NHR
05/12/16
Item No. 9

AN ORDINANCE 2016-05-12-0338

AUTHORIZING A LEASE AND CONCESSION AGREEMENT WITH NORTHWEST PETROLEUM, LP FOR A GAS STATION, CONVENIENCE STORE AND FAST FOOD RESTAURANT AT SAN ANTONIO INTERNATIONAL AIRPORT.

* * * * * *

WHEREAS, the City released a Request for Proposals (RFP) in November 2013 to provide development, financing, design, construction, operation, and maintenance of a gas station concession, with convenience store and fast food restaurant, on up to 4.67 acres at the northeast corner of Loop 410 and Airport Blvd at the San Antonio International Airport; and

WHEREAS, one response was received in January 2014, from Northwest Petroleum, LP, which response was reviewed by Aviation staff and a non-City employee subject matter expert, and based on the evaluation criteria established in the RFP, Aviation staff recommends awarding the lease and concession agreement to Northwest Petroleum, LP, for a term of 20 years with two 10 year renewal options; and

WHEREAS, consistent with a motion approved by City Council, the design of this facility will be subject to future City Council approval; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of a twenty year Lease and Concession Agreement with Northwest Petroleum, LP, with two 10 year renewal options, with minimum annual guaranteed concession income of $50,000.00 and $81,889.00 ground rent during the first year of the agreement, are hereby approved, subject to future City Council approval of the design of the facility. The City Manager or her designee is hereby authorized to execute the Agreement, a copy of which is set out in **Attachment I** to this Ordinance.

SECTION 2. Funds received for lease payments by this Ordinance will be deposited into Fund 51001000, Internal Order 233000000006 and General Ledger 4409040 Aviation Ground Rental Non Aviation.

SECTION 3. Funds received for concessionaire payments by this Ordinance will be deposited into Fund 51001000, Internal Order 233000000116 and General Ledger 4405923 Aviation Concession-Services.

SECTION 4. 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.

NHR
05/12/16
Item No. 9

SECTION 5. 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 12th day of May, 2016.

Ivy R. Taylor

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Agenda Item:	**9**
Date:	05/12/2016
Time:	10:01:22 AM
Vote Type:	Motion to Appr w Cond
Description:	An Ordinance authorizing a lease and concession agreement with Northwest Petroleum, LP for a gas station, convenience store and fast food restaurant at the San Antonio International Airport. [Carlos R. 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				
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				x
Michael Gallagher	District 10			x			

SAN ANTONIO INTERNATIONAL AIRPORT
LEASE AND CONCESSION AGREEMENT
FOR
OPERATION OF
RETAIL FUEL STATION, CONVENIENCE STORE, AND FAST FOOD RESTAURANT

2016

INDEX

ARTICLE 1 – Definitions 4

ARTICLE 2 – Description of Leased Premises 6

ARTICLE 3 – Lease Term 6

ARTICLE 4 – Rent 7

ARTICLE 5 – Records and Sales Reports 12

ARTICLE 6 – Audit 15

ARTICLE 7 – Conduct of Business by Lessee 16

ARTICLE 8 – Operation of Business 18

ARTICLE 9 – Indemnification 21

ARTICLE 10 – Insurance 22

ARTICLE 11 – Performance Guarantee & Landlord's Lien 26

ARTICLE 12 – Privileges and Conditions 23

ARTICLE 13 – As Is Acceptance and Condition of Leased Premises 28

ARTICLE 14 – Construction 29

ARTICLE 15 – Liens Prohibited 34

ARTICLE 16 – Maintenance and Repair 34

ARTICLE 17 – Title 36

ARTICLE 18 – Compliance with Environmental Laws 37

ARTICLE 19 – Fuel Facilities and Management 43

ARTICLE 20 – Airport Concessions Disadvantaged Business Enterprise (ACDBE) and Disadvantaged Business Enterprise (DBE) Program Special Contract Provisions 46

ARTICLE 21 – Signs 56

ARTICLE 22 – Regulations 56

ARTICLE 23 – Time of Emergency 57

ARTICLE 24 – Quality of Services 57

ARTICLE 25 – Subordination of Agreement and Right of Recapture 57

ARTICLE 26 – Security 59

ARTICLE 27 – Default and Remedies 58

ARTICLE 28 – Holding Over 61

ARTICLE 29 – Assignment and Sublet 62

ARTICLE 30 – Damage or Destruction of Leased Premises 63
ARTICLE 31 – Laws and Ordinances 64
ARTICLE 32 – Taxes and Licenses 64
ARTICLE 33 – Nondiscrimination and Affirmative Action Regulations 64
ARTICLE 34 – Wages 65
ARTICLE 35 – Force Majeure 65
ARTICLE 36 – Attorney's Fees and Costs 65
ARTICLE 37 – Severability 65
ARTICLE 38 – Amendment 66
ARTICLE 39 – Relationship of Parties 66
ARTICLE 40 –Cumulative Remedies – No Waiver – No Oral Change 66
ARTICLE 41 – Conflict of Interest 66
ARTICLE 42 – General Provisions 67
ARTICLE 43 – Parties Bounds 69
ARTICLE 44 – Texas Law To Apply 69
ARTICLE 45 – Gender 69
ARTICLE 46 – Captions 69
ARTICLE 47 – Entire Agreement 69

EXHIBITS

Exhibit 1 – Leased Premises (Exhibits 1-A, 1-B, 1-C, 1-D)
Exhibit 2 – Lessee Monthly Statement Form
Exhibit 3 – Lessee Annual Audit Form
Exhibit 4 – Lessee Project Improvements

SAN ANTONIO INTERNATIONAL AIRPORT
LEASE AND CONCESSION AGREEMENT

This San Antonio International Airport Lease and Concession Agreement (hereinafter "Agreement") is entered into by and between the **City of San Antonio** ("**Lessor**"), a Texas home-rule municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____, and Northwest Petroleum, LP a Texas Limited Partnership, by and through its General Partner, Fuel Management GP, LLC, a Texas Limited Liability Company ("**Lessee**"), acting by and through its duly authorized officer.

WHEREAS, San Antonio International Airport (the "Airport") and the traveling public will benefit from a retail fuel station, convenience store, and fast food restaurant on the Airport premises; and

WHEREAS, Lessee hereby agrees to construct such retail fuel station, convenience store, and fast food restaurant on the Leased Premises defined herein in accordance with the terms of this Agreement at Lessee's sole cost; and

WHEREAS, Lessor and Lessee have agreed to enter into this Agreement for the purpose of allowing Lessee to construct the retail fuel station, convenience store, and fast food restaurant and for the other purposes set forth herein; **NOW THEREFORE:**

Lessor and Lessee for and in consideration of the mutual covenants and promises herein expressed do hereby agree as follows:

ARTICLE 1. DEFINITIONS

As used herein, the following words and phrases shall have the meanings set forth below:

1.1 Affiliate. "Affiliate" means any corporation or other entity which directly or indirectly controls or is directly or indirectly controlled by or is under common control with Lessee; "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise.

1.2 "Airport" means San Antonio International Airport.

1.3 "Appraisal Process" is defined in **Article 27 - Holding Over.**

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

1.5 "Capital Improvements" means any item that enhances the value of the Leased Premises having a net cost in excess of one hundred thousand dollars ($100,000.00) and a useful life in excess of ten (10) years, constructed to expand facilities, improve or develop the Leased Premises, as well as any extraordinary or substantial expenditure whose object is to preserve, enhance or protect the Leased Premises, the construction of which is commenced after the Effective Date of this Agreement. Capital Improvements, as used in this Agreement, are improvements to the real estate. Capital Improvement does not include trade fixtures, items

that can be removed from the Leased Premises without damaging the Leased Premises, or personal property.

1.6 "Commencement Date" is defined in **Article 3 - Term.**

1.7 "Contractual Charges" is defined in **Article 4 - Rent.**

1.8 "Day" means calendar day and not business day.

1.9 "DOT" means the United States Department of Transportation, and any federal agency succeeding to its jurisdiction.

1.10 "FAA" means the Federal Aviation Administration of the United States government, and any federal agency succeeding to its jurisdiction.

1.11 "Fuel Facilities" is defined in **Section 19.1**.

1.12 "Fuel Facilities Operations Manual" is defined in **Section 19.5**.

1.13 "Gross Receipts" is defined in **Article 4 - Rent.**

1.14 "Guaranteed Rent" means the Minimum Annual Guaranteed Rent ("**MAG**") more fully described in **Section 4.1.2**.

1.15 "Improvements" is defined in **Section 17.1**. Improvements includes "Project Improvements" as well as all additional improvements constructed by Lessee at any time during the Primary Term and lease extensions.

1.16 "Initial Construction Period" is defined in **Section 4.1.1.**

1.17 "Lease Year" means any successive twelve (12) month period commencing on the first day of the month following the earlier of: (i) issuance of a certificate of occupancy for the Project Improvements; or (ii) eighteen (18) months from Commencement Date, unless extended pursuant to the provisions of **Article 14 – Construction by Lessee**.

1.18 "Leased Premises" means those certain premises at Airport more particularly described in **Article 2 – Description of Leased Premises**.

1.19 "Primary Term" is defined in **Article 3 – Term**.

1.20 "Project Improvements" is defined in **Article 14 – Construction by Lessee.**

1.21 "Retail Fuel Station,Convenience Store, and Fast Food Restaurant" means the fuel station and convenience store, with a franchised fast food restaurant, to be constructed by Lessee at its sole cost, as more particularly described in **Article 14 - Construction by Lessee.**

1.22 "Sign" means any advertising sign, billboard, identification sign or symbol, or other similar device, regardless of content.

1.23 "Subsidiary" means any corporation or other entity not less than fifty percent (50%) of whose outstanding stock (or other form of equity ownership) shall, at the time, be owned directly or indirectly by Lessee or the entity owning directly or indirectly 50% or more of Lessee, as applicable.

ARTICLE 2. DESCRIPTION OF LEASED PREMISES

2.1 Lessor, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by Lessee, does hereby lease unto Lessee, and Lessee does hereby accept from Lessor, the following described property (collectively referred to as "Leased Premises"):

> Approximately 2.024 acres of land at the southeastern corner of Airport Boulevard and Northern Boulevard, at the San Antonio International Airport, San Antonio, Bexar County, Texas, as more particularly described in **Exhibit 1** ("**Ground Space**").

The survey and metes and bounds description of the Ground Space are attached hereto as **Exhibits 1-A and 1-B**, and incorporated into this Agreement, as the controlling description of the Ground Space.

2.2 Lessor and Lessee acknowledge that the Leased Premises are subject to an easement to the FAA, containing approximately 6,276 square feet, as reflected on **Exhibit 1-C**.

ARTICLE 3. LEASE TERM

3.1 Term.

The term of this Agreement shall be the Initial Construction Period plus twenty (20) years ("**Primary Term**") and shall commence on the tenth (10th) day following the passage of an Ordinance by the City Council of San Antonio approving this Agreement ("**Commencement Date**"), and shall terminate (unless earlier terminated in accordance with this Agreement) at midnight of the last day of said twenty (20) years. Up to two (2) additional ten (10) year options to extend the term ("**Extension Option(s)**") can be authorized by the Aviation Director as set forth herein, such authorization not to be unreasonably withheld. Lessee's right to exercise the first Extension Option shall be contingent upon Lessee's investment of not less than an additional $600,000.00 in Capital Improvements ("**Additional Capital Investment**") to the Leased Premises at any time after completion of the Minimum Capital Investment during the timeframe required in **Subsection 14.1.1** herein, and prior to termination of the Primary Term. Any project costs incurred by Lessee during the Initial Construction Period in excess of the Minimum Capital Investment shall not count towards the Additional Capital Investment required of Lessee to exercise any Extension Option. Lessee's right to exercise the second Extension Option shall be contingent upon Lessee's investment of not less than an additional $200,000.00 in Capital Improvements (Additional Capital Investment) at any time during the first Extension Option term. Notwithstanding the foregoing, Lessee's right to exercise any Extension Option(s) shall be contingent upon Lessee's having performed all required maintenance and repairs and keeping the Leased Premises in clean and attractive condition and being in good standing in the performance of all obligations under this Agreement. Lessee shall provide Lessor with written notice of its request to exercise the Extension Option(s) no later than one hundred eighty (180) days prior to termination of the Primary Term or termination of either of the exercised Extension Options.

3.2 Late Opening.

Except as otherwise provided in **Article 14 – Construction by Lessee**, if Lessee fails to complete construction of the Retail Fuel Station, Convenience Store, and Fast Food Restaurant and open

for business no later than eighteen (18) months following Commencement Date, and such failure shall be due to the fault of Lessee including, but not limited to, obtaining approval from the Aviation Director of the Lessee's plans and obtaining any permits or certificates from the City, and not due to delays caused by Lessor for City's failure to timely approve or provide comments to Lessee's plans within 45 days after submittal by Lessee; provided, however, such plans strictly meet the requirements set forth in this Agreement then the parties agree that it is and will be impracticable to determine the actual damages suffered by Lessor. The parties have agreed that in order to compensate Lessor for its loss, Lessee shall pay a late opening fine at the rate of $500.00 per day until the Retail Fuel Station, Convenience Store, and Fast Food Restaurant open. The Guaranteed Rent shall be prorated in an equitable manner so as to only apply on a per day basis. This remedy shall be in addition to any other remedies available to Lessor in the event of such failure to open by Lessee. The amount has been determined based on the Guaranteed Rent proposed by Lessee in its proposal.

ARTICLE 4. RENT

4.1 Lessee agrees to pay Lessor rental as indicated below, in advance (without notice or demand, both of which are expressly waived) at the times and in the manner hereinafter provided.

4.1.1 Ground Space Rental

During the Initial Construction Period, Lessee shall pay the sum for Ground Space rental set forth in the table below on a monthly basis, with the first payment prorated from the Commencement Date to the first day of the following month. The Initial Construction Period shall commence on the Commencement Date and continue until the first day of the first Lease Year ("**Initial Construction Period**"). After the Initial Construction Period, Ground Space rentals shall be calculated on an annual basis and shall be paid by Lessee to Lessor in advance without invoicing, notice or demand, in monthly installments on or before the first day of each month during the Term. Payment of Ground Space rentals shall commence on the Commencement Date and continue throughout the remainder of the term of this Agreement and any extension(s) hereof. The rental amount for Ground Space shall increase fifteen percent (15%) at the beginning of the sixth Lease Year and every five (5) years thereafter during the Term.

Ground Space	Total Sq. Footage*	Annual Rate Per Sq. Ft.	Annual Rate	Monthly Rental
Initial Construction Period	81,889	15¢	$12,283.35	$1,023.61
	Total Sq. Footage*	Annual Rate Per Sq. Ft.		
Lease Years 1-5	81,889	$1.00	$81,889.00	$6,824.08

*Square footage for calculation of Ground Space Rental is the square footage of the Ground Space, less the square footage of the FAA easement (6,276 square feet) depicted on **Exhibit 1-C**, and Ground Space rental will not be paid for the FAA easement.

4.1.2 Concession Rent

From and after the beginning of the first Lease Year, Lessee shall pay to Lessor the greater of Minimum Annual Guaranteed ("MAG") Rent ("**Guaranteed Rent**") or Percentage Rent (defined below in this subsection). Lessee shall also pay other charges set forth herein.

Lessee's obligation to pay Guaranteed Rent and Percentage Rent shall commence upon the beginning of the first Lease Year.

(a) Minimum Annual Guaranteed ("**MAG**") Rent

(i) During the first Lease Year and subject to all applicable provisions of this Agreement, Lessee shall pay to Lessor Guaranteed Rent of $50,000.00. Lessee shall pay Guaranteed Rent in equal consecutive monthly installments in advance on or before the first day of each month, without prior demand or notice. Should any Lease Year contain less than 12 calendar months, Guaranteed Rent shall be prorated in a manner determined by Aviation Director in accordance with customary business practices.

(ii) The Guaranteed Rent for the second Lease Year and each succeeding Lease Year shall be equal to 85% of the prior year's payables (consisting of Guaranteed Rent and Percentage Rent). For example, assuming that the Lease Year begins in January, in order to provide the Guaranteed Rent to the Lessee in December, the Guaranteed Rent would be based on the Rents due for the sales during the prior twelve month period beginning November 1 through October 31. Notwithstanding the foregoing, Guaranteed Rent for Lease Year 2 shall be calculated on an annualized basis using the first ten (10) months of data available from the first Lease Year. In no event, however, shall the Guaranteed Rent for any Lease Year be less than 100% of the Guaranteed Rent proposed for the first Lease Year or any prorated portion thereof.

(b) Percentage Rent

(i) In addition to Guaranteed Rent and other charges set forth herein, Lessee shall pay to Lessor, for each month of the term, Percentage Rent for those months in which the year-to-date Percentage Rent exceeds the year-to-date Guaranteed Rent ("**Percentage Rent**"). The Percentage Rent shall be equal to the product of the Percentage Rent Rate, times Lessee's year-to-date Gross Receipts (as defined in **Subsection (c)** below) minus the sum of the year-to-date Guaranteed Rent amount and Percentage Rent paid year-to-date as set forth below *[Percentage Rent = (Percentage Rent Rate X year-to-date Gross Receipts) – (year-to-date Guaranteed Rent + percentage rent paid year-to-date)]*. Lessee shall pay Percentage Rent, if any, to Lessor monthly without prior notice or demand within twenty (20) days after the expiration of each calendar month. Percentage Rent shall apply at all times during the term of this Agreement. "Percentage Rent" is set forth in the table below, and includes fuel sales and ATM monthly rental, in addition to the stated percentages for Convenience Store sales, Fast Food Restaurant sales and lottery sales and pay-outs:

Product Category	Percentage Fee Rate
All Convenience Store and Fast Food Restaurant Gross Receipts	2% of Gross Receipts
Commissions paid to Lessee on Lottery Sales and Pay-outs (winnings)	1% of amount paid to Lessee
Retail fuel sales	$0.01/gallon
ATM Rental	$100/month

(ii) If, at the end of any Lease Year, the total amount of monthly installments of Concession Rent paid for such Lease Year is less than the total amount of annual Concession Rent required to be paid for such Lease Year, Lessee shall pay the amount of such deficiency on or before the time Lessee provides Lessee's Annual Audit required under **Article 5 – Records and Sales Reports**. If, at the end of any Lease Year, the total amount of monthly installments of Concession Rent paid based on Gross Receipts for such Lease Year exceeds the total amount of annual Concession Rent required to be paid for such Lease Year, as indicated in Lessee's Annual Audit, Lessee shall receive a credit equivalent to such excess, which shall be credited by Lessor to the next monthly payment(s) of Concession Rent due from Lessee to Lessor hereunder. If at the end of the final Lease Year the total amount of Concession Rent paid by Lessee exceeds the total amount of annual Concession Rent required to be paid by Lessee for such final Lease Year (calculated in the same manner provided hereinabove for non-final Lease Years), such excess shall be refunded to Lessee within 60 days after Lessee has vacated the Leased Premises at the termination of this Agreement if (i) the Leased Premises are in the condition required by this Agreement, and (ii) any other sums due Lessor from Lessee under this Agreement have been paid in full. Lessor shall be entitled to deduct such remaining sums due from any such excess.

