KRH
09/01/16
Item No. 23

AN ORDINANCE 2016-09-01-0659

AUTHORIZING A CONCESSION AGREEMENT WITH TRICOPIAN, LLC FOR FUELROD KIOSKS AT SAN ANTONIO AIRPORT SYSTEM.

* * * * * *

WHEREAS, Tricopian, LLC (FuelRod) installs kiosks at airports to provide travelers, at a cost, with a convenient portable charging alternative for their smartphones and tablets; and

WHEREAS, pursuant to the concession agreement Aviation staff has negotiated with the firm, FuelRod will install six kiosks at various locations throughout the San Antonio International Airport and pay the City a percentage rent rate of 12% on its gross revenue which is expected to generate $8,640.00 annually; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of a one-year Concession Agreement with two one-year renewal options with Tricopian, LLC for the installation and operation of six FuelRod kiosks at the San Antonio International Airport, are hereby approved. The City Manager or her designee is authorized to execute the Concession Agreement, a copy of which is set out in **Attachment I** to this Ordinance.

SECTION 2. Funds generated by this Ordinance will be deposited into Fund 51001000, Internal Order 233000000091 and General Ledger 4405923.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance shall be effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED and APPROVED this 1st day of September, 2016.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

City Attorney

Agenda Item:	**23 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 12A, 12B, 13A, 13B, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28)**
Date:	09/01/2016
Time:	09:16:54 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a concession agreement with Tricopian, LLC for FuelRod Kiosks to dispense FuelRod kits for charging smartphones and tablets in the San Antonio International Airport. [Carlos Contreras, Assistant City Manager; Noel T. Jones, Director, Aviation]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Attachment I

SAN ANTONIO INTERNATIONAL AIRPORT
CONCESSION AGREEMENT

Between

CITY OF SAN ANTONIO

And

TRICOPIAN, LLC

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SAN ANTONIO INTERNATIONAL AIRPORT
CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT ("Agreement") is made and entered into on _____, 201___, by and between the **CITY OF SAN ANTONIO** ("City"), a Texas home-rule municipality, acting by and through its City Manager, pursuant to Ordinance No. _____, passed and approved by the San Antonio City Council on _____, 201___, and **TRICOPIAN, LLC,** a California Limited Liability Company authorized to do business in the State of Texas ("Concessionaire"), acting by and through its authorized officers.

For good and valuable consideration, the City, does hereby lease unto Concessionaire, and Concessionaire hereby leases from the City, the location identified herein ("**Premises**") which is in and part of Terminal B ("**Terminal**") at San Antonio International Airport ("**SAT**" or "**Airport**"). **Exhibit A** is a general site plan of the Airport including the locations of Terminals A and B.

ARTICLE I. DEFINITIONS

The terms used in this Agreement shall have the meanings indicated in this **Article I, Definitions** unless the context clearly indicates otherwise. Words used in this Agreement in the present tense include the future as well as the present. Words used in the masculine gender include the feminine and neuter. The singular number includes the plural and the plural includes the singular. The word "person" means a business or corporation as well as a natural person.

"Airport" means San Antonio International Airport.

"Annual Statement" is defined in **Section 4.02(a)**.

"Kiosk" is defined in **Section 8.05**.

"Commencement Date" is defined in **Section 2.03**.

"Day" means calendar day and not business day.

"Delivery of Premises Date" means the date(s) on which the City delivers the location of the Premises shown in **Section 2.01**, subject of this Agreement, to Concessionaire.

"Director" means the Aviation Director, or his designee, for the City of San Antonio.

"Gross Receipts" means all monies paid or payable to Concessionaire, for fees received, sales made, and services rendered. A "sale" shall be deemed to have been consummated for purposes hereof, and the entire amount of the sales price shall be included in Gross Receipts and deemed received at the time of determination of the amount due for each transaction. Gross Receipts shall mean the Transaction Fee collected by Concessionaire. Losses from counterfeit currency are Concessionaire's sole responsibility and shall not be excluded from Gross Receipts. Gross Receipts shall include all such sales, revenues or receipts generated by Concessionaire's subtenants or anyone else conducting business pursuant to an arrangement with Concessionaire within the Premises.

Gross Receipts shall not include: (i) any amounts collected for any federal, state, county and municipal sales taxes, so-called luxury taxes, use taxes, consumer excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed by law upon the sale of merchandise and products or series, but only if separately stated from the sales price and only to the extent paid by Concessionaire to any duly constituted governmental/taxing authority; (ii) the portion of the sales price for all merchandise and products returned by customers and accepted for credit to the extent of the credit actually given to the customer, as well as rebates, exchanges or allowances made to customers; (iii) shipping and delivery charges if there is no profit to Concessionaire and such charges are merely an accommodation to customers; (iv) sale of trade fixtures, equipment or property which are not stock in trade and not in the ordinary course of business; (v) receipts in the form of refunds from or the value of merchandise and products; services, supplies or

equipment returned to vendors, shippers, suppliers or manufactures including volume discounts received from vendors, suppliers or manufacturers; (vi) customary discounts given by Concessionaire on sales of merchandise and products or services to Concessionaire employees, if separately stated, and limited in amount to no more than one percent (1%) of Concessionaire Gross Receipts per lease month; (vii) gratuities for services performed by employees of Concessionaire which are paid by Concessionaire's customers to such employees; (viii) except with respect to proceeds received for business interruptions paid on a gross earnings business interruption insurance policy as provided in the definition of Gross Receipts, receipts from all other insurance proceeds received by Concessionaire as a result of a loss or casualty; and (ix) unless otherwise agreed by Director, sales reported by Concessionaire under another Lease with the City.

"Lease Year" means a twelve (12) month period commencing on the Commencement Date and each successive twelve (12) month period thereafter during the term; however, in the event the Commencement Date occurs on a day other than the first of a month, the first Lease Year shall contain the prorated month from the Commencement Date through the immediately following full twelve (12) month period.

"Leased Premises" or **"Premises"** means those premises made available to Concessionaire under this Agreement.

"Logistics Charges" is defined in **Section 9.03**.

"Logistics Costs and Expenses" is defined in **Section 9.03**.

"Miscellaneous Charges" is defined in **Section 3.03**.

"Monthly Statement" is defined in **Section 4.02(a).**

"**Operating Equipment**" means any removable trade furniture, furnishings, equipment and

fixtures that are fabricated, furnished and installed by Concessionaire and used in its operations in the Premises, but does not include any displays, advertising materials or decorations that are of a seasonal or temporary promotional nature.

"Operation Plan" means the installation schedule submitted by Concessionaire and approved by the Director.

"Percentage Rent" is defined in **Section 3.02**.

"Percentage Rent Rate" is defined in **Section 3.02**.

"Permitted Use" means the commercial activities that Concessionaire is authorized to conduct in the Leased Premises, as such activities are described in **Section 8.01**.

"Public Areas" means, to the extent provided by City, all improved interior and exterior areas within the Terminal which are not devoted to the exclusive use by the Aviation Department, City employees, any airline, concessionaire or other occupant occupying space in the Terminal, including, without limitation, public transportation loading and unloading facilities, pedestrian walkways and horizontal pedestrian movers, delivery areas, landscaped areas, community rooms, elevators, escalators, stairs and ramps, public restrooms and comfort stations, service areas, service and fire exit corridors, passageways and parking facilities.

"Rental Commencement Date" means the first day of the month on which the Concessionaire is under obligation to pay Percentage Rent for each individual location within the Premises under this Agreement.

"Rents" and "Rentals" means the amounts payable by Concessionaire to City including Percentage Rent.

"Transaction Fee" is defined in **Section 8.01(d).**

ARTICLE II. PREMISES, GRANT AND TERM

Section 2.01 PREMISES. The Premises, shown on **Exhibit B**, comprise the initial six (6) kiosk locations, which locations may be reconfigured, added to, or deleted from during the term of this Agreement, to be evidenced by a replacement of **Exhibit B**. The kiosk locations may be moved at the direction of the Aviation Director upon thirty (30) days' written notice to Concessionaire.

Section 2.02 CONDITIONS OF GRANT. The City has the right to make any modifications to the Airport. Concessionaire acknowledges that the City may change the shape, size, location, and number of the locations generally shown on **Exhibits A and B,** and may eliminate or add any location to any portion of the Terminals and the Airport at any time without Concessionaire's consent. The City shall have the right to locate, install, maintain, use, repair and replace pipes, utility lines, conduits, ducts, flues, refrigerant lines, drains, sprinkler mains and valves, wires and wiring and structural elements leading through the Premises, serving the Premises, or serving any other parts of the Terminals. The City, to the extent possible, shall use reasonable efforts to locate any such items (other than existing items and/or necessary structural elements) in locations that do not materially interfere with Concessionaire's use of the Premises. Concessionaire, upon approval by the Director or his designee, shall have the right to install those utilities lines which exclusively serve the Premises in the area between Concessionaire's finished ceiling and the roof above at Concessionaire's sole cost. In the event the City elects to enlarge or alter the Airport or the Terminals, the City may include the additional area in the definition of either of the Airport or Terminals for purposes hereof.

Section 2.03 COMMENCEMENT AND ENDING DATE OF TERM. The Term shall commence on the first day after the date of the enactment of the Ordinance which approves this Agreement by City Council ("**Commencement Date**"). The Term hereof shall end at the end of the first Lease Year, unless sooner terminated in accordance with this Agreement. Provided Concessionaire is in good standing on all obligations under this Agreement, Concessionaire and City, by and through the Aviation Director, may enter into two (2) one-year extensions of the Term by written amendment. Concessionaire shall notify City in writing no later than sixty (60) days prior to expiration of each successive Lease Year if Concessionaire wishes to extend the

Term under this Section. If no such written request is received by City, the Lease Term shall automatically expire as of the end the then-current Lease Year, with no further action required of either party. Unless otherwise approved in writing by the Director, Concessionaire shall install, fully stock, and have operational for the public the Kiosks in accordance with its Operation Plan, which Operation Plan shall be submitted to the Director no later than the Commencement Date.

Section 2.04 **HOLDING OVER**

(a) Any holding over after expiration of the Term with the consent of the Director shall be construed to be a tenancy from month to month pursuant to the terms hereof at one-twelfth (1/12th) of the Percentage Rent required to be paid by Concessionaire (as established for a Lease Year under **Section 3.01** hereof), and shall be on the same terms and conditions as herein specified, so far as applicable.

(b) Without City's waiver of any rights, any holding over without the City's consent shall be construed to be a tenancy from month to month pursuant to the terms hereof at one hundred fifty percent (150%) of Percentage Rent, and shall be on the same terms and conditions as herein specified, so far as applicable. In the event of such non-consensual holdover, City shall be entitled to reenter the Premises at any time in order to retake possession of the same. Concessionaire shall indemnify, defend and hold harmless the City from and against any and all loss, claims, demands, liabilities, damages (including, without limitation, consequential damages), costs and/or expenses (including, without limitation, attorneys' fees and expenses) resulting from any failure by Concessionaire to surrender the Premises in the manner and condition required by this Agreement upon the expiration of the Term or earlier termination of this Agreement, including, without limitation, any claims made by any proposed new concessionaire founded upon such failure.

Section 2.05 **LATE OPENING.** Except as otherwise provided in **Section 26.04**, if Concessionaire fails to install the Kiosks at the Premises within sixty (60) days from the Commencement Date, and such failure shall be due to the fault of Concessionaire, then and in such event Concessionaire shall pay $100.00 for each location commencing on the first day of the Lease Year.

ARTICLE III. RENTAL

From and after the commencement of the first Lease Year, Concessionaire shall pay to the City Percentage Rent (as defined in this Agreement). Concessionaire shall also pay other charges set forth herein.

Concessionaire's obligation to pay Percentage Rent shall commence with the first Lease Year. Any occupancy of the Premises by Concessionaire following the Commencement Date and prior to the beginning of the first Lease Year shall be subject to all terms and conditions hereof, including payment of Rent.

Section 3.01 PERCENTAGE RENT.

(a) Concessionaire shall pay to the City, for each month of the Term, Percentage Rent The Percentage Rent ("**Percentage Rent**") shall be equal to the product of the Percentage Rent Rate set forth below ("**Percentage Rent Rate**"), times Concessionaire's Gross Receipts (including Concessionaire's subconcessionaires' Gross Receipts) *[Percentage Rent Due = Percentage Rent Rate X Gross Receipts* Concessionaire shall pay Percentage Rent, if any, to the City monthly, without prior notice or demand within fifteen (15) days after the expiration of each calendar month. Percentage Rent shall apply at all times during the term of this Agreement.

Percentage Fee Rate
12% of Transaction Fees Collected by Concessionaire

(b) Percentage Rent is agreed to be a portion of the consideration for the City to enter into this Agreement and the City expects a fair rental return. If Concessionaire fails to continuously operate its business or vacates the Premises prior to the expiration of the Term, the City will suffer damages not readily ascertainable. The City shall have the right to treat any of such events as a material default and breach by Concessionaire and the City shall be entitled to all remedies provided hereunder or at law.

Section 3.02 MISCELLANEOUS CHARGES. The following charges shall be collectively referred to as "**Miscellaneous Charges**":

(a) Employee Parking. The City, while providing parking facilities at the San Antonio International Airport to Concessionaire's employees in common with employees of other concessionaires and users of the Airport, retains the right to institute a reasonable charge for the privilege of using these parking facilities. Such charges shall be evidenced by an invoice from the City and shall be promptly paid to the City, with payment to be made directly at the office of the Aviation Director at the Airport at such intervals as shall be demanded by the City from time to time.

(b) Identification Security Badges. All persons employed at SAT and SSF, including Concessionaire's employees, are required to obtain identification security badges from the City and the City reserves the right to institute a reasonable charge for the issuance and replacement of these identification security badges. Concessionaire shall pay such charges at the time incurred.

(c) Maintenance and Repairs Performed by the City. If the City is required to perform any emergency and other routine maintenance and repairs to the Premises as provided in **Section 10.03**, the cost of all labor and materials required to complete the work will be paid by Concessionaire to the City within ten (10) days following written demand from the Director for said reimbursement payment at the City's standard rates then in effect plus any overhead which may be reasonably determined by the Director. Such charges shall be evidenced by an invoice from the City and shall be promptly paid to the City, with payment to be made directly at the office of the Aviation Director at the Airport at such intervals as shall be demanded by the City from time to time.

Section 3.03 OTHER CONTRACTUAL CHARGES. Concessionaire shall pay the following charges (collectively "**Contractual Charges**") for violation of various requirements set out in the referenced sections below. Acceptance of payment for Contractual Charges shall not constitute a waiver by City of its right to pursue other contractual or legal remedies:

Section	Violation	Amount of fee
4.02(c)	Late Monthly Statements	$100.00 per month per late statement until submitted.
4.02(d)	Late Annual Audit	$100.00 per month until submitted.
8.02 (k)	Failure to comply with a law or regulation; licenses pertaining to cleanliness, safety, occupancy; operation and use of premises, etc.	$50.00 per day until compliant.

Section 3.04 PAYMENTS.

All Rents, fees, and charges shall be paid by Concessionaire by check payable to the City of San Antonio, which shall be delivered or mailed, postage prepaid to the address in this section or to such other address as may be designated in writing by Director.

City of San Antonio
c/o Frost National Bank
P.O. Box 1958
San Antonio, TX 78297-1958

Section 3.05 TIME OF PAYMENT. The following sets forth the time of Concessionaire payments of rents, fees, and charges to City which shall all be paid without deduction or setoff:

(a) Percentage Rent for each month of operations shall be due and payable without deduction or setoff by the fifteenth (15th) day of the month following the end of said month.

(b) Miscellaneous, Contractual, and/or Late Payment Charges shall be paid by Concessionaire within ten (10) days of transmittal of an invoice or other writing by City or in conformance with procedures established by Director.

Section 3.06 LATE PAYMENT CHARGE. If any Rentals, charges, or fees required to be paid to the City hereunder are not made when such Rentals, charges and fees are due, including amounts identified as a result of any audit findings, are delinquent for a period of ten (10) days or

more from the date when such payment is due to City, Concessionaire shall pay City late fees thereon, from the date such Rents, fees, or charges became payable to the date of payment at the rate of one and one-half percent (1.5%) per month; provided, however, that if the maximum rate then provided by law is less than one and one-half percent (1.5%) per month, then the rate shall be such maximum legal rate. City may, but is not obligated to, provide Concessionaire with a written reminder when invoiced rents, fees, or charges have not been received within ten (10) days of the due date. The parties hereto agree that such late payment charge represents a fair estimate of expenses the City will incur by reason of any such late payment. The City's acceptance of partial payments or late payment charges shall not constitute a waiver of Concessionaire's default with respect to Concessionaire's nonpayment nor prevent the City from exercising all other rights and remedies available to the City under this Agreement or at law.

Section 3.07 <u>CONCESSIONAIRE'S PAYMENT OBLIGATIONS</u>. The City may apply any payments received from Concessionaire to any Rentals which are then due. If the City shall not make any specific application of a payment received from Concessionaire, then any such payment received shall be applied first to the Rentals which have been overdue for the longest period of time. No designation of any payment by Concessionaire for application to a specific portion of Concessionaire's financial obligations hereunder shall be binding unless otherwise required under Texas law. Concessionaire covenants to pay all Rentals hereunder independent of any obligation of the City. No breach of this Agreement by the City shall relieve Concessionaire of its obligation and duty to pay all such Rentals when due under the terms hereof. Except as otherwise specifically set forth herein, all Rentals shall be paid by Concessionaire to the City without set-off, deduction, demand, notice or abatement. All payments received by the City shall be credited and be deemed to be on account of the Rental and other charges first then due. No statements or endorsements on any check or any letter accompanying any check or payment of Rental or other charges shall be deemed an accord and satisfaction of any debt or obligation of Concessionaire hereunder. The City reserves the right to accept any check or payment without prejudicing in any way the City's right to recover the balance of any and all Rental and other charges due from Concessionaire after receipt of any such check or payment or to pursue any other remedy provided herein or by law.

