best serve the flying public. The hours and days of operations may be adjusted as necessary to best serve the Airport and its flying public by mutual written agreement between the Concessionaire and the Director. Failure to comply with the minimum hours of operation may result in liquidated damages being assessed against Concessionaire in the amount of \$100 per occurrence.

2.3 Signage and Illumination. Concessionaire shall not paint upon, attach, exhibit or display in or about the Premises any permanent sign or placard without the written consent of the Director first obtained regarding the nature and construction of said sign.

2.4 Taxes, Licenses, and Permits. Concessionaire shall obtain and keep current all municipal, state and

federal licenses and permits that may be required in its operation. Concessionaire will bear, pay, and discharge all taxes, assessments and levies of every nature and kind which may be taxed, charged or assessed lawfully against the Premises and improvements thereon, or which may be lawfully levied or imposed upon the Premises a governmental agency. In the event that Concessionaire is unsuccessful in obtaining the required wine license for the sale of unopened wine as a gift item, within 90 days from the Commencement Date, County reserves the right to establish a separate agreement with a different Concessionaire for a wine gift and shipping service elsewhere within the terminal. Under no circumstances will alcoholic beverages be allowed to be served within the Premises.

2.5 Staff. Concessionaire shall at all times assign qualified and trained professional staff for the operation of the business at the Premises. Concessionaire shall furnish concession services in a prompt, courteous, professional, and efficient manner and shall be adequate to meet the demands of said service at the Airport. Concessionaire and Concessionaire's employees shall present a clean and neat appearance while on Airport premises.

2.6 Independent Contractor Status. Concessionaire enters into this Agreement solely and exclusively as an independent contractor and only in that capacity and not as a partner, employee or other agent of the County.

2.7 Installation of Equipment and Fixtures, Alterations and Improvements. County provides the Premises in its "AS-IS" condition. Concessionaire shall have the right to install, maintain, and operate at its own expense: equipment, phone, fax, and wireless communication equipment. Concessionaire is responsible for all tenant improvements, including, but not limited to, those required by the County Health Agency. Concessionaire shall make no structural alterations, additions or improvements upon the Premises, without the prior written consent of County, and provided that when so authorized said alterations, additions or improvements shall be upon the sole charge and responsibility of Concessionaire, and Concessionaire shall protect the Premises from any lien or charges whatsoever, by reason of said alterations, additions or improvements. Cutting holes through any roof on any structure and/or installation of vent pipes on said Premises is prohibited without prior written approval from the Director. It is further agreed that all such structural alterations, additions or improvements which may be affixed to or made by either Concessionaire or the County upon the Premises, excepting movable furniture or equipment or other trade fixtures, shall become the property of County and shall remain upon and be surrendered with the Premises, as a part thereof, at the termination of this Agreement, without disturbance or

injury.

Upon expiration/termination of this Agreement, Concessionaire shall have a reasonable amount of time (not to exceed ten calendar days from the expiration/termination date) for the removal of any movable furniture, equipment and trade fixtures installed at Concessionaire's expense, and upon abandonment or failure to remove such furniture, equipment or trade fixtures by Concessionaire within said time period, then title thereto shall thereafter vest in County. Any and all property which Concessionaire might otherwise be authorized to remove shall be subject to a lien by County for any unpaid rental, fees or charges outstanding and due from Concessionaire to County. Upon the removal of such property as is authorized to be removed by the Concessionaire by the terms of this Agreement, whether such removal be upon termination or at any time prior thereto, the Concessionaire shall at Concessionaire's own cost and expense, (a) repair all damage to the Premises caused by the addition or removal of such property by the Concessionaire, and (b) restore the Premises to the same condition of good order and repair as said Premises were in at the commencement date of said term, reasonable use and wear thereof and damage by act of God and the elements being excepted therefrom. **IF CONCESSIONAIRE TERMINATES THIS AGREEMENT WITHIN THE INITIAL TERM (AS DEFINED IN ARTICLE 3.1 BELOW), THEN ALL EQUIPMENT PURCHASED BY CONCESSIONAIRE, FROM THE PREVIOUS CONCESSIONAIRE AT THE AIRPORT TERMINAL, SHALL CONVEY TO COUNTY UPON SAID TERMINATION, FREE AND CLEAR OF ANY LIENS AND/OR ENCUMBRANCES.**