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

(c) Gross Receipts

"**Gross Receipts**" means and includes all monies paid or payable to Lessee, whether for cash, credit or otherwise, for sales made and services rendered at the Leased Premises, regardless of when or where the order therefor is received, including, without limitation: mail, catalogue, closed circuit television, computer, other electronic or telephone orders; all deposits not refunded to or otherwise forfeited by customers; orders taken; the entire amount of the actual sales price and all other receipts for sales and services rendered; all insurance proceeds received due to loss of gross earnings paid under Lessee's business interruption insurance policy; retail display allowances or other promotional incentives

received from vendors and suppliers, etc.; and the spread earned on any exchange or foreign currency transaction whether for an exchange service or for merchandise, products and/or services. 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, whether for cash, credit or otherwise and not at the time of billing or payment. Losses from "bad" checks or credit card fee transactions are Lessee's sole responsibility and shall not be excluded from Gross Receipts. Gross Receipts shall also include all such sales, revenues or receipts generated by Lessee's subtenants or anyone else conducting business pursuant to an arrangement with Lessee within the Leased 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 Lessee to any duly constituted governmental/taxing authority; (ii) similar taxes as those listed in (i) that are not separately stated from the sales price because it is prohibited by law to do so, such as the mixed beverage tax, but only to the extent paid by Lessee to the applicable taxing authority; (iii) 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; (iv) shipping and delivery charges if there is not profit to Lessee and such charges are merely an accommodation to customers; (v) sale of trade fixtures, equipment or property which are not stock in trade and not in the ordinary course of business; (vi) 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; (vii) customary discounts given by Lessee on sales of merchandise and products or services to Lessee employees, if separately stated, and limited in amount to no more than 1% of Lessee's Gross Receipts per Lease Month; (viii) gratuities for services performed by employees of Lessee which are paid by Lessee's customers to such employees; (ix) exchange of merchandise and products between stores or warehouses owned by or affiliated with Lessee (where such exchange is made solely for the convenient operation of the business of Lessee and not for purposes of consummating a sale which has theretofore been made in or from the Leased Premises and/or for the purpose of depriving Lessor of the benefit of a sale which otherwise would be made in or from the Leased Premises); (x) proceeds from the sale of gift certificates or like vouchers until such time as the gift certificates or like vouchers have been treated as a sale pursuant to Lessee's recordkeeping system or have been recognized as income; (xi) the sale or transfer in bulk of the inventory of Lessee to a purchaser of all or substantially all of lessee's assets in a transaction not in the ordinary course of Lessee's business; (xii) 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 Lessee as a result of a loss or casualty, and; (xiii) unless otherwise agreed by Aviation Director, sales reported by Lessee under another agreement with the City.

4.2 Fees and charges for miscellaneous items and services, including, but not limited to, employee badges, parking charges, airfield driver's and security classes, personal property storage, shall be assessed by City Ordinance, in connection with the ordinary usage of Airport facilities.

4.3 All rentals, fees and charges payable by Lessee to Lessor under the terms hereof, whether or not expressly denominated as rent, shall constitute rent for all purposes, including, but not limited to, purposes of the United States Bankruptcy Code.

4.4 Other Contractual Charges. Lessee shall pay the following charges (collectively "**Contractual Charges**") for violation of various lease requirements set out in the referenced sections below. Acceptance of payment for contractual charges shall not constitute a waiver by Lessor of its right to pursue other contractual or legal remedies:

Section	Violation	Amount of fee
5.2(c)	Late Monthly Statements	$100.00 per month per late statement.
5.2(d)	Late Annual Audit	$100.00 per month until submitted
3.2	Late Opening	$500.00 per day until Retail Fuel Station, Convenience Store, and Fast Food Restaurant open
14.1.14	Late submission of lien waivers, lien releases, certificates of occupancy, as-built drawings, statement of construction costs	$500.00 per month, or fraction thereof, until all documents are submitted.
7.5(e)	Failure to remove objectionable item from display, service or sale	$150.00 per day until item is removed.
8.4	Failure to operate during required hours	$50.00 per day for each violation that occurs more than twice per month.
8.20	Failure to comply with a law or regulation; licenses pertaining to cleanliness, safety, occupancy; operation and use of premises, etc.	$150.00 per day until compliant.

4.5 Payments.

All Rents, fees, and charges shall be paid by Lessee 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 Aviation Director.

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

4.6 Time of Payment. The following sets forth the time of Lessee payments of rents, fees, and charges to Lessor which shall all be paid without deduction or setoff:

(a) Ground Rent and Guaranteed Rent shall be due and payable, without deduction or setoff, in monthly installments in advance on or before the first day of each month.

(b) Percentage Rent for each month of operations shall be due and payable without deduction or setoff by the twentieth (20th) day of the month for the prior month.

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

4.7 Late Payment Charge. If any Rentals, charges, or fees required to be paid to Lessor 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 thirty (30) days or more from the date when such payment is due to Lessor, Lessee shall pay Lessor 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. Lessor may, but is not obligated to, provide Lessee with a written reminder when invoiced rents, fees, or charges have not been received within thirty (30) days of the due date. The parties hereto agree that such late payment charge represents a fair estimate of expenses Lessor will incur by reason of any such late payment. Lessor's acceptance of partial payments or late payment charges shall not constitute a waiver of Lessee's default with respect to Lessee's nonpayment nor prevent Lessor from exercising all other rights and remedies available to Lessor under this Agreement or at law.

4.8 Lessee's Payment Obligations. Lessor may apply any payments received from Lessee to any Rentals which are then due. If Lessor shall not make any specific application of a payment received from Lessee, 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 Lessee for application to a specific portion of Lessee's financial obligations hereunder shall be binding unless otherwise required under Texas law. Lessee covenants to pay all Rentals hereunder independent of any obligation of Lessor. No breach of this Agreement by Lessor shall relieve Lessee 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 Lessee to Lessor without set-off, deduction, demand, notice or abatement. All payments received by Lessor 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 Lessee hereunder. Lessor reserves the right to accept any check or payment without prejudicing in any way Lessor's right to recover the balance of any and all Rental and other charges due from Lessee after receipt of any such check or payment or to pursue any other remedy provided herein or by law.

ARTICLE 5. RECORDS AND SALES REPORTS

5.1 Lessee's Records.

(a) Lessee 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 Lessee's business at any time operated within the Leased Premises and of the operations of each sublessee, 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 Lessee (collectively, "Records"). The Records to be kept by Lessee 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 Leased 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 Lessee's sales sufficient to provide determination and verification of Gross Receipts and the exclusions therefrom.

(b) Lessee must also provide an electronic cash control system which will provide all significant point-of-sale information reasonably satisfactory to the Aviation Director which must include sales by general product category, if applicable;

(c) Lessee'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);
ii. be capable of printing transactions on tape or receipt for customers showing time of day and day, month and year;
iii. print out customer receipts showing the amount of the transaction, the amount of cash, check or credit tendered and the amount of cash or credit returned to the customer; and
iv. 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.

(d) The Records shall be preserved by Lessee 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 Lessee's normal business hours after 20 days prior written notice, be open to the inspection of, and may be copied or extracted from, in whole or in part, by, Lessor, or Lessor's designated management representatives or agents, including Lessor's internal or external auditors.

5.2 Reports by Lessee.

(a) Lessee shall deliver to Lessor:

i. within twenty (20) days after the expiration of each Lease Month, in the form attached hereto as **Exhibit 2,** a written statement signed by an officer of Lessee, showing the Gross Receipts made from the Leased 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 90 days after the expiration of each Lease Year and after termination of this Agreement, a written statement on a form reasonably satisfactory to the Aviation Director signed by an officer of Lessee and audited by an independent certified public accountant ("CPA") employed by Lessee ("**Annual Audit**") in the form attached hereto as **Exhibit 3**, showing in reasonable detail the amount of Gross Receipts made by

Lessee from the Leased Premises during the preceding Lease Year including an itemization of any exclusions or deductions made to Gross Receipts, the payments of Guaranteed Rent and Percentage Rent paid among other matters. Lessee shall certify in its Annual Audit that

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

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

iv. The Monthly Statements and Annual Audits prepared by Lessee also provide an analysis of operations, which shall include the following data for Convenience Store, fuel, lottery sales, Fast Food Restaurant, and any other category requested by the Aviation Director:

a. Total Gross Receipts and, if requested, Lessee shall calculate such Gross Receipts per square foot of Floor Area in the Leased Premises;
b. Sales by general product category;
c. Total number of transactions;
d. Average dollar amount per transaction;
e. Sales variance analysis as compared to the immediately prior Lease Month and/or Lease Year;
f. Sales time distribution if requested by the Aviation Director; and
g. Average fuel sales per month.

v. The Aviation Director may make reasonable changes to the form of the Monthly Statement or Annual Audit from time to time upon 30 days prior notice to Lessee.

(b) Lessee shall require a similar audit, as the audit required from Lessee, from all operators, sublessees, franchisees, joint venture partnerships or sublicenses operating in or on the Leased Premises.

(c) If Lessee fails to furnish Lessor with the Monthly Statement required above, Lessee'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 Aviation Director by Lessee for the month in question, and resulting surpluses or deficits shall be applied to Lessee for the next succeeding month. An accounting fee of $100 per month per late monthly statement will be charged to Lessee and shall be payable by Lessee for the additional services required by Lessor pursuant to this paragraph. This remedy shall be in addition to other remedies provided herein or by law to Lessor.

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

ARTICLE 6. AUDIT

6.1 Right to Examine Books.

Notwithstanding the acceptance by Lessor of payments of Rentals or installments thereof, Lessor shall have the right to audit all Rentals and other charges due hereunder. Lessee shall make available to the Aviation Director within thirty (30) days following Lessor's written request for the same at the Aviation 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 Lessee and any sublessees, licensees and/or assignees, if any, in order to verify the amount of Gross Receipts in and from the Leased Premises and the amount of all Rentals.

6.2 Audit.

Lessor may at any time upon thirty (30) days' prior written notice to Lessee, cause a complete audit to be made by an auditor or accountant selected by Lessor, or internal City auditor or City compliance personnel, of the entire records and operations of Lessee and/or any sublessees, licensees and/or assignees, if any, relating to the Leased Premises for the period covered by any statement issued or required to be issued by Lessee as above set forth in **Article 5 – Records and Sales Reports**. Lessee shall make available to Lessor's auditor at its office in the Airport within thirty (30) days following Lessor's written notice requiring such audit, all of the books, source documents, accounts, records and sales tax reports of Lessee 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, Lessee shall make the records available at the address indicated by Lessor. If such audit discloses that Lessee's Gross Receipts as previously reported for the period audited were understated, Lessee shall immediately pay to Lessor 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 Lessee's actual Gross Receipts as disclosed by such audit, Lessee shall immediately pay to Lessor or to Lessor'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 Lessee's Gross Receipts as disclosed by such audit due to Lessee's intentional, willful or fraudulent act or omission, Lessor 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 Lessee shall vacate and surrender the Leased 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 Lessor's auditor, accountant or representative reasonably determines that sufficient documentation is not maintained, retained, recorded, or available in accordance with GAAP to verify Lessee's actual Gross Receipts, Lessee shall pay for the reasonable and actual cost of such audit and, in addition, should Lessor deem it necessary, Lessee shall reconstruct, at its sole cost and expense, all records for the determination of Gross Receipts for any period being audited.

If Lessee is not able to provide records as required under this Article, Lessor reserves the right to review records/conduct an audit at Lessee's office within the continental United State of

America, at Lessee's full expense. Lessor shall be entitled and Lessee shall advance all expenses associated with conducting the audit.

ARTICLE 7. CONDUCT OF BUSINESS BY LESSEE

7.1 Permitted Use.

Lessee shall use the Leased Premises solely for (i) during the Initial Construction Period, construction of the Project Improvements, and (ii) upon completion of construction, operation of the Retail Fuel Station, Convenience Store, and Fast Food Restaurant, and other reasonably incidental uses, and for such other purposes as may be approved in writing by the Aviation Director.

7.2 Retail Fuel Station.

Lessee shall provide low-grade regular unleaded, mid-grade regular unleaded, and premium unleaded gasoline, diesel fuel, and is permitted to provide low or zero-emission alternative fuel options, including electric car charging stations. Lessee shall provide a minimum of ten (10) fuel pumps at five (5) islands, with twenty (20) fueling stations. All fueling equipment, including fuel tanks, must meet all applicable Federal, State and local laws, regulations, ordinances and requirements, including but not limited to those mandated by the Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), the Texas Railroad Commission (TRC), and the State Energy Conservation Office (SECO).Lessee shall provide and maintain sufficient quantities of fuel to satisfy anticipated customer demand. Self-service pumps shall be fully automated allowing customers to pay-at-the-pump with the credit and debit cards normally accepted by Lessee pursuant to **Section 8.2** below. All pump islands and fueling positions shall be covered by a permanent overhead canopy. The fuel sold at the Retail Fuel Station shall be at all times a nationally-recognized retail fuel brand. Fuel brands shall be subject to prior written approval of the Aviation Director, which approval shall not be unreasonably withheld.

7.3 Convenience Store.

Convenience Store shall offer standard convenience store retail items and amenities. Convenience Store may sell beer and wine at retail to be sold for off-site consumption only. Applications and associated fees for a beer/wine permit from the Texas Alcoholic Beverage Commission are the sole responsibility of Lessee. Lessee may sell lottery tickets. Convenience Store shall be a minimum of 4,500 square feet, including public restrooms. Convenience Store shall provide separate public restrooms for men and women which are accessed from the interior of the facility. There shall be a sufficient number of restrooms to serve anticipated customer demand of the businesses located on the Leased Premises and the Cell Phone Waiting Area.

7.4 Fast Food Restaurant.

Lessee will, with Aviation Director's written approval, provide a Fast Food Restaurant within the Convenience Store structure through itself or through a sub-tenant, concession, or management or similar agreement. Any restaurant and/or fast food facilities operated on the Leased Premises shall at all times be nationally-recognized or popular, locally branded concepts. Brands shall be subject to the prior written approval of the Aviation Director, which approval shall not be

unreasonably withheld; provided, however, that Burger King is hereby pre-approved as an acceptable Fast Food Restaurant to operate within the Leased Premises.

7.5 Restrictions on Privileges, Uses, and Rights.

(a) The rights granted hereunder are expressly limited to the construction, maintenance, and operation of the Retail Fuel Station, Convenience Store, and Fast Food Restaurant pursuant to the terms and conditions of this Agreement, and nothing herein shall be construed to give Lessee any exclusive rights to operate a particular business, or to sell or distribute any particular product(s) or service(s). Lessee covenants and agrees that the Leased Premises shall be utilized solely for the uses permitted in this Agreement and for no other purpose whatsoever.

(b) Parking of boats, motor homes or inoperable or derelict vehicles and the stockpiling or storage of inoperable equipment, machinery, or containers is strictly prohibited.

(c) All storage and dumpsters must be screened or concealed from public view, and storage shall be limited to the storage incidental to Lessee's overall operations on the Leased Premises.

(d) Persons, including, but not limited to, Lessee's employees, shall not loiter or remain overnight on the Leased Premises. The foregoing will not preclude Lessee's personnel from being present on the Leased Premises while on-duty.

(e) Notwithstanding anything to the contrary contained herein, including Lessee's Permitted Use, if the Aviation Director reasonably determines that any item and/or service displayed, offered for sale or sold by Lessee is objectionable or inappropriate for display or sale at the Leased Premises, including, but not limited to, Adult Materials as set forth in **Section 8.6** below, Lessee shall, within one (1) day after delivery of the Aviation Director's written notice to the Leased Premises, immediately remove such item and/or service from display and its inventory (if the objectionable item and/or service displayed, offered for sale or sold shall be deemed to be offensive or potentially dangerous to the general public, as reasonably determined by the Aviation Director from time to time, Lessee shall remove such offensive or potentially dangerous item and/or service immediately upon verbal notice from the Aviation Director or his/her designee) and Lessee shall not thereafter display, offer for sale or sell any such objectionable or inappropriate item and/or service. If Lessee shall fail to remove any such item and/or service from display as may be required from time to time by Lessor within such 1 day period, then Lessee shall pay, within 10 days of demand therefor by the Aviation Director, Contractual Charges in the amount of not more than $150.00 per day until such time as Lessee has removed any such item and/or service from display. This remedy shall be in addition to any and all other remedies provided in this Agreement or by law to Lessor. Lessee represents and warrants that it holds all certificates, permits, licenses or other entitlements required by federal, state or local, laws, rules or regulations in order to enable Lessee to conduct its operations and to engage in its Permitted Use and that such certificates, permits, licenses or other entitlements are and shall be kept current, valid and complete at all times during the term hereof. Lessee shall submit any of the foregoing for inspection by Lessor from time to time. Lessee, at Lessee's expense, shall at all times comply with the requirements of any and all such certificates, permits, licenses or other entitlements.