Section 3.08 PERFORMANCE GUARANTEE. Concessionaire shall deliver to the City and shall keep in force throughout the term of this Agreement either an irrevocable standby letter of credit in favor of City drawn upon a bank satisfactory to City or a surety bond payable to City. If a letter of credit is delivered it shall be in the form set forth in **Exhibit C** to this Agreement. If a bond shall be delivered, it shall be issued by a sound indemnity company authorized to do business in Texas. The amount of the irrevocable letter of credit or surety bond to be delivered by Concessionaire to the Director on or before the Commencement Date of the Agreement and shall be Seven Hundred Fifty Dollars ($750.00) for the first Lease Year. Notwithstanding the forgoing, Concessionaire may tender to the Director a cashiers' check in lieu of letter of credit or surety bond in the amount of the required performance guarantee. For each subsequent Lease Year, the amount of the performance guarantee shall be adjusted so that at all times it equals not less than fifty percent (50%) of the prior Lease Year's Gross Revenues. The City shall retain said performance guarantee for the benefit of the City throughout the Term of this Agreement as security for the faithful performance by Concessionaire of all of the terms, covenants and conditions of this Agreement. If Concessionaire defaults with respect to any provision of this Agreement, including, but not limited to, the provisions relating to the payment of Rentals, the City may use, apply or retain all or any part of the performance guarantee for the payment of any Rentals or any other sum in default, or for the payment of any loss or damage which the City may suffer by reason of Concessionaire's default, or to compensate the City for any other amount which the City may spend or become obligated to spend by reason of Concessionaire's default. In no event, except as specifically hereinafter provided, shall the City be obliged to apply the same to Rentals or other charges in arrears or to damages for Concessionaire's failure to perform said covenants, conditions and agreements; however, the City may so apply the performance guarantee, at its option. The City's right to bring a special proceeding to recover or otherwise to obtain possession of the Premises before or after the City's declaration of the termination of this Agreement for non-payment of Rentals or for any other reason shall not in any event be affected by reason of the fact that the City holds the performance guarantee. In the event that the City regains possession of the Premises, whether by special proceeding, reentry or otherwise, because of Concessionaire's default or failure to carry out the covenants, conditions and agreements of this Agreement, the City may apply such performance guarantee to all damages

suffered through the date of said repossession and may retain the performance guarantee to apply to such damages as may be suffered or shall accrue thereafter by reason of Concessionaire's default or breach. In the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against Concessionaire, or its successors or assigns, or any guarantor of Concessionaire hereunder, such performance guarantee shall be deemed to be applied first to the payment of any Rentals and/or other charges due the City for all periods prior to the institution of such proceedings, and the balance, if any, of such performance guarantee may be retained by the City in partial liquidation of the City's damages. The performance guarantee shall not constitute a trust fund. In the event the City applies the performance guarantee in whole or in part, Concessionaire shall, within ten (10) days after written demand by the City, deposit sufficient funds by delivering an amendment to the existing irrevocable standby letter of credit or surety bond or delivering a new irrevocable standby letter of credit or surety bond to maintain the performance guarantee in the initial amount. Failure of Concessionaire to supply such additional funds shall entitle the City to avail itself of the remedies provided in this Agreement for non-payment of Rentals by Concessionaire. If Concessionaire fully and faithfully performs every provision of this Agreement to be performed by it, the performance guarantee or any balance thereof, less any sums then due the City from Concessionaire under this Agreement, shall be returned to Concessionaire (or, at the City's option to the last assignee of Concessionaire's interest thereunder) within one hundred twenty (120) days following the later of the expiration of the Term of this Agreement, the earlier termination thereof or Concessionaire's vacating and surrendering possession of the Premises to the City.

ARTICLE IV. RECORDS AND SALES REPORTS

Section 4.01 CONCESSIONAIRE'S RECORDS. (a) Concessionaire shall keep and maintain full and accurate books and source documents, in accordance with generally accepted accounting principles ("GAAP"), of the Gross Receipts, whether for cash, credit or otherwise, of Concessionaire's business at any time operated within the Premises and of the operations of each subconcessionaire, joint venture partner or licensee, if any, and shall require and cause all such parties to prepare and keep books, source documents, records and accounts sufficient to substantiate those kept by Concessionaire (collectively, "**Records**"). The Records to be kept by Concessionaire at its principal business office in the United States shall include, without limitation,

true copies of all federal, state and local sales and use tax returns and reports, daily receipts from all sales (including those from mail, electronic or telephone orders), duplicate bank deposit slips, invoices, journals, ledgers and other pertinent original sales records and records of any other transactions conducted in or from the Premises. Pertinent original sales records shall also include a point of sale system of record keeping and such other reasonable documentation which would normally be examined by an independent accountant pursuant to GAAP in performing an audit of Concessionaire's sales sufficient to provide determination and verification of Gross Receipts and the exclusions therefrom.

(b) Concessionaire's electronic cash control system must ensure tight cash control, have complete audit capability and include:

i. the ability to record transactions by sequential control number which can be printed on audit tape(s); and

ii. the point of sale device shall have a provision for non-resettable totals and access for resetting the control totals shall be reserved solely to the point of sale device supplier.

(c) The Records shall be preserved by Concessionaire and its subcontractors for a period of three (3) years following the expiration of the Term or earlier termination of this Agreement. All Records maintained pursuant hereto shall at all reasonable times, during Concessionaire's normal business hours after twenty (20) days prior written notice, be open to the inspection of, and may be copied or extracted from, in whole or in part, by, the City, or the City's designated management representatives or agents, including City's internal or external auditors.

Section 4.02 <u>REPORTS BY CONCESSIONAIRE</u>.

(a) Concessionaire shall deliver to the City:

i. within fifteen (15) days after the expiration of each month during any Lease Year, a written statement in the form attached hereto as **Exhibit D-1** or other form reasonably satisfactory to the Director signed by an officer of Concessionaire, showing the Gross Receipts made from the Premises during such period including an itemization of any exclusions or deductions made to Gross Receipts and the amount of Percentage Rent

paid, if any, among other matters ("**Monthly Statement**"); and

ii. within ninety (90) days after the expiration of each Lease Year and after termination of this Agreement, a written statement in the form attached hereto as **Exhibit D-2** or other form reasonably satisfactory to the Director signed by an officer of Concessionaire and audited by an officer of the company retained by Concessionaire ("**Annual Statement**") showing in reasonable detail the amount of Gross Receipts made by Concessionaire from the Premises during the preceding Lease Year including an itemization of any exclusions or deductions made to Gross Receipts, the payments of Percentage Rent paid among other matters. Concessionaire shall certify in its Annual Statement that:

1) such statements have been prepared in accordance with the terms of this Agreement and GAAP;
2) that all revenues derived from Concessionaire's activities hereunder which are required to be included in Gross Receipts have been so included; and
3) that all payments of Percentage Rent have been made in accordance with the terms of this Agreement.

iii. The written audit with respect to the Annual Statement required above shall state that Concessionaire's total Gross Receipts for the previous Lease Year and the Percentage Rent paid by Concessionaire to the City were calculated and reflected by Concessionaire in its Annual Statement in accordance with the applicable terms of this Agreement and prepared in accordance with GAAP. Concessionaire shall require all subconcessionaires, licensees and/or assignees, if any, to furnish a similar statement.

The Monthly Statements and Annual Statements prepared by Concessionaire shall also provide an analysis of operations, which shall include the total number of transactions per location.

iv. The Director may make reasonable changes to the form of the Monthly Statement or Annual Statement from time to time upon thirty (30) days prior notice to Concessionaire.

(b) Concessionaire shall require a similar audit, as the audit required from Concessionaire, from all sublessees, subconcessionaires, joint venture partnerships or sublicenses operating in the Premises.

(c) If Concessionaire fails to furnish City with the Monthly Statement required above, Concessionaire's monthly sales shall be determined by assuming that the total sales during the preceding month were one hundred fifty percent (150%) of gross sales for the highest month in the preceding 12-month period. Any necessary adjustment in such Percentage Rent shall be calculated after an accurate report is delivered to the Director by Concessionaire for the month in question, and resulting surpluses or deficits shall be applied to Concessionaire for the next succeeding month. An accounting fee of $100.00 per month per late Monthly Statement will be charged to Concessionaire and shall be payable by Concessionaire for the additional services required by City pursuant to this paragraph. This remedy shall be in addition to other remedies provided herein or by law to the City.

(d) If Concessionaire fails to furnish to the Director an Annual Statement as required above, the Concessionaire shall pay within ten (10) days of written demand therefor by the City as a contractual charge of $100.00 per month, or fraction thereof, until the Annual Statement is delivered to Director by Concessionaire. This remedy shall be in addition to other remedies provided herein or by law to the City.

ARTICLE V. AUDIT

Section 5.01 RIGHT TO EXAMINE BOOKS. Notwithstanding the acceptance by the City of payments of Rentals or installments thereof, the City shall have the right to audit all Rentals and other charges due hereunder. Concessionaire shall make available to the Director within thirty (30) days following the City's written request for the same at the Director's office in the Airport for the purpose of examination, extracting and/or copying all books, source documents, accounts, records and sales tax reports filed with applicable government agencies of Concessionaire and any subconcessionaires, licensees and/or assignees, if any, in order to verify the amount of Gross Receipts in and from the Premises and the amount of all Rentals.

Section 5.02 AUDIT. The City may at any time upon thirty (30) days' prior written notice to Concessionaire, cause a complete audit to be made by an auditor or accountant selected by the City, or an internal City auditor or City compliance personnel, of the entire records and operations of Concessionaire and/or any subconcessionaires, licensees and/or assignees, if any, relating to the Premises for the period covered by any statement issued or required to be issued by Concessionaire as set forth in **Article IV** above. Concessionaire shall make available to the City's auditor at its office in the Airport within thirty (30) days following the City's written notice requiring such audit, all of the books, source documents, accounts, records and sales tax reports of Concessionaire which such auditor deems necessary or desirable for the purpose of making such audit. If the audit is conducted after the expiration of this Agreement, Concessionaire shall make the records available at the address indicated by City. If such audit discloses that Concessionaire's Gross Receipts as previously reported for the period audited were understated, Concessionaire shall immediately pay to the City the additional Percentage Rent due for the period audited together with interest at the interest rate from the date(s) such amount was originally due. Further, if such understatement was in excess of one percent (1%) of Concessionaire's actual Gross Receipts as disclosed by such audit, Concessionaire shall immediately pay to the City or to the City's designee the reasonable and actual cost of such audit, within 30 days of an invoice therefor. If such understatement was in excess of five percent (5%) of Concessionaire's Gross Receipts as disclosed by such audit due to Concessionaire's intentional, willful or fraudulent act or omission, the City may declare this Agreement terminated and the Term ended, in which event this Agreement shall cease and terminate on the date specified in such notice with the same force and effect as though the date set forth in such notice were the date set forth in this Agreement for expiration of the Term, and Concessionaire shall vacate and surrender the Premises on or before such date in the condition required by this Agreement for surrender upon the expiration of the Term. If upon examination or audit the City's auditor, accountant or representative reasonably determines that sufficient documentation is not maintained, retained, recorded, or available in accordance with GAAP to verify Concessionaire's actual Gross Receipts, Concessionaire shall pay for the reasonable and actual cost of such audit and, in addition, should the City deem it necessary, Concessionaire shall reconstruct, at its sole cost and expense, all records for the determination of Gross Receipts for

any period being audited.

If Concessionaire is not able to provide records as required under this Article, City reserves the right to review records/conduct an audit at Concessionaire's office within the continental United State of America, at Concessionaire's full expense. City shall be entitled and Concessionaire shall advance all expenses associated with conducting the audit not to exceed $5,000.

ARTICLE VI. DELIVERY AND CONDITION OF PREMISES

(a) Except as otherwise specifically provided herein (including, without limitation, in **Exhibit B**), Concessionaire hereby agrees that upon delivery of possession of the Premises to Concessionaire, Concessionaire shall accept such delivery of possession of individual locations that comprise the Premises in their then existing **"AS IS"** condition, and Concessionaire acknowledges that:

i. Concessionaire shall have inspected the Premises and shall be fully aware of the condition of the Premises as of delivery of possession;

ii. the City shall have no obligation to improve or alter the Premises for the benefit of Concessionaire;

iii. except as may be expressly provided herein, neither the City nor any of the City's employees, agents, designated management representatives, contractors nor brokers has made any representation or warranty of any kind respecting:

- the condition of the Premises, and/or the Terminals,
- the suitability thereof for Concessionaire's permitted use or the conduct of Concessionaire's business, or
- occupancy or operation within the Terminals by any other airline, person or entity including forecasted or estimated enplaned passenger volume in the Terminals.

(b) Concessionaire irrevocably waives any claim based upon or related to any such claimed representation by the City or its designated management representatives as to public traffic to be expected at the Premises or sales to be expected at the Premises. Concessionaire's taking

possession of the Premises shall constitute Concessionaire's formal acceptance of the same and acknowledgment that the Premises are in the condition called for hereunder, subject to all field conditions existing at the time of delivery of possession. In no event shall the City be liable for damages or otherwise as a result of any failure to make the Premises available within the time and/or in the condition provided herein.

ARTICLE VII. ALTERATIONS, CHANGES AND ADDITIONS

Section 7.01 REMOVAL BY CONCESSIONAIRE. Upon the expiration or earlier termination of this Agreement, Concessionaire shall remove all Operating Equipment and removable trade fixtures installed by Concessionaire and not permanently affixed to the Premises, and Concessionaire's personal property shall remain the property of Concessionaire and may be removed throughout the Term hereof or upon expiration or earlier termination of the Term hereof if all Rental and other charges due hereunder are paid in full and Concessionaire is not otherwise then in default of any of the covenants, terms or provisions of this Agreement beyond applicable notice and cure periods; provided that Concessionaire immediately repair any damage caused by such removal. If Concessionaire shall fail to remove any of its personal property and Operating Equipment, the City may remove all or any portion of the property from the Premises and dispose of the property in any manner, without compensation to Concessionaire. In the latter event, Concessionaire shall, upon demand, pay to the City the reasonable and actual expense of such removal and disposition and the repair of any damage to the Premises resulting from or caused by such removal. The obligations contained in this **Section 7.01** shall survive the expiration or earlier termination of this Agreement.

Section 7.02 CHANGES AND ADDITIONS. The City reserves the right at any time, and from time to time, to make extensive renovations and/or alterations to, and to build additional stories on, the Terminals and to construct other buildings and improvements at the Airports, including any extensive modifications of the Public Areas in connection therewith, to enlarge or reduce the Terminals, to add decks or elevated parking facilities, and to sell or lease any part of the land comprising the Airports, for the extensive construction thereon of a building or buildings which may or may not be part of the Airports. The City reserves the right at any time to relocate, reduce,

enlarge, or reconfigure the Terminals, the Airports, parking areas and other Public Areas shown on **Exhibits A and B**, or to add additional locations at the Airports. Concessionaire agrees to accommodate and cooperate with the City in such matters, even though Concessionaire's own operations may be inconvenienced or impaired thereby, and Concessionaire agrees that no liability shall attach to the City (including its agents, contractors, designated management representatives, directors, employees, officers and subcontractors) by reason of such inconvenience or impairment, and Concessionaire hereby waives any and all claims for damages and other consideration by reason of such inconvenience or impairment. The City shall use reasonable efforts not to materially inconvenience Concessionaire or materially impair Concessionaire's operations and the Director shall give reasonable notice to Concessionaire of any such construction, repair or related activity.

Section 7.03 <u>RELOCATION, REDUCTION OR TERMINATION</u>.

(a) At any time during the Term hereof, due to the nature of the commercial air public transportation facilities in general, it may be necessary to relocate and/or reduce all or any part of the Premises if the Director determines such action to be necessary for airline and/or airport operational considerations (e.g., the operation of non-concession services in the Terminals, the operation of non-concession services for any airline or Airport operations in the Terminals or due to public health or safety issues relating to the operation of the Terminals). For purposes hereof, relocation is defined as the City's decision to terminate possession of an existing concession facility and to provide a reasonably comparable space for the substitute concession facility in terms of size, location, relation to airline gates and exposure to the Terminals' users' pedestrian traffic flow patterns (particularly enplaned passengers) within the Terminals. Reduction of the Premises includes, but is not limited to, the movement of walls of the Premises or any other action which may reduce the size or any part of the Premises. In the event the Director elects to exercise any such rights as the City deems reasonably necessary or desirable, it shall advise Concessionaire by sixty (60) days prior written notice and Concessionaire hereby agrees to be bound by such election and to execute, upon receipt from the Director, whatever amendments, terminations or other instruments as may be necessary. Any such relocation or reduction of the Premises shall be accomplished, with Concessionaire's complete cooperation, as expeditiously as is reasonable under the circumstances but in no event later than the date specified by the Director to ensure the proper

and efficient operation of the Terminals. Concessionaire shall be solely responsible for any and all costs and expenses involved in any relocation of or reduction to all or any part of the Premises. The City shall not have any liability for such relocation or reduction of the Premises other than as specifically set forth in this **Section 7.03(a)** and Concessionaire hereby waives any such claims, including, without limitation, claims for lost business opportunity, claims for lost profits and claims for relocation benefits under Federal and any state law. Should such relocation or reduction of the Premises be accomplished, then and in such event, the Aviation Director, at his sole discretion, may temporarily or permanently adjust the MAG if the reduction in Premises is significant. The Aviation Director shall determine if the reduction in Premises is significant, which determination shall be in the Aviation Director's sole discretion.

ARTICLE VIII. CONDUCT OF BUSINESS BY CONCESSIONAIRE

Section 8.01 PERMITTED USE. Concessionaire will use the Premises solely for the operation of a state of the art unmanned kiosk vending concession for the sale of portable electric chargers for personal electronic devices. The kiosks will be installed in approved locations within the Public Areas of the Airport and at such other specified locations determined by the City ("**Permitted Use**"). No other Permitted Use shall be allowed unless approved in writing by the Aviation Director. For the initial six (6) kiosks installed, the City shall provide a location which provides an existing standard 110V electrical outlet. If any additional kiosks are located at spaces without existing standard 110V electrical outlets, Concessionaire will be required to install conduit and electrical outlet(s) at its sole expense. City will provide continuous electrical power at no cost to the Concessionaire for all kiosks placed on the Premises. Any other use shall require the advance written approval of the Aviation Director.

Specific services and equipment to be provided by Concessionaire shall include as a minimum but not be limited to the following:

(a) Concessionaire must install, maintain, and operate equipment at its sole cost and expense, including but not limited to, the costs of kiosk locations, any construction related to installation, utilities (other than electrical utilities), and all parts and supplies.

(b) Director and Concessionaire will mutually agree on any increase or decrease in the

number and/or location changes of kiosks needed to accommodate the traveling public. Notwithstanding the foregoing, upon providing City not less than thirty (30) days written notice, Concessionaire may remove any Kiosks generating fewer than $20.00 per day based on the previous six (6) months average; however, Concessionaire must maintain at least one operational Kiosk at all times during the term of this Agreement. Concessionaire shall submit all change requests in writing to the Director, setting forth the reason for such changes. The Director, may, at his discretion, request such other materials and data as is reasonably believed to be pertinent in analyzing the request.

(c) Concessionaire must comply with all rules and regulations, and coordinate its activities with the appropriate staff including, but not limited to, any design and construction related to the installation of kiosks.

Section 8.02 <u>OPERATION OF BUSINESS</u>.

(a) Concessionaire agrees to be open for business and to continuously and uninterruptedly operate in all of the Premises during the entire Term following the Commencement Date, to actively and diligently conduct its business at all times in a first class and reputable manner, making every reasonable and lawful effort to develop, maintain and increase Concessionaire's business, using best efforts to achieve maximum sales volumes, customer satisfaction and maintaining at all times high quality merchandise and products. Notwithstanding the foregoing, Director acknowledges that, due to the automated nature of Concessionaire's business, Concessionaire shall be open for business 24/7 with the exception of reasonable downtime for necessary service, maintenance, and repair. Any such reasonable downtime shall not be deemed a violation of this Agreement.

(b) Concessionaire shall maintain a sufficient number of personnel at all times to service equipment. All such personnel shall be knowledgeable, helpful to Terminal users, courteous, efficient, and neat in appearance and appropriately attired and shall not act in a loud, offensive or otherwise objectionable manner. Concessionaire's employees or subcontractors shall wear name tags and security badges at all times. Concessionaire shall not employ at or about the Premises any person who shall use offensive language, makes persistent announcements of its merchandise and

products and/or services over loud speakers or whose conduct is loud or offensive or otherwise detrimental to the best interests of the Terminals and/or Airport. Concessionaire also agrees not to divert or allow or cause to be diverted any business from the Terminals and/or Airport. Concessionaire agrees that it will reasonably and promptly respond to all customer complaints regarding unsatisfactory service and/or unsatisfactory quality of merchandise, products and/or services, including all refunds as appropriately requested from time to time by any customer. Concessionaire shall not give samples, approach customers, or otherwise solicit business in the common areas, terminals, or any other location at the Airport, nor shall Concessionaire distribute any handbills or other advertising material at the Airport.