2.8 Cleaning and Maintenance of Premises. Concessionaire shall provide janitorial services associated with the operation of the airport terminal concession throughout the Premises, including but not limited to, cleaning the interior of the Premises behind the food counter, in the storage areas, and in the area of tables, counters, and chairs. Concessionaire agrees to keep the floors, tables, counters, and chairs within the Snack Bar and Gift Shop area clean at all times, including the prompt cleaning of food or beverage spills and trash disposal during Concessionaire's hours of operation. Concessionaire shall provide all janitorial supplies necessary to clean Premises at its sole cost. County shall be the sole judge of the quality of cleaning and maintenance (as described in 2.9 below), and upon written notice by County to Concessionaire, Concessionaire shall be required to accomplish whatever cleaning or maintenance County deems reasonably necessary. If said cleaning or maintenance is not undertaken and completed within ten (10) calendar days after receipt of written notice, County shall have the right to enter the Premises and perform, or have performed by an outside contractor, the necessary work without liability, and Concessionaire agrees to pay one hundred and twenty-five (125%) of such expenses within fifteen (15) calendar days upon invoice receipt.

2.9 Repair. Concessionaire agrees to properly maintain the Premises in good order and repair, at Concessionaire's own cost and expense, during the entire term of this Agreement, including any holdover. Should Concessionaire fail or neglect to maintain and/or make repairs, as necessary to protect the health, safety, or welfare of individuals using the Premises, or fails or neglects to maintain and/or make a repair required to protect the structural integrity and/or cosmetic appearance of the Premises, County may, after written notice to Concessionaire as specified in 2.8 above, make said repair and charge Concessionaire for same.

### Article 3

#### Term

3.1 Initial Term. The initial term of this Agreement shall be one (1) year, commencing on the date the County signs the Agreement ("Commencement Date"), unless terminated sooner as herein provided, **OR EARLIER IN THE EVENT THAT THE AIRPORT AND/OR EXISTING TERMINAL OF WHICH THE PREMISES ARE A PART, CLOSES OR CEASES TO BE DESIGNATED AS THE PRIMARY AIR TERMINAL BUILDING.**

3.2 Option to Extend: After the Initial Term, Concessionaire, if not in default, shall have the option to extend this Agreement for one additional two (2) year term, on the same terms and conditions, except that rent shall follow the Article 4 schedule below for years 2 and 3, PROVIDED HOWEVER, THAT THE EXISTING TERMINAL CONTINUES TO BE DESIGNATED AS THE PRIMARY AIR TERMINAL BUILDING. The Concessionaire shall provide written notice to the County of its intention to extend this Agreement, not less than ninety (90) days prior to the end of the Initial Term. **The County authorizes the Director to approve the option to extend without obtaining further County Board of Supervisor approval, if it meets the requirements stated in this article 3.2.**

In the event that the airport and/or existing terminal of which the Premises are a part, is still operational at the ending date of the Initial Term and concessionaire has not exercised the option to extend as set forth in this Article 3.2, then this Agreement shall revert to a month to month holdover. In the event that the airport and/or existing terminal of which the Premises are a part, closes or ceases to be designated as the primary air terminal building, the County shall give Concessionaire 60 days advanced notice of said event and said date shall establish a termination date for this Agreement.