ARTICLE 8. OPERATION OF BUSINESS

8.1 Lessee agrees to be open for business and to continuously and uninterruptedly operate in all of the Leased Premises during the entire term following the beginning of first Lease Year, 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 Lessee's business, using best efforts to achieve maximum sales volumes, customer satisfaction and maintaining at all times a complete stock of high quality merchandise and products.

8.2 Lessee shall maintain a sufficient number of personnel at all times to service customers. All such personnel shall be knowledgeable, helpful to Airport users, courteous, efficient, and neat in appearance and appropriately attired and shall not act in a loud, offensive or otherwise objectionable manner. Lessee's employees shall wear name tags and security badges, if applicable, at all times. Lessee shall not employ at or about the Leased 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 Airport. Lessee also agrees not to divert or allow or cause to be diverted any business from the Terminal and/or Airport. Lessee 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. Lessee agrees to accept at least three (3) nationally recognized credit and debit cards for payment of purchases made at the Leased Premises.

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

8.4 Lessee shall be obligated to be open for business and to operate continuously during all established business hours identified further below. Convenience Store and Fast Food Restaurant shall be open 7 days per week from the hours of 5:00 a.m. to 10:00 p.m. Fuel pumps shall be operational for sales 24 hours per day, 7 days per week, with point-of-sale payment available during hours when the Convenience Store is closed. Lessee's obligation to be open for business shall include, but not be limited to, opening for business not more than fifteen (15) minutes late, closing the business not more than fifteen (15) minutes early, and, if Lessee fails to comply with any of the foregoing operating requirements, then Lessee shall pay Contractual Charges in the amount of not more than $50.00 per day for each such violation that occurs more than twice during any month. This remedy shall be in addition to any and all other remedies provided herein or by law to Lessor. Lessee understands and agrees that its operation hereunder is a service to airline customers and the users and employees of the Terminal and the Airport. The management, maintenance, and operation of the Leased Premises shall be at all times during the term hereof under the supervision and direction of an active, qualified, competent, and experienced manager to be assigned at the Leased Premises during normal business hours, and Lessee will at all times during the absence of such manager assign, or cause to be assigned, a qualified subordinate to assume and be directly responsible for the carrying out of his or her duties. Lessee shall assure that a local representative of Lessee is available, by telephone, on a 24 hours-per-day, 7 days-per-week, basis in case of emergencies and Lessee shall notify Lessor of the name and telephone number of such representative and shall update such information promptly as necessary.

8.5 Notwithstanding the requirements set forth herein, the Aviation Director shall have the right to make reasonable objections to the number or quality of sales staff used by Lessee, the prices for merchandise and products sold or services rendered, the number or quality of articles sold or services rendered, the character of the service offered to the public, responses to customer complaints and the appearance and condition of the Leased Premises. Lessee agrees to take reasonable steps to promptly comply with the Aviation Director's reasonable objections.

8.6 Adult Materials. Any Adult Materials approved for sale at the Leased Premises shall be handled in a discreet manner so as not to offend the public. Adult magazines shall be wrapped or covered, except for the name, and their manner of display shall be subject at all times to the Aviation Director's approval. Any other Adult Materials shall be handled as directed by Aviation Director. Lessee shall immediately remove from the Leased Premises any and all Adult Materials that Aviation Director directs it to so remove and shall not thereafter display such material on the Leased Premises. For the purposes of this section, Aviation Director's designation of an item as Adult Material shall be final. "Adult Material" is defined as one or more of the following, regardless of whether it is new or used: (a) books, magazines, periodicals or other printed matter; photographs, films, motion pictures, video cassettes, slides, or other visual representations; recordings, other audio matter; and novelties or devices; which have as their primary or dominant theme subject matter depicting, exhibiting, illustrating, describing or relating to specified sexual activities or specified anatomical areas; or (b) instruments, novelties, devices, or paraphernalia which are designed for use in connection with specified sexual activities.

8.7 Lessee, at its expense, shall promptly comply with all present and future laws, ordinances, orders, rules, regulations, applicable business licenses and requirements of Lessor and all governmental authorities having jurisdiction affecting or applicable to the Leased 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 Leased Premises. Lessee shall promptly correct any deficiencies reported by Lessor and all other governmental authorities having jurisdiction. Lessee shall not do or permit anything to be done in or about the Leased 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 Leased Premises or the Terminal which has been or may hereafter be enacted or promulgated by Lessor and all governmental authorities, or in any way obstruct or interfere with the rights of others, nor shall Lessee use or allow the Leased Premises to be used for any improper, immoral or objectionable purposes or do any act tending to injure the reputation of the Terminal and/or Airport.

8.8 Any area occupied by Lessee and all equipment and materials used by Lessee 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 Lessor 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.

8.9 No auction, liquidation, going out of business, fire or bankruptcy sale may be conducted or advertised by sign or otherwise in the Leased Premises. All apparatus, utensils, devices, cooking equipment, machines and piping used by Lessee shall be constructed so as to facilitate the cleaning and inspection thereof and shall be properly cleaned and sterilized on a daily or more frequent basis after each period of use (at no time to exceed eight (8) hours). All trays, dishes,

cookery, glassware, cutlery and other such equipment used in the preparation of and serving of all food & beverage products shall be properly cleaned and sterilized on a daily or more frequent basis immediately before each use thereof. Bottles, vessels, cooking equipment and other reusable containers shall be properly cleaned and sterilized on a daily or more frequent basis immediately before each use thereof.

8.10 From time to time and as often as required by Lessor, Lessee shall conduct pressure, water-flow, and other appropriate tests of the fire-extinguishing system and apparatus located at the Leased Premises. Lessee shall keep in proper functioning order all firefighting equipment on the Leased Premises and Lessee shall at all times maintain on the Leased Premises adequate stocks of fresh, usable chemicals for use in such system and apparatus. Lessee shall notify Lessor prior to conducting such tests. If requested, Lessee shall furnish Lessor with copies of written reports of such tests.

8.11 Lessee shall not use the areas adjacent to or outside the Leased Premises for business purposes or any other purposes, including the display and sale or merchandise, products or services in any areas outside of the Leased Premises without the Aviation Director's advance written approval, which approval may be withheld in the Aviation Director's sole discretion.

8.12 All receiving and delivery of goods and merchandise and products for the Leased Premises, and all removal of merchandise and products, supplies, equipment, trash and debris and all storage of trash and debris from the Leased 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 Leased Premises or to or from the Leased Premises may be left unattended. Lessee shall be solely responsible for prompt disposal within the Leased Premises or in such areas as may be provided for such disposal of all trash and debris from the Leased Premises.

8.13 Lessee shall not use or permit the use of any portion of the Leased Premises for any unlawful purposes, or, except as specifically permitted in **Section 7.1** above. Lessee shall not install any radio, television, communication dish or other similar device or related equipment exterior to the Leased Premises, shall not cause or make any penetration of the roof of the Leased Premises and shall not erect any aerial or antenna on the roof or exterior walls of any building at the Leased Premises without the written approval of the Aviation Director.

8.14 Lessee, at its sole cost and expense, shall contract directly with a pest control service reasonably acceptable to the Aviation Director at such intervals as Lessor may require.

8.15 Lessee shall, without charge, provide services such as making change, giving directions, and providing general information to the public. Lessee shall strive to ensure that all of its employees know the layout of the Airport and have the ability to provide passengers and visitors with accurate information regarding the locations of Airport services.

8.16 As the owner and operator of the Airport, Lessor has the right to regulate and control certain aspects of Lessee's operations at the Leased Premises including but not limited to the matters listed below in this **Section 8.16.** Lessee agrees that the Leased Premises shall be utilized solely for the uses permitted herein and for no other purpose whatsoever. Lessee shall not provide any products or services that are not specifically authorized by this Agreement or the Aviation Director, including, but not limited to, the following products and services:

(a) Automotive service, repair and maintenance, including, but not limited to oil changes, tune ups, and general minor repair services;

(b) Paid parking;

(c) Parking or storage of unattended vehicles for more than two (2) hours, except for the personal vehicles of employees currently working on the Leased Premises;

(d) Rental or sales of motor vehicles;

(e) Towing/emergency road services;

(f) Advertising, with the exception of Department-approved business identification signage, unless otherwise approved in writing by the Aviation Director in his sole and absolute discretion;

(g) Valet, shuttle, or ground transportation services;

(h) Food trucks or trailers;

(i) Any use prohibited by law.

8.17 Flammable Liquids. All flammable liquids that are kept or stored at the Leased Premises must at all times be handled, stored, and used in accordance with all applicable federal, state, and local laws.

8.18 Fire Extinguishing System. From time to time and as often as reasonably required by the Aviation Department or any governmental authority having jurisdiction, Lessee shall conduct pressure, water flow, and other appropriate tests of the fire extinguishing system and apparatus which are maintained by Lessee or any sub-Lessee.

8.19 Emergency Evacuation Plans. Lessee shall provide the Aviation Department with emergency evacuation plans within thirty (30) calendar days of the Commencement Date. These plans shall be detailed procedures of actions to be taken by Lessee and its sub-Lessees, if any, in the event of an emergency evacuation warning. Lessee shall update its emergency evacuation plans annually, if requested by the Aviation Department.

8.20 If Lessee shall fail to comply with any of the provisions of this **Article 8**, then Lessee shall pay, within 10 days of demand therefor by Lessor, Contractual Charges in the amount of not more than $150.00 per day until such time as Lessee 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 Lessor.

ARTICLE 9. INDEMNIFICATION

9.1 **LESSEE covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, LESSOR and its elected and appointed officials, employees, officers, directors, volunteers and representatives of LESSOR, individually or collectively, from and against any and all costs, claims, liens, 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, death and property**

damage, made upon LESSOR directly or indirectly arising out of, resulting from or related to LESSEE's activities under this AGREEMENT, including any acts or omissions of LESSEE, any agent, officer, director, representative, employee, consultant or subcontractor of LESSEE, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or 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 LESSEE 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 LESSOR UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

9.3 All personal property placed in the Leased Premises shall be at the sole risk of Lessee. Lessor shall not be liable, and Lessee waives all claims for any damage either to the person or property of Lessee or to other persons: (i) due to the Leased Premises, or any part of appurtenances thereof, becoming out of repair; (ii) arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current (unless caused by the sole negligence or willful misconduct of Lessor or its elected officials, employees, officers, directors, volunteers and/or representatives); (iii) from any act or omission of employees, or other occupants of the Leased Premises, or any other persons; or (iv) due to the happening of any accident in or about the Leased Premises. Lessee shall save and hold harmless Lessor from any claims arising out of damage to Lessee's property or damage to Lessee's business, including subrogation claims by Lessee's insurers.

ARTICLE 10. INSURANCE

10.1 Prior to occupancy of the Leased Premises and the conduct of any business thereupon, Lessee shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to Lessor's Aviation Department, which shall be clearly labeled "San Antonio International Airport Lease and 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. Lessor will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to Lessor. Lessor shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by Lessor's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 Lessor 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 reasonably 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 Lessor allow modification whereby Lessor may incur increased risk.

10.3 A Lessee's financial integrity is of interest to Lessor; therefore, subject to Lessee's right to maintain reasonable deductibles in such amounts as are approved by Lessor, Lessee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Lessee'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:

TABLE 1 – INSURANCE REQUIRED DURING INITIAL CONSTRUCTION PERIOD

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory Limits $1,000,000/$1,000,000/$1,000,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Broad Form Property Damage to include Fire and Legal Liability g. Damage to property rented by you h. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability.	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 g. $100,000
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 $5,000,000 per occurrence
5. Builder's Risk Insurance for the construction of the Project Improvements and all materials, equipment and supplies that will become a part of the Project Improvements	Contract Sum in the Construction Contract between Lessee and the Contractor for the construction of the Project Improvements

TABLE 2 – INSURANCE REQUIRED UPON COMMENCEMENT OF FIRST LEASE YEAR

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory Limits $1,000,000/$1,000,000/$1,000,000
3. Broad form Commercial General Liability Aviation Insurance to include coverage for the following: ** a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Broad Form Property Damage to include Fire and Legal Liability g. Damage to property rented by you h. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability.	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 g. $100,000
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 $5,000,000 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 Contractor's property
6. Plate Glass Coverage for Leased Premises*	Replacement Cost Insurance Coverage
7. Above Ground and/or Underground Storage Tank Storage Tank Liability	$10,000,000.00 per claim
* if applicable	
** In the event third party aircraft are stored/maintained on the Leased Premises, a Hangar Keeper's Liability Endorsement will be required	

10.4 Lessee agrees to require, by written contract, that the Lessee's Contractor obtain the same insurance coverages required of Lessee herein, and provide a certificate of insurance and endorsement that names the Lessee and Lessor as additional insureds. Lessee shall provide Lessor with said certificate and endorsement prior to the commencement of any work by the Contractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when reasonably 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.

10.5 Lessee shall maintain, at its sole cost and expense, (when required under **Section 10.3**) commercial property insurance covering the building, fixtures, equipment (excluding non-fixture equipment), tenant improvements and betterments. Lessee shall maintain, at its sole cost and expense, (when required under **Section 10.3**) builder's risk insurance covering the construction of the Project Improvements and all materials, equipment and supplies that will become a part of the Project Improvements. Commercial property insurance shall, at minimum, cover the perils insured under the ISO broad causes of loss form (CP 10 20). Builder's risk insurance shall be "special form" (also known as "all-risk") insurance. Commercial property insurance and builder's risk insurance shall cover the replacement cost of the property insured. The amount insured shall equal the full estimated cost of the property insured. Any coinsurance requirement in the policy shall be eliminated through the attachment of an agreed amount endorsement, the activation of an agreed value option, or as is otherwise appropriate under the particular policy form. Lessor shall be included as an insured and loss payee under the commercial property or builder's risk insurance. Lessee may, at its option, purchase business income, business interruption, extra expense or similar coverage as part of this commercial property insurance, and in no event shall Lessor be liable for any business interruption or other consequential loss sustained by Lessee, whether or not it is insured, even if such loss is caused by the negligence of Lessor, its employees, officers, directors, or agents.

10.6 As they apply to the limits required by Lessor, Lessor shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Lessee shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to Lessor at the address provided below within 10 days of the requested change. Lessee shall pay any costs incurred resulting from said changes.

City of San Antonio
Aviation Department
Attn: Aviation Director
9800 Airport Boulevard
San Antonio, Texas 78216-9990

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

- Name Lessor, 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 Lessor, 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 Lessor.

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

10.8 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Lessee shall provide a replacement Certificate of Insurance and applicable endorsements to Lessor. Lessor shall have the option to suspend Lessee'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.

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

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

10.11 It is agreed that Lessee'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.

10.12 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 Lessor shall be limited to insurance coverage provided.

10.13 Lessee and any Subcontractors are responsible for all damage to their own equipment and/or property.

ARTICLE 11. PERFORMANCE GUARANTEE & LANDLORD'S LIEN

11.1 Lessee shall deliver to the Aviation Director, on or before the execution of this Agreement, and shall keep in force throughout the term hereof, an irrevocable standby letter of credit in favor of Lessor, drawn upon a bank satisfactory to Lessor and payable to City of San Antonio, Aviation Department. The foregoing shall be in a form and content satisfactory to Lessor, shall be conditioned upon satisfactory performance of all terms, conditions and covenants contained herein during the term hereof and shall stand as security for payment by Lessee of all valid claims by Lessor hereunder. The amount of the irrevocable standby letter of credit shall be at least 50% of the Ground Rental for the Initial Construction Period, or in any event, not less than Six Thousand Six Hundred Fifty and Zero/Hundred Dollars ($6,650.00), and will be increased to Sixty-Nine Thousand One Hundred and Zero/Hundred Dollars ($69,100.00) (50% of Guaranteed Rent and 50% of Ground Rent) at the beginning of the first Lease Year. Said amount shall be adjusted, as necessary, so that it shall at all times equal at least one-half (1/2) of the total annual rental payable by Lessee to Lessor hereunder.

Lessor shall retain said performance guarantee for the benefit of Lessor throughout the term of this Agreement as security for the faithful performance by Lessee of all of the terms, covenants and conditions of this Agreement. If Lessee defaults with respect to any provision of this Agreement, including but not limited to the provisions relating to the payment of Rentals, Lessor 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 Lessor may suffer by reason of Lessee's default, or to compensate Lessor for any other amount which Lessor may spend or become obligated to spend by reason of Lessee's default. In no event, except as specifically hereinafter provided, shall Lessor be obliged to apply the same to Rentals or other charges in arrears or to damages for Lessee's failure to perform said covenants, conditions and agreements; however, Lessor may so apply the performance guarantee, at its option. Lessor's right to bring a special proceeding to recover or otherwise to obtain possession of the Leased Premises before or after Lessor'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 Lessor holds the performance guarantee. In the event that Lessor regains possession of the Leased Premises, whether by special proceeding, reentry or otherwise, because of Lessee's default or failure to carry out the covenants, conditions and agreements of this Agreement, Lessor 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 Lessee's default or breach. In the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against Lessee, or its successors or assigns, or any guarantor of Lessee hereunder, such performance guarantee shall be deemed to be applied first to the payment of any Rentals and/or other charges due Lessor for all periods prior to the institution of such proceedings, and the balance, if any, of such performance guarantee may be retained by Lessor in partial liquidation of Lessor's damages. The performance guarantee shall not constitute a trust fund. In the event Lessor applies the performance guarantee in whole or in part, Lessee shall, within 10 days after written demand by Lessor, deposit sufficient funds by delivering an amendment to the existing irrevocable standby letter of credit or delivering a new irrevocable standby letter of credit to maintain the performance guarantee in the initial amount. Failure of Lessee to supply such additional funds shall entitle Lessor to avail itself of the remedies provided in this Agreement for non-payment of Rentals by Lessee. After expiration of the term of this Agreement, the earlier termination thereof, or Lessee's vacating and surrendering possession of the Leased Premises to Lessor, if Lessee fully and faithfully performs every provision of this Agreement to be performed by it, then the performance guarantee or any balance thereof, less any sums then due Lessor from Lessee under this Agreement, shall be returned to Lessee (or, at Lessor's option to the last assignee of Lessee's interest thereunder) no later than thirty (30) days after Lessor has determined that all requirements of this Agreement have been met.