(c) Concessionaire shall not abandon or permanently vacate the Premises without the prior, advance written approval of the Director. For purposes hereof, "abandonment" shall mean closing the Premises to public trade for five (5) or more consecutive days, unless other provisions hereof permit such closing.

(d) Concessionaire shall be obligated to operate all kiosks 24 hours per day, 7 days per week. Concessionaire understands and agrees that its operation hereunder is a service to airline customers and the users and employees of the Terminals and the Airport.

(e) Concessionaire, at its expense, shall promptly comply with all present and future laws, ordinances, orders, rules, regulations, applicable business licenses and requirements of the City and all governmental authorities having jurisdiction affecting or applicable to the Premises or the cleanliness, safety, occupancy, operation and use of the same, whether or not any such law, ordinance, order, rule, regulation or requirement is foreseen or unforeseen, ordinary or extraordinary, shall necessitate changes or improvements (other than structural changes or structural improvements) and/or interfere with the use and enjoyment of the Premises. Concessionaire shall promptly correct any deficiencies reported by the City and all other governmental authorities having jurisdiction. Concessionaire shall not do or permit anything to be done in or about the Premises, nor bring anything therein, which will in any way conflict with any such law, ordinance, order, rule, regulation or requirement affecting the occupancy or use of the

Premises or the Terminals which has been or may hereafter be enacted or promulgated by the City and all governmental authorities, or in any way obstruct or interfere with the rights of others, nor shall Concessionaire use or allow the Premises to be used for any improper, immoral or objectionable purposes or do any act tending to injure the reputation of the Terminals and/or the Airport.

(f) Any area occupied by Concessionaire and all equipment and materials used by Concessionaire shall at all times be kept clean, sanitary, and free from rubbish, refuse, dust, dirt, offensive or unclean materials, flies and other insects, rodents and vermin in accordance with any and all applicable rules, regulations and requirements of the City and in accordance with any and all laws, statutes, ordinances and regulations that may be promulgated from time to time by governmental agencies and authorities.

(g) No auction, liquidation, going out of business, fire or bankruptcy sale may be conducted or advertised by sign or otherwise in the Premises.

(h) All receiving and delivery of goods and merchandise and products for the Premises, and all removal of merchandise and products, supplies, equipment, trash and debris and all storage of trash and debris from the Premises shall be made only by way of or in the areas provided therefor. No trash, trash containers, hand trucks, carts, racks or movable fixtures designed for the movement of merchandise and products and/or trash within the Premises or to or from the Premises may be left unattended in the corridors or other Public Areas, nor may such items or devices in non-Public Areas be visible from Public Areas of either the Premises or the Terminals. Concessionaire shall be solely responsible for prompt disposal within the Premises or in such areas as may be provided for such disposal of all trash and debris from the Premises.

(i) Should the City establish a central delivery dock area, Concessionaire shall provide all deliveries of supplies, materials, inventory or merchandise and products to the central delivery dock area controlled by the City.

(j) If Concessionaire shall fail to comply with any of the provisions of this **Section 8.02(a)-(j)**, then

Concessionaire shall pay, within ten (10) days of demand therefor by the City, Contractual Charges in the amount of not more than $50.00 per day until such time as Concessionaire is in compliance. This remedy shall be in addition to any and all other remedies provided in this Agreement or by law or in equity to the City.

Section 8.03 <u>AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PROGRAM</u>.

(a) This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 C.F.R. Part 23. The Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of this Agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 C.F.R. Part 23.

(b) Concessionaire agrees to include the above statements in any subsequent concession agreement or contract covered by 49 C.F.R. Part 23 that it enters into and cause those businesses to similarly include the statements in further agreements.

(c) Concessionaire shall comply with City's approved Airport Concessions Disadvantaged Business Enterprise (ACDBE) program submitted in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Office of the Secretary, Part 23, Participation by Disadvantaged Business Enterprise programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(d) Concessionaire shall make a good faith effort to adhere to the City's ACDBE program if opportunities arise for utilization of ACDBE firms in the performance of this Agreement.

(e) Concessionaire agrees that within thirty (30) days after the expiration of each calendar quarter during the term of this Agreement, it will provide an expenditure report to the City, in a form acceptable to the City, describing names of the vendors providing the goods and services utilized by Concessionaire at the Airport in fulfilling the obligations prescribed by this Agreement. Such

expenditure report shall also include goods and services for any substitute ACDBE obtained pursuant to **Section 8.03(h)**, calculated in accordance with the requirements of 49 C.F.R. Part 23.

(f) Should this Agreement be considered for any term renewals or extensions, the extent of Concessionaire's ACDBE participation will be reviewed prior to any recommendation for renewal of the term of this Agreement to Council, to consider whether an increase or decrease in ACDBE participation is warranted. Concessionaire agrees to make good faith efforts at that time to find additional ACDBE participants as required should the City deem an increase in ACDBE participation warranted.

(g) Concessionaire agrees that it will also submit within the same period described in this **Section 8.03**, a report to the City, in a form acceptable to the City, describing the Concessionaire's total Gross Receipts for the entire contract, and a breakdown of such Gross Receipts by location.

(h) Concessionaire will have no right to terminate an ACDBE for convenience without the City's prior written consent. If an ACDBE is terminated by the Concessionaire with the City's consent or because of the ACDBE's default, then the Concessionaire must make a good faith effort, in accordance with the requirements of 49 C.F.R. part 23.25(e)1(iii) and (iv), and 49 C.F.R. part 26.53, to find another ACDBE to substitute for the original ACDBE to perform the tasks or provide services, if feasible, for the remaining term of this Agreement attributable to the same estimated Gross Receipts under the Agreement as the ACDBE that was terminated. In the event such action is not feasible, the Concessionaire shall make good faith efforts during the remaining term of the Agreement to encourage ACDBEs to compete for purchases and or leases of goods and services to be made by the Concessionaire. Should City notify Concessionaire that Concessionaire has not attained the ACDBE participation required under this Agreement, Concessionaire shall submit a corrective action plan to City to remedy such non-attainment within thirty (30) days of the non-attainment notice.

(i) The Concessionaire's breach of its obligations under this **Section 8.03** shall constitute an event of default by Concessionaire and shall entitle the City to exercise any and all of its contractual and legal remedies, including termination of this Agreement.

(j) The City reserves the right to apply any and all legal and contractual remedies available under federal, state and local law, including, but not limited to, responsibility determinations in future contracts, suspension/debarment procedures, and forfeiture of profits as provided elsewhere.

(k) Pursuant to 49 C.F.R. 26.107, any person or entity that makes a false or fraudulent statement in connection with participation of an ACDBE in any Department of Transportation assisted program or otherwise violates applicable federal statutes, may be referred to the Department of Transportation, and possibly the Department of Justice, for prosecution.

Section 8.04 <u>ENVIRONMENTAL COMPLIANCE</u>.

(a) Concessionaire shall, in conducting any activity on the Premises, comply with all environmental laws and regulations, including but not limited to environmental laws and regulations regarding the generation, storage, use, transportation and disposal of solid wastes, hazardous materials, toxic chemicals, special wastes or other contaminants and shall comply with all laws, regulations and notice requirements pertaining to releases or threatened releases of hazardous materials, toxic chemicals, special wastes or other contaminants into the environment. Concessionaire shall not cause or permit its employees, agents, permittees, contractors, subcontractors, subconcessionaires or others in Concessionaire's control, supervision, or employment to release (whether by way of uncapping, pouring, spilling, spraying, spreading, attaching, or otherwise) into or onto the Premises or any other location upon the Airport (including the air above, the ground and ground water thereunder and the sewer and storm water drainage systems therein) any quantity of hazardous substances (as defined or established from time to time by applicable local, state, or federal law and including, among other things, hazardous waste and any other substances that have been or may in the future be determined to be toxic, hazardous, or unsafe). To the extent any such release may exceed quantities or volumes permitted by applicable federal, Texas, or local law, Concessionaire shall immediately notify the Director, the Texas Commission on Environmental Quality (TCEQ) and the Local Emergency Planning Committee (LEPC) as may be required under the federal Emergency Planning And Community Right To Know Act. Concessionaire shall be responsible for compliance with the

Emergency Planning And Community Right To Know Act if any such release occurs.

(b) Concessionaire shall remedy any such release or threatened release as described above and, whether resulting from such release or otherwise, shall remove any hazardous materials, and special wastes and any other environmental contamination as are caused by Concessionaire on or under or upon the Premises, as are necessary to protect the public health and safety and the environment from actual or potential harm and to bring the Premises into compliance with all environmental laws and regulations. Such work shall be performed at Concessionaire's sole expense after Concessionaire submits to the City a written plan for completing such work. The City shall have the right to review and inspect all such work at any time using consultants and representatives of its choice. The cost of such review and inspection shall be paid by Concessionaire. Specific cleanup levels for any environmental remediation work shall be designed to meet all of the applicable environmental laws and regulations, to the satisfaction of the appropriate regulatory agency and the City.

(c) Except for the environmental matters not caused by Concessionaire, **Concessionaire agrees to defend, indemnify and hold harmless the City, its elected and appointed officials, officers, agents, designated management representatives and employees from and against any and all loss, claim, liability, damages, injunctive relief, injuries to person, property or natural resources, cost, expense, enforcement actions, action or cause of action, fines and penalties arising as a result of action or inaction by the Concessionaire, its employees, agents or contractors in connection with the release, threatened release or presence of any hazardous material, contaminants, or toxic chemicals at, on, under, over or upon the Premises, the Terminal and the Airport, whether foreseeable or unforeseeable, regardless of the source of such release or threatened release or when such release or threatened release or presence occurred or is discovered.** The foregoing indemnity includes without limitation, all costs at law or in equity for removal, clean-up, remediation any kind and disposal of such contaminants, all resultant and associated costs of determining whether the Premises, the Terminal or the Airport is in compliance and causing the Premises, the Terminal or the Airport to be in compliance with all applicable environmental laws and regulations and all costs associated with claims for damages to persons, property or natural resources. **In the event that the City is**

named in any enforcement action or lawsuit by any party in connection with the environmental condition of the Premises, the Terminal or the Airport caused by the action or inaction of the Concessionaire, Concessionaire shall defend the City and indemnify and hold harmless the City its elected and appointed officials, officers, agents, designated management representatives and employees from any costs, damages, fines and penalties resulting therefrom.

(d) In addition to any other rights of access regarding the Premises herein contained, the City shall have access to the Premises to inspect the same in order to confirm that the Concessionaire is using the Premises in accordance with all applicable environmental laws and regulations. Concessionaire shall, upon the Director's demand and at Concessionaire's sole expense, demonstrate to the Director (through such tests, professional inspections, or samplings, or otherwise as is in the Director's reasonable judgment sufficient for the purpose) that Concessionaire has not caused or permitted any release of hazardous substances or contaminants in excess of quantities or volumes permitted by applicable federal, state or local law. Any such tests and assessments shall be conducted by qualified independent experts chosen by Concessionaire and subject to the City's approval. Copies of reports from any such testing or assessments shall be provided to the City upon receipt by Concessionaire. Should Concessionaire not provide such tests, inspections, or samplings, or assessments, the City may conduct or cause to be conducted such tests, inspections, samplings and assessments and Concessionaire shall reimburse the City for all costs of such actions, no later than thirty (30) days following receipt by Concessionaire of invoices therefor. The City reserves the right to conduct any of the above actions at the Director's discretion, when in the opinion of the Director, additional or supplemental assessment is in the best interest of the City. Concessionaire, at the request of the City, shall make available for inspection and copying upon reasonable notice and at reasonable times, any or all of the documents and materials the Concessionaire has prepared pursuant to any environmental law or regulation, which may be retained by the City or submitted to any governmental regulatory agency; provided, that such documents and materials relate to environmental regulatory compliance and are pertinent to the Premises, the Terminal or the Airport. If any environmental law or regulation requires the Concessionaire to file any notice or

report of a release or threatened release of regulated materials on, under or about the Premises, the Terminal or the Airport, Concessionaire shall promptly submit such notice or report to the appropriate governmental agency and shall simultaneously provide a copy of such report or notice to the City. In the event that any allegation, claim, demand, action or notice is made against Concessionaire regarding Concessionaire's failure or alleged failure to comply with any environmental law or regulation, Concessionaire immediately shall notify the City in writing and shall provide the City with copies of any such written allegations, claims, demands, notices, or actions so made.

(e) Concessionaire shall not discharge or cause to be discharged any matter or substance (whether in liquid, solid, gaseous, gelatinous, or other form) into the storm water system unless expressly approved by Director and in full compliance with the City's storm water permit and applicable law and regulations.

(f) The parties to the Concession Agreement, including subconcessionaires who may enjoy a future right of occupation through the Concessionaire, acknowledge a right and a duty in the City, exercised by the Director, to review safety and potential environmental impacts of any proposed operation, business, maintenance activity, or other activity of the Concessionaire and its subconcessionaires. To this end, the Director shall have authority to disapprove an activity of the Concessionaire and/or any subconcessionaire on the basis of a risk assessment. Discretion and judgment are reserved to the Director for reason that combinations and proximity of such materials are synergistic. The Director's decision in this regard is final. The Director shall exercise such review prior to any lease or sublease and shall exercise such review from time to time as he or she may deem necessary for appropriate risk assessment of existing leases and subleases.

Section 8.05. <u>KIOSK EQUIPMENT SPECIFICATIONS</u>. All kiosks installed under this Agreement shall be new in appearance, in good operating condition and, if available, Energy Star rated and not older than eighteen (18) months at the time of contract award. All kiosks must comply with Americans with Disabilities Act (ADA) guidelines, to the extent applicable. All kiosks shall be the same as or similar to the dimensions and operational specifications shown

on the attached **Exhibit E**. The Director reserves the final right of approval or disapproval of all kiosks prior to installation. Further, the Aviation Department retains the right, in its sole discretion, throughout the term of the Agreement, to require Concessionaire to replace any kiosks that do not meet the Aviation Department's standards in terms of appearance, function, and/or condition.

(a) All kiosks shall be equipped to accept major credit cards. All kiosks shall be equipped to record sales data to permit verification of reports required to be provided by Concessionaire to the City. Prices for products and services offered for sale shall be clearly posted. Any price increases for products offered for sale must be approved in advance by the Aviation Director.

(b) Kiosks must be kept in good working order and shall be serviced at intervals that guarantee the machine functions properly.

(c) The location designated for the six (6) initial kiosks in this agreement has an existing electrical outlet. The Concessionaire may obtain without charge a supply of electricity, where applicable, for operation of its kiosks, provided that existing electrical outlets are adequate for this purpose. In the event that new areas are designated or existing electrical outlets are inadequate, electrical hook-ups and all associated costs to establish the new electrical service at the outlet (except for the cost of providing electricity) will be the sole responsibility of the Concessionaire.

(d) All kiosk enclosures or casings shall be of a material and color that is approved by the Aviation Department. The enclosures shall be sturdy, in both material and as an outside frame to the designated machines.

(e) All kiosk displays are to be approved in advance by the Aviation Department. The kiosks shall be branded "Fuel-Rod" and the products dispensed shall be branded "Fuel-Rod". The charging equipment sold shall not have any sound producing device as part of the normal operation thereof. No other corporate logos or brand names are allowed. Any changes to approved brand names and/or logos must be approved in advance by the Aviation Department.

(f) Kiosk signage and/or visual displays must adhere to the graphic standards of the Aviation Department and indicate the following information: (i) simple instructions to guide customers through the purchase process in multiple languages; at a minimum, the kiosks should provide instructions in English and Spanish; and (ii) Concessionaire's customer service contact information, including toll free telephone numbers and hours of service. Concessionaire must provide 24-hour customer service assistance through a toll-free telephone number that is posted on all kiosks. Concessionaire must provide instructions to customers for refunds for defective merchandise and/or kiosk failure to dispense merchandise.

Section 8.06 OPERATIONAL REQUIREMENTS. Servicing of kiosks shall include, but not be limited to:

(a) Kiosks shall be serviced and filled at intervals which guarantee the machines are full.

(b) Kiosks must be kept in good working order and shall be serviced at intervals to guarantee the machines function properly, and maintained in new or like-new condition. No deliveries of any items shall be made by any persons or entities directly to the Premises without the prior written authorization of the Director and, if given by the Director, the Director shall have the right to revoke any such authorization at any time and for any reason. Armored carrier deliveries must be made in accordance with Airport Rules and Regulations and applicable TSA requirements.

(c) General Cleaning: Concessionaire will, at its own expense, provide all cleaning, repair, and maintenance service for its kiosks. The Concessionaire shall keep the machine, floor area immediately under and around the machine, and the wall behind the machine, in a clean and sanitary condition. Concessionaire shall keep each enclosure, every side including the top of the enclosure, in a clean and sanitary condition, free of dust, dirt, and grime. Kiosks shall be cleaned every time a machine is restocked.

(d) At all times, the Concessionaire must employ a sufficient number of personnel necessary to ensure prompt, courteous, and efficient service while ensuring prompt service will be rendered to travelers using the Airport. Employees must be clean, neat in

appearance, uniformly attired, (with appropriate identification badge displaying no less than Concessionaire and employee name), and courteous at all times.

(e) The City maintains the right to monitor and enforce quality standards for its concession operators. Areas for review will include, but not be limited to, cleanliness, maintenance, repair of equipment, casings or enclosures, quality of products, demeanor of employees, pricing, and overall responsiveness.

ARTICLE IX. PUBLIC AREAS

Section 9.01 OPERATION AND MAINTENANCE OF PUBLIC AREAS. The manner in which all interior and exterior Public Areas of the Terminals and/or the Airport are operated and maintained, and the expenditures therefor, shall be determined at the City's sole and absolute discretion. The use of such interior and exterior Public Areas shall be subject to reasonable and non-discriminatory rules and regulations as the City may make from time to time.

Section 9.02 USE OF PUBLIC AREAS. (a) Concessionaire shall have as appurtenant to the Premises the right to the non-exclusive use in common with others all Public Areas in the Terminals as designated by the Director from time to time, and such reasonable access, during Concessionaire's normal operating hours, to the Premises. Such appurtenant rights shall be subject to such reasonable rules, regulations, fees and security directives from time to time established by the City by suitable notice. The City shall have the right, but not the obligation, from time to time, to modify the Public Areas, remove portions of the Public Areas from common use, to permit entertainment events, advertising displays, educational displays and other displays in the Public Areas.

(b) Concessionaire and its employees shall not park their cars or any other vehicles in the parking facilities except in the areas specifically designated by the Director. There is no free parking at the Airport for Concessionaire or any of Concessionaire's employees, contractors or customers. Concessionaire and its agents, employees, contractors or subcontractors shall comply with the City's rules and regulations with respect to parking and vehicular traffic as the same may be amended or modified from time to time and will be subject to any enforcement action (including

towing) pursued by the City's airport police without any notice thereof. The City may at any time close any Public Areas to make repairs or changes, to prevent the acquisition of public rights in such area, to use areas for attendant or valet parking, and may do such other acts in and to the Public Areas as in its judgment may be desirable.