## Article 4

### Rent

Concessionaire shall pay County as rent for the Premises and for the rights and privileges herein granted, as follows:

- 4.1 Percentage Rent. The term "gross receipts" whenever used in this Agreement, is intended and shall mean all monies, property or any other thing of value received by Concessionaire through the operation of the Snack Bar and Gift Shop service, without any deduction or offsets. Gross receipts shall not include any sales or excise taxes imposed by any governmental entity.
- 4.2 Year 1(Initial Term). Concessionaire shall pay 1% of gross monthly receipts for months with gross receipts that equal or exceed \$15,000. Concessionaire shall pay no rent for any month during year 1, where gross monthly receipts are less than \$15,000.
- 4.3 Year 2 (applicable if option to extend is exercised). Concessionaire shall pay \$500 per month, however, for any month with gross receipts that equal or exceed \$25,000, Concessionaire shall pay 3% of said gross monthly receipts instead of \$500 per month.
- 4.4 Year 3 (applicable if option to extend is exercised). Concessionaire shall pay \$550 per month or 6% of gross monthly receipts, whichever is greater.

## Article 5

### Security Deposit

Concessionaire shall deposit with County a cashier's check, or performance bond in the amount of **Two Thousand Dollars (\$2000)**, as security for any performance of the terms and conditions of this Agreement by Concessionaire. If Concessionaire defaults in respect to any term or condition contained herein, including payment of rentals, County retain the whole or any part of said security for the payment of rentals in default or any other sum County may be required to spend or incur by reason of Concessionaire's default. Should Concessionaire faithfully and fully comply with the terms and conditions of this concession agreement, the security or any balance shall be returned to Concessionaire within thirty (30) days of the termination of this concession agreement. County shall not be required to pay interest on any cash deposit.

## **Article 6**

### **Reporting**

6.1 **Monthly Report and Payment.** Concessionaire shall furnish County on or before the ***10th day*** of each month, including the month following termination of this Concession Agreement, a cumulative statement of gross receipts certified as correct by Concessionaire through the close of the preceding month for the then current year. With such monthly statements, Concessionaire shall pay to the County, without demand, the rental payment for the preceding calendar month. The rental payment for each preceding month shall be such an amount as will, if added to all previous months' payments of that year, equal the prescribed percentage of the accumulated gross receipts to the end of that month.

Said rent will become delinquent if not received by the ***15th*** day of each month and shall be subject to a late penalty of ten percent (10%), which shall be added to the principal then due and owing. If still unpaid for thirty (30) days after the delinquency date the legal rate of interest shall apply. All payments shall be made to the County of San Luis Obispo, Office of the Airports Manager, 903-5 Airport Drive, San Luis Obispo, CA 93401, Attn: Accounts Receivable, or at other such place as the Director may designate.

6.2 **Business Records and Audit.** Concessionaire shall maintain records and accounts as the County Auditor-Controller shall require. County Auditor-Controller may require Concessionaire, at Concessionaire's expense, to have Concessionaire's records and accounts, including monies collected for and due the County, and all receipts for capital improvement projects, if applicable, audited by an accountant licensed by the State of California and approved in advance by the County Auditor-Controller, and to present said audit to the County Auditor-Controller within one hundred and twenty (120) days after written request by the Auditor-Controller for the audit. County may make its own audit of Concessionaire's records and accounts at any time. If Concessionaire fails to complete a County required audit, or said audit if shown by a County audit to be incorrect, then Concessionaire shall pay the cost of the County's audit.

County shall have the right through its representative, at all reasonable times, to inspect books and records, including State of California Sales Tax Records, and Concessionaire agrees that all books and records are available to the Director. All Federal Tax returns of Concessionaire, relative to this Agreement, shall be made available to the Director, for accounting examination purposes. County further reserves the right to examine all such book and records at any time during a five (5) year period following the termination of this

Agreement. Concessionaire agrees that as part of Concessionaire's record keeping activity, Concessionaire shall install and maintain a cash register and/or office equipment deemed necessary by the County Auditor-Controller to facilitate any required audits.