11.2 Lessee hereby gives to Lessor a lien upon all of its property now, or at any time hereafter, in or upon the Leased Premises, to secure the prompt payment of charges herein stipulated to be paid for the use of said Leased Premises; all exemptions of such property, or any of it, being hereby waived. Provided that Lessee is not in default under any terms, conditions or covenants of this Lease, Lessor agrees that upon written request of Lessee, Lessor shall execute and deliver to Lessee an agreement reasonably satisfactory in form to Lessee's lender and Lessor, subordinating Lessor's liens and security interests, both statutory and contractual, to the first lien or security interest of any bona fide lender taking or succeeding to a security interest in personal property of Lessee located within the Leased Premises and specified in such request. Lessor's security interests and liens, both statutory and contractual, shall not apply to any property leased by Lessee. Notwithstanding anything to the contrary appearing herein (including without limitation **Article 15**), Lessee shall at all times and from time

to time have the right to encumber by mortgage, deed of trust, or security agreement Lessee's leasehold estate in the Leased Premises created by this Lease, together with Lessee's rights and interests in the Project Improvements, FFE (both terms as defined in **Section 14.1)**, fixtures, equipment, and personal property situated thereon and all rents, issues, profits, revenues, and other income to be derived by Lessee therefrom, to secure such loans from time to time made by any person, firm or corporation to Lessee; provided, however, that such mortgage, deed of trust, or security agreement shall only encumber Lessee's interests in the Leased Premises and shall not encumber Lessor's fee title interest in the Leased Premises.

11.3 Should Lessee provide an amount for the Performance Guarantee required by this Agreement equal to the greater of the rentals, fees and charges payable by Lessee to Lessor for the current calendar year, or double the amount of the Performance Guarantee set forth in **Section 11.1** above, then, for so long as such Performance Guarantee shall be in place, Lessor lien described in **Section 11.2** above, shall not be effective or apply to any property of Lessee.

ARTICLE 12. PRIVILEGES AND CONDITIONS

12.1 Lessor hereby grants to Lessee the following general, non-exclusive privileges, uses and rights, subject to the terms, conditions and covenants herein set forth:

> 12.1.1 The right of ingress to and egress from the Leased Premises, over and across common or public roadways serving the Airport for Lessee, its agents, servants, patrons, invitees, suppliers of service and furnishers of material. Said right shall be subject to such ordinances, rules and regulations as now, or may hereafter, apply at the Airport.

12.2 The granting and acceptance of this Agreement is conditioned upon compliance with the covenant that the right to use said common Airport facilities, in common with others so authorized, shall be exercised subject to and in accordance with the laws of the United States, State of Texas and City of San Antonio, the rules and regulations promulgated by their authority with reference to aviation and navigation, and all reasonable and applicable rules, regulations and ordinances of Lessor, now in force or hereafter prescribed or promulgated by charter authority or by law.

12.3 Lessor reserves the right to enter the Leased Premises at any reasonable time upon notice to Lessee for the purpose of inspecting same or verifying that fire, safety, sanitation regulations and other provisions contained in this Agreement are being adhered to by Lessee; however, notice to Lessee shall not be required for Lessor to enter the Leased Premises in the event of an emergency.

ARTICLE 13. AS IS ACCEPTANCE AND CONDITION OF LEASED PREMISES

13.1 Lessee has had full opportunity to examine the Leased Premises. Except for environmental matters not caused by or reasonably discoverable by Lessee prior to the commencement of this Agreement, Lessee's taking possession of the Leased Premises shall be conclusive evidence of Lessee's acceptance thereof in an "AS IS" condition, and Lessee hereby accepts same in its present condition as suitable for the purpose for which leased. Should additional environmental site assessments deem the site not suitable for development or too costly to develop, Lessee may elect to terminate this Agreement by providing Lessor written notice no later than sixty (60) days after the Commencement Date.

13.2 Lessee agrees that no representations respecting the condition of the Leased Premises and no promises to improve same, either before or after the execution hereof, have been made by Lessor or its agents to Lessee, unless contained herein or made a part hereof by specific reference.

ARTICLE 14. CONSTRUCTION BY LESSEE

14.1 Construction.

The provisions of this **Section 14.1** shall apply with respect to the Project Improvements.

14.1.1 Construction of the Project Improvements. Lessee shall construct or cause to be designed and constructed, at Lessee's sole expense, (i) the Retail Fuel Station, Convenience Store, and Fast Food Restaurant and (ii) the Lessee Site Work (together with the Retail Fuel Station, Convenience Store, and Fast Food Restaurant, the **"Project Improvements"**), as reflected in **Exhibit 4** attached hereto, and substantially in accordance with the plans and specifications to be prepared by Lessee (the **"Construction Documents"**). In addition, Lessee shall at its sole expense obtain and install within the Retail Fuel Station, Convenience Store, and Fast Food Restaurant the furniture, fixtures, and equipment, security, utilities, and cabling and other items needed by Lessee for its operations (the **"FFE"**). To the extent those items of the FFE, upon installation within the Retail Fuel Station, Convenience Store, and Fast Food Restaurant, constitute fixtures under applicable law, such items shall be included within the terms "Retail Fuel Station, Convenience Store, and Fast Food Restaurant" and "Project Improvements" for purposes of this Agreement. Lessee's Minimum Capital Investment for the Project Improvements shall be $2,000,000.00 ("**Minimum Capital Investment**"). Design of the Project Improvements must not impede vehicle access from Northern Boulevard to Lessor's new Cell Phone lot and/or Taxi Hold lot. Construction of the Project Improvements shall commence no later than ninety (90) days following Commencement Date. Construction of the Project Improvements shall be completed and a certificate of occupancy obtained no later than eighteen (18) months after the Commencement Date, subject to (i) any delay caused by force majeure events, (ii) any delay resulting from the inability of Lessee to obtain all necessary governmental permits required for such construction (provided that Lessee has used reasonable, good faith attempts to obtain such permits), and (iii) any delay in the completion of the construction to the extent such delay is caused by Lessor, DOT, FAA or other governmental agency having regulatory jurisdiction over operations at the Airport. The parties acknowledge that Lessee will utilize a general contractor (the **"Contractor"**) for the construction of the Project Improvements.

14.1.2 Approval of Construction Documents. The Construction Documents are subject to the approval of the Aviation Director. Lessee (i) shall submit the Construction Documents to the Aviation Director no later than ninety (90) days following the Commencement Date. Notwithstanding the foregoing, approval by the Aviation Director of the Construction Documents shall in no way alleviate Lessee's responsibility for the integrity of such documents. The approval by the Aviation Director of the Construction Documents refers only to the conformity of same to the general architectural plan for the Leased Premises, as opposed to their architectural or engineering design. Lessor, by giving its approval, assumes no liability or responsibility therefor or for any defect in any work performed according to such plans and specifications. No later than fourteen (14) days after the Aviation Director has approved the Construction Documents, Lessee shall submit the Construction Documents for permitting with appropriate City departments.

Lessee shall commence construction of the Project Improvements no later than thirty (30) days after receipt of applicable permitting. Notwithstanding the foregoing, and as set forth in **Subsection 14.1.1** above, construction of the Project Improvements shall commence no later than ninety (90) days following Commencement Date.

14.1.3 Prior to the commencement of construction, Lessee shall procure any and all additional approvals of the Construction Documents required by any federal, state or municipal authorities (including other departments of Lessor), agencies, officers and departments having jurisdiction thereof, and shall obtain any and all requisite building or construction licenses, permits or approvals. Construction shall comply with applicable building code requirements and with applicable regulations promulgated by any federal, state or municipal agency or department having jurisdiction thereof. Lessee will obtain at its expense all required permits from City of San Antonio; however, Lessor will assist Lessee in all reasonable respects with City of San Antonio permitting processes. Lessee specifically agrees that it shall hold Lessor completely harmless from and against any and all claims, causes of action or liabilities, whether actual or potential, associated with any construction undertaken by Lessee hereunder.

14.1.4 Infrastructure Site Work. Lessee will perform certain infrastructure and other site work (collectively, the "Site Work") at the Leased Premises in connection with the construction of the Project Improvements in accordance with the Construction Documents. The Site Work shall include site preparation, utilities, telecommunication, fencing, landscape, parking areas, accessibility requirements, driveways, installation of two (2) below ground fuel tanks (20,000 gallons and 15,000 gallons capacity, respectively) for the retail fuel pumps, and no fewer than four (4) retail fuel pumps. The site must be landscaped and made presentable to the traveling public. In development of the site for landscaping, Lessee must comply with all applicable landscaping ordinances and regulations, including, but not limited to, City of San Antonio Landscape Ordinance No. 35510, Buffer Ordinance No. 35510 and Tree Ordinance No. 35523. It is further expressly understood and agreed that any improvements and access thereto constructed by Lessee on the Leased Premises shall be performed in such a manner that shall not cause flowage of surface drainage onto adjacent tracts or interrupt flow to the storm drainage system.

14.1.5 Delivery of Payment and Performance Bonds. Prior to the commencement of any work on the Project Improvements or any Improvements constructed by Lessee on the Leased Premises during the term of the Agreement, Lessee shall deliver a fully executed Agreement to Lessor, along with such bonds as Lessee may be required to furnish, including, but not limited to, a required payment bond in the form and amount specified in this Agreement and a required performance bond in the form and amount specified in this Agreement.

> 14.1.5 (i) Payment & Performance Bonds. Lessee shall, with the execution and delivery of the Agreement, furnish and file with Lessor, in the amounts required in this **Article 14**, the surety bonds described herein. Each surety bond shall be signed by Lessee, as the Principal, as well as by an established corporate surety bonding company as surety. The surety bonds shall be accompanied by an appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign and shall include:

14.1.5 (i)(a) Performance Bond. A good and sufficient bond in an amount equal to one hundred percent (100%) of the total cost of the construction contract amount, guaranteeing the full and faithful execution of the work and performance of the Project Improvements in accordance with the Construction Documents and all other contract documents, including any extensions thereof, for the protection of Lessor. This bond shall also provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of Final Completion or acceptance of the Project Improvements by Lessor.

14.1.5 (i)(b) Payment Bond. A good and sufficient bond in an amount equal to 100% of the total construction contract amount, guaranteeing the full and prompt payment of all claimants supplying labor or materials in the prosecution of the Project Improvements, and for the use and protection of each claimant.

14.1.6 Delivery of Evidence of Insurance. Upon execution of the Agreement and prior to the commencement of any work on the Project Improvements or any other Improvements constructed by Lessee on the Leased Premises during the term of this Agreement, Lessee shall deliver evidence of insurance to Lessor. Lessee shall furnish an original completed Certificate of Insurance and a copy of all insurance policies, together with all required endorsements thereto, required by the Agreement to the Aviation Department, Properties Division, clearly labeled with the name of the Project Improvements and which shall contain all information required by the Agreement. Lessee shall be prohibited from taking possession or commencing work on the Project Improvements until such evidence of insurance is delivered to Lessor.

14.1.7 Supervision. Lessee shall be responsible for the acts and omissions of Contractor's agents and employees, Subcontractors and their agents and employees and other persons or entities performing portions of the work for or on behalf of Contractor or any of its Subcontractors. If Lessee, its Contractor, or any of its Subcontractors, agents, or employees, damages the FAA easement, including, but not limited to, FAA cables located within the FAA easement, Lessee shall be responsible for any such repairs required, and shall indemnify Lessor from any such claims.

14.1.8 Warranty. Lessee warrants to Lessor that materials and equipment furnished and installed in the Project Improvements shall be of good quality and new, unless otherwise required or permitted by the Agreement, the Project Improvements work shall be free from material defects as determined by Lessor not inherent in the quality required or permitted and shall conform to the requirements of the Construction Documents. Work not conforming to this warranty and these requirements may be considered defective. Lessee's warranty excludes remedies for damage or defect caused by abuse, modifications not executed by the Lessee, improper or insufficient maintenance, improper operation, normal wear and tear and normal usage, and additional damage or defects caused by Lessor's failure to promptly notify Lessee.

14.1.8 (i) A right of action by Lessor for any breach of Lessee's express warranty herein shall be in addition to, and not in lieu of, any other remedies Lessor may have under this Agreement, at law or in equity, regarding any defective work. Such warranty shall be interpreted to require Lessee, upon written timely demand

by Lessor, to replace defective materials and equipment and re-execute any defective work disclosed to the Lessee by the Lessor within a period of one (1) year after Substantial Completion of the Project Improvements (as defined herein) or, in the event of a latent defect, within one (1) year after the earlier to occur of (i) actual discovery thereof by Lessor, (ii) the date that Lessor should have discovered such defect in the exercise of reasonable diligence, or (iii) two years following Substantial Completion. "Substantial Completion" is the date certified by Lessee, when the Project Improvements (including the installation of the FFE), or a Lessee-designated portion thereof that is approved by the Aviation Director, is sufficiently complete in accordance with the Construction Documents so as to be operational and fit for the intended use.

14.1.8 (ii) Except when a longer warranty time is specifically called for in the Agreement or is otherwise provided by law or by manufacturer, all warranties shall be at minimum for twelve (12) months and shall be in form and content otherwise reasonably satisfactory to Lessor.

14.1.8 (iii) Warranties shall become effective on the date of Substantial Completion of the entire Project Improvements, unless otherwise provided in any certificate of partial Substantial Completion approved by the parties, except for work to be completed or corrected after the date of Substantial Completion. Warranties for work to be completed or corrected after the date of Substantial Completion and prior to final completion shall become effective on the later of the date the work is completed or corrected or the date of final completion of the work.

14.1.8 (iv) When Lessee is constructing the Retail Fuel Station, Convenience Store, and Fast Food Restaurant, the structure(s) shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the structure(s) by external forces beyond Lessee's control. Lessee, in a reasonably prompt manner upon notification by Lessor of water penetration, shall determine the source of water penetration and perform any work necessary to make the structure(s) watertight. Lessee also shall repair or replace any damaged material, finishes and/or fixtures damaged as a result of any water penetration, returning the structure(s) to original condition. The costs of such determination and repair shall be borne by Lessee only to the extent that the leak(s) is/are attributable to faulty workmanship or unauthorized or defective materials.

14.1.9 Project Improvements Schedule. Lessee shall meet with Lessor each month at a scheduled project schedule update meeting, for the duration of the Initial Construction Period to coordinate the work being performed by Lessee and review progress made. At each monthly meeting, Lessee shall submit an updated critical path method Project Improvements Schedule to aid in the coordination and scheduling of work Lessee is required to perform hereunder. The project schedules shall show the sequence and interdependence of activities required for complete performance of the work to be performed. Lessee shall submit Construction Documents to the Aviation Director for review at the 30%, 60% and 90% completion phases.

14.1.10 Use of Site During Construction. Lessee shall confine construction equipment, the storage of materials and equipment and the operations of workers to

the Leased Premises, and shall not unreasonably encumber the Leased Premises with construction equipment or other materials or equipment that are not related to the Project Improvements.

14.1.11 Cleaning Up. Prior to Substantial Completion of the Project Improvements, Lessee shall remove all waste materials, rubbish and debris from and about the Leased Premises, as well as all tools, appliances, construction equipment and machinery and surplus materials, and shall leave the Leased Premises clean and ready for occupancy. As applicable, Lessee shall clean, sweep, mop, brush and polish the interior of the Project Improvements, including, but not limited to, any floors, carpeting, ducts, fixtures, furniture, equipment, and ventilation units operated during construction, and shall clean exterior gutters, drainage, walkways, driveways and roofs of debris.

14.1.12 Lien Waivers/As-Built Plans. Within sixty (60) days after Lessee's opening for business at the Leased Premises, Lessee shall deliver to the City executed copies of all mechanics' lien waivers and/or releases or other lien waivers and/or releases on account of Lessee's Project Improvements, notarized and unconditional, in such form as the Aviation Director shall have reasonably approved and an architect's certification that the Leased Premises have been constructed in accordance with the approved final drawings and are fully complete in accordance with all of such requirements specified or referenced herein. Upon completion of construction a conformed set of "as built" plans and a Certificate of Occupancy shall be provided by Lessee to the Aviation Director. Lessee shall pay within 10 days of written demand therefor by Lessor as a contractual charge of $500.00 per month, or fraction thereof, until all documents required under this sub-section are delivered to Aviation Director by Lessee. This remedy shall be in addition to other remedies provided herein or by law to Lessor.

14.1.13 Physical Street Address. Lessee shall obtain a street address for the Retail Fuel Station, Convenience Store, and Fast Food Restaurant at commencement of construction.

14.2 It is further expressly understood and agreed that any improvements and access thereto constructed by Lessee pursuant to this Agreement shall be performed in such a manner that shall not cause flowage of surface drainage onto adjacent tracts or interrupt flow to the storm drainage system.

14.3 Renovations, Alterations, and Construction After the Initial Construction Period

After completion of the Initial Construction Period, Lessee shall have the right to erect, alter, remodel and renovate buildings and other Improvements on the Leased Premises, provided that Lessee complies with all requirements set forth within this **Article 14**, including, but not limited, to, approval of designs, plans and specifications, and payment and performance bonds. The cost of any renovations, construction, alterations or improvements upon the Leased Premises shall be borne and paid for solely by Lessee. Except as may be otherwise set forth herein, Lessor has no financial or other obligation of any kind under this Agreement, other than the renting to Lessee of the premises which are the subject hereof for the term and consideration hereinbefore set forth. Except as may be otherwise set forth herein, Lessor has no financial or other obligation of any kind under this Agreement, other than the renting to Lessee of the premises which are the subject hereof for the term and consideration hereinbefore set forth.