ARTICLE X. MAINTENANCE AND REPAIRS

Section 10.01 CITY'S MAINTENANCE AND REPAIRS The City shall keep and maintain the Terminal properties, which are not part of the Premises, structural elements and structural foundation and the exterior surface of the exterior walls of the building in which the Premises is located, the Public Areas of the Terminals adjacent to the Premises in good repair, except that the City shall not be required to undertake any maintenance or repair required or occasioned by any act, negligent act or omission to act of Concessionaire, its agent, employees, licensees, contractors or subcontractors or caused by any alteration, addition, construction or improvement by Concessionaire, its agents, employees, licensees, contractors or subcontractors. Such maintenance of the Terminals required by the City herein shall be maintained in a condition which the City determines for the proper operation thereof, determined in the City's sole discretion. The City shall not be called upon or required to make any other improvements or repairs of any kind upon the Premises and appurtenances, except as specifically required under this Agreement. In no event shall the City be liable for any damages, whether consequential damages or otherwise or lost profits claimed to be caused by any failure of maintenance or repair by the City and nothing contained in this **Section 10.01** shall limit the City's right to reimbursement from Concessionaire for maintenance costs, repair costs and replacement costs confirmed elsewhere in this Agreement.

Section 10.02 CONCESSIONAIRE'S MAINTENANCE AND REPAIRS. Except as provided in **Section 10.01**, Concessionaire, at its sole cost and expense, shall keep and maintain in a first-class appearance, reasonable wear and tear and damage by fire and other casualty excepted, and in a safe, clean, neat, sanitary and lawful order, good condition and repair (including replacement of parts and equipment), the Premises immediately adjacent to Concessionaire's kiosks.

Section 10.03 RIGHTS OF THE CITY. If at any time Concessionaire shall fail to comply

with any of its obligations under **Section 10.02** hereof, the City reserves the right to perform and complete such maintenance, repairs, replacements or alterations after reasonable notice to Concessionaire of its default thereunder and Concessionaire's failure to timely cure the same, and charge back to Concessionaire the full cost thereof for such work performed on behalf of Concessionaire. The City, with prior reasonable notice to Concessionaire (if such notice is possible and does not interfere or limit City's exercise of its governmental functions or powers), may make inspections as often as it considers necessary, to determine the proper maintenance of the Premises by Concessionaire. Further, the City reserves the right to interrupt, temporarily, all utility services provided by the City when necessary to make repairs, alterations, replacements or improvements in such systems. The City shall not have any responsibility or liability to Concessionaire (including consequential damages and lost profits) for failure to supply utilities or, when prevented from doing so by laws, orders or regulations of any federal, state or local agency as a result of strikes, accidents, force majeure or by any other cause whatsoever beyond the City's control. The City shall provide Concessionaire with as much advance notice as reasonably possible and under the circumstances shall use reasonable efforts to avoid interrupting Concessionaire's business operations except as deemed necessary by the Director.

ARTICLE XI. INSURANCE

Section 11.01 Prior to the commencement of any work under this Agreement, Concessionaire shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Aviation Department, which shall be clearly labeled *"Tricopian d/b/a Fuel-Rod Concession Agreement"* in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this

requirement.

Section 11.02 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

Section 11.03 A Concessionaire's financial integrity is of interest to the City; therefore, subject to Concessionaire's right to maintain reasonable deductibles in such amounts as are approved by the City, Concessionaire shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Concessionaire's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
5. Property Insurance: For physical damage to the property of LESSEE, including improvements and betterment to the Leased Premises	Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of Concessionaire's property

Section 11.04 Concessionaire agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Concessionaire herein, and provide a certificate of insurance and endorsement that names the Concessionaire and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Concessionaire. Concessionaire shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

Section 11.05 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Concessionaire shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Concessionaire shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Aviation Department
P.O. Box 839966
San Antonio, Texas 78283-3966

Section 11.06 Concessionaire agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

Section 11.07 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Concessionaire shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Concessionaire's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

Section 11.08 In addition to any other remedies the City may have upon Concessionaire's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Concessionaire to stop work hereunder, and/or withhold any payment(s) which become due to Concessionaire hereunder until Concessionaire demonstrates compliance with the requirements hereof.

Section 11.09 Nothing herein contained shall be construed as limiting in any way the extent to which Concessionaire may be held responsible for payments of damages to persons or property resulting from Concessionaire's or its subcontractors' performance of the work covered under this Agreement.

Section 11.10 It is agreed that Concessionaire's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

Section 11.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or

on behalf of the City shall be limited to insurance coverage provided..

Section 11.12 Concessionaire and any Subcontractors are responsible for all damage to their own equipment and/or property.

ARTICLE XII. INDEMNITY

Section 12.01 INDEMNITY. CONCESSIONAIRE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages (including, but not limited to, punitive, exemplary and consequential damages), losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, intellectual property infringement, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONCESSIONAIRE'S activities under this Agreement, including any acts or omissions of CONCESSIONAIRE, any agent, officer, director, representative, employee, consultant or subcontractor of CONCESSIONAIRE, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONCESSIONAIRE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

CONCESSIONAIRE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONCESSIONAIRE known to CONCESSIONAIRE related to or arising out of CONCESSIONAIRE's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONCESSIONAIRE's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONCESSIONAIRE of any of its obligations under this paragraph.

Section 12.02 INJURY CAUSED BY THIRD PARTIES. Concessionaire covenants and agrees that the City (including its agents, employees, officers, directors, elected officials, designated management representatives and shareholders) shall not be responsible or liable to Concessionaire, or any entity or person claiming by, through or under Concessionaire, for any injury, death or damage to persons or property resulting from any latent defect in the Premises, the Terminals, the Airport and appurtenant areas; or from any acts or omissions of entities, persons, concessionaires or other occupants occupying adjoining premises in the Terminals or any other part of the Airport or the agents, servants, employees, contractors or invitees of such entities, persons, concessionaires or occupants; or from fire, electricity, water, snow or leaks from any part of the Terminals or Terminal systems, including sprinkler systems; or from any other cause of whatever nature, unless caused by or due to the direct and sole negligence or direct and sole misconduct of the City, its agents and employees.

ARTICLE XIII. UTILITIES

(a) The City shall provide access to a continuous supply, in commercially reasonable and normal amounts (as determined by the City), of electric, heat, air conditioning, and if applicable, gas, domestic cold water, high temperature hot water and sewage services to the Premises for use by Concessionaire provided by utility systems, connections and related equipment existing as of the Premises delivery date but shall have no obligation to provide telephone or data communication services to the Premises.

(b) In no event shall the City be liable for damages, loss of business, loss of profits, consequential damages, or otherwise for any interruption, reduction, disruption, curtailment or failure in the

supply, quality or character of electricity, services from a central utility plant or any other utility or other service, or if either the quantity, quality or character thereof supplied to or by the City is changed or is no longer available for Concessionaire's requirements, nor shall any such interruption, reduction, disruption, curtailment, failure or change in quantity, quality or character constitute or be deemed to constitute actual or constructive eviction of Concessionaire, or excuse or relieve Concessionaire from its obligations hereunder, including but not limited to the payment of Rental or all other sums, damages, fees, costs and expenses payable under this Agreement. Any obligation of the City to furnish light, power and services from a central utility plant shall be conditioned upon the availability of adequate energy sources. The City shall have the right to reduce heating, cooling and lighting within the Premises and the Public Areas as required by any mandatory or voluntary fuel or energy saving allocation, or similar statute, regulation, order or program. Notwithstanding anything to the contrary contained in this **Article XIII**, if any utility to the Premises is supplied by or through the City and, due to the sole negligence of the City, such utility to the Premises is interrupted which forces Concessionaire to close its business within the Premises for more than two (2) complete and consecutive days, then Percentage Rent shall abate for the period commencing on the third day after Concessionaire is forced to close its business within the Premises and shall continue until the earlier of: (i) the date such utility is restored to the Premises; or (ii) the date Concessionaire reopens its business in the Premises.

ARTICLE XIV. SUBORDINATION AND TIME OF EMERGENCY

Section 14.01 SUBORDINATION. This Agreement shall be subordinate to the provisions of any existing or future agreement between the City and the United States of America relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States Government be to take any of the property under lease or substantially alter or destroy the commercial value of the leasehold interest granted herein, the City shall not be held liable therefor, but in such event Concessionaire may cancel this Agreement upon ten (10) days' written notice to the City. Notwithstanding the foregoing, however, the City agrees that, in the event the City becomes aware of any such proposed or pending agreement or taking, the City shall utilize the City's best

efforts to (i) give the maximum possible notice thereof to Concessionaire, and (ii) cooperate with Concessionaire to mitigate the impact of such agreement or taking or other government action upon Concessionaire, including but not limited to reasonably assisting Concessionaire in securing alternate premises, and minimizing any disruption of or interference with Concessionaire's business.

Section 14.02 TIME OF EMERGENCY. During time of war or national emergency, the City shall have the right to lease the landing area or any part thereof to the United States for government use, and, if such lease is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended.

ARTICLE XV. ASSIGNMENT AND SUBLETTING

(a) Concessionaire shall not transfer or assign this Agreement or Concessionaire's interest in or to the Premises or any part thereof without having first obtained the prior written consent of the City which may be given only by or pursuant to an ordinance enacted by the City Council of the City of San Antonio, Texas; provided, however, the transfer of Concessionaire's securities in connection with Concessionaire becoming a publicly held company or issuing securities in connection with an additional public offering of securities shall not constitute a transfer or assignment of this Agreement. The public trading of Concessionaire's securities on a nationally recognized exchange or on the NASDAQ market shall not constitute or be considered to result in any such transfer or assignment of this Agreement. Notwithstanding the foregoing, and for so long as any pledge or collateral assignment of Concessionaire's interest in the Agreement shall be by instrument substantially in such form as shall have previously been approved by the City Council, the consent of the City to such pledge or collateral assignment may be given by the City acting by and through the Director. Each transfer, assignment or subletting to which there has been consent shall be by instrument in writing, in form satisfactory to the City, and shall be executed by the transferee, assignee or subconcessionaire who shall agree in writing for the benefit of the City to be bound by and to perform the terms, covenants and conditions of this Agreement. Four executed copies of such written instrument shall be delivered to the City. Failure to first obtain in writing the City's consent, or failure to comply with the provisions herein contained, shall operate to prevent any such transfer, assignment or subletting from

becoming effective. The receipt by the City of rent from an assignee, subtenant or occupant of the Premises shall not be deemed a waiver of the covenant in this Agreement against assignment and subletting or an acceptance of the assignee, subtenant or occupant as a tenant or a release of the Concessionaire from further observance or performance by Concessionaire of the covenants contained in this Agreement. No provision of this Agreement shall be deemed to have been waived by the City unless such waiver be in writing, signed by the Director.

(b) Notwithstanding the foregoing provisions of this **Article XV**, Concessionaire shall have the right to transfer or assign this Agreement, with the Director's consent, such consent not to be unreasonably withheld, to:

i. a subsidiary of Concessionaire or its parent corporation or to an entity that is an affiliate of Concessionaire or its parent corporation;

ii. any corporation with which Concessionaire shall merge, reorganize or consolidate; or

iii. any corporation acquiring all or substantially all of the assets of Concessionaire or which may succeed to a controlling interest in the business of Concessionaire; provided that in the case of any and each such transfer or assignment under clauses (ii) and (iii) above which is permitted hereunder, the City shall have the discretionary right to withhold its consent unless;

1) such transferee or assignee shall have a net worth equal to or greater than Concessionaire's (or its guarantor, if any) as of the effective date of any proposed transfer or assignment;

2) such transferee or assignee shall have proven airport concession operating experience as a prime concessionaire and the ability to efficiently and effectively operate the business in the Premises consistent with at least as high a standard as then exists in the Premises;

3) the business conducted in the Premises by such transferee or assignee shall be conducted under the same use and under a trade name permitted to be used by Concessionaire hereunder;

4) Concessionaire shall not be in default after the applicable notice and cure periods under any of the terms and provisions hereof;

5) the use of the Premises by such Concessionaire shall not violate any agreements affecting the Premises, the City or other tenants or occupants in the Airport and shall not disrupt the concession mix within the Terminals as determined in the sole and absolute discretion of the City;
6) if Concessionaire is a certified DBE or if Concessionaire's certified DBE participant is a member/partner of a limited liability company/general partnership or joint venturer of a joint venture with Concessionaire, any such transfer or assignment of this Agreement shall not effect, modify or otherwise jeopardize the required DBE participation interest under this Agreement;
7) except as may otherwise be prohibited under federal securities laws, notice of any proposed transfer or assignment shall be given to the City at least thirty (30) days prior to its proposed effective date, and there shall be delivered to the City instruments evidencing such proposed transfer or assignment and the agreement of such transferee or assignee to assume and be bound by all of the terms, conditions and covenants hereof, all in form acceptable to the City; and
8) Concessionaire and its guarantor, if any, shall continue to remain fully liable for the payment of all sums due and the performance of all the terms and conditions hereof.

(c) Concessionaire shall not sublet the Premises or any part thereof without having first obtained the prior written consent of the City which may be given by the City acting by and through the Director. In the event Concessionaire requests permission to sublease, the request shall be submitted to the Director prior to the effective date of the sublease requested and shall be accompanied by a copy of the proposed sublease agreements and of all agreements collateral thereto. The identity of the subconcessionaire, the area or space to be subleased, the rental to be charged, the type of business to be conducted, recent audited financial statements and history and all other information requested by said Director shall be specified. Concessionaire shall not sublease a total of more than 25% of the equipment.

(d) Should the transfer or assignment of this Agreement be approved by the City and to the extent that such transferee or assignee assumes Concessionaire's obligation hereunder, Concessionaire may by virtue of such assignment be released from such obligation to the extent the City approves such release in writing. Should the subletting of the Premises be approved by the City, however, Concessionaire agrees and acknowledges that Concessionaire shall remain fully and primarily liable under this Agreement, notwithstanding any such sublease and that any such subconcessionaire shall be required to attorn to the City under the terms of this Agreement.

ARTICLE XVI. WASTE OR NUISANCE

Concessionaire shall not commit nor permit any of its employees, contractors, subcontractors, licensees, subconcessionaires or agents to injure, deface or otherwise harm the Premises, the Terminals or the Airport, nor commit any waste upon the Premises, the Terminals or the Airport, and shall not place a load upon the floor of the Premises which exceeds the floor load per square foot which such floor was designed to carry. Concessionaire shall not commit nor permit any of its employees, contractors, subcontractors, licensees, subconcessionaires or agents to commit any nuisance or other act or thing which may constitute a menace or which may impact either the City's operation of the Terminals or the Airport or disturb the quiet enjoyment of any other occupant or concessionaire of the Airport. Concessionaire shall not use or permit to be used any medium that might constitute a nuisance, such as loudspeakers, sound amplifiers, tape decks, compact disc players, radios, televisions, or any other sound producing or other device which will carry sound or odors outside the Premises except as may otherwise be approved in advance in writing by the Director and, upon notice from the Director to Concessionaire's business representative at the Premises, Concessionaire shall cause any such noise or odors to cease immediately. Concessionaire shall not allow any use of the Premises or any other portion of the Terminals and/or Airport in a manner which is a source of annoyance, disturbance or embarrassment to the City, or to the other concessionaires and occupants of the Terminals and/or Airport or which is deemed by the City, in its sole discretion, as not in keeping with the character of the Terminals and/or Airport. The Premises shall not be used for any unlawful or immoral purpose or which will invalidate or increase the premiums on any of the City's insurance.

ARTICLE XVII. SOLICITATION OF BUSINESS

Concessionaire shall not give samples, approach customers, distribute handbills or other advertising matter or otherwise solicit business in the parking or other Public Areas or any part of the Terminals or the Airport. In the event Concessionaire violates the foregoing, Concessionaire shall, at Concessionaire's sole cost and expense, be responsible to clean the area of any such materials so distributed by Concessionaire, its agents or employees. Notwithstanding the foregoing, the Director may approve in writing activities, prohibited in this **Article XVII**, to be conducted for a limited period of time.

ARTICLE XVIII. DAMAGE OR DESTRUCTION OF EQUIPMENT

Section 18.01 In the event any of Concessionaire' equipment is destroyed or damaged to the extent that it is unusable, Concessionaire shall have the election to replace or not replace the equipment. Concessionaire shall give the Director written notice of its election within sixty (60) days after the occurrence of such casualty. If the entirety or substantially all of the equipment is damaged or destroyed and Concessionaire elects not to replace the equipment within the sixty (60) day election period, the Director may terminate this Agreement by written notice to Concessionaire given within sixty (60) days following expiration of Concessionaire's election period, whereupon (i) this Agreement shall terminate and Concessionaire shall abandon the Premises and (ii) the insurance proceeds covering the equipment shall be paid to the owner of the equipment as of the date of such damage or destruction (provided, however, Concessionaire shall have the right to retain therefrom its actual costs paid in making improvements to the damaged or destroyed equipment).

Section 18.02 If Concessionaire elects to replace the equipment, Concessionaire shall use its insurance proceeds from the policy covering the destroyed equipment. If the insurance proceeds are not sufficient, Concessionaire agrees to pay the deficiency. Concessionaire agrees that such equipment replacement will be commenced and completed with due diligence.

Section 18.03 Prior to any equipment replacement described above, Concessionaire shall

submit plans and specifications to the Director for his written approval. Such equipment replacement shall be in accordance therewith. Any changes must be approved in writing by the Director.

ARTICLE XIX. NON-DISCRIMINATION

Section 19.01 GENERAL PROHIBITION. As a party to this Agreement, Concessionaire understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. Any discrimination by Concessionaire, its agents or employees on account of race, creed, color, sex, age, disability, religion or national origin, in employment practices or in the use of or admission to the Premises is prohibited. Concessionaire, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, that: (a) no person on the grounds of race, creed, color, sex, age, disability, religion or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; (b) that in the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age disability, religion or national origin shall be excluded from participation, denied the benefits of, or otherwise be subjected to discrimination; and (c) that Concessionaire shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended and/or supplemented.

Section 19.02 AFFIRMATIVE ACTION. To the extent required by law, Concessionaire assures that it will undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, sex, age, disability, religion or national origin be excluded from participating in any employment activities covered in 14 C.F.R. 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 this subpart. Concessionaire assures that it will require that its covered sub-organizations provide assurances to Concessionaire that they will require assurances from their sub-organizations, as required by 14 C.F.R. Part 152, Subpart E, to the same effect. Concessionaire shall comply with the City's Nondiscrimination Clause as set forth in the

Concessionaire Handbook which shall include submittal of Concessionaire's affirmative action plan for equal employment opportunity relating to the conduct of its business in the Premises. If requested by the City, this plan shall be submitted on an annual basis and monitored through the submission of an annual status report reflecting prior year activity. Quarterly affirmative action status reports shall also be provided, if requested by the City.