## **Article 7**

### **Rights and Privileges of Concessionaire**

7.1 **Use of Public Airport Facilities.** Concessionaire shall have the non-exclusive right for general use, with others, of all Public Airport Facilities and improvements which are now or may hereafter be connected with or appurtenant to the Airport, to be used by Concessionaire for the purposes herein granted. For purposes of this Agreement, "Public Airport Facilities" means the existing primary air terminal building as of the date of this agreement and trash dumpster located in employee parking lot behind subject terminal building. The County has not granted Concessionaire vehicle access to the Aircraft Operations Area, which is defined for purposes of this Agreement as that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist (hereinafter "A.O.A.") and use of the Airport security gates.

7.2 **Ingress and Egress.** The Concessionaire, its employees, suppliers of materials, furnishers of service, subleases, business visitors, and invites shall have the right of ingress and egress over and across public roadways serving the Airport to and from the Premises. Said right is subject to such ordinances, rules, and regulations imposed by appropriate government agencies having jurisdiction now or may hereafter have application to the Airport.

7.3 **Quiet Enjoyment.** Concessionaire shall have the right and duty to manage, operate and control the permitted activities in a first class manner and to do all things necessary in the exercise of such management, operation and control subject to the regulations and policies of the Director, and in accordance with the terms and conditions set forth in this Agreement. Concessionaire shall not commit or suffer to be committed on the Premises any nuisance, unlawful act or waste and Concessionaire agrees to take all reasonable precautions to protect the Premises from damage, theft, vandalism and other such hazards and liabilities.

7.4 Parking. Concessionaire shall have the nonexclusive right to utilize existing County parking facilities at the airport subject to all applicable fees. County may, from time to time, modify this parking plan.

Concessionaire's employees shall be provided parking permits for employee parking on Airport Drive or other location(s) as designated by Director. Said permits are available as of the date of this Agreement at \$5 (five) per vehicle

7.5 Non-Exclusive Rights. Concessionaire may not have or enjoy, and may not grant, any exclusive rights of any kind which are forbidden by any applicable and pertinent law, statute, ordinance, rule or regulation of any governmental entity or agency. It is understood and agreed that nothing herein contained shall be construed to grant or authorize granting of an exclusive right of use which would be in violation of Federal Administration Rules and Regulations.

## **Article 8**

### **Insurance**

Concessionaire shall obtain and maintain for the entire term of this Agreement and Concessionaire shall not perform any work under this Agreement until after Concessionaire has obtained insurance complying with the provisions of this Article. Said policies shall be issued by companies authorized to do business in the State of California. Concessionaire shall maintain said insurance in force at all times. The following coverage with the following features shall be provided:

8.1 Commercial Liability Insurance. Concessionaire shall maintain in full force and effect for the period covered by this Agreement, commercial liability insurance. This insurance shall include, but shall not be limited to, comprehensive general and automobile liability insurance providing protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from any act or occurrence arising out of Concessionaire's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The policy shall provide not less than single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage in the total amount of One Million Dollars (\$1,000,000). The following endorsements must be attached to the policy:

(A) If the insurance policy covers on an "accident" basis, it must be changed to "occurrence".

(B) The policy must cover personal injury as well as bodily injury.

(C) Blanket contractual liability must be afforded and the policy must contain a cross liability or severability of interest endorsement.

8.2 Workers' Compensation Insurance. In accordance with the provisions of sections 3700 et seq., of the California Labor Code, if Concessionaire has any employees, Concessionaire is required to be insured against liability for workers' compensation or to undertake self insurance. Concessionaire agrees to comply with such provisions before commencing the performance of this Agreement.

8.3 Additional Insureds to be Covered. The commercial general liability policies shall name "County of San Luis Obispo, its officers, employees, and agents" as additional insureds. The policy shall provide that the Concessionaire's insurance will operate as primary insurance and that no other insurance maintained by the County, or additional insureds will be called upon to contribute to a loss hereunder.

8.4 Certification of Coverage. Prior to commencing work under this Agreement, Concessionaire shall furnish County with the following for each insurance policy required to be maintained by this Agreement:

(A) A copy of the Certificate of Insurance. The Certificate of Insurance must include a certification that the policy will not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the County.

(B) A Workers' Compensation Certificate of Insurance.