14.4 Documentation of Lessee's Minimum Capital Investment and Additional Capital Investment

Lessee shall provide documentation such as invoices, contracts, proof of payment, and other records reasonably satisfactory to the Aviation Director as evidence of costs incurred for the Minimum Capital Investment requirements set forth in **Section 14.1** above, and the Additional Capital Investment requirements for the Extension Options set forth in **Section 3.1**. Such documentation shall be provided to Lessor at the end of each approved project. Lessee shall also provide on an annual basis, no later than the first day of each Lease Year, cumulative totals of all costs, whether complete or under construction, of Minimum Capital Investment and Additional Capital Investment by project and combined that have been incurred during the term of the Lease. Project costs will not be deemed to be included toward the Minimum Capital Investment and Additional Capital Investment requirements until such projects are completed and all documentation is received and approved by the Director. Any project costs incurred by Lessee during the Initial Construction Period in excess of the Minimum Capital Investment shall not count towards the Additional Capital Investment required of Lessee to exercise any Extension Option under **Section 3.1.**

ARTICLE 15. LIENS PROHIBITED

15.1 Lessee shall not suffer or permit any mechanics' or other liens to be filed against the fee of the Leased Premises, or against Lessee's leasehold interest in the land, buildings or improvements thereon, by reason of any work, labor, services or materials supplied, or claimed to have been supplied, to Lessee or to anyone holding the Leased Premises, or any part thereof, through or under Lessee.

15.2 If any such mechanics' lien or materialmen's lien described in **Section 15.1** above shall be recorded against the Leased Premises, or any improvements thereon, Lessee shall cause the same to be removed or, bonded around pursuant to the terms of the Texas Property Code. In the alternative, if Lessee, in good faith, desires to contest the same, it shall be privileged to do so; however, in such case, Lessee hereby agrees to indemnify and save Lessor harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said mechanics' lien, cause the same to be discharged and removed prior to sale of the property or execution of such judgment.

ARTICLE 16. MAINTENANCE AND REPAIR

16.1 Lessee shall pay or cause to be paid, any and all charges for water, heat, gas, electricity, sewer and any and all other utilities used on the Leased Premises, throughout the term of, or any extension of, this Agreement, including, but not limited to, any connection fees and any and all additional costs related to utility connection, metering, maintenance, repair and usage.

16.2 Except as may be otherwise provided herein, Lessee shall, throughout the term of this Agreement and any extension hereof, assume the entire responsibility, cost and expense, for all repair and maintenance of the Leased Premises and all buildings and improvements thereon, whether such repair or maintenance be ordinary, extraordinary, structural or otherwise. Additionally, without limiting the foregoing, Lessee shall:

16.2.1 at all times maintain the buildings and improvements in a good state of repair and preservation, excepting ordinary wear and tear and obsolescence in spite of repair; and

16.2.2 replace or substitute any fixtures and equipment which have become inadequate, obsolete, worn out, unsuitable or undesirable, with replacement or substitute fixtures and equipment, free of all liens and encumbrances, which shall automatically become a part of the buildings and improvements; provided that Lessee shall not be obligated to replace or substitute any such fixtures or equipment which Lessee reasonably determines to not be necessary for the operations of Lessee conducted on the Leased Premises; and

16.2.3 at all times keep the Leased Premises, its buildings, improvements, fixtures, equipment and personal property, in a clean and orderly condition and appearance; and

16.2.4 provide, and maintain in good working order, all obstruction lights and similar devices, fire protection and safety equipment, and all other equipment of every kind and nature required by applicable laws, rules, orders, ordinances, resolutions or regulations of any competent authority, including Lessor and Aviation Director; and

16.2.5 observe all insurance regulations and requirements concerning the use and condition of the Leased Premises, for the purpose of reducing fire hazards and insurance rates on the Airport; and

16.2.6 repair any damage caused by Lessee to paving or other surfaces of the Leased Premises or the Airport, in connection with the scope of the Agreement, caused by any oil, gasoline, grease, lubricants, flammable liquids and/or substances having a corrosive or detrimental effect thereon, or by any other reason whatsoever; and

16.2.7 take reasonable measures to prevent erosion, including, but not limited to, the planting and replanting of grass on all unpaved or undeveloped portions of the Leased Premises; the planting, maintaining and replanting of any landscaped areas; the designing and constructing of improvements on the Leased Premises; and the preservation of trees as may be required by City ordinance, consistent with Lessee's construction and operations; and

16.2.8 if damage is caused by Lessee, be responsible for the maintenance and repair of all utility services lines upon the Leased Premises, including, but not limited to, water and gas lines, electrical power and telephone conduits and lines, sanitary sewers and storm sewers; and

16.2.9 keep and maintain all vehicles and equipment operated by Lessee on the Airport in safe condition, good repair and insured, as required by this Agreement; and

16.2.10 replace broken or cracked plate glass, paint/repaint structures upon the Leased Premises and, where applicable, mow the grass; and

16.2.11 provide and use suitable covered metal receptacles for all garbage, trash and other refuse; assure that boxes, cartons, barrels or similar items are not piled in an unsightly, unsafe manner, on or about the Leased Premises; provide a complete and proper arrangement, satisfactory to the Aviation Director, for the adequate sanitary

handling and disposal away from the Airport, of all trash, garbage and refuse caused as a result of the operation of Lessee's business.

16.3 The adequacy of the performance of the foregoing maintenance and repair by Lessee shall be determined by the Aviation Director, whose reasonably exercised judgment shall be conclusive. Should Lessee refuse or neglect to undertake any such maintenance or repair, or if Lessor is required to perform any maintenance or repair necessitated by the negligent acts or omissions of Lessee, its employees, agents, assignees, subtenants or licensees, then Lessor shall have the right, but not the obligation, to perform such maintenance or repair on behalf of and for Lessee. The costs of such maintenance or repair, plus any associated overhead reasonably determined by Lessor, shall be reimbursed by Lessee to Lessor no later than ten (10) days following receipt by Lessee of written demand from Lessor for same. In cases not involving maintenance or repair requiring exigent action, Lessor shall provide Lessee a written request that Lessee perform such maintenance or repair (which request shall describe the required maintenance or repair in reasonable detail), at least thirty (30) days before Lessor effects such maintenance or repair on behalf of Lessee.

ARTICLE 17. TITLE

17.1 All foundations, buildings, alterations, additions or improvements (hereinafter "**Improvements**") made upon the Leased Premises by Lessee are and shall be the property of Lessee during the term of this Agreement. During the term, such Improvements may be conveyed, transferred or assigned, without the Aviation Director's written approval, only to a person or entity to whom this Agreement simultaneously is being transferred or assigned, whereupon the subsequent holder of the leasehold interest hereunder shall own the Improvements. Absent written approval of the Aviation Director, any other attempted conveyance, transfer or assignment of the Improvements, to any person or entity, whether voluntary, by operation of law or otherwise, shall be void and of no effect.

17.2 At Lessor's sole option, title to the Improvements made upon the Leased Premises by Lessee, and fixtures annexed thereto, excluding, however, underground fuel storage tanks, shall vest in and become the property of Lessor, at no cost to Lessor and without any instrument of conveyance, upon the expiration of the term of this Agreement or earlier termination in accordance with the terms of this Agreement. Notwithstanding the foregoing, Lessee covenants and agrees, upon Lessor's demand, on or after termination of the Agreement, to execute any instruments reasonably requested by Lessor in connection with the conveyance of such Improvements. Lessor shall notify Lessee if Lessor intends take title to the Improvements, or any portion thereof, as herein provided, at least sixty (60) days prior to the expiration of the term of this Agreement or earlier termination thereof. Lessor's failure to provide such notice, however, shall not act as a waiver of its rights hereunder, provided that Lessor, within a reasonable time after receipt of Lessee's written request, advises Lessee of its election hereunder.

17.3 Should Lessor elect not to take title to the Improvements, or any portion thereof, as provided in **Section 17.2** above, the same shall be removed by Lessee, at its sole cost and risk, in compliance with all applicable laws and regulations and, to the degree reasonably possible, the Leased Premises shall be restored to the condition that existed prior to the construction of same. Should Lessee fail to undertake such removal upon the later to occur of (i) the expiration of ninety (90) days following the expiration or termination of this Agreement, or (ii) 90 days after Lessee receives written notice from Lessor that Lessor will not elect to take title to the Improvements in accordance with **Section 17.2** above, Lessor may undertake such removal at

Lessee's expense. If Lessee shall fail to remove any of its personal property and operating equipment, Lessor may, at its option, retain either any or all of such property, and title thereto shall thereupon vest in Lessor without compensation to Lessee; or Lessor may remove all or any portion of the property from the Leased Premises and dispose of the property in any manner, without compensation to Lessee. In the latter event, Lessee shall, upon demand, pay to Lessor the reasonable and actual expense of such removal and disposition and the repair of any damage to the Leased Premises resulting from or caused by such removal. Lessee shall, at its expense, execute all documents requested and deemed necessary by Lessor to evidence the title to any fixed improvements. The obligations contained in this Section 17.3 shall survive the expiration or earlier termination of this Agreement. The Performance Guarantee required under this Agreement, if any, may, at Lessor's option, be applied towards any costs incurred by Lessor for such removal.

ARTICLE 18 COMPLIANCE WITH ENVIRONMENTAL LAWS

18.1 Definitions in Article 18 and Article 19.

"Environmental Baseline Study Update" means an investigation of site environmental conditions sufficient to identify changes in environmental conditions at the Project Site as compared to the Environmental Baseline Study or the most recent Updated Environmental Baseline Study. The Environmental Baseline Study Update shall meet at least the minimum standards of American Society for Testing and Materials ("**ASTM**") Standard *D6008 -96(2014) Standard Practice for Conducting Environmental Baseline Surveys*, or its latest version.

"Environmental Audit" means an environmental compliance audit consistent with any applicable or relevant and appropriate assessment or auditing standards, including, but not limited to, CERCLA § 101(35)(B) (42 U.S.C. § 9601(35)(B)), 40 C.F.R. Part 312, and ASTM Standard *E2107-00 Standard Practice for Environmental Regulatory Compliance Audits.* An Environmental Audit should be conducted under audit privilege laws, including the Texas Environmental, Health and Safety Audit Privilege Act, Tex. Rev. Civ. Stat. Ann. Art. 4447cc (Vernon's).

"Environmental Baseline Study" means the study conducted for the City that characterizes the environmental conditions at the Project Site prior to construction of the Gas Station, Convenience Store, and Fast Food Restaurant at the Leased Premises. The study is documented in a report prepared by Freese and Nichols, Inc. dated May 2015.

"Environmental Claims" means, without limitation, all claims, demands, suits, actions, judgments, and liability for: (i) spills, discharges, releases, removal, remediation, assessment, transportation, testing or disposal of Hazardous Materials; (ii) bodily injury or death; (iii) damage to or loss of use of property of any Person; (iv) injury to natural resources; (v) fines, costs, fees, assessments, truces, demands, orders, directives or any other requirements imposed in any manner for violation of Environmental Laws by any governmental agency; and (vi) costs and expenses of cleanup, remediation, assessment testing, investigation, transportation and disposal of a Hazardous Material spill, release, or discharge.

"Environmental Law" or "Environmental Laws" means any law pertaining to health, industrial hygiene, public safety, occupational safety, mining, mine reclamation, natural or cultural resources, fish, wildlife or other protected species or the environment, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, *et. seq.);* the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et. seq.);* the Toxic Substances Control Act (15 U.S.C. § 2601, *et. seq.);* the Clean

Water Act (33 U.S.C. § 1251, *et. seq.);* the Oil Pollution Act of 1990 (33 U.S.C. § 2701, *et. seq.);* the Clean Air Act (42 U.S.C. §*7401, et. seq.);* the Atomic Energy Act (42 U.S.C. § 2011, *et. seq.);* the Hazardous Materials Transportation Act (49 U.S.C. § 5101, *et. seq.);* the Emergency Planning and Community Right-To-Know Act (42 U.S.C. 11001, *et. seq.);* the Endangered Species Act of 1973 (16 U.S.C. §1531, *et. seq.);* the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701, *et. seq.);* the Lead-Based Paint Exposure Reduction Act (15 U.S.C. § 2681, *et. seq.);* the Safe Water Drinking Act Amendments of 1996 (42 U.S.C. § 300); the National Historic Preservation Act of 1966; the Mine Safety and Health Act (30 U.S.C. 801 et seq.); the Surface Mining Control And Reclamation Act (30 U.S.C. 1201 et seq.) and state and local counterparts of each of the foregoing.

"Fuel Spill Response Plan" means the written plan adopted by the Airport in 2002 to help the airport and tenants plan for and respond to emergency fuel spills at the Airport, as may be amended from time to time.

"Hazardous Materials" means, without limitation, all substances whose use, handling, treatment, storage, disposal, discharge, or transportation is governed, controlled, restricted, or regulated by Environmental Laws, and includes all Hazardous Substances.

"Hazardous Substance" means all materials, substances, or wastes defined, designated, regulated or classified as hazardous, toxic or radioactive, under any Environmental Law, whether by type or by quantity, and shall include petroleum or any derivative or by-product thereof, and asbestos and asbestos containing materials.

"Pre-Lease Agreement Environmental Condition" means the site environmental condition prior to construction of the Facility as determined in the Environmental Baseline Study.

"Spill Prevention Control and Countermeasures Plan" or "SPCC Plan" means a written plan required by Environmental Law, that includes a risk evaluation performed by a Professional Engineer and that describes the storage of petroleum products (as defined in 40 C.F.R. 112.7) and spill response procedures as they relate to the storage and use of petroleum products. The SPCC Plan shall be prepared by the Lessee.

"Storm Water Pollution Prevention Plan" or "SWPPP" means a written plan required by the Clean Water Act or other Environmental Law, or if not required by Environmental Law, an equivalent plan required by the City for the Project Site, prepared by Lessee, that describes the Leased Premises (including, but not limited to, the Fuel Facilities) and adjacent Airport properties (including roadways) and the management, training, operational, and monitoring activities and requirements in place to prevent illicit discharges to the waters of the United States or other deleterious materials (e.g., total suspended solids) from, or in connection with, the Leased Premises; control and remediate spills or releases; and/or meet other environmental permit requirements related to releases from, or in connection with, the Leased Premises.

"Storm Water Best Management Practices" or "BMPs" mean the schedules of activities, prohibitions of practices, maintenance procedures, and other techniques to control, prevent or reduce the discharge of pollutants from storm water discharges. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spills or leaks, sludge or waste disposal, or drainage from raw material storage areas. All BMPs shall be subject to approval by the Aviation Director.

"Updated Environmental Baseline Study" means the Environmental Baseline Study as updated by the most recent Environmental Baseline Study Update or other environmental investigation meeting at least the minimum standards of *D6008 -96(2014) Standard Practice for Conducting Environmental Baseline Surveys*, or its latest version.

Section 18.2 Environmental Compliance.
In its operations on the Leased Premises and at the Airport, Lessee shall strictly comply with all applicable Environmental Laws, the Airport Rules and Regulations (including without limitation, the SWPPP, SPCC, and Fuel Spill Response Plan), and other Airport environmental policies and procedures as may be promulgated from time to time. Without limiting the generality of the foregoing provision, Lessee shall not use or store Hazardous Materials on or at the Leased Premises or Airport except as reasonably necessary in the ordinary course of Lessee's permitted activities at the Leased Premises and Airport, and then only if such Hazardous Materials are properly labeled and contained as required pursuant to Applicable Laws, and an annual inventory and a copy of the current material safety data sheet is provided to the City for each such Hazardous Material. Prior to commencing operations at the Leased Premises or Airport, Lessee must complete an Airport environmental questionnaire. Lessee shall not discharge, release, or dispose of any Hazardous Materials on the Leased Premises or Airport or surrounding air, lands or waters in violation of Applicable Laws. Lessee shall promptly and no later than 24 hours after occurrence notify City of any Hazardous Material spills, releases, or other discharges by Lessee at the Airport in accordance with City's Fuel Spill Response Plan and promptly abate, remediate, and remove any of the same to the extent required under Applicable Laws. Lessee shall provide the City with copies of all reports, complaints, claims, citations, demands, inquiries, or notices relating to the environmental condition of the Airport, or any alleged material noncompliance with Environmental Laws by Lessee at the Leased Premises or Airport within ten (10) days after such documents are generated by or received by Lessee. If Lessee uses, handles, treats, or stores Hazardous Materials at the Leased Premises or Airport, Lessee shall arrange for the proper storage, handling, and disposal of the Hazardous Materials, and shall comply with all applicable Environmental Law regarding waste characterization, transportation, and disposal. Complete records of all disposal manifests, receipts and other documentation required by Applicable Law shall be retained by Lessee and made available to the City for review upon request. The City shall have the right at any time to enter the Leased Premises to inspect, take samples for testing, and otherwise investigate the Leased Premises for the presence and proper management of Hazardous Materials. In exercising its right of access, City shall endeavor to minimize disruption of or interfere with Lessee's operations or use of the Leased Premises. Lessee will comply with Occupational Safety and Health Administration ("**OSHA**") hazard communications laws, 29 C.F.R. 1910.1200 *et seq.*, and Texas hazard communication laws. All waste containers shall be labeled with the name of the Lessee, to avoid orphaned or wandering waste containers.

Section 18.3 Hazardous Materials Responsibility.
Lessee's Hazardous Materials shall be the responsibility of Lessee. Lessee shall not allow the release, spill, discharge, leak, emission, injection, escape, migration or dumping in, on, about, from or adjacent to the Leased Premises (including storm drains, sanitary sewer system, surface waters, soils, underground waters or air) of any Hazardous Material or other deleterious substance in any manner that could be a detriment to the Leased Premises or in violation of the Pollution Prevention Plan, the SPCC Plan, any City Codes and City Standards, any City Environmental Permit or any Environmental Law. All reporting and notice requirements under Environmental Laws with respect to spills, releases, or discharges of Hazardous Materials by Lessee at the Leased Premises or Airport shall be the

responsibility of Lessee. Lessee shall promptly notify City of any report or notice in accordance with **Section 18.9.**

18.4 Stormwater Requirements.
Lessee acknowledges that the Airport is subject to the National Pollution Discharge Elimination System Program ("**NPDES**"), Federal Stormwater Regulations (40 C.F.R. Part 122) and the Texas Pollution Discharge Elimination System Program ("**TPDES**"). The Airport currently has a delegated shared SWPPP, and Lessee shall prepare and implement a unified SWPPP for the Leased Premises, and shall coordinate Lessee's SWPPP with the Airport's delegated shared SWPPP. Lessee shall provide a copy of the SWPPP to the City not more than thirty (30) days before Lessee commences operations at the Leased Premises. Lessee shall be responsible for updating the SWPPP to address future changes in the Leased Premises or activities, operations and practices of Lessee upon the Leased Premises.