ARTICLE XX. DEFAULT

Section 20.01 CONCESSIONAIRE'S DEFAULT. (a) Notwithstanding any provision herein to the contrary and irrespective of whether all or any rights conferred upon the City by this **Article XX** are expressly or by implication conferred upon the City elsewhere herein, each of the following shall constitute an the event of default by Concessionaire:

i. Concessionaire shall fail to pay any Rentals or any other charges whatsoever due as provided for in this Agreement and such failure shall continue for a period of ten (10) days after written notice thereof, provided that such notice from the City shall be in lieu of, and not in addition to, any notice of default required by applicable laws;

ii. Concessionaire shall neglect or fail to perform or observe any of the other terms, conditions, or covenants herein contained, and on Concessionaire's part to be performed or in any way observed if such neglect or failure shall continue for a period of thirty (30) days after written notice of such neglect or failure (or if more than 30 days shall be required because of the nature of the default, if Concessionaire shall fail within said 30 days to commence and thereafter diligently proceed to cure such default to completion, provided that in no event shall such cure period extend beyond 60 days or such longer period of time as is approved by the Director in writing and if Concessionaire's cure period is so extended, Concessionaire must, within 5 days after the written extension notice provide a written plan to the Director outlining all steps Concessionaire is taking to cure the default and when the cure shall be completed), provided that such notice from the City shall be in lieu of, and not in addition to, any notice of default required by applicable laws;

iii. Concessionaire shall fail to install its kiosks in accordance within the timetables set forth in this Agreement and such failure is not occasioned by reason of force majeure;

iv. Concessionaire shall fail to operate continuously in the manner and during the hours established by the Director or for the Permitted Use;

v. Concessionaire shall voluntarily discontinue its operations at the Premises for a period of five (5) consecutive days and such failure is not occasioned by reason of force majeure or permitting this Agreement to be taken under any writ of execution or similar writ or order;

vi. Concessionaire shall become insolvent, shall take the benefit of any present or future insolvency statute, shall make a general assignment for the benefit of creditors, shall file a voluntary petition in bankruptcy or a petition or answer seeking a reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any state thereof, or shall consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property;

vii. an Order of Relief shall be entered at the request of Concessionaire or any of its creditors under the federal bankruptcy laws or under any law or statute of the United States or any state thereof and shall not be vacated within 60 days;

viii. a petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against Concessionaire and shall not be dismissed within 90 days after the filing thereof;

ix. by or pursuant to or under the authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the

property of Concessionaire and such possession or control shall continue in effect for a period of 60 days;

x. if applicable, Concessionaire shall become a corporation in dissolution or voluntarily or involuntarily forfeit its corporate charter;

xi. Concessionaire shall fail to carry insurance as required under this Agreement or to comply with any applicable law, rule or regulation concerning security, and such failure continues for forty-eight (48) hours after written notice from the City thereof;

xii. a governmental authority, board, agency or officer with competent jurisdiction terminates or suspends any certificate, license, permit or authority held by Concessionaire without which Concessionaire shall not be lawfully empowered to conduct its business operations in the Premises;

xiii. the rights of Concessionaire hereunder shall be transferred to, pass to, or devolve upon, by operation of law or otherwise, any other person, firm, corporation, or other entity by or in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation or other similar proceedings or occurrences;

xiv. if applicable, the failure of Concessionaire to initially obtain and thereafter maintain continuously throughout the Term, its eligibility and certification required under the federal ACDBE program, its ACDBE status and/or to renew such eligibility and certification as and such failure shall continue for a period of 30 days.

(b) If any condition of Concessionaire's event of default shall occur which shall not be timely cured as provided in **Section 20.01(a)**, in addition to any other rights or remedies the City may have by law or in equity, the City, then, or at any time thereafter, but prior to the removal of such event of default shall have the right, at its election, either to terminate this Agreement by giving at least five (5) days written notice to Concessionaire at which time Concessionaire will then quit and surrender the Premises to the City, but Concessionaire shall remain liable as hereinafter

provided, or, to enter upon and take possession of the Premises (or any part thereof in the name of the whole), without demand or notice, and repossess the same as of the City's former estate, expelling Concessionaire and those claiming under Concessionaire, forcibly if necessary, without prejudice to any remedy for arrears of Rentals or preceding breach of covenant and without any liability to Concessionaire or those claiming under Concessionaire for such repossession, in which event the City shall have the right to enforce all of the City's rights and remedies hereunder including the right to recover all Rentals and other charges payable by Concessionaire hereunder as they become due hereunder. The City's repossession of the Premises shall not be construed as an election to terminate this Agreement nor shall it cause a forfeiture of Rentals or any other charges remaining to be paid during the balance of the Term hereof, unless a written notice of such intention be given to Concessionaire, or unless such termination is decreed by a court of competent jurisdiction. If the City elects to terminate this Agreement, the City shall have the right to recover immediately from Concessionaire all damages permissible in law or at equity.

(c) If the City shall terminate this Agreement or take possession of the Premises by reason of an event of default, Concessionaire and those holding under Concessionaire, shall forthwith remove their goods and effects from the Premises within seven (7) days. If Concessionaire or any such claimant shall fail to effect such removal forthwith, the City may, without liability to Concessionaire or those claiming under Concessionaire, remove such goods and effects and may store the same for the account of Concessionaire or of the owner thereof at any place selected by the City, or, at the City's election, and upon giving fifteen (15) days written notice to Concessionaire of date, time and location of sale, the City may sell the same at public auction or private sale on such terms and conditions as to price, payment and otherwise as the City in its sole discretion may deem advisable. If, in the City's judgment, the cost of removing and storing or the cost of removing and selling any such goods and effects exceeds the value thereof or the probable sale price thereof, as the case may be, the City shall have the right to dispose of such goods in any manner the City may deem advisable. Concessionaire shall be responsible for all costs of removal, storage and sale, and the City shall have the right to reimburse the Airport Revenue Fund from the proceeds of any sale for all such costs paid or incurred by the City. If any surplus sale proceeds remain after such reimbursement, the City may deduct from such surplus any other sums due to the City

hereunder and shall pay over to Concessionaire any remaining balance of such surplus sale proceeds. Any amount paid or expense or liability incurred by the City for the account of Concessionaire may be deemed to be additional rent and the same may, at the option of the City, be added to any Rentals then due or thereafter falling due hereunder.

(d) If the City shall enter into and repossess the Premises for reason of the default of Concessionaire in the performance of any of the terms, covenants or conditions herein contained, then, and in that event, Concessionaire hereby covenants and agrees that Concessionaire will not claim the right to redeem or re-enter the Premises to restore the operation of this Agreement and Concessionaire hereby waives the right to such redemption and re-entrance under any present or future law, and does hereby further, for any party claiming through or under Concessionaire, expressly waive its right, if any, to make payment of any sum or sums of Rentals, or otherwise, of which Concessionaire shall have made default under any of the covenants of this Agreement and to claim any subrogation of the rights of Concessionaire under these presents, or any of the covenants thereof, by reason of such payment.

(e) Anything to the contrary notwithstanding, the City shall not be required to give notice under this **Article XX** more than three (3) times for the same type of default in any consecutive twelve-month period. All rights and remedies of the City herein created or otherwise existing at law are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently and whenever and as often as deemed desirable. If proceedings shall, at any time, be commenced for recovery of possession as aforesaid and compromise or settlement shall be effected either before or after judgment whereby Concessionaire shall be permitted to retain possession of the Premises, then such proceeding shall not constitute a waiver of any condition or agreement contained herein or of any subsequent breach thereof or to this Agreement.

Section 20.02 <u>CITY'S DEFAULT</u>. (a) Each of the following shall constitute an event of default by the City:

i. the permanent abandonment of the Airport by the City;

ii. the issuance by a court of competent jurisdiction of any injunction preventing or restraining the use of the Airport in such a manner as to substantially restrict Concessionaire from conducting business operations within the Premises and the remaining in force of such injunction for at least 60 days;

iii. the default by the City of any of the terms, covenants or conditions of this Agreement to be kept, performed or observed by the City and the failure of the City to remedy such default for a period of 60 days after written notice from Concessionaire of the existence of such default has been received by the City or if more than 60 days shall be required because of the nature of such default, if the City shall fail within said 60 day period to commence and thereafter diligently proceed to cure such default; or

iv. the assumption by the United States government, or any authorized agency thereof, or the operation, control or use of the Airport and its facilities in such a manner as to substantially restrict the Concessionaire from conducting business operations within the Premises hereunder if such restriction shall be continued for a period of 3 consecutive months or more.

(b) If any event of default shall occur which is not cured by the City as provided in **Section 20.02(a)** and notwithstanding any waiver or indulgence granted by Concessionaire with respect to any event of default in any form or instance, Concessionaire's sole right and remedy shall be to declare this Agreement to be terminated upon not less than 30 days prior written notice to the City. If Concessionaire elects to terminate this Agreement due to the City's default, this Agreement shall terminate upon the expiration of such 30 day notice period to the City and Concessionaire shall pay to the City all Rentals and other charges due under this Agreement which shall have accrued prior to the effective date of any such termination. Concessionaire shall not be entitled to any other claims or remedies and Concessionaire hereby waives any such claims, including, without limitation, claims for lost business opportunity, consequential damages, claims for lost profits and all monetary claims for breach of this Agreement under Federal and any state law.

ARTICLE XXI. BANKRUPTCY OR INSOLVENCY

Section 21.01 CONCESSIONAIRE'S INTEREST NOT TRANSFERABLE. Neither Concessionaire's interest in this Agreement, nor any estate hereby created in Concessionaire nor

any interest herein or therein, shall pass to any trustee or receiver or assignee for the benefit of creditors or otherwise by operation of law except as may specifically be provided pursuant to the United States Bankruptcy Code, as amended ("Code").

Section 21.02 ELECTION TO ASSUME AGREEMENT. Even though this is an Agreement of real property in an airport, the parties contractually agree that this Agreement shall be construed to be a lease of commercial real property within the meaning of Section 365 of the Code. If Concessionaire becomes a Debtor under Chapter 7, 11 or 13 of the Code, and the Trustee or Concessionaire, as Debtor-In-Possession, elects to assume this Agreement for the purpose of assignment to a third party or otherwise, such election and assignment, if any, may only be made if all the terms and conditions of the applicable provisions of the Code are satisfied. If the Trustee or Concessionaire, as Debtor-In-Possession, fails to elect to assume or reject this Agreement by the 60th day after the entry of the Order for Relief in a case under Chapter 7, 11 and 13 of the Code, this Agreement shall thereafter be deemed rejected and terminated in accordance with Section 365 of the Code. The Trustee or Concessionaire, as Debtor-In-Possession, shall thereupon immediately surrender possession of the Premises to the City and the City shall have no further obligation to Concessionaire or Trustee hereunder. The acceptance of Rentals by the City after the 60th day shall not be deemed a waiver of the City's rights herein and under Section 365 of the Code, and the City's right to be compensated for damages in such bankruptcy case shall survive.

Section 21.03 OCCUPANCY CHARGES. When, pursuant to the Code, the Trustee or Concessionaire, as Debtor-In-Possession shall be obligated to pay reasonable use and occupancy charges for the use of the Premises or any portion thereof, such charge shall not be less than the Percentage Rent.

ARTICLE XXII. ACCESS BY THE CITY

(a) The City, its agents and designated management representatives shall have the right to access the exterior of Concessionaire's equipment for any reasonable purpose (including inspecting the condition of the Premises) upon reasonable notice to Concessionaire. Concessionaire shall cooperate upon receipt of any such notice and may arrange for its personnel to be available during any such access by the City. The City shall have the further right to make such repairs, alterations, improvements or additions to the Premises as it may deem necessary or desirable,

and shall be allowed to take all material into and upon the Premises that may be required without the same constituting an eviction of Concessionaire in whole or in part, and Percentage Rent and other charges reserved hereunder shall not abate while said repairs, alterations, improvements or additions are being made, by reason of loss or interruption of business of Concessionaire, or otherwise.

(b) If the City exercises the foregoing rights and as a result thereof there is a material adverse effect to Concessionaire's operation of its business to the extent that any of Concessionaire's kiosks cannot be used by customers for two (2) or more complete consecutive days, Concessionaire's obligation to pay Percentage Rent shall be abated proportionately by kiosks not in use during such non-operational periods of time. Concessionaire's payment of Percentage Rent to the City in the full amount required under this Agreement shall immediately recommence on the date once such kiosks are again able to be used by customers.

(c) In exercising such right of entry, the City shall use reasonable efforts not to disrupt Concessionaire's business. The City or its agents and designated management representatives shall have the further right to access the exterior of Concessionaire's equipment without notice at any time in the event of emergency. Finally, the City, during the last twelve (12) months prior to the expiration of the Term, may access Premises for the purpose of exhibiting the same to prospective concessionaires and their representatives.

ARTICLE XXIII. CONCESSIONAIRE'S PROPERTY

Section 23.01 TAXES ON CONCESSIONAIRE'S PERSONAL PROPERTY. Concessionaire shall be responsible for, and agrees to pay prior to delinquency, any and all taxes or other taxes, assessments, levies, fees and other governmental charges and impositions of every kind of nature, regular or special, direct or indirect, presently foreseen or unforeseen or known or unknown, levied or assessed by municipal, county, state, federal or other governmental taxing or assessing authority, upon, against or with respect to (i) Concessionaire's leasehold interest in the Premises, and (ii) the Operating Equipment, inventory and any other personal property of any kind owned by, or placed, installed or located in, within, upon or about the Premises by Concessionaire (collectively, "**Concessionaire's Taxes**"). Concessionaire shall provide the

Director with evidence of Concessionaire's timely payment of such Concessionaire's Taxes upon the Director's request. If at any time any of such Concessionaire's Taxes are not levied and assessed separately and directly to Concessionaire (for example, if the same are levied or assessed to the City, or upon or against, the building containing the Premises and/or the land underlying said building), Concessionaire shall pay to the City Concessionaire's share thereof as reasonably determined and billed by the City.

Section 23.02 LOSS AND DAMAGE. The City shall not be responsible or liable to Concessionaire for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying premises or any part of the premises adjacent to or connected with the Premises or any part of the building of which the Premises are a part, or any other area in the Airport, or for any loss or damage resulting to Concessionaire or its property from bursting, stoppage or leaking of water, gas, sewer or steam pipes, or (without limiting the foregoing) for any damage or loss of property within the Premises from any cause whatsoever. Concessionaire shall give immediate notice to the Director in case of any damage to or destruction of all or any part of, or of accidents occurring within the Premises, or of defects therein or of any damage to or destruction of any inventory, fixtures or equipment within the Premises.

Section 23.03 THE CITY'S LIEN. Concessionaire hereby gives to the City a lien upon all of its property, now, or at any time hereafter placed in or upon the Premises to secure the prompt payment of the charges herein stipulated to be paid for the use of the Premises; all exemptions of such property, or any of it, being hereby waived. In the event that the amount of the Performance Guarantee provided by Concessionaire to the City under **Section 3.08** above shall equal the greater of the Rentals payable by Concessionaire to the City for the current calendar year, then, and in such event, the provisions set forth above shall not be applicable to this Agreement.

ARTICLE XXIV. RULES AND REGULATIONS

Concessionaire agrees to comply with and observe all reasonable rules and regulations established by the City from time to time, with respect to the Airport, the Terminals, the Premises or any related matter. Concessionaire and its employees shall faithfully observe and comply with any

other reasonable rules which the Director may from time to time make after notice to Concessionaire, provided such rules apply to all similarly situated concession operators in the Airport and are reasonably related to the safety, care, appearance, reputation, operation or maintenance of the Terminals or the Airports or the comfort of occupants and others using the Airports. The City shall not have any duty or obligation to enforce such rules or the terms and conditions in any other concession agreement, lease or sublease as against any other concessionaire, lessee or tenant and the City shall not be liable to Concessionaire for violations of the same by other concessionaires, lessees, tenants, subtenants, invitees, their servants, employees, contractors, subcontractors and agents. Concessionaire's failure to keep and observe said rules and regulations shall constitute a breach of the terms hereof in the same manner as if the rules and regulations were contained herein as covenants. Concessionaire shall comply with all laws and Federal Aviation Administration (FAA) guidelines, including the requirements set forth in **Exhibit F** attached hereto and incorporated by reference, FAA Required Contract Provisions. This Agreement may be amended without further consideration for the purpose of satisfying FAA or TSA requirements.

ARTICLE XXV. QUIET ENJOYMENT

CITY'S COVENANT. Subject to the terms and conditions hereof, upon payment by Concessionaire of the Rentals herein provided and other charges payable by Concessionaire hereunder, and upon the observance and performance of all the covenants, terms and conditions on Concessionaire's part to be observed and performed, Concessionaire shall peaceably and quietly hold and enjoy the Premises for the Term hereby demised without hindrance or interruption by the City.

ARTICLE XXVI. MISCELLANEOUS

Section 26.01 WAIVER; ELECTION OF REMEDIES. One or more waivers of any covenant or condition by either party shall not be construed as a waiver of a subsequent breach of the same covenant or condition by the other party, and the consent or approval by the City to or of any act by Concessionaire requiring the City's consent or approval shall not be deemed to render unnecessary the City's consent or approval to or of any subsequent similar act by Concessionaire. No breach by either party of a covenant or condition hereof shall be deemed to have been waived

by the non-breaching party unless such waiver is in writing and signed by a representative of the non-breaching party. The rights and remedies of the City hereunder or in any specific Section, subsection or clause hereof shall be cumulative and in addition to any and all other rights and remedies which the City has or may have elsewhere hereunder or at law or equity, whether or not such Section, subsection or clause expressly so states.

Section 26.02 ENTIRE AGREEMENT. This Agreement supersedes all prior agreements between the parties and sets forth all the covenants, promises, agreements and conditions, and understandings between the City and Concessionaire concerning the Premises, the Terminal and the Airport and there are no actual or implied covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are set forth herein and none thereof shall be used to interpret, construe, supplement or contradict this Agreement. Neither the City nor its designated management representatives, employees, elected officials and/or agents have made any representation or warranty regarding the profitability of the Premises, the enplaned passenger and/or airline volume in the Terminal and/or the Airport or operating airlines in the Terminal and/or the Airport, and Concessionaire has not entered into this Agreement in reliance on any such representations, warranties or financial projections prepared or furnished to Concessionaire by the City or its designated management representatives, employees, elected officials and/or agents. No alteration, amendment, change or addition to this Agreement shall be binding upon the City or Concessionaire unless reduced to writing and signed by each party.

Section 26.03 INTERPRETATION; USE OF PRONOUNS; AUTHORIZATION. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint ventures between the parties hereto, it being understood and agreed that neither the method of computation of Rentals, nor any other provision contained herein, nor any acts of the parties herein, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant. Whenever herein the singular number is used the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. If this Agreement is signed on behalf of a corporation, partnership or other entity, the signer is duly authorized to execute this Agreement on behalf of such corporation, partnership or entity.

Section 26.04 DELAYS; FORCE MAJEURE. In the event either party is delayed in the performance of any obligation required by this Agreement, such performance shall be excused (unless the specific provision otherwise provides) for the period of the delay and performance of any such obligation shall be extended for a period equal to the delay, if and only if the delay is by reason of "force majeure", which as used herein shall mean fire, earthquake, hurricane, flood and a similar act of God constituting a natural disaster, explosion, terrorist action, war, executive order of government or similar causes not within the control of the entity being delayed. However, the time for Concessionaire's performance of any obligation shall not be extended due to any lack of funds, financial or economic problems of either Concessionaire or Concessionaire's architects, contractors, suppliers, agents, consultants and/or employees. If Concessionaire shall claim a delay due to force majeure, Concessionaire must notify the Director in writing for receipt by the City within 15 days of the first occurrence of an event of force majeure. Such notice must specify in reasonable detail the cause or basis for claiming force majeure and the anticipated delay in Concessionaire's performance. In no event shall any delay extend Concessionaire's performance beyond a 75 day period without the specific written approval of the Director. Under no circumstances shall any such condition or delay (unless the specific provision provides for abatement of Rentals), whether such condition or delay is claimed by the City or Concessionaire, excuse or delay Concessionaire's payment of any Rentals and other charges due hereunder. Further, the City's reasonable reduction of heat, light, air conditioning or any other services whatsoever to the Terminal, the Airport or the Premises shall not relieve or excuse Concessionaire from any of its obligations hereunder.