Upon written request by the County, the Concessionaire shall provide a copy of the complete insurance policy. Approval of insurance by County shall not relieve or decrease the extent to which the Concessionaire may be held responsible for payment of damages resulting from Concessionaire's services or operations pursuant to this Agreement. Further, County's act of acceptance of an insurance policy does not waive or relieve Concessionaire's obligations to provide the insurance coverage required by the specific written provisions of this Agreement. If Concessionaire fails or refuses to procure or maintain the insurance required by this Agreement, or fails or refuses to furnish County with the certifications required above, County shall have the right, at its option, to forthwith terminate the Agreement for cause.

## **Article 9**

### **Indemnity**

Concessionaire shall defend, indemnify and hold harmless the County, its officers, agents, and employees from any and all claims and demands, costs, expenses, judgments, attorney fees or liabilities that may be asserted by any person or entity that arise out of or in connection with the acts or omissions relating to

the performance of any obligation or duty provided for or relating (directly or indirectly) to this Agreement, the tenancy created under this Agreement, or the Premises hereunder. The obligation to indemnify shall be effective and shall extend to all such claims and losses, in their entirety, even when such claims or losses arise from the comparative negligence of the County, its officers, agents, and employees. However, this indemnity will not extend to any claims or losses arising out of the sole negligence or willful misconduct of the County, its officers, agents, and employees. It is the intent of the parties to provide the County the fullest indemnification, defense, and hold harmless rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this Agreement and the remaining language shall be given full force and effect.

#### **Article 10**

##### **Non Discrimination**

Concessionaire, its agents and employees will not discriminate against any person or class of persons by reason of race, color, creed, sex, or national origin in providing any services, in the use of its facilities provided for the public or in its operations, in any manner prohibited by Part 21 Assurance of the Regulations of the Office of the Secretary of Transportation. Concessionaire further agrees to comply with such enforcement procedures as the United States might demand that County take in order to comply with the Sponsor's Assurances relating to the County use of Federal funds associated the 14 CFR Part 151 *Federal Aid to Airports* program.

Concessionaire, for itself, its successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agrees that in the event facilities are constructed, maintain, or otherwise operated on the property described in this Agreement for a purpose which a Federal Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Concessionaire shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, *Nondiscrimination in Federally Assisted Programs of the Department of Transportation*, and as said Regulations may be amended.

Concessionaire, for itself, its successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that:

1. No person on the grounds of race, creed, color, handicap, national origin or sex shall be excluded from participation in, denied the benefits or, or be otherwise subjected to discrimination in the use of said facilities;
2. 2. In the construction of any improvements on, over, or under such land and the furnishing of services thereon, on the grounds of race, creed, color, handicap, national origin or sex shall be excluded from participation in, denied the benefits or, or be otherwise subjected to discrimination, and
3. CONCESSIONAIRE shall use the Premises in compliance with all other requirements imposed pursuant to 49 CFR Part 21, *Nondiscrimination in Federally Assisted Programs of the Department of Transportation*, and as said Regulations may be amended.

Concessionaire, for itself, its successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that Concessionaire, its successor in interest and assigns shall comply with (1) Subpart E of 14 CFR Part 152, and (2) 49 CFR Part 27 and all obligations thereunder, including the obligation to make its facilities available to accommodate the handicapped and not to discriminate against them in services and employment.

Concessionaire agrees that in furnishing any aeronautical service to the public at the Airport, it will:

1. Furnish said service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and
2. Charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; provided, that Concessionaire may make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

That in the event of a breach of any of the above nondiscrimination covenants, County shall have the right to terminate this Agreement and re-enter and repossess said land and facilities thereon, and hold the same as if said Agreement had never been made or issued.

## **Article 11**

### **Affirmative Action**

Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by the subpart. Concessionaire assures that it will require that its covered sub-

organizations provide assurances to County that they similarly will undertake affirmative action programs as required by 14 CFR Part 152, Subpart E.