18.5 Sustainability.
Lessee shall comply with Applicable Laws and policies pertaining to recycling, energy, and natural resource conservation and management. Lessee shall cooperate with the City in the implementation of energy conservation, water conservation, alternative fueling, emissions reduction, and waste minimization programs and policies the City establishes from time to time.

18.6 Spill Prevention Control and Countermeasure Plan.
Lessee shall determine whether Section 112.7 of Title 40 of the Code of Federal Regulations is applicable to the Leased Premises and Lessee's operations, and whether Lessee is required to prepare a SPCC Plan. This determination must be submitted to City for approval, with a copy to the City. Preparation of Lessee's SPCC Plan, if required, shall be the sole responsibility of Lessee. Any SPCC Plan must be certified by a licensed Professional Engineer in accordance with all applicable legal requirements (specifically including Environmental Laws) and an up-to-date copy thereof shall be furnished at all times to the City.

18.7 Survival.
The covenants, conditions, and indemnities in this Article shall survive the expiration or earlier termination of this Agreement.

18.8 Pre-Lease Agreement Environmental Condition.
An Environmental Baseline Survey of the Leased Premises was conducted prior to the Effective Date of this agreement, which identifies the Pre-Lease Agreement Environmental Condition. The FAA issued a Finding of No Significant Impact ("**FONSI**") for the construction of a fueling station on the leasehold, on March 3, 2015.

18.9 Permits, Reports, and Notices.
Lessee shall make available to the City upon request copies of all material safety data sheets for all Hazardous Materials used or stored on the Leased Premises, Lessee's U.S. Environmental Protection Agency waste generator number, and its generator annual hazardous waste reports. Within seventy-two (72) hours of receipt or transmission, whichever first occurs, Lessee shall provide City with copies of any environmentally related regulatory permits or approvals (including revisions or renewals) and any material report or notice Lessee receives from, or provides to, any governmental authority in connection with the handling of Hazardous Materials on the Leased Premises or the presence, or possible presence, of any Hazardous Material in, on, about, from or adjacent to the Leased Premises. Lessee shall report to the City any spills or emissions of Hazardous Materials resulting from the acts or

omissions of the Lessee in accordance with the City's Fuel Spill Response Plan and shall report to the appropriate governmental authorities any spills or emissions of Hazardous Materials by Lessee that are above reportable quantities as defined by applicable Environmental Laws.

18.10 Violation of Environmental Laws.
If Lessee is in violation of any Environmental Law concerning the presence or use of Hazardous Materials or the handling or storing of hazardous wastes, Lessee shall promptly take such action as is necessary to mitigate and correct the violation. If Lessee does not act in such a manner, the City has the right, but not the obligation, to come onto the Leased Premises, to act in place of Lessee (and Lessee hereby appoints the City as its agent for such purposes) and to take such action as the City deems necessary to ensure compliance or to mitigate the violation. If the City has a reasonable belief that Lessee is in violation of any of the Environmental Laws, or that Lessee's acts or omissions present a threat of violation or a threat of damage to the Leased Premises, the City have the right to enter onto the Leased Premises and take such corrective or mitigating action as it deems necessary in City's sole discretion. All reasonable and necessary costs and expenses incurred by the City in connection with any such actions shall become immediately due and payable by Lessee upon presentation of an invoice therefor. Interest shall accrue on all unpaid sums.

18.11 Inspection: Test Results.
The City shall have access to the Leased Premises to conduct (but shall have no obligation to conduct) environmental inspections, including an Environmental Audit, and Lessee shall permit the City access to the Leased Premises for the purpose of conducting environmental testing, whether in connection with the City's action taken pursuant to **Section 18.10** hereof or for other City purposes. Except in the event of any real or threatened emergency, (a) environmental testing by the City shall occur only during normal business hours, or at such other times as Lessee shall reasonably approve; (b) the City shall provide notice to Lessee of its intention to conduct tests at least five (5) business days prior to such date of testing; (c) testing shall not unreasonably interfere with Lessee's normal business operations; and (d) any damages to the Leased Premises caused by the environmental testing conducted by City shall be repaired by City at its sole cost and expense. Lessee shall not conduct or permit others to conduct environmental media testing on the Leased Premises without first obtaining the City's prior consent. Lessee shall within three (3) business days inform the City of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Leased Premises whenever Lessee knows the same, and Lessee shall provide copies thereof to the City, with the exception of Lessee internal audits covered under attorney-client privilege. Notwithstanding such privilege, Lessee shall have a duty to warn City of life/safety risks revealed by such an audit.

18.12 Termination: Removal of Equipment and Hazardous Materials.
Prior to the expiration or earlier termination of this Agreement, Lessee shall remove or remediate in accordance with applicable Environmental Laws and the Airport Rules and Regulations (including without limitation, the SWPPP, SPCC, and Fuel Spill Response Plan, and other Airport environmental policies and procedures as may be promulgated from time to time), all of Lessee's Hazardous Materials from the Leased Premises and, if Lessee is ceasing to operate at Airport, then from Airport, and surrounding lands and waters. Unless instructed otherwise by City, Lessee shall also, prior to vacating the Leased Premises and Airport, remove all aboveground and underground storage tanks, piping and other equipment, if any, installed by or on behalf of Lessee at the Leased Premises which stored Hazardous Materials, or which are contaminated by Hazardous Materials, provided that Lessee shall not at any time install or have installed any such storage tanks, piping or other equipment without express prior

written consent of the City. Prior to expiration or earlier termination of this Agreement, Lessee shall conduct, at its sole expense, an Environmental Baseline Study Update of the Leased Premises, and shall provide to the City an Updated Environmental Baseline Survey. This removal and demonstration shall be a condition precedent to the City's return of the Performance Guarantee to Lessee upon the expiration or earlier termination of the Term.

18.13 Remedies Not Exclusive.
No remedy provided herein shall be deemed exclusive. In addition to any remedy provided above, the City shall be entitled to full reimbursement from Lessee whenever the City incurs any costs resulting from the use or management of Hazardous Materials on the Leased Premises by Lessee, including costs of remedial activities, fines or penalties assessed directly against the City, injuries to third persons or other properties, and loss of revenues resulting from an inability to re-lease or market property due to its environmental condition, even if such loss of revenue occurs after the expiration or earlier termination of the Term.

18.14 Environmental Indemnity.
IN ADDITION TO ALL OTHER INDEMNITIES PROVIDED IN THIS AGREEMENT, LESSEE AGREES TO DEFEND, INDEMNIFY AND HOLD CITY AND ITS ELECTED OFFICIALS, MANAGERS, OFFICERS, AGENTS AND EMPLOYEES, FREE AND HARMLESS FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, REGULATORY DEMANDS, LIABILITIES, FINES, PENALTIES, LOSSES, AND EXPENSES, INCLUDING REMEDIAL COSTS (AND INCLUDING REASONABLE ATTORNEYS' FEES, COSTS AND ALL OTHER REASONABLE LITIGATION EXPENSES WHEN INCURRED AND WHETHER INCURRED IN DEFENSE OF ACTUAL LITIGATION OR IN REASONABLE ANTICIPATION OF LITIGATION ARISING FROM THE EXISTENCE OR DISCOVERY OF ANY HAZARDOUS MATERIAL ON THE LEASED PREMISES, OR THE MIGRATION OF ANY HAZARDOUS MATERIAL FROM THE LEASED PREMISES TO OTHER PROPERTIES OR INTO THE SURROUNDING ENVIRONMENT, ARISING OR RESULTING FROM ANY ACT OR OMISSION OF LESSEE, WHETHER (A) MADE, COMMENCED OR INCURRED DURING THE LEASE TERM, OR (B) MADE, COMMENCED OR INCURRED AFTER THE EXPIRATION OR TERMINATION OF THE LEASE TERM IF ARISING OUT OF EVENTS OCCURRING DURING THE LEASE TERM; PROVIDED, HOWEVER, LESSEE'S OBLIGATION TO INDEMNIFY THE CITY PURSUANT TO THIS SECTION SHALL NOT APPLY WITH RESPECT TO ANY RELEASE OF A HAZARDOUS MATERIAL CLEARLY ARISING OUT OF ANY CONSTRUCTION DEFECT IN THE FUEL FACILITIES, WHICH DEFECT IS DISCOVERED WITHIN ONE YEAR AFTER THE COMMENCEMENT DATE. LESSEE'S OBLIGATIONS UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THE LEASE TERM.

18.15 Term of Environmental Provisions.
The provisions of **Articles 18 and 19**, including the representations, warranties, covenants and indemnities of Lessee shall expressly survive termination of this Agreement, and Lessee's obligations and liabilities under **Articles 18 and 19** shall continue so long as the City bears any liability or responsibility under Environmental Law arising from Lessee's occupancy or use of the Leased Premises and/or Airport during the term of this Agreement.

ARTICLE 19 FUEL FACILITIES AND MANAGEMENT

19.1 Fuel Facilities.
Lessee, as part of the construction of the Project Improvements, shall build, install and equip gasoline fuel facilities ("**Fuel Facilities**") for the operation of its Retail Fuel Station. Fuel Facilities include underground fuel tanks, piping, and automated fuel leak sensors, dispensers and other required and appropriate equipment, including shut-off alarm systems to support the retail fueling of vehicles.

19.2 Fuel and Environmental Responsibilities.
Lessee shall operate its allocated fuel dispenser(s) in accordance with Environmental Laws and in such a manner as to prevent and eliminate fuel spills or damage to the Fuel Facilities.

19.3 Environmental Assessment.
Within forty-five (45) days after (i) any change in ownership or affiliation of Lessee; (2) Lessee vacates the Leased Premises for any reason; or (3) this Agreement terminates for any reason, at Lessee's sole cost and expense, an Environmental Baseline Study Update of the Leased Premises and, specifically, the Fuel Facilities, shall be performed to identify the nature and extent of any release of Hazardous Materials, if any, present on the Leased Premises since the Environmental Baseline Study or the most recent Updated Environmental Baseline Study. The Environmental Baseline Study Update shall be used to prepare a new Updated Environmental Baseline Study and the full report shall be given to the City identifying any change in the environmental condition of the Leased Premises. Any contamination identified shall be subject to removal as more particularly set forth in **Section 18.12, Termination: Removal of Equipment and Hazardous Materials** and this Article.

19.4 Fuel Facilities Management - Operation, Maintenance, and Repair Responsibilities.
Lessee shall be responsible for the proper operation, maintenance, repair and use of the Fuel Facilities and the payment of all costs and expenses incurred for the operation, maintenance, repair and use of the Fuel Facilities. Lessee shall be entirely responsible for all spill response, the immediate or other removal, investigation, remediation, restoration and other corrective actions, or site closure associated with a release of any Hazardous Material from the Fuel Facilities. Lessee will immediately take all necessary action to address such an event in accordance with Environmental Laws. Immediately upon becoming aware that a release of any Hazardous Material from the Fuel Facilities has occurred, Lessee shall inform City of such release in accordance with the Fuel Spill Response Plan. The City shall have no liability for, or responsibility for the payment of, any costs, expenses or liabilities incurred in connection with the operation, maintenance, repair and use of the Fuel Facilities.

19.5 Fuel Facilities Operations Manual; Lessee Cooperation and Compliance.
Lessee shall prepare the Fuel Facilities Operations Manual (**"Fuel Facilities Operations Manual"**). The Fuel Facilities Operations Manual shall: (a) be provided to City not more than thirty (30) days before retail operations commence at the Retail Fuel Station (and not more than thirty (30) days after any update thereof); (b) be prepared in coordination with City staff; (c) describe in detail the fuel storage inventory and leak detection systems; (d) be consistent with warranty requirements and the manufacturer's recommendations with respect to the Fuel Facilities; (e) be consistent with the Environmental Laws; (f) be consistent with the Storm Water Pollution Prevention Plan, the SPCC Plan, Storm Water Best Management Practices and all other legal requirements; and (g) be updated to address future changes in the design, use or composition of the Fuel Facilities. The Fuel Facilities Operations Manual shall be subject to the prior approval of City and shall be updated as needed, but not less often than annually, to

address the operations and practices of Lessee. Lessee shall conduct all of its activities on, or relating to, the Fuel Facilities: (a) in compliance with Environmental Laws, the provisions of this Agreement, City Codes and Standards and all other legal requirements; (b) in cooperation with City in City's efforts to comply with the Environmental Laws; and (c) in compliance with the Fuel Facilities Operations Manual. In the event of a conflict between any provisions of this Agreement and the Environmental Laws, the more stringent provisions shall govern and control.

19.6 Necessary Permits.

Lessee shall obtain and maintain any and all necessary permits or consents required by Environmental Laws with respect to its use of the Fuel Facilities, including registration and certification requirements for underground storage tanks. For all permits, registrations, certifications and other authorizations required by Environmental Laws, Lessee shall be identified as the operator of the Retail Fuel Station, and City shall be identified as owner of the Ground Space. Prior to submitting any document to a federal or state regulatory authority wherein the City is identified as an owner, or otherwise identified as a responsible party, the document shall be first submitted to the City for review and acceptance. The costs associated with obtaining and maintaining permits, registrations and other authorizations shall be borne by Lessee. Lessee shall promptly furnish the City with copies of permits, registrations, and all other material correspondence between Lessee and any permitting agency.

19.7 Environmental Audit.

Lessee shall hire an independent third party to conduct an Environmental Audit of the Leased Premises (including the Fuel Facilities), and Lessee's operations, equipment, facilities and fixtures on or about the Leased Premises, every third (3rd) Lease Year after commencement of retail operations . Not later than thirty (30) days after completion of each Environmental Audit, Lessee shall review the findings of the Environmental Audit with the City, together with a draft plan (including a performance schedule) to correct all deficiencies and compliance issues identified during the Environmental Audit. The City shall have thirty (30) days within which to comment upon the draft plan, and Lessee shall promptly incorporate any comments of City into a final plan and correct all compliance issues according to the final plan (and performance schedule). Lessee shall modify the Fuel Facilities Operations Manual or other operational plans and procedures associated with the Fuel Facilities as reasonably recommended by such Environmental Audit. Environmental Audits should be conducted under the Texas Environmental Health and Safety Audit Privilege Act, and the City shall be included as a person afforded the privileges provided and receiving immunity from penalties for violations of Environmental Laws discovered and disclosed to any regulatory authority.

19.8 Subsequent City Environmental Audit.

The City shall have the right to conduct its own Environmental Audit of the Leased Premises and the operations, equipment, facilities and fixtures on or about Leased Premises. Upon being presented with any non-compliances discovered under the Environmental Audit, Lessee shall provide the City with a draft plan (including a performance schedule) to correct all identified deficiencies and compliance issues. The City shall have thirty (30) days within which to review and comment upon the draft plan, and Lessee shall promptly incorporate any City comments into a final plan and correct all compliance issues according to the final plan (and performance schedule). Lessee shall modify the Fuel Facilities Operations Manual or other operational plans and procedures associated with the Fuel Facilities as reasonably recommended by any such Environmental Audit. In conducting any Environmental Audit, the City shall not unreasonably interfere with Lessee's business operations.

19.9 Environmental Certification.
Lessee shall provide to the City at the commencement of each Lease Year (other than the first Lease Year) a written statement that Lessee's occupation and use of the Leased Premises, complied with (a) the Storm Water Pollution Prevention Plan, the SPCC Plan, the terms of all applicable permits, the Fuel Facilities Operations Manual and the Environmental Laws during the preceding Lease Year, and (b) all directions and recommendations set forth in any previous Environmental Audit. If Lessee is unable to provide such certification or documentation to City, it shall provide City with a written statement of the steps that are being taken to enable it to provide City with a certification of compliance and all required documentation.

19.10 General Standards.
In determining those recommendations incorporated into any Environmental Audit that are reasonable (and therefore to be implemented), all recommendations shall be presumed reasonable unless Lessee can demonstrate in a manner acceptable to City that a recommendation (a) is not required by Legal Requirements; and (b) the cost of implementing such recommendation significantly outweighs the benefits thereof.

19.11 Fuel Facilities Environmental Indemnity.
LESSEE SHALL DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS COUNCIL MEMBERS, MANAGERS, OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM ANY DAMAGES, CLAIMS OR LIABILITY ARISING OUT OF LESSEE'S USE OR OCCUPANCY OF THE FUEL FACILITIES ON OR ABOUT THE LEASED PREMISES, INCLUDING LIABILITY FOR INVESTIGATION AND REMEDIAL ACTION RELATED TO THE FOLLOWING OR SIMILAR ACTIVITIES OCCURRING DURING AND BY REASON OF ANY OF LESSEE'S USE AND/OR OPERATION OF THE FUEL FACILITIES: (A) ANY RELEASES, SPILLS, DISCHARGES, LEAKS, EMISSIONS, INJECTIONS, ESCAPES, DUMPING, GENERATION, TRANSPORTATION, STORAGE, TREATMENT OR DISPOSAL OF HAZARDOUS MATERIALS; (B) ANY OTHER DISCHARGE TO SURFACE OR GROUND WATERS; (C) ANY AIR EMISSIONS; AND (D) ANY CONTAMINATION OF SOIL OR GROUND WATERS BENEATH OR ADJACENT TO THE LEASED PREMISES, EXCEPT FOR SUCH DAMAGE, CLAIMS OR LIABILITY (I) CAUSED BY THE CITY OR ITS OFFICERS, AGENTS OR EMPLOYEES, (II) ASSOCIATED WITH THE PRE-LEASE ENVIRONMENTAL CONDITION, (III) CLEARLY ARISING FROM ANY CONSTRUCTION DEFECT IN THE FUEL FACILITIES DISCOVERED WITHIN ONE (1) YEAR AFTER SUBSTANTIAL COMPLETION, OR (IV) ASSOCIATED WITH ANY HAZARDOUS MATERIAL CLEARLY MIGRATING ONTO THE LEASED PREMISES FROM SOME OTHER LOCATION THROUGH NO ACT OR OMISSION OF LESSEE.