Section 26.05 NOTICES. Notwithstanding the fact that certain descriptions elsewhere in this Agreement of notices required to be given by one party to the other may omit to state that such notices shall be in writing, any notice, demand, request or other instrument which may be or is required to be given hereunder shall be in writing and sent by (i) United States certified mail or registered mail, postage prepaid; (ii) United States express mail; (iii) recognized national air courier (such as Federal Express); (iv) personal delivery; or (v) any other method creating a receipt, waybill or other indication of delivery, and shall be addressed (a) if to the City, at the address as set forth below, or such other address or addresses as the City may designate by written

notice, together with copies thereof to such other parties designated by the City; and, (b) if to Concessionaire, the address set forth below, or such other address or addresses as Concessionaire shall designate by written notice, together with copies thereof to such other parties designated by Concessionaire.

If to the City:
City of San Antonio
Attention: Airport Concessions Manager
9800 Airport Blvd., Suite 2091
San Antonio, TX 78216

If to Concessionaire :
Tricopian, LLC
2683 Via De La Valle
Suite G228
Del Mar, CA 92014

This Article shall apply only to notices required by this Agreement. Service of process must be performed in accordance with applicable law.

Section 26.06 CAPTIONS AND SECTION NUMBERS. The captions, section numbers and article numbers appearing herein are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles hereof nor in any way affect this Agreement.

Section 26.07 RECORDING. Concessionaire shall not record this Agreement or any short form or memorandum hereof.

Section 26.08 FURNISHING OF FINANCIAL STATEMENTS. Concessionaire has provided the City at or prior to the date of this Agreement with financial statements that provided an analysis of its credit condition as an inducement to the City to enter into this Agreement, and Concessionaire hereby represents and warrants that its financial condition and credit rating have not materially changed since the date of those statements and reports. Upon the Director's written request, Concessionaire shall promptly furnish the City, from time to time, but not more frequently than once in any Lease Year, with financial statements reflecting Concessionaire's then current financial condition. The City shall treat such financial statements and information provided to it confidentially, and shall not disclose them except to the City's lenders or otherwise as reasonably

necessary for the operation of the Terminal or the Airport or administration of the City's business or unless disclosure is required by any judicial or administrative order or ruling.

Section 26.09 CONCESSIONAIRE'S WAIVERS IN ACTION FOR POSSESSION. The City and Concessionaire agree that in any action brought by the City to obtain possession of the Premises, the parties desire an expeditious resolution of such litigation. Accordingly, Concessionaire shall not file and hereby waives the right to file any non-compulsory counterclaim in such action. Concessionaire also shall not file and hereby waives the right to file any defense to such action for possession other than the defense that the default alleged by the City did not occur unless Concessionaire would otherwise be precluded from the filing of any such other defense in a separate action.

Section 26.10 ALL AMOUNTS IN U.S. CURRENCY. All amounts mentioned, calculated, or required in this Agreement shall be in U.S. dollars.

Section 26.11 EXECUTION OF AGREEMENT; NO OPTION. The submission of this Agreement to Concessionaire shall be for examination purposes only, and does not and shall not constitute a reservation of an option for Concessionaire to lease, or otherwise create any interest by Concessionaire in the Premises or any other premises in the Terminal or the Airport. Execution of this Agreement by Concessionaire and the return of same to the City shall not be binding upon the City, notwithstanding any time interval, until the City has executed and delivered this Agreement to Concessionaire as authorized by ordinance. Once so executed and delivered by the City as aforesaid, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

Section 26.12 GOVERNING LAW. All obligations of the parties created hereunder are performable in Bexar County, Texas. This Agreement shall be construed under and in accordance with the laws of the State of Texas except where state law shall be preempted by any rules, laws or regulations of the government of the United States of America. If any provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be

invalid or unenforceable, such provision shall be adjusted rather than voided, if possible, in order to achieve the intent of the parties, to the extent possible; in any event, all other provisions hereof shall be deemed valid and enforceable to the full extent.

Section 26.13 SPECIFIC PERFORMANCE OF RIGHTS. Each party shall have the right to obtain specific performance of any and all covenants or obligations of the other party hereunder except to the extent otherwise provided herein for the benefit of the City excusing any such performance by the City, and nothing contained herein shall be construed as or shall have the effect of abridging such right.

Section 26.14 SUCCESSORS. All rights and liabilities herein given to, or imposed upon, the parties hereto shall inure to and be imposed upon the respective heirs, executors, administrators, successors and assigns of the said parties; and if there shall be more than one entity or individual comprising Concessionaire, they shall all be bound jointly and severally by the terms, covenants and agreements herein. No rights, however, shall inure to the benefit of any assignee of Concessionaire unless the assignment to such assignee has been approved in advance by the Director in writing or approved by Ordinance as required by this **Section 26.14** or **Article XV**.

Section 26.15 SURVIVAL OF OBLIGATIONS. All obligations of either party hereunder which cannot be ascertained to have been fully performed prior to the end of the Term or any earlier termination hereof shall survive any such expiration or termination. All of the terms, conditions, covenants, provisions, restrictions or requirements imposed upon Concessionaire hereunder shall be deemed to extend to Concessionaire's agents, employees, officers, directors, partners, guarantors, contractors, licensees, subconcessionaires and subcontractors and Concessionaire shall cause any such persons or entities to comply therewith and include any applicable provisions in any agreements, contracts, subcontracts or the like entered into by Concessionaire with respect to its activities and operations in the Premises, the Terminal and the Airport.

Section 26.16 CERTAIN RULES OF CONSTRUCTION. Time is of the essence in Concessionaire's performance of this Agreement. Notwithstanding the fact that certain references elsewhere in this Agreement to acts required to be performed by Concessionaire hereunder, or to

breaches or defaults of this Agreement by Concessionaire, omit to state that such acts shall be performed at Concessionaire's sole cost and expense, or omit to state that such breaches or defaults by Concessionaire are material, unless the context clearly implies to the contrary, each and every act to be performed or obligation to be fulfilled by Concessionaire pursuant hereto shall be performed or fulfilled at Concessionaire's sole cost and expense, and all breaches or defaults by Concessionaire hereunder shall be deemed material. Concessionaire shall be fully responsible and liable for the observance and compliance by franchisees, sublessees, licensees, and contractors of Concessionaire and with all the terms and conditions of this Agreement, which terms and conditions shall be applicable to franchisees and licensees as fully as if they were the Concessionaire hereunder; and failure by a franchisee or licensee fully to observe and comply with the terms and conditions of this Agreement shall constitute a default by Concessionaire. Nothing contained in the preceding sentence shall constitute consent by the City to any subconcession, subletting or other arrangement. Further, although the printed provisions of this Agreement were drawn by the City, the parties agree that this circumstance alone shall not create any presumption, canon of construction or implication favoring the position of either the City or Concessionaire and the deletion of language from this Agreement prior to its mutual execution shall not be construed to
have any particular meaning or to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse, adverse or opposite of the deleted language.

Section 26.17 <u>CONFIDENTIALITY</u>. Any and all information contained in this Agreement or provided to or by Concessionaire and/or the City by reason of the covenants and conditions hereof, economic or otherwise, shall remain confidential between the City and Concessionaire and shall not be divulged to third parties except as required to be disclosed by law. The City shall be permitted to disclose any and all such information consistent with its policies and procedures as such determination is made by the City in its sole and absolute discretion, and, in addition, the City shall be permitted to divulge the contents of statements and reports derived and received in connection with the provisions of **Article IV** and **Article V** in connection with any contemplated sales, transfers, assignments, encumbrances or financing arrangements of the City's interest in the Airport or the Terminal or in connection with any administrative or judicial proceedings in which the City is involved where the City may be required to divulge such information.

Section 26.18 ATTORNEY FEES. If the City brings any action under this Agreement, and prevails in said action, then the City shall be entitled to recover from Concessionaire its reasonable and actual attorney's fees incurred in the defense or prosecution of such action to the extent and in the manner that the City is awarded any such fees from the court.

Section 26.19 WAIVER OF TRIAL BY JURY. The City and Concessionaire desire and intend that any disputes arising between them with respect to or in connection with this Agreement be subject to expeditious resolution in a court trial without a jury. Therefore, the City and Concessionaire each hereby waive the right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding or other hearing brought by either the City against Concessionaire or Concessionaire against the City or any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship of the City and Concessionaire, Concessionaire's use or occupancy of the Premises or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

Section 26.20 A.D.A. COMPLIANCE. To the extent applicable, Concessionaire agrees that within the Premises Concessionaire shall be fully and solely responsible for compliance with the Americans with Disabilities Act (42 U.S.C. §§ 12101 *et seq.*), and the regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto. Further, Concessionaire agrees to install its Operating Equipment and operate the Premises so that the Premises shall at all times accommodate customers with disabilities.

Section 26.21 SECURITY. (a) Concessionaire shall be fully responsible, at its sole cost, for providing security for the Premises with no right of reimbursement from the City. Notwithstanding the foregoing, Concessionaire shall take such reasonable security precautions with respect to the Premises and its operations and personnel as the City in its discretion may require from time to time.

(b) Concessionaire shall comply with all rules, regulations, statutes, orders, directives or other

mandates of the United States of America or of the State of Texas regarding security requirements or security measures upon the Airport, including, but not limited to, compliance with any badging requirements for all of its personnel employed at the Airport. Concessionaire shall also comply with the mandates of the FAA and/or the TSA for background investigations of its personnel, as such mandates now exist or as they may be changed, amended or replaced with new and different mandates in the future. Concessionaire shall indemnify and hold harmless the City, its elected officials, officers, designated management representatives and employees from any charges, fines or penalties that may be assessed or levied by any department or agency of the United States of America, including the FAA, the TSA or of the State of Texas by reason of Concessionaire's failure to comply with any applicable security provision and/or with any provision or requirement for compliance set forth in this **Section 26.21**.

Section 26.22 LABOR HARMONY AND WAGES. Concessionaire agrees that in the use of the Premises or any work performed in or about the Premises that Concessionaire will employ only labor who can work in harmony with all elements of labor employed at the Airport or as otherwise reasonably required by the Director from time to time. Concessionaire shall pay wages that are not less than the minimum wages required by Federal and State statutes and City ordinances to persons employed in its operations hereunder.

Section 26.23 CROSS DEFAULT. Notwithstanding anything to the contrary contained in this Agreement, an event of default of Concessionaire's obligations under the provisions of any other agreement with the City covering any other concession facilities within the Airport shall constitute a default by Concessionaire under this Agreement, entitling the City to the rights and remedies provided to it under this Agreement and at law.

Section 26.24 CONFLICT OF INTEREST.

(a) Concessionaire acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of

the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

(b) Pursuant to the subsection above, Concessionaire warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Concessionaire further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

Section 26.25 APPROVALS BY THE CITY. Whenever this Agreement calls for approval by the City, such approval shall be evidenced by the prior written approval of the Director and/or the City Manager or her designee; provided, however, that this section shall not apply to construction permits or licenses that must be sought outside the Aviation Department.

[signature page follows]

IN WITNESS WHEREOF, the City and Concessionaire, personally or by their duly authorized agents, have executed this Agreement as of the day and year first above written.

CONCESSIONAIRE:
TRICOPIAN, LLC

By: _____

Printed Name: JOE YEAGLEY

Its: COO

ATTEST:

By: Kendall Cloudt

CITY:
CITY OF SAN ANTONIO,
a Texas home-rule municipality

_____
City Manager

ATTEST:

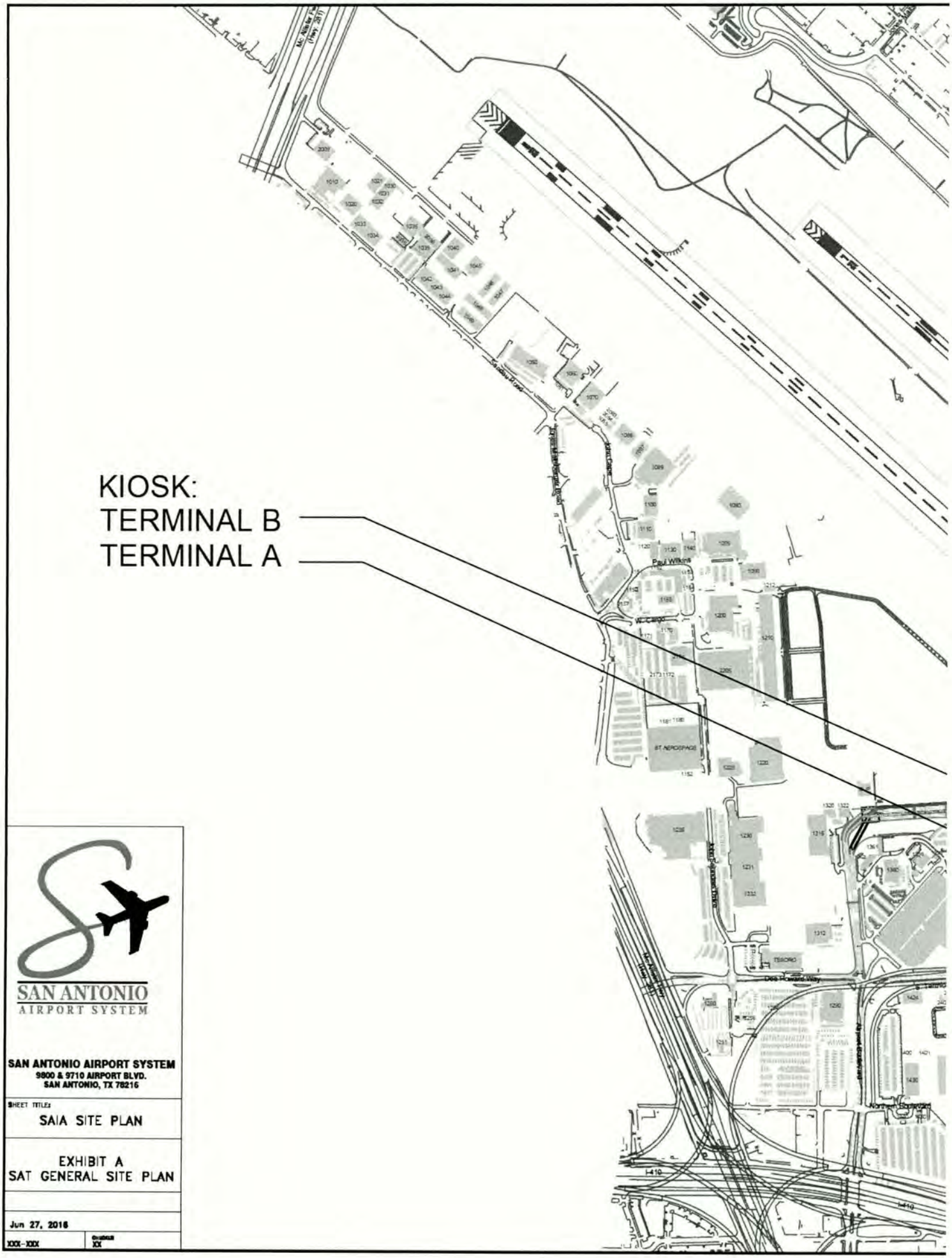
_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A – SAT General Site Plan