## **Article 12**

### **Miscellaneous**

12.1 **Inspection.** County, its agents and employees, shall have access to and the right to inspect the Snack Bar and Gift Shop at any time to examine the condition thereof, and to direct Concessionaire to make such repairs or modifications as may be necessary for the protection of persons or property, at the expense of Concessionaire.

12.2 **Restrictions and Reservations.** The rights granted Concessionaire herein are subject to the right of County to develop, maintain, improve and operate the Airport and its facilities as it sees fit, in a nondiscriminatory manner, without interference by Concessionaire. This Agreement shall be subordinate and subject to the provisions of any existing or future agreements between County and the United States. This Agreement is subject to the rights the United States Government now or may hereafter have or acquire affecting the control, operation, regulation and taking over of the Airport. This Agreement is made subject to any approval of Federal Aviation Administration which may be required.

12.3 **Rules.** The Director reserves the right at any time to make such reasonable rules and regulations as in his/her judgment may from time to time be necessary for the safety, care, and cleanliness of the Premises, and for the preservation of good order therein, and Concessionaire hereby agrees to strictly comply therewith. Concessionaire agrees to observe, obey, and abide by all directives of the Director, rules and regulations for the common and joint use of Airport facilities and for maintenance and conduct of Concessionaire's service which are now or may hereafter be imposed by Airport, Federal Aviation Administration, County, or any other governmental agency having jurisdiction at the Airport. **Concessionaire acknowledges receipt of San Luis Obispo County Airport's Title 24 – Airport Rules & Regulations (rev. 3/8/05).**

12.4 **Laws.** Concessionaire shall at all times observe and comply with, and shall cause all of Concessionaire's agents, employees and sub-Concessionaires to observe and comply with all present and future

laws, statutes, ordinances, regulations, rules, resolutions, or other binding enactments of any governmental authority, now or at any time during this Agreement. If any future laws, rules, regulations or ordinances are passed by the County and said legislative enactment has any impact fiscal or otherwise on Concessionaire, and if Concessionaire does not make a timely objection to County during the course of legislative process, Concessionaire will be deemed to have waived any right to object at a later time and waives all damages flowing therefrom.

12.5 Hazardous Materials. Concessionaire shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations ("Hazardous Materials Laws") relating to industrial hygiene, environmental protection, or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, UREA formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances," "hazardous wastes," "hazardous materials" or "TOXIC SUBSTANCES" under such laws, ordinance or regulations (collectively, "Hazardous Materials").

Concessionaire shall, except in the event of County's sole negligence, indemnify, defend, protect, and hold County, each of County's officers, directors, employees, agents, attorneys, successors and assigns, free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by:

(a) The presence in, on, under or about the Premises or discharge in or from the premises of any Hazardous Materials or Concessionaire's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials, to, in, on, under, about or from the Premises, or

(b) Concessionaire's failure to comply with any Hazardous Materials Law. Concessionaire's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the Premises, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith caused by Concessionaire and shall survive the expiration or earlier termination of the term of this Agreement. For purposes of the release and indemnity provisions hereof, any acts or omissions of County, or by employees, agents, assignees, Contractors or subContractors of County or others acting for or on behalf of County (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to County.

12.6 Assumption of Risks. Concessionaire represents that Concessionaire has inspected said Airport and Premises, and all facilities thereupon and in connection therewith, and that Concessionaire accepts the condition of same and fully assumes all risks incidental to the use thereof. The County shall not be liable to Concessionaire for any damages or injuries to the property or person, or to the agents, employees, customers, or business visitors of Concessionaire, which may result from hidden, latent or other dangerous conditions upon said Airport, building or Premises, or which may result from the negligence of the County, its agents, officers or employees, or which may result from any condition of fire, earthquake, flood, rainfall, or escape of water from any channel, regardless of the cause thereof. Concessionaire understands that one of the storage areas, under certain weather conditions, may experience some water intrusion.