19.12 Remedies Not Exclusive.
No remedy provided herein shall be deemed exclusive. In addition to any remedy provided above, the City shall be entitled to full reimbursement from Lessee whenever the City incurs any costs resulting from the use or management of Hazardous Materials on the Leased Premises by Lessee, including costs of remedial activities, fines or penalties assessed directly against the City, injuries to third persons or other properties, and loss of revenues resulting from an inability to re-lease or market property due to its environmental condition, even if such loss of revenue occurs after the expiration or earlier termination of the Term.

18.13 Environmental Indemnity.
IN ADDITION TO ALL OTHER INDEMNITIES PROVIDED IN THIS AGREEMENT, LESSEE AGREES TO DEFEND, INDEMNIFY AND HOLD CITY AND ITS ELECTED OFFICIALS, MANAGERS, OFFICERS, AGENTS AND EMPLOYEES, FREE AND HARMLESS FROM ANY

AND ALL CLAIMS, CAUSES OF ACTION, REGULATORY DEMANDS, LIABILITIES, FINES, PENALTIES, LOSSES, AND EXPENSES, INCLUDING REMEDIAL COSTS (AND INCLUDING REASONABLE ATTORNEYS' FEES, COSTS AND ALL OTHER REASONABLE LITIGATION EXPENSES WHEN INCURRED AND WHETHER INCURRED IN DEFENSE OF ACTUAL LITIGATION OR IN REASONABLE ANTICIPATION OF LITIGATION ARISING FROM THE EXISTENCE OR DISCOVERY OF ANY HAZARDOUS MATERIAL ON THE LEASED PREMISES, OR THE MIGRATION OF ANY HAZARDOUS MATERIAL FROM THE LEASED PREMISES TO OTHER PROPERTIES OR INTO THE SURROUNDING ENVIRONMENT, ARISING OR RESULTING FROM ANY ACT OR OMISSION OF LESSEE, WHETHER (A) MADE, COMMENCED OR INCURRED DURING THE LEASE TERM, OR (B) MADE, COMMENCED OR INCURRED AFTER THE EXPIRATION OR TERMINATION OF THE LEASE TERM IF ARISING OUT OF EVENTS OCCURRING DURING THE LEASE TERM; PROVIDED, HOWEVER, LESSEE'S OBLIGATION TO INDEMNIFY THE CITY PURSUANT TO THIS SECTION SHALL NOT APPLY WITH RESPECT TO ANY RELEASE OF A HAZARDOUS MATERIAL CLEARLY ARISING OUT OF ANY CONSTRUCTION DEFECT IN THE FUEL FACILITIES, WHICH DEFECT IS DISCOVERED WITHIN ONE YEAR AFTER THE COMMENCEMENT DATE. LESSEE'S OBLIGATIONS UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THE LEASE TERM.

19.14 Term of Environmental Provisions.
The provisions of **Articles 18 and 19**, including the representations, warranties, covenants and indemnities of Lessee shall expressly survive termination of this Agreement, and Lessee's obligations and liabilities under **Articles 18 and 19** shall continue so long as the City bears any liability or responsibility under Environmental Law arising from Lessee's occupancy or use of the Leased Premises and/or Airport during the term of this Agreement.

ARTICLE 20. AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) and DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM SPECIAL CONTRACT PROVISIONS

20.1 ACDBE/DBE Policy Requirements. ACDBE and DBE participation commitments (11%) have been established for this Agreement, which participation is a contractual commitment upon commencement of the first Lease Year of the Agreement. Participation is measured as a percentage of total annual Gross Receipts received by Concessionaire in the Leased Premises operated as a Convenience Store and a Fast Food Restaurant under the Agreement.

20.1.1 General Requirements

1. It is the policy of the Airport that ACDBEs and DBEs as defined in 49 C.F.R. Part 23 ("Part 23") and Part 26 ("Part 26") shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. The Airport has developed and implemented an ACDBE and DBE program as required by Part 23 and Part 26. The ACDBE/DBE program objective is to ensure full and fair access to concession opportunities for all businesses and in particular for ACDBE/DBE businesses.

2. Concessionaire acknowledges that it is a "concessionaire" as that term is defined in 49 C.F.R. § 23.3.

3. This Agreement is subject to the requirements of the United States Department of Transportation's ("DOT") regulations, 49 C.F.R. Parts 23 and 26. 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 performance of this Agreement or any management contract, subcontract, purchase agreement, or other agreement covered by Part 23 or Part 26. Concessionaire agrees to include the above statements in any subsequent concession agreement or contract covered by Part 23 or Part 26 that it enters into, and that it shall require such those businesses to similarly include the statements in further agreements.

4. Concessionaire shall carry out applicable requirements of 49 C.F.R. Part 23 and Part 26 in the award and administration of DOT-assisted contracts. Failure by Concessionaire to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Airport deems appropriate.

5. The Airport's Small Business Section is responsible for ensuring compliance with the Airport's ACDBE/DBE policies and procedures. The Airport's Small Business Manager has been designated as the ACDBE/DBE Liaison Officer. In that capacity, the Small Business Manager is responsible for compliance with all aspects of the ACDBE/DBE programs. The Small Business Manager has established overall, annual ACDBE and DBE goals for the Airport.

   a. The Small Business Section will evaluate the number of ACDBE's that reasonably reflect their availability in the San Antonio market area, in the absence of discrimination, to do the types of work required, will participate as concessionaires throughout the term of the agreement, and account for a percentage of the estimated annual gross receipts equivalent to a level set in accordance with 49 C.F.R §§ 23.47 and 23.55.

   b. The Small Business Section is required to review the extent of ACDBE participation before the exercise of each renewal option in a long-term exclusive lease, to consider whether an increase or decrease in ACDBE participation is warranted (to reflect ACDBE availability in the SAT market area or is consistent with an approved overall goal).

6. Concessionaire specifically agrees to comply with all applicable provisions of the Airport's ACDBE and DBE Policy and any amendments thereto. ACDBE/DBE and Non-ACDBE/DBE sub-concessionaires shall also be required to agree to comply with all applicable provisions of the Airport's ACDBE and DBE Policy.

7. Concessionaire shall maintain records showing:

a. Subcontract/supplier awards, including awards to ACDBE/DBEs;

b. Specific efforts to identify and award such contracts to ACDBE/DBEs;

c. Executed contracts with ACDBE/DBEs showing actual ACDBE/DBE project participation.

8. Failure to comply with the Airport's ACDBE and DBE policies or Part 23 or Part 26, or any other applicable laws or regulations, shall constitute a material breach of this Agreement, shall be cause for termination of this Agreement and shall entitle Airport to any and all remedies available at law or equity.

20.1.2 Administrative Requirements

1. Concessionaire is charged with knowledge of and is solely responsible for complying with each requirement of Parts 23 and 26 in maintaining its participation commitment or demonstrating a good faith effort as described below. Should any questions arise regarding specific circumstances, Concessionaire must consult Parts 23 and 26, appropriate DOT Rules and Regulations, or may contact the Airport's Small Business Section.

2. Concessionaire shall appoint a high-level official, who will report directly to Concessionaire's chief executive officer or equivalent to administer and coordinate Concessionaire's ACDBE/DBE contractual commitments and obligations under 49 C.F.R. Parts 23 and 26.

3. Concessionaire agrees to submit quarterly reports of payments and subcontract and/or supplier awards to DBEs and Non-DBEs in such form and manner and at such times as the Airport shall prescribe.

4. Concessionaire shall provide Airport with access to all books, records, accounts and personnel. Such access will be used for, among other purposes, determining ACDBE/DBE participation and compliance with the ACDBE and DBE Policy. Concessionaire may be subject to interim and post-contract ACDBE/DBE audits. Audit determination(s) regarding Concessionaire's compliance with the ACDBE/DBE Policy may be considered and have a bearing on consideration of Concessionaire for award of future contracts.

20.2 Participation Commitments and Good Faith Efforts

1. Concessionaire has a continuing obligation to meet its ACDBE/DBE participation commitment. If amendments or other modifications are made to agreements with ACDBE/DBEs, and if said changes affect the dollar value or scope of work of said ACDBE/DBEs, Concessionaire shall immediately inform City in writing of such changes, regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification. Concessionaire must make good faith efforts to

maintain its ACDBE participation commitment. Concessionaire cannot terminate or otherwise change the terms of its ACDBE and DBE commitments without the prior written consent of City. This includes, but is not limited to, instances in which the Concessionaire seeks to perform work originally designated for an ACDBE/DBE firm with its own forces or those of an affiliate, a non-ACDBE/DBE or another ACDBE/DBE. If Concessionaire during performance of this Agreement must replace an ACDBE/DBE for any reason, it must follow the provisions herein governing the substitution of ACDBE/DBEs and make documented good faith efforts to meet its original ACDBE/DBE participation commitments.

An ACDBE concessionaire that is unable to perform successfully will be replaced by another ACDBE concessionaire, if the remaining term of the Agreement makes this feasible. In the event that such action is not feasible, Concessionaire must make a good faith effort during the remaining term of the Agreement to encourage ACDBEs to compete for the purchases and/or leases of goods and services to be made by the Concessionaire.

2. Concessionaire must demonstrate good cause to terminate an ACDBE/DBE joint venturer, subcontractor, contractor or supplier. Good cause includes the following circumstances:

   a. The listed ACDBE/DBE joint venturer, subcontractor, contractor or supplier fails or refuses to execute a written contract.

   b. The listed ACDBE/DBE joint venturer, subcontractor contractor or supplier fails or refuses to meet Concessionaire's reasonable, nondiscriminatory bond requirements.

   c. The listed ACDBE/DBE joint venturer, contractor or supplier becomes bankrupt, insolvent or exhibits credit unworthiness.

   d. City has determined that the listed ACDBE/DBE joint venturer, sub-contractor, contractor or supplier is not a responsible firm.

   e. The listed ACDBE/DBE joint venturer, sub-contractor, contractor or supplier voluntarily withdraws from the project and provides City written notice of its withdrawal.

   f. The listed ACDBE/DBE joint venturer, sub-contractor, contractor or supplier is ineligible to receive credit for the type of work required.

   g. The ACDBE/DBE owner dies or becomes disabled with the result that the listed ACDBE/DBE joint venturer, sub-contractor, contractor or supplier is unable to complete its work on the contract.

   h. Other documented good cause as determined by City.

Good cause does not include where Concessionaire seeks to terminate a ACDBE/DBE it relied upon to obtain this Agreement so that Concessionaire can self-perform the work or substitute another ACDBE/DBE or non-ACDBE/DBE joint venturer, sub-contractor, contractor or supplier to perform the work for which the ACDBE/DBE was engaged or listed in the proposal.

Concessionaire must give the ACDBE/DBE notice in writing, with a copy to Airport, of its intent to request to terminate and/or substitute, and the detailed reasons for the request.

3. Good faith efforts during performance of this Agreement must include, but are not limited to:

   a. Solicitation of ACDBE/DBEs that are certified in the applicable area of work or specialty;

   b. Providing interested ACDBE/DBEs with adequate information about the plans, specifications, scope of work and requirements of this Agreement;

   c. Fairly investigating and evaluating the interested ACDBE/DBEs regarding their capabilities, not rejecting ACDBE/DBEs as unqualified without sound reasons based on a thorough investigation, and providing verification, including a statement giving Concessionaire's reasons for its conclusion that it rejected each non-utilized ACDBE/DBE because the ACDBE/DBE was not qualified;

   d. Negotiating in good faith with interested ACDBE/DBEs regarding price, using good business judgment and not rejecting reasonable quotes from interested ACDBE/DBEs, and providing written documentation why Concessionaire and any of the ACDBE/DBEs contacted did not succeed in negotiating an agreement; and

   e. Effectively using the services of available minority and women community organizations; chambers and concessionaire groups; local, State, and Federal business assistance offices, and other organizations that provide assistance in the identification of ACDBE/DBEs.

4. If Concessionaire is found not to have made continuing good faith efforts to meet its ACDBE and DBE contractual commitments, it may request administrative review and final reconsideration by the Airport Director. Concessionaire may elect to meet in person to discuss whether Concessionaire made continuing good faith efforts in accordance with the Policies.

5. Concessionaire may not require exclusive subcontracting or teaming agreements with other concessionaires, sub-concessionaires, contractors or vendors.

6. In evaluating Concessionaire's good faith efforts submission, City will only consider those documented efforts that occurred prior to the good faith effort submission.

7. Concessionaire must submit a *Letter of Intent* form for each proposed new joint venturer, sub-contractor, contractor or supplier. Airport will approve or disapprove the substitution based on Concessionaire's documented compliance with these provisions.

8. Airport will look not only at the different kinds of efforts that Concessionaire has made but also the quantity and intensity of those efforts. Efforts that are merely pro-forma are not good faith efforts to meet the commitments, even if they are sincerely motivated. Airport will also consider if, given all relevant circumstances, Concessionaire's efforts could reasonably be expected to produce a level of ACDBE/DBE participation sufficient to meet the goal.

20.3 Counting ACDBE Participation

Concessionaire may meet its ACDBE obligations in any of the following ways:

1. ACDBE prime concessionaire participation: If Concessionaire is a certified ACDBE, count the total amount of the dollar value of the Gross Receipts the ACDBE earns under this Agreement and the total value of a management contract or subcontract with an ACDBE toward the goal. An ACDBE prime concessionaire can count its self-performance toward meeting the ACDBE goal, but only for the scope of work and at the percentage levels it will self-perform. If the ACDBE enters into a sub-concession agreement or subcontract with a non-ACDBE, do not count any of the Gross Receipts earned by the non-ACDBE.

2. ACDBE sub-concessionaire participation: Count only the portion of the Gross Receipts earned by the ACDBE under its sub-agreement.

3. ACDBE joint venture participation: If the goal is to be met through a joint venture agreement with an ACDBE partner, count the portion of the Gross Receipts equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces. To be eligible for credit towards meeting the goal, the ACDBE partner must share in the financial risks and rewards commensurate with the amount of proposed ACDBE participation sought to be credited towards the ACDBE goal. For purposes of ACDBE participation, joint ventures are not certified as ACDBEs. If Concessionaire forms a new joint venture for any purpose that has not been previously approved by SAT, it must submit a Draft Joint Venture Agreement to SAT.

4. ACDBE/DBE services participation: Count the entire amount of fees or commissions charged by an ACDBE for a *bona fide* service, provided that the Small Business Section determines this amount to be reasonable and not excessive as compared with fees customarily allowed for similar services. Such services may include, but are not limited to, professional,

technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial services.

5. ACDBE/DBE manufacturer participation: Count 100 percent of the cost of goods obtained from an ACDBE manufacturer. The term manufacturer has the same meaning as in 49 C.F.R. § 26.55(e)(1)(ii).

6. ACDBE/DBE regular dealer participation: Count 100 percent of the cost of goods purchased or leased from an ACDBE/DBE regular dealer. The term "regular dealer" has the same meaning as in 49 C.F.R. § 26.55(e)(2)(ii).

7. ACDBE/DBE goods participation: Count credit toward DBE goals for goods purchased from a DBE which is neither a manufacturer nor a regular dealer as follows:

   i. Count the entire amount of fees or commissions charged for assistance in the procurement of the goods, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the goods themselves.

   ii. Count the entire amount of fees or transportation charges for the delivery of goods required for a concession, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of goods themselves

8. Other Legal Arrangement. Concessionaire may propose some other legal arrangement so long as it meets the eligibility standards in 49 C.F.R. Part 23.

9. Costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the "build-out") do not count towards the ACDBE participation commitment.

10. When calculating participation levels, percentages and dollar amounts for each ACDBE/DBE, Concessionaire cannot round up in determining whether or not the total of these amounts meets or exceeds the ACDBE/DBE contractual commitment.

11. Concessionaire may count towards its ACDBE/DBE participation commitments an ACDBE/DBE that is certified during the performance of the Agreement if the ACDBE/DBE is added to the Agreement or substituted for another ACDBE/DBE pursuant to these provisions.

12. Concessionaire may not count toward its ACDBE/DBE participation commitment the dollar value of work performed by a ACDBE/DBE after it has ceased to be certified as an ACDBE/DBE, except where the

ACDBE/DBE is no longer certified because it has exceeded the size standard.

13. ACDBE prime concessionaires can count their self-performance toward meeting the ACDBE goal, but only for the scope of work and at the percentage level they self-perform.

14. When an ACDBE/DBE participates in the Agreement, Concessionaire shall count only the value of the work actually performed by the ACDBE/DBE toward the ACDBE/DBE goals.

15. Concessionaire may count expenditures to an ACDBE/DBE towards the ACDBE/DBE participation commitment only if the ACDBE/DBE is performing a commercially useful function. For purposes of these provisions, the term "commercially useful function" has the same meaning as in 49 C.F.R. § 26.55(c).

    a. An ACDBE/DBE performs a commercially useful function when it is responsible for execution of the work under the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the ACDBE/DBE must also be responsible, with respect to materials and supplies used under the Agreement, for negotiating price, determining quality and quantity, ordering the materials, and installing (where applicable) and paying for the materials itself. To determine whether an ACDBE/DBE is performing a commercially useful function, Small Business Section will evaluate the amount of the work subcontracted, industry practices, whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, the ACDBE/DBE credit claimed for its performance of the work, and other relevant factors.

    b. An ACDBE/DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of ACDBE/DBE participation. In determining whether an ACDBE/DBE is such an extra participant, the Small Business Section will examine, among other relevant factors, similar transaction, particularly those in which ACDBE/DBEs do not participate.

    c. When an ACDBE/DBE is presumed not to be performing a commercially useful function as provided in this section, the ACDBE/DBE may present evidence to rebut this presumption. The Small Business Section will determine whether the firm is performing a commercially useful function given the type of work involved and normal industry practices.