See attached map



SAN ANTONIO
AIRPORT SYSTEM

SAN ANTONIO AIRPORT SYSTEM
9800 & 9710 AIRPORT BLVD.
SAN ANTONIO, TX 78216

SHEET TITLE:
SAIA SITE PLAN

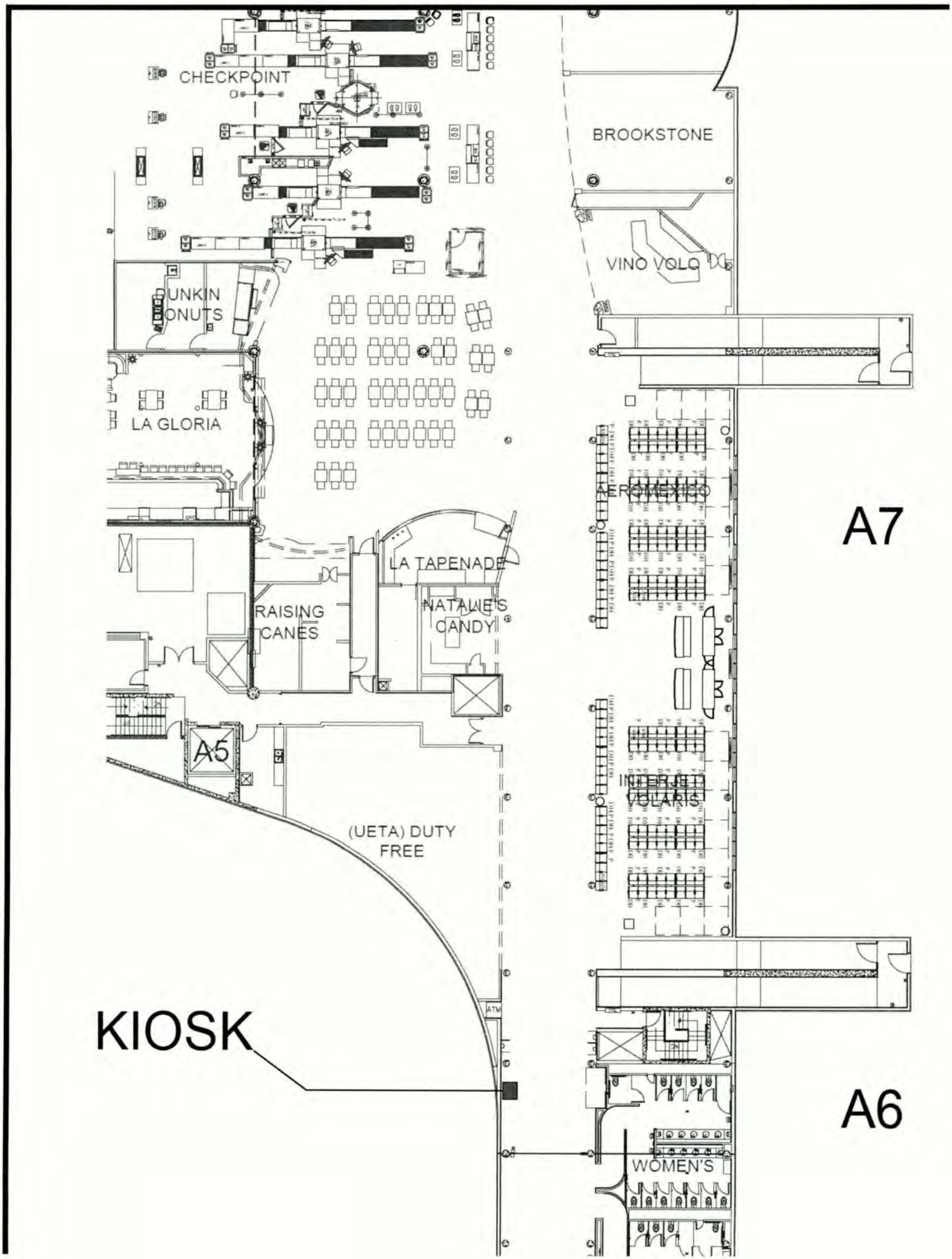
EXHIBIT A
SAT GENERAL SITE PLAN

Jun 27, 2016

XXX-XXX

CHANGE
XX

EXHIBIT B
Premises Floor Plan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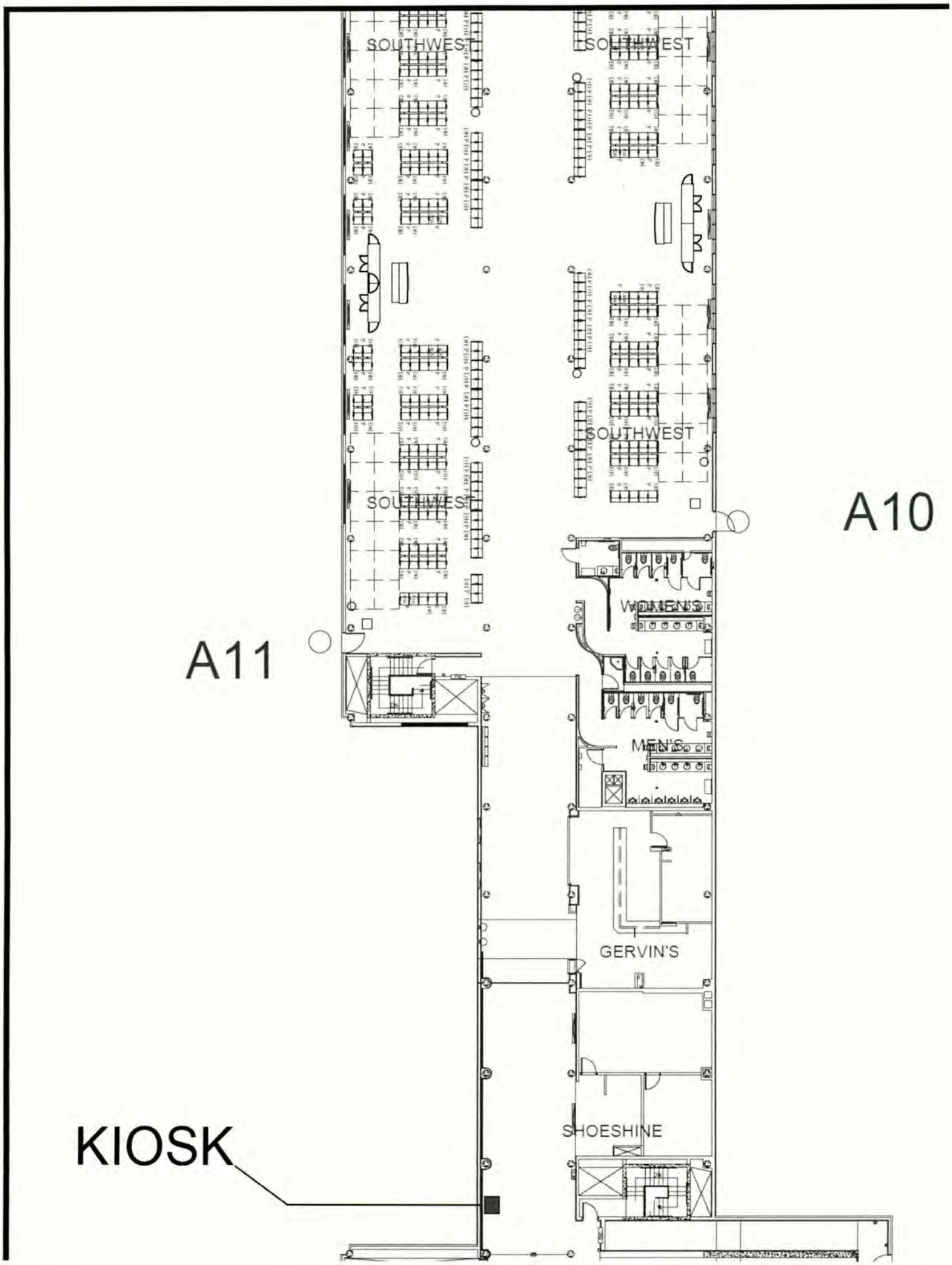
BROOKSTONE
VINO VOLO
DUNKIN DONUTS
LA GLORIA
AEROMEXICO
A7
LA TAPENADE
RAISING CANES
NATALIE'S CANDY
A5
INTERJET VOLARIS
(UETA) DUTY FREE
KIOSK
A6
WOMEN'S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SOUTHWEST
SOUTHWEST
SOUTHWEST
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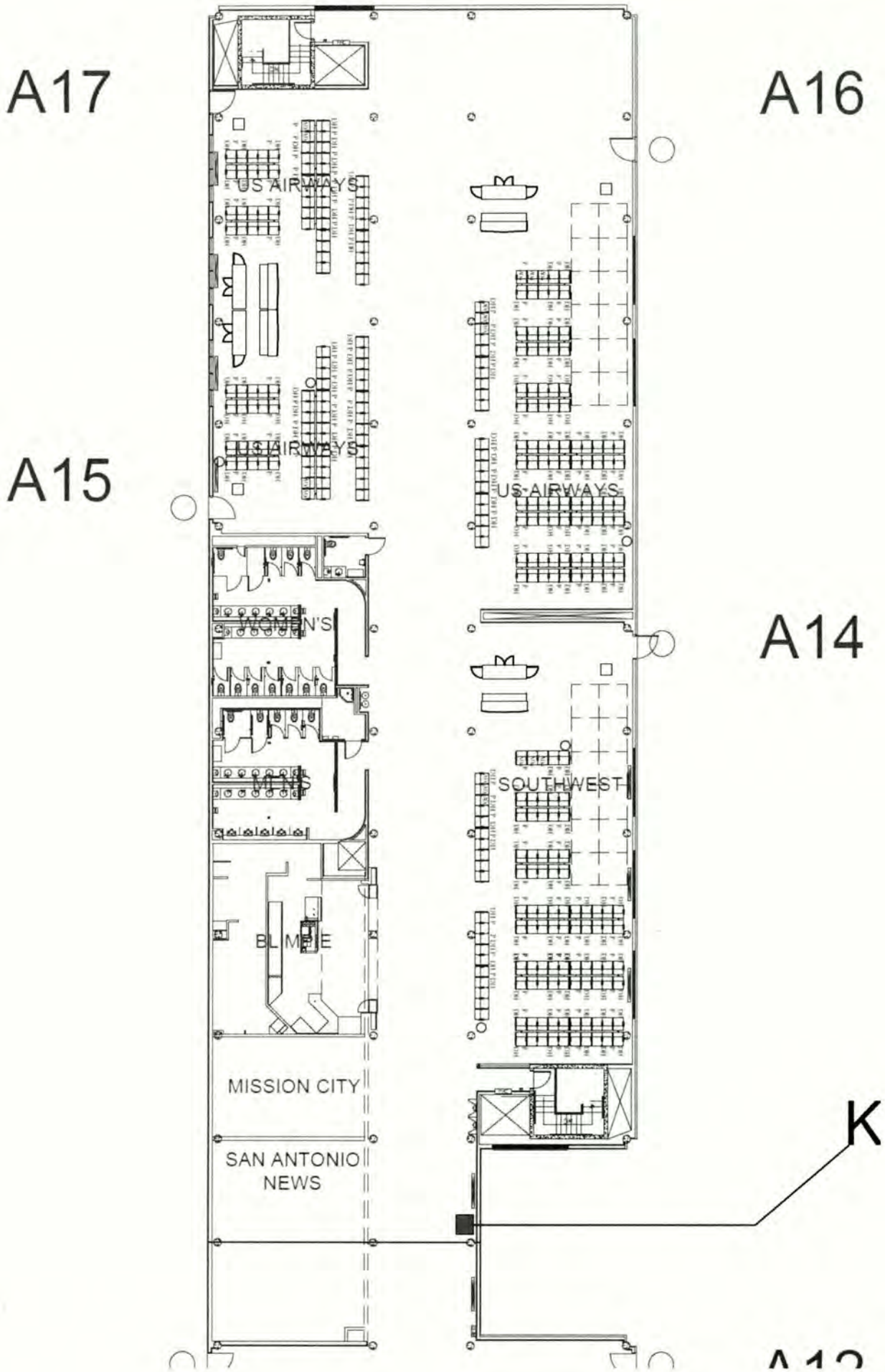
A11
WOMEN'S
MEN'S
GERVIN'S
SHOESHINE
KIOSK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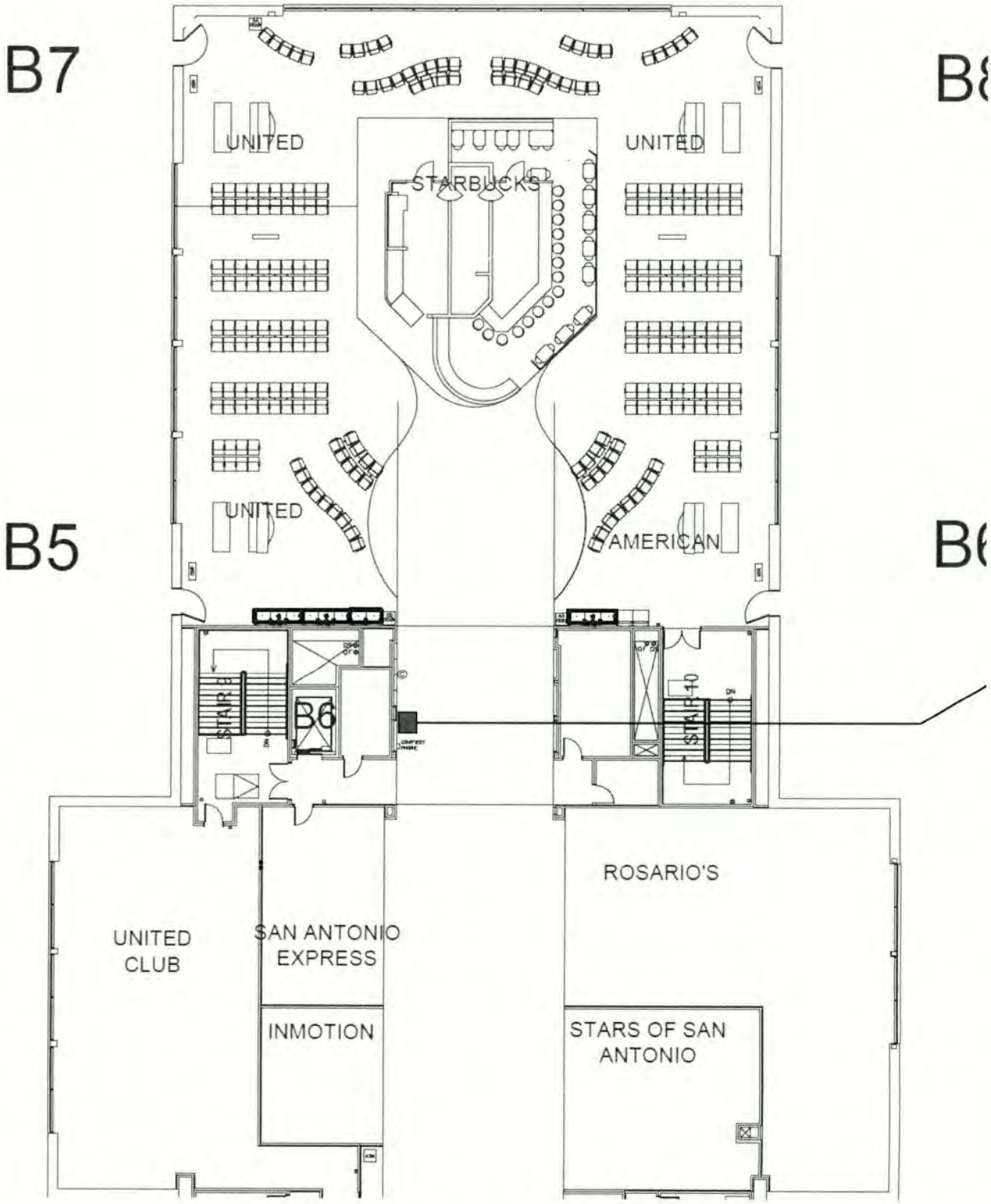
A16
US AIRWAYS
US AIRWAYS
A15
US AIRWAYS
WOMEN'S
A14
MEN'S
SOUTHWEST
BLUE
MISSION CITY
K
SAN ANTONIO
NEWS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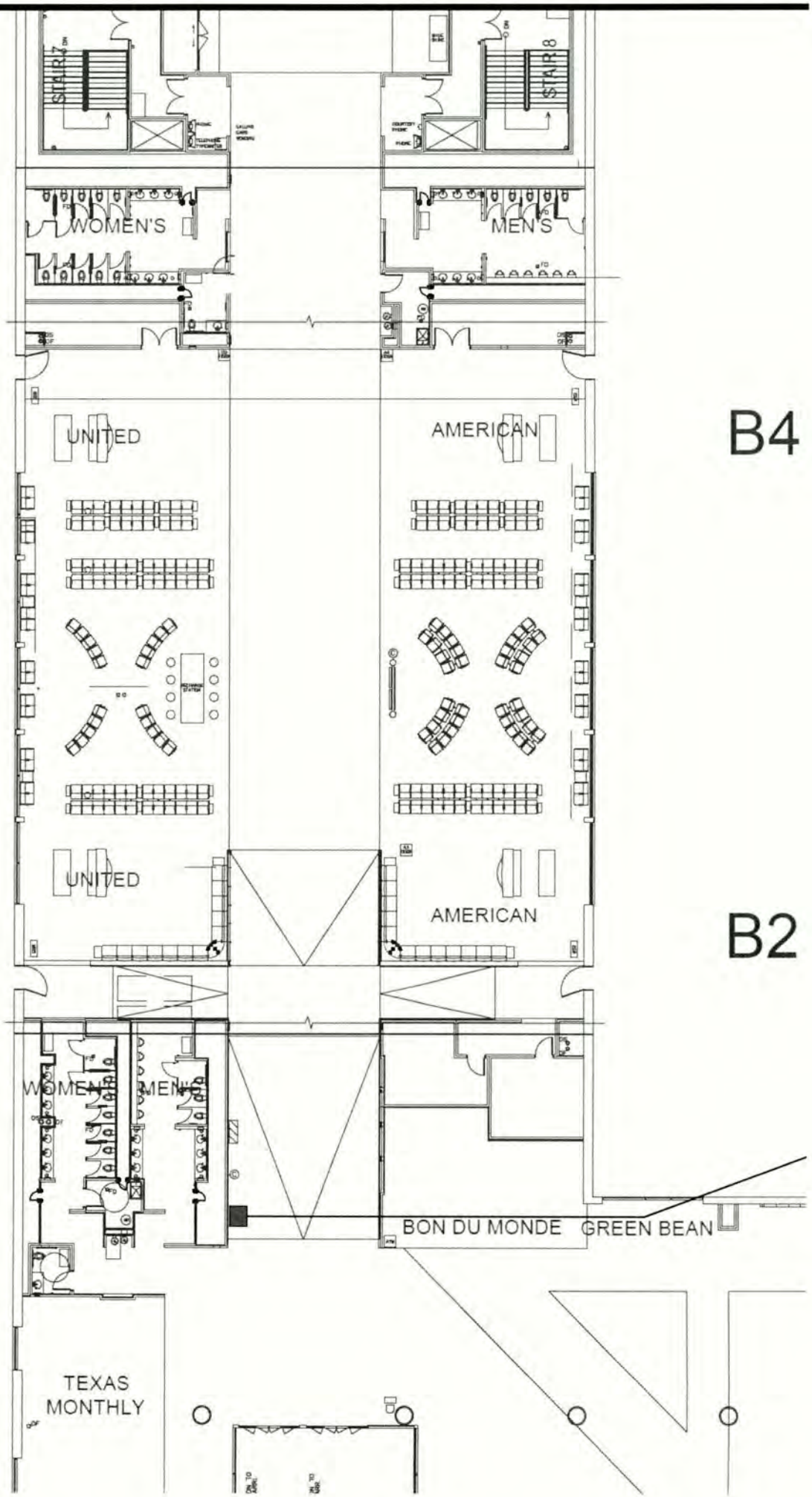
B8
UNITED
UNITED
STARBUCKS
UNITED
B5
AMERICAN
B6
STAIR 3
B6
STAIR 40
ROSARIO'S
UNITED CLUB
SAN ANTONIO EXPRESS
INMOTION
STARS OF SAN ANTONIO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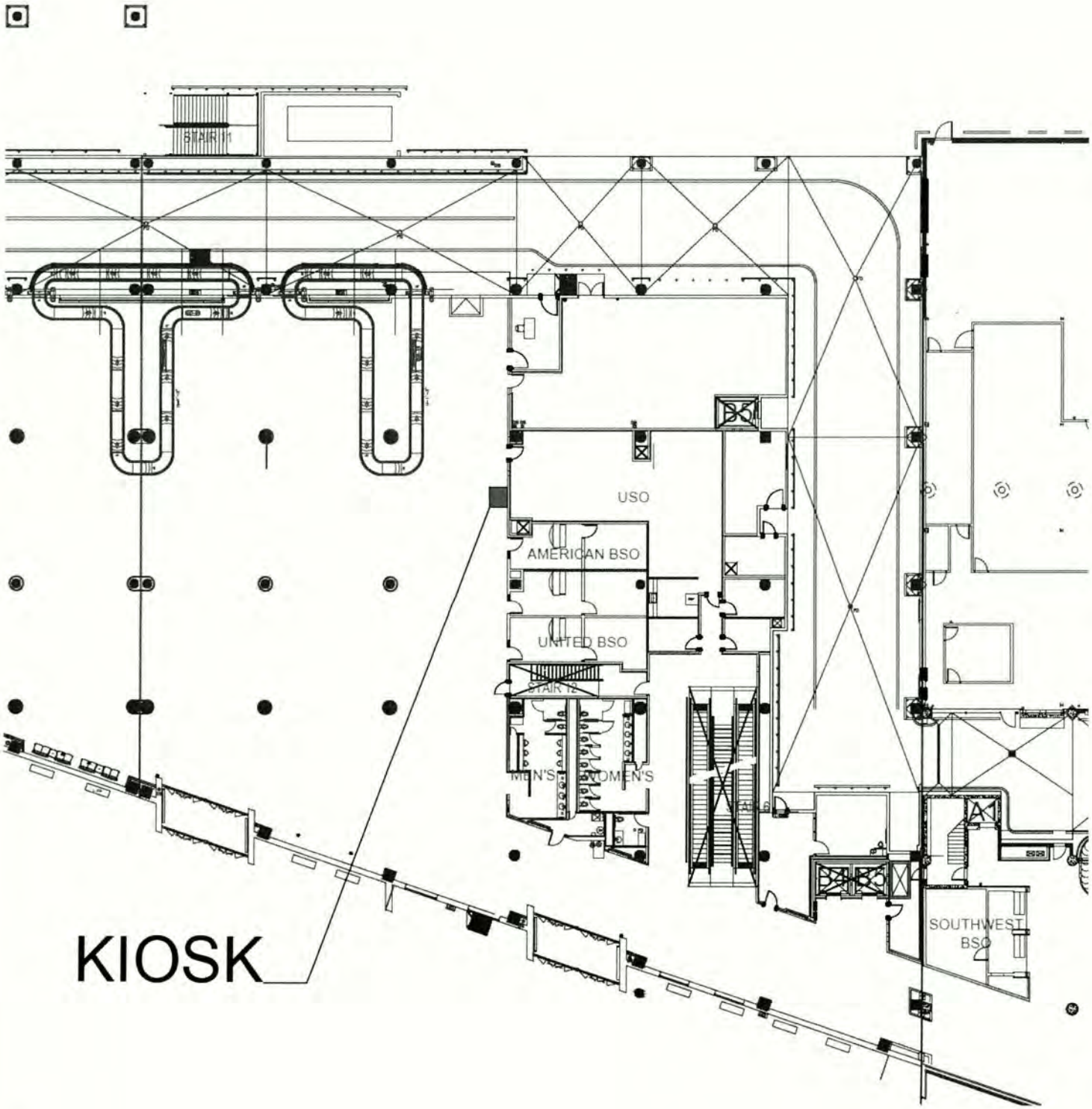
STAIR 8
WOMEN'S
MEN'S
B3
UNITED
AMERICAN
B4
UNITED
AMERICAN
B1
B2
WOMEN'S
MEN'S
BON DU MONDE
GREEN BEAN
TEXAS
MONTHLY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USO
AMERICAN BSO
UNITED BSO
STAIR 12
MEN'S
WOMEN'S
STAIR 6
SOUTHWEST BSO
KIOSK