12.7 Notices. All notices, demands, or communication in connection with this Agreement may be served upon County or Concessionaire by personal service or by mailing the same in the United States Mail, postage prepaid, and directed as follows:

County: San Luis Obispo County Regional Airport  
Attn: General Manager  
903-5 Airport Drive  
San Luis Obispo, CA 93401

Concessionaire: Achievement House, Inc.  
Attn: Executive Director  
496 Linne Road,  
Paso Robles, CA 93446

Either County or Concessionaire may change such address by notifying the other in writing and said address shall continue as the notification address until further written notice.

12.8 Possessory Interest. Concessionaire recognizes and understands that this Concession Agreement shall create a possessory interest subject to taxation and that Concessionaire is required to pay any and all taxes levied on such interest prior to delinquency.

12.9 Closure. At any time, should an occurrence necessitate the closing of the terminal or Premises to the general public, Concessionaire shall have no recourse by law to the County for losses incurred.

12.10 Master Plan Development. The County hereby advises Concessionaire and Concessionaire so acknowledges that the County has developed a master land use plan for the Airport (the "Master Plan"), and that this Master Plan has been adopted, and will be applicable to the Premises used by Concessionaire. Concessionaire understands that the County is under no obligation to anticipate or provide for Concessionaire's needs in the implementation of the Master Plan and is not obligated to provide for Concessionaire's need in any future airport planning, including potential development to be authorized pursuant to such planning. Further, Concessionaire recognizes that the County has the right to develop the Premises in accordance with the Master Plan and that by doing so, the Concessionaire may not have continued use and occupancy of the premises.

In the event that County determines that all or any part of the Premises are needed consistent with the Master Plan, or that the current premises will be vacated consistent with the Master Plan, County shall have the right to terminate this Agreement by giving Concessionaire 60 days prior written notice. In the event of termination, County will be under no obligation to provide Concessionaire with any relocation assistance or benefits, or to provide Concessionaire with any compensation for loss of business or loss of business goodwill or to reimburse operator any costs or expenses related to the termination or non-renewal of the Concession Agreement by County.

12.11 Waiver. Concessionaire hereby waives any and all claims for damages that may be caused by County in re-entering and taking possession of the Premises, and all claims for damages that may result from the destruction of or injury to the Premises thereby, and all claims for damages to or loss of such property belonging to Concessionaire as may be in or upon the Premises at the time of such re-entering. Concessionaire hereby also waives any and all claims against County for loss or damages to any property of Concessionaire from any cause arising at any time.

12.12 Assignment. This Agreement is of a personal nature and Concessionaire shall not assign, sublet, mortgage, pledge or otherwise transfer this Agreement, either voluntarily or by operation of law, in whole or in part.

12.13 Venue. This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by

the laws of the State of California. The duties and obligations of the parties created hereunder are performable in San Luis Obispo County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with, or by reason of this Agreement.

12.14 Bankruptcy. If Concessionaire is adjudged bankrupt, either by voluntary or involuntary proceedings, then this Agreement shall immediately terminate and County shall have the right forthwith to re-enter said Premises, and in no event shall this Agreement be, or be treated as, an asset of Concessionaire after adjudication of bankruptcy. If Concessionaire shall become insolvent or fail in business, then this Agreement may be terminated at the option of County, in which event County shall have the right to immediately re-enter said Premises, and in no event shall this Agreement be, or be treated as, an asset of Concessionaire after the exercise of said option. As hereinabove set forth, it is agreed that this Agreement is not assignable by Concessionaire, either voluntarily or involuntarily, or by any process of law, except as herein otherwise provided, and shall not be under the control of the creditors, or trustee or trustees of Concessionaire in case of bankruptcy, or in the insolvency of Concessionaire, but shall then be subject to termination, as herein provided.