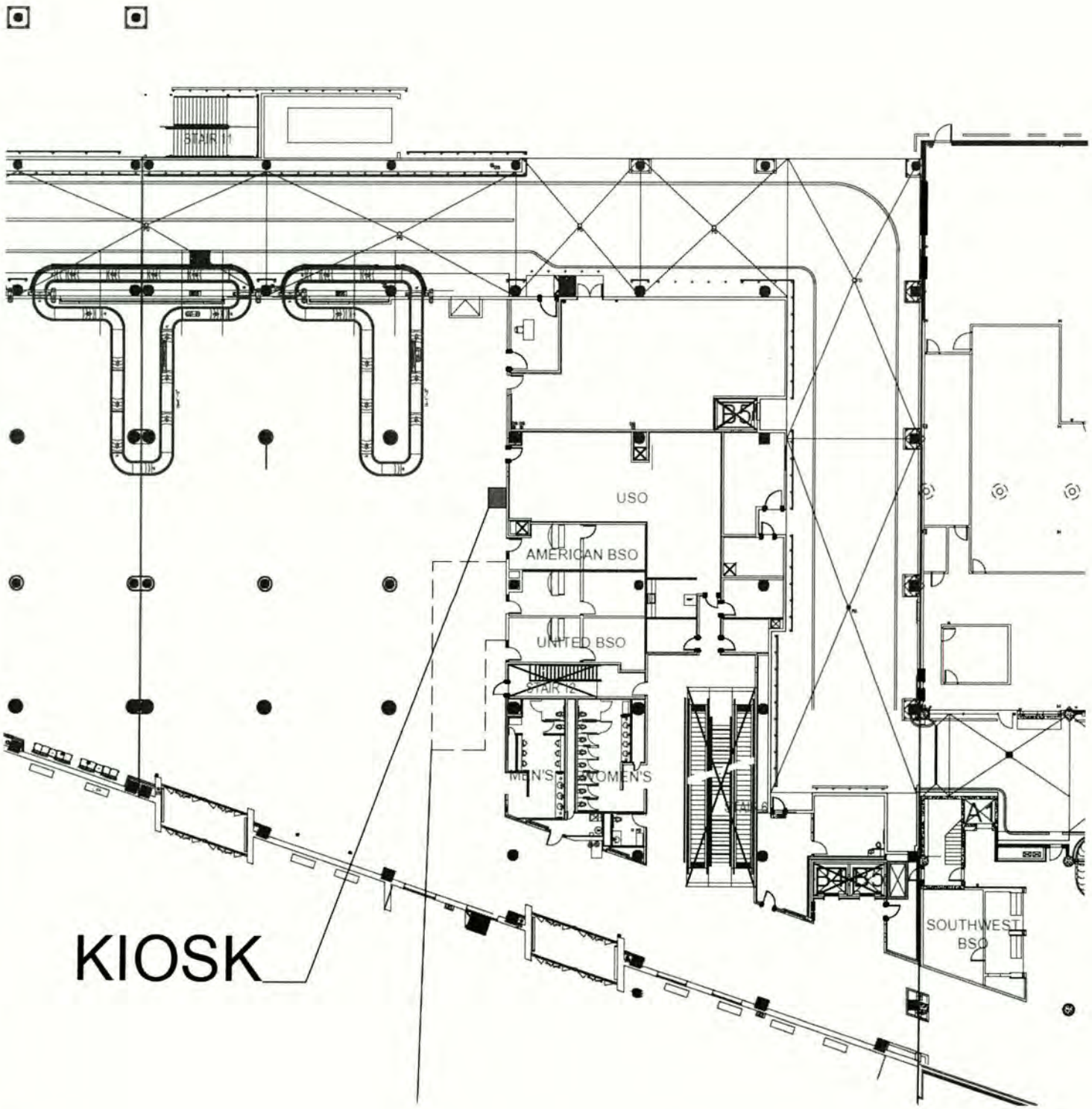

STAIR 11
USO
AMERICAN BSO
UNITED BSO
STAIR 12
MEN'S
WOMEN'S
STAIR 6
SOUTHWEST BSO
KIOSK

EXHIBIT C

City of San Antonio
9800 Airport Blvd.
San Antonio, Texas 78216
ATTN: Aviation Director

Date: _____

IRREVOCABLE STANDBY LETTER OF CREDIT NO._____

To the Addressee:

At the request of_____A_____, we_____B_____, hereby open this IRREVOCABLE STANDBY LETTER OF CREDIT NO._____C_____in your favor up to an aggregate of $_____D_____U.S. Dollars, available by your draft(s) on us at sight.

We warrant to you that all of your drafts under this CLEAN IRREVOCABLE LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION OF YOUR DRAFT(S) drawn on us and presented to us at the office of our Texas Branch, now located at_____E_____,_____E_____on or before the expiration set forth below or future expiration date as indicated below. Our obligation under this Letter of Credit is the individual obligation of the Bank, in no way contingent upon reimbursement with respect thereto, or upon our ability to perfect any lien or security interest.

All drafts must be marked "Drawn Under_____B_____Letter of Credit No._____C_____ dated_____, 200_ ." Partial drawings under this Letter of Credit are permitted.

Drafts must be accompanied by a statement from the City Manager of the City of San Antonio, or his designee, that A_____has not performed certain terms, conditions or covenants contained in Concession Agreement No._____by and between the City of San Antonio and_____A_____.

This CLEAN IRREVOCABLE LETTER OF CREDIT expires at the close of business on_____F_____. 200_. This CLEAN IRREVOCABLE LETTER OF CREDIT shall be automatically extended without amendment for additional periods of one (1) year from the present or each future expiration date unless we have notified you in writing not less than sixty (60) days before such date that we elect not to extend the Letter of Credit for such additional period, such notice to be sent by registered or certified mail to you at the address herein. Upon receipt by you of such notice you may draw on us at sight for the balance remaining in this Letter of Credit within the then applicable expiration date, no statement required.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500.

_____
Bank Officer/Representative

LEGEND:
A-INSERT APPLICANT NAME, I.E. CONCESSIONAIRE NAME.
B-INSERT NAME OF ISSUING BANK.
C-INSERT L/C IDENTIFICATION NUMBER.
D-INSERT DOLLAR VALUE OF INSTRUMENT.
E-INSERT EXACT ADDRESS OF LOCAL BANK BRANCH.
F-INSERT EXPIRATION DATE OF AGREEMENT PLUS SIXTY DAYS.

EXHIBIT D

CONCESSIONAIRE MONTHLY AND ANNUAL STATEMENT CERTIFICATE FORMS

SAN ANTONIO AIRPORT SYSTEM

SAN ANTONIO INTERNATIONAL AIRPORT
MONTHLY CONCESSION CERTIFIED STATEMENT

Month: **Year:**

Concession Name:

D/B/A or Trade Name:

Concession Type:

Lease Number: Space Number: Lease Date

Location Description	# of Units Sold	Total Gross Receipts
Kiosk 1		$0.00
Kiosk 2		$0.00
Kiosk 3		$0.00
Kiosk 4		$0.00
Kiosk 5		$0.00
Kiosk 6		$0.00
Total:	**$0.00**	**$0.00**

	Gross Receipts	Percentage Due	Percentage Rent Due
Gross Receipts	$0.00	12%	$0

MONTHLY PAYMENTS

(A)	Total Gross Receipts	$0.00
(B)	Total Percent Rent @ 12 %	$0.00
(B)	**Total Monthly Percentage Rent Payment Due:**	**$0.00**

I hereby certify to the City of San Antonio that this is true and accurate statement of Gross Receipts and all payments shown above and that each of the foregoing is in accordance with the provisions of the Concession Agreement.

Signature Title Date

THIS MONTHLY STATEMENT IS DUE NO LATER THAN THE 15TH DAY OF EACH MONTH.
SUBMIT TO: ConcessionsSalesReports@sanantonio.gov

SAN ANTONIO AIRPORT SYSTEM

SAN ANTONIO INTERNATIONAL AIRPORT
ANNUAL CONCESSION CERTIFIED STATEMENT

Lease Year

Concession Name:

D/B/A or Trade Name:

Concession Type:

Lease Number Space Number: Lease Date

Month	# of Units Sold						Total ANNUAL Gross Receipts
	Kiosk 1	Kiosk 2	Kiosk 3	Kiosk 4	Kiosk 5	Kiosk 6	
January							
February							
March							
April							
May							
June							
July							
August							
September							
October							
November							
December							
Total:							

Total # of Units Sold	Total Annual Gross Receipts	Percentage Rate	Percentage Rent Due
		12%	

ANNUAL PAYMENTS	
Annual Gross Receipts	
Annual Percentage Rent	
Total Payments Received LYD	
Total Annual Payment Due (if any):	

Please provide an explanation on any variance found by month and please include supporting documents, if available.

I hereby certify to the City of San Antonio that this is true and accurate statement of Gross Receipts and all payments shown above and that each of the foregoing is in accordance with the provisions of the Concession Agreement all statements were prepared in accordance with GAAP.

Signature Title Date

THIS ANNUAL STATEMENT IS DUE NO LATER THAN 90 DAYS AFTER THE EXPIRATION OF EACH LEASE YEAR.

EXHIBIT E-1
Kiosk Equipment Dimensions

EXHIBIT E-1

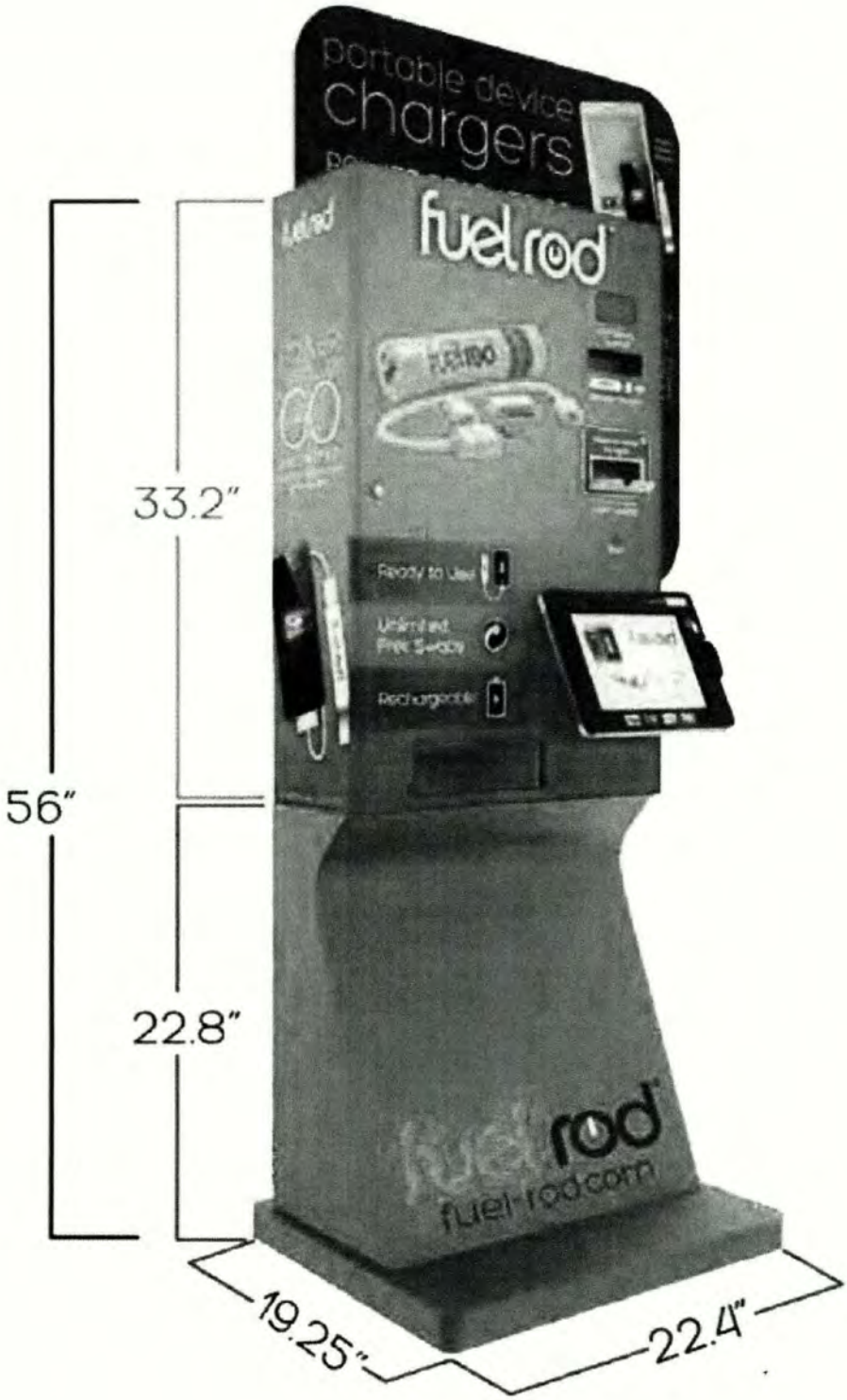
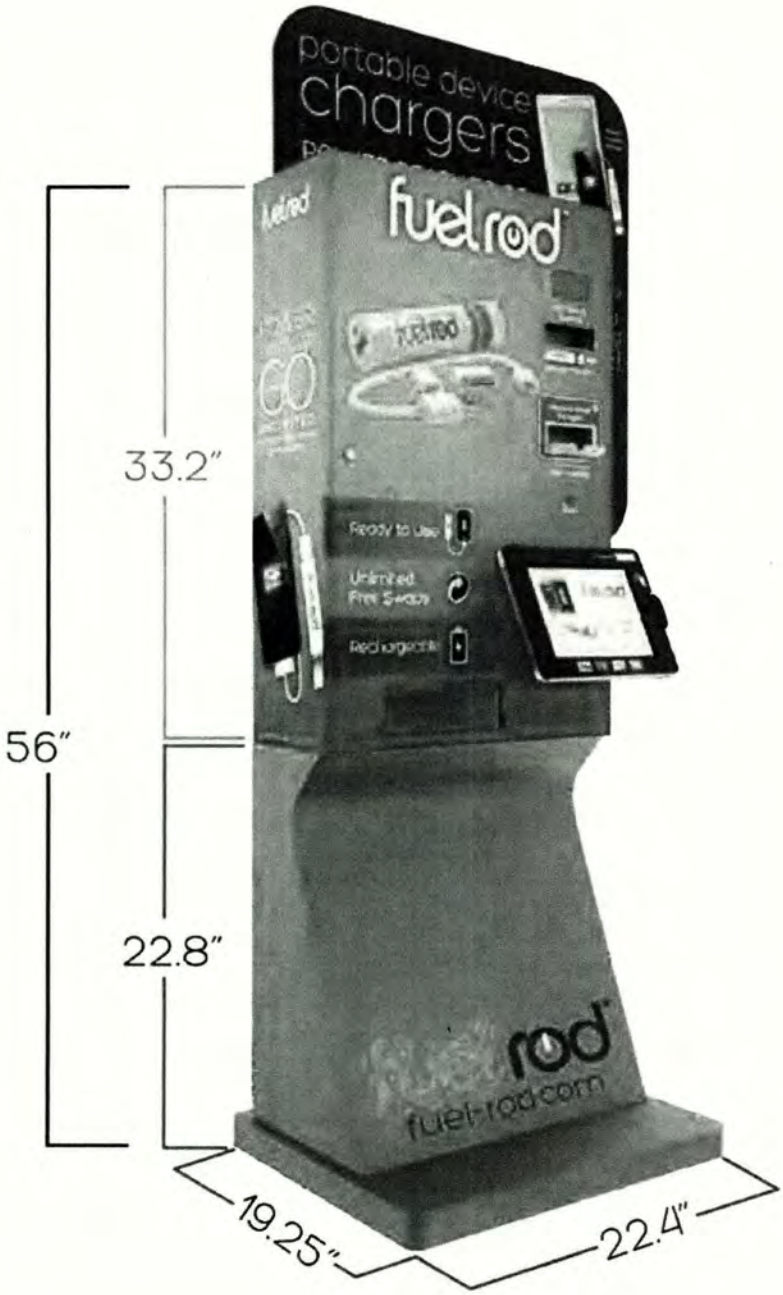

Portable device
Chargers
fuel rod
33.2"
56"
22.8"
fuel rod
fuel-rod.com
19.25"
22.4"

EXHIBIT E-2
Kiosk Equipment Operating Specifications/Design

fuel rod™

SWAPBOX™

Dispense & Exchange Portable Device Chargers



PRODUCT

FuelRod portable charging unit
Low-Cost, High-Performance, Eco-Friendly

- One-for-One Swap

  OR

- Recharge in any USB adapter

PAYMENT METHOD

All Major Credit Cards

NETWORK COMMUNICATION

3G/4G/LTE
WiFi

USER INTERFACE

10" LCD-Touch Screen

DIMENSION

33.2"H x 21.25"W x 9"D (without stand)

WEIGHT

85 lbs loaded (approx.)

INSTALLATION

Stand mount

- Designed for ADA & stability

Wall Mount

- 4 Anchor Bolts
- Dry Wall, Wood, Concrete, etc.
- Avoid Direct Sun Light

POWER

110V-220V; 50Hz/60Hz; 2 Amp.; 25W
3-Prong, 6-ft Power Cord

ENERGY USAGE (ESTIMATE):

15 kWh/Month $20/Year based on .11 cents per kWh

For more information:
info@fuel-rod.com

EXHIBIT F
REQUIRED FEDERAL CONTRACT PROVISIONS

As used in this Exhibit, the terms "contractor" or "Contractor" shall refer to "Concessionaire".

I. GENERAL CIVIL RIGHTS PROVISIONS

The contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractor and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

II. TITLE VI CLAUSES COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes Concessionaires) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may

be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
    a. Withholding payments to the contractor under the contract until the contractor complies; and/or
    b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

III. TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

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

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

- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. §1681 et seq.).

IV. FEDERAL FAIR LABOR STANDARDS ACT

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 C.F.R. Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

V. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 C.F.R. Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 C.F.R. Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.