12.15 Forfeiture If any of the following events occur, the County may opt to take the actions hereinafter set forth in this section:

- A.** If Concessionaire offers, causes or affects composition of creditors, or
- B.** a reorganization or plan to reorganize, or
- C.** adjustment or plan of readjustment of Concessionaire's debts, or
- D.** if any receiver, attachment or keeper of the business or of the property or assets of Concessionaire be instituted, and such receiver, attachment or keeper be not discharged or released within ten (10) days, or
- E.** if the receiver makes a general or any assignment for the benefit of creditors, or
- F.** if the receiver should abandon or vacate the Premises, then in any of such events, the County shall have the option:

1. To collect by suit or otherwise, each installment of rent or other sum as it becomes due hereunder, or to enforce, by suit or otherwise, any other term or provision hereof on the part of Concessionaire required to be kept or performed; or

2. To re-enter said Premises, remove all persons therefrom, and terminate this Concession Agreement.

The foregoing remedies of County shall not be exclusive, but shall be cumulative and in addition to all remedies now or hereafter allowed by law or elsewhere provided for.

12.16 Immediate Suspension and Termination Clause. If Concessionaire or Concessionaire's agents, employees, or any party responsible to Concessionaire cause an occurrence on the Premises which seriously threatens or damages the health, safety and or welfare of the public, or Concessionaire fails to comply with **Article 8** above, the Director may, upon written notice to Concessionaire, immediately suspend all activities on the Premises and this Agreement may be terminated. Concessionaire shall have no recourse against County of said action and Concessionaire shall defend, and indemnify the County against all liability and loss arising from the occurrence.

12.17 Termination for Convenience. Either party can terminate this Agreement without cause, by serving on the other party, a written 120 day advance notice of its intent to terminate, setting forth the date of termination in the notice.

12.18 Provisions Deemed Covenants and Conditions. The parties hereto agree that all of the provisions hereof are to be construed as covenants and conditions as though the words importing such covenants and conditions were used in each instance, and that all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. Concessionaire agrees to pay all reasonable costs and expenses in connection with the enforcement of the covenants and conditions of this Agreement.

12.19 Severability. The invalidity of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

12.20 Exhibits. Any Exhibits attached to this Agreement are incorporated herein by this reference as though fully set forth herein.

12.21 Construction During Term. It is understood by Concessionaire that dirt and dust will be created from time to time by the maintenance or construction of the Airline Terminal and associated facilities. Due to the

close proximity of the Snack Bar and Gift Shop to said maintenance or construction, the Premises may be subject to dirt and dust. Concessionaire accepts this condition without reservation as part of this Agreement and as such, shall not be entitled to a reduction in its fees to County as a result of any dirt and dust landing on the Snack Bar and Gift Shop inventory, supplies, and equipment. Concessionaire further understands that construction may cause inconvenience and disruption of business to the Snack Bar and Gift Shop. Concessionaire accepts this condition without reservation as part of this Agreement and shall not be allowed any compensation or reduction in its fees to County for losses suffered as a result of said construction.

12.22 Entire Agreement and Modifications. This Agreement embodies the whole agreement between the parties hereto as it pertains to the subject real property and there are no promised terms, conditions, or obligations referring to the subject matter hereof, other than as contained herein. Any alterations, changes or modifications to this Concession Agreement must be in writing and executed by both Concessionaire and County.

////////////////////////////////// NOTHING FURTHER PAST THIS POINT //////////////////////////////////

IN WITNESS WHEREOF, the parties have duly executed this Concession Agreement.

COUNTY OF SAN LUIS OBISPO

CONCESSIONAIRE:

I, Crystal Nevosh, certify that I am authorized to sign  
Executive Director  
as ~~owner~~ <sup>man</sup> of Achievement House, Inc. the within  
instrument in my stated capacity and that said execution of the  
same shall be binding.

By: \_\_\_\_\_

**Janette Pell**

**General Services Agency Director**

By: Crystal Nevosh  
Achievement House, Inc. title Executive Director

Date: 11 / 27 / 12

Date:

APPROVED AS TO FORM AND LEGAL EFFECT:

**Rita L. Neal**

**County Counsel**

By: Sherrice Mat 15/12/12  
Deputy County Counsel

Date: 11/27/12