16. Small Business Section will count ACDBE participation where the ACDBE or joint venture partner performs a portion of work under the Agreement based on the percentage of ownership or equity of the ACDBE in a joint venture. Small Business Section will allow the joint venture to count the

portion of the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work under the Agreement that the ACDBE joint venture partner performs with its own forces toward the ACDBE commitment and for which it is at risk.

20.4 Certification

1. In order to count the participation of ACDBE's towards the ACDBE participation commitments, the ACDBE must be certified by an approved entity of the Texas Unified Certification Program ("TUCP"). Other certifications are not acceptable.

2. Concessionaire must submit to Small Business Section a properly completed ACDBE certificate or letter, with all required attachments, for all ACDBE's proposed to be utilized as sub-concessionaires or suppliers to meet the contract goals.

3. A firm must be certified as an ACDBE by the TUCP at the time of substitution or replacement to be counted towards the participation commitment. However, Concessionaire may count ACDBE's certified during the performance of the Agreement towards its ACDBE participation commitment once documentation confirming such certification is submitted to Airport.

4. South Central Texas Regional Certification Agency, the Texas Department of Transportation (TxDOT) and the Federal Aviation Administration (FAA) maintain current listings of certified ACDBE's. Concessionaire must utilize these Directories to assist them in locating ACDBE's for the work required on the contract. The ACDBE Directories are located at:

   - www.dot.state.tx.us/business/tucp/default.htm.
   - www.sctrca.org
   - https://faa.dbesystem.com/FrontEnd/VendorSearchPublic.asp?TN=faa&XID=7227

5. ACDBE certification does not constitute a representation or warranty as to the qualifications or capabilities of any certified firm.

20.5 ACDBE/DBE Utilization Forms and Related Documentation

1. Concessionaire must submit completed ACDBE and DBE utilization forms as required by Airport.

2. Concessionaire shall timely submit reports and verifications within ten (10) business days as requested by the Airport in the form attached as **Exhibit E**, which form may be modified from time to time by the Airport, and shall provide such financial information or other information deemed necessary to support and document the ACDBE/DBE commitment and ACDBE/DBE participation for this Agreement. The Airport shall have the

right until five (5) years after the expiration or termination of this Agreement, to review books, records and financial information of Concessionaire, and where applicable, all individuals, joint venturers or other business entities that are engaged in concession activity under this Agreement, to substantiate compliance with 49 C.F.R. Parts 23 and 26, as amended, and any guidance issued by the Federal Aviation Administration regarding the interpretation of the federal regulations.

3. For Concessionaire's participation commitment, where an ACDBE firm is a joint venture partner or subconcessionaire, if the ACDBE's information or status changes, Concessionaire must immediately notify the Small Business Section of the change and provide a written explanation for the change by submitting a ***Request for Approval of Change to Original Joint Venture Commitment*** form. No change in the use of an ACDBE firm will change Concessionaire's participation commitment. Any change in the use of an ACDBE firm shall be governed by the MODIFICATION OR SUBSTITUTION provisions herein.

4. Except as authorized by Airport, Concessionaire shall enter into formal agreements with the partners, subcontractors, suppliers listed in its bid proposal and ***Letter of Intent*** form within ten (10) business days after receipt of this Agreement executed by the Airport. If requested, Concessionaire must provide the Airport copies of those agreements within five (5) business days of the written request.

20.6 Compliance and Enforcement

1. These compliance and enforcement provisions address the additional contractual remedies available to City as a result of Concessionaire's failure, if any, to comply with the obligations set forth in the ACDBE and DBE Program requirements. The contractual remedies set forth in the ACDBE and DBE Programs are also applicable to any failure to comply with the Program requirements, as well as any remedies available at law or in equity. These remedies are not intended to apply to any failure by Concessionaire to comply with other obligations under this Agreement unrelated to the Program requirements or preclude City's recovery of its actual damages for such unrelated breaches.

2. Concessionaire must forward to Airport all necessary documents and information during the course of performance under this Agreement and to close out the Agreement, and must cooperate with Airport in providing any information, including the final accounting for ACDBE and DBE participation on this Agreement.

3. Airport is empowered to receive and investigate complaints and allegations by ACDBEs and/or DBEs, third parties or staff, or to initiate its own investigations, regarding Concessionaire's compliance with the Program requirements. If Airport determines that an investigation is warranted, Concessionaire must fully cooperate with the investigation and provide complete, truthful information to the Airport concerning the investigation and Concessionaire's compliance with the Program requirements.

4. The failure of Concessionaire to meet the ACDBE and DBE contractual commitments or comply with any other aspect of the Program requirements may constitute a material breach of this Agreement, entitling the Airport to exercise any remedy available in this Agreement, the Program requirements or applicable law.

5. The Airport may report any suspected false, fraudulent or dishonest conduct relating to the Concessionaire/contractor's performance of the Program requirements to any applicable enforcement agency, including the State Attorney General's Office and appropriate federal law enforcement authorities.

6. If Concessionaire is in breach of any of the Program requirements, City may exercise any of following remedies, in addition to any other remedies available to it under this Agreement or at law or in equity:

   a. withholding funds payable under this Agreement, including, but not limited to, funds payable for work self-performed by the Concessionaire or applicable retainage;

   b. temporarily suspending, at no cost to City, Concessionaire performance under the Agreement;

   c. termination of this Agreement;

   d. suspension/debarment, in accordance with applicable law, of Concessionaire from participating in any solicitations issued by City for severity of breach of contract; and

7. With respect to ACDBE and DBE firms, a finding of non-compliance may result in a denial of certification or removal of eligibility and/or suspension and debarment.

ARTICLE 21. SIGNS

Lessee shall neither erect signs nor distribute advertising matter upon Airport premises, without the prior written consent of the Aviation Director. Signs displayed on the Leased Premises must be approved by the Aviation Director.

ARTICLE 22. REGULATIONS

Lessee's officers, agents, employees and servants shall obey all rules and regulations promulgated by Lessor, its authorized agents in charge of the Airport, or other lawful authority, to insure the safe and orderly conduct of operations and traffic thereon.

ARTICLE 23. TIME OF EMERGENCY

During time of war or national emergency, Lessor 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 those of the Government lease, shall be suspended.

ARTICLE 24. QUALITY OF SERVICES

Lessee shall, at all times, furnish good, prompt and efficient services, adequate to meet demand for same at the Airport, furnish said services on a non-discriminatory basis to all users thereof, and charge non-discriminatory prices for each unit of sale or service; provided, however, that Lessee will be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

ARTICLE 25. SUBORDINATION OF AGREEMENT AND RIGHT OF RECAPTURE

25.1 This Agreement shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States of America regarding 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 be to take any of the property under lease, or substantially alter or destroy the commercial value of the leasehold interest granted herein, Lessor shall not be held liable therefore, but, in such event, Lessee may cancel this Agreement upon ten (10) days' written notice to Lessor. Notwithstanding the foregoing, Lessor agrees that, in the event it becomes aware of any such proposed or pending agreement or taking, Lessor shall utilize its best efforts to (i) give the maximum possible notice thereof to Lessee. Any portion of the Leased Premises recaptured from Lessee under this provision shall result in a proportionate abatement of rent as of the date the recapture is effectuated; provided, that nothing herein shall prevent or prohibit Lessee from seeking an award for damages from the taking authority.

25.2 Lessor shall have the right to recapture any or all of the Leased Premises to the extent that such are necessary for Lessor's development, improvement, and or maintenance of the Airport's runways and taxiways; for protection or enhancement of flight operations; or for other development in compliance with any current or future Airport Master Plan. In the event of any such recapture, Lessor shall pay to Lessee the unamortized cost of Lessee's investment in the Leased Premises which are taken.

ARTICLE 26. SECURITY

26.1 If applicable, Lessee shall provide for the security of the Air Operations Area (hereinafter "A.O.A.") and/or Security Identification Display Area (hereinafter "S.I.D.A.") to prevent entry or movement of unauthorized persons thereupon, in accordance with Chapter 3, Division 8 Security, of the City Code of San Antonio, Texas, as currently written, or as amended or replaced in the future. In appropriate cases, physical barriers to prevent access to the A.O.A. and/or the S.I.D.A. must be placed and supervised by Lessee during construction upon the Leased Premises.

26.2 Lessee shall comply with all rules, regulations, statutes, orders, directives or other mandates of the United States, the State of Texas, and/or the City of San Antonio or City's Aviation Department regarding Airport security requirements or measures.

26.3 Lessee shall comply with all current and future mandates of the Transportation Security Administration, or successor agency, for background investigations of its personnel.

26.4 **Lessee shall indemnify and hold harmless Lessor, its officers and employees from any charges, fines or penalties that may be assessed or levied by any department or agency of the United States or State of Texas, by reason of Lessee's failure to comply with any applicable security provision and/or requirement for compliance set forth herein.**

ARTICLE 27. DEFAULT AND REMEDIES

27.1 Each of the following shall constitute an event of default by Lessee:

27.1.1 Lessee shall fail to pay any rent as provided for in this Agreement and such failure shall continue for a period of ten (10) days after receipt by Lessee of written notice thereof.

27.1.2 Lessee shall neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained, and if such neglect or failure should continue for a period of thirty (30) days after receipt by Lessee of written notice of same, or if more than thirty (30) days shall be required because of the nature of the default, if Lessee shall fail within said thirty (30) day period to commence and thereafter diligently proceed to cure such default.

27.1.3 Lessee shall become insolvent; take the benefit of any present or future insolvency statute; make a general assignment for the benefit of creditors; 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 consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property.

27.1.4 An Order of Relief shall be entered, at the request of Lessee or any of its creditors, under federal bankruptcy, reorganization laws or any law or statute of the United States or any state thereof.

27.1.5 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 Lessee and shall not be dismissed within ninety (90) days after the filing thereof.

27.1.6 Pursuant to, or under the authority of, any legislative act, resolution, rule, or any court, governmental, agency or board order or decree or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Lessee and such possession or control shall continue in effect for a period of sixty (60) days.

27.1.7 Lessee shall become a corporation in dissolution or voluntarily or involuntarily forfeit its corporate charter; provided that, in the event of involuntary charter forfeiture no

event of default shall exist so long as Lessee reinstates the charter within sixty (60) days following the forfeiture thereof.

27.1.8 The rights of Lessee hereunder shall be transferred to, pass to or devolve upon, by operations of law or otherwise, any other person, firm, corporation or other entity, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation, receivership, or other proceeding or occurrence described in Paragraphs 26.1.3 through 27.1.8 of this **Section 27.1**.

27.1.9 Lessee shall voluntarily discontinue its operations at the Airport for a period of sixty (60) consecutive days.

27.1.10 Lessee shall fail to complete the Project Improvements required under **Article 14 - Construction by Lessee** within two (2) years of Commencement Date.

27.1.11 Lessee shall fail to make the Minimum Capital Investment required under **Article 14 - Construction by Lessee** within two (2) years of Commencement Date.

27.2 In the event any default shall occur, Lessor then, or at any time thereafter, but prior to the removal of such condition of default, shall have the right, at its election, to terminate Lessee's right of possession of the Leased Premises, by giving at least five (5) days written notice to Lessee, at which time Lessee will then quit and surrender the Leased Premises to Lessor, but Lessee's obligations under the Agreement shall remain in full force and effect. At the expiration of said five (5) days notice period, Lessor may enter upon and take possession of the Leased Premises (or any part thereof in the name of the whole), without demand or notice, and repossess the same as of the Lessor's former estate, expelling Lessee and those claiming under Lessee, forcibly if necessary, without prejudice to any remedy for arrears of rent or preceding breach of covenant and without any liability to Lessee or those claiming under Lessee for such repossession.

27.3 Lessor's repossession of the Leased Premises shall not be construed as an election to terminate this Agreement nor shall it cause a forfeiture of rents or other charges remaining to be paid during the balance of the term hereof, unless a written notice of such intention be given to Lessee, or unless such termination is decreed by a court of competent jurisdiction.

27.4 Upon repossession, Lessor shall have the right, at its election and whether or not this Agreement shall be terminated, to relet the Leased Premises or any part thereof for such period(s), which may extend beyond the term hereof, at such rent and upon such other terms and conditions as Lessor may, in good faith, deem advisable. Notwithstanding any law or anything contained herein to the contrary, to the full extent permitted under applicable law, Lessee and Lessor agree that Lessor's duty to relet the Leased Premises or otherwise to mitigate damages hereunder shall be limited to those requirements set forth in the Texas Property Code, as amended. Lessor shall in no event be liable, and Lessee's liability shall not be affected or diminished whatsoever, for failure to relet the Leased Premises, or in the event the Leased Premises are relet, for failure to collect any rental under such reletting, so long as the Lessor uses objectively reasonable efforts to comply with said Texas Property Code. Lessor and Lessee agree that any such duty shall be satisfied and Lessor shall be deemed to have used objective reasonable efforts to relet the Leased Premises and mitigate Lessor's damages by: (1) posting a "For Lease" sign on the Leased Premises; and (2) advising Lessor's lease agent, if any, of the availability of the Leased Premises.

27.5 In the event that Lessor elects to relet, rentals received by same from such reletting shall be applied: first, to the payment of any indebtedness, other than rent due hereunder from Lessee under this Agreement; second, to the payment of any cost of such reletting; third, to the payment of rent due and unpaid hereunder; and finally, the residue, if any, shall be held by Lessor and applied hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by Lessee hereunder, then Lessee shall pay such deficiency to Lessor. Such deficiency shall be calculated and paid monthly. Lessee shall also pay to Lessor, as soon as ascertained, any costs and expenses reasonably incurred by Lessor in such reletting not covered by the rentals received from such reletting of the Leased Premises.

27.6 If Lessor shall terminate this Agreement or take possession of the Leased Premises by reason of a condition of default, Lessee and those holding under Lessee, shall forthwith remove their goods and effects, including underground fuel storage tanks, from the Leased Premises. If Lessee or any such claimant shall fail to effect such removal forthwith, Lessor may, without liability to Lessee or those claiming under Lessee, remove such goods and effects and store same for the account of Lessee or of the owner thereof at any place selected by Lessor, or, at Lessor's election, and upon giving fifteen (15) days' written notice to Lessee of date, time and location of sale, Lessor may sell the same at public auction or private sale on such terms and conditions as to price, payment and otherwise, as Lessor in its sole discretion may deem advisable. If, in Lessor's judgment, the cost of removing and storing, or of removing and selling any such goods and effects, exceeds the value thereof or the probable sale price thereof, as the case may be, Lessor shall have the right to dispose of such goods in any manner Lessor may deem advisable.

27.7 Lessee shall be responsible for all costs of removal, storage and sale, and Lessor shall have the right to reimburse the Airport Revenue Fund from the proceeds of any sale for all such costs paid or incurred by Lessor. If any surplus sale proceeds remain after such reimbursement, Lessor may deduct from such surplus any other sum due to Lessor hereunder and shall pay over to Lessee any remaining balance of such surplus sale proceeds.

27.8 If Lessor shall enter into and repossess the Leased Premises as a result of Lessee's default in the performance of any of the terms, covenants or conditions herein contained, then Lessee hereby covenants and agrees that it will not claim the right to redeem or re-enter the Leased Premises to restore the operation of this Agreement pursuant to any present or future statute providing a right of redemption or right of re-entry to tenants under real property leases, and Lessee 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 Lessee, expressly waive its right, if any, to make payment of any sum or sums of rent, or otherwise, of which Lessee shall have made default under any of the covenants of the Agreement and to claim any subrogation of the rights of Lessee under these presents, or any of the covenants thereof, by reason of such payment.

27.9 All rights and remedies of Lessor 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, whenever and as often as deemed desirable.

27.10 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 Lessee shall be permitted to retain possession of the Leased 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.

27.11 Any amount paid or expense or liability incurred by Lessor for the account of Lessee may be deemed to be additional rental and the same may, at the option of Lessor, be added to any rent then due or thereafter falling due hereunder, including but not limited to attorney's fees and costs as set forth in **Article 36.**

ARTICLE 28. HOLDING OVER

28.1 It is agreed and understood that any holding over by Lessee, with Lessor's consent, after the termination of this Agreement, shall not renew and extend same, but shall operate and be construed as a tenancy from month-to-month, upon all the terms and conditions set forth herein, except that rental shall be paid to Lessor by Lessee for the Ground Space at one hundred fifteen percent (115%) of the total rental in effect for the Ground Space as of the end of the term of this Agreement or any extension thereof or the ground rental rate established through appraisal. In addition to payment of Ground Rent as set forth herein, Lessee shall pay Lessor one-twelfth (1/12th) of the Guaranteed Rent required to be paid by Lessee (as established for a Lease Year under **Section 3.1.2** hereof, together with Percentage Rent. In the event that Title to any Improvements shall vest upon Lessor at the end of the term or any extension thereof, Lessee shall also pay rent for the Improvements at rental rates established by the Appraisal Process.

28.2 Should Lessee hold over against Lessor's will, Lessee agrees to pay to Lessor, as monthly rent during such period of non-consensual holding over, for the Leased Premises (including Ground Space and all Improvements located thereon), whether title to such Improvements is in the name of Lessor or Lessee) for each month of such tenancy, three hundred percent (300%) of the Ground Space Rental paid for the last month of the Agreement term, plus one-twelfth (1/12th) of an amount equal to one hundred fifty percent (150%) the Guaranteed Rent that would otherwise be required, together with Percentage Rent, plus all applicable fees and any other fees authorized by this Agreement and/or authorized by Ordinance. Lessee shall be liable to Lessor for all loss or damage resulting from such holding over against Lessor's will after the termination of this Agreement, whether such loss or damage may be contemplated at such time or not. It is expressly agreed that acceptance of the foregoing rental by Lessor, in the event that Lessee fails or refuses to surrender possession, shall not operate to give Lessee any right to remain in possession beyond the period for which such amount has been paid nor shall it constitute a waiver by Lessor of its right to immediate possession thereafter. In the event that Title to any Improvements shall vest upon Lessor at the end of the term or any extension thereof, then Lessee shall also pay rent for such building at rental rates established by the Appraisal Process as defined in **Section 28.3** below. Further in the event of such non-consensual holdover, Lessor shall be entitled to reenter the Leased Premises at any time in order to retake possession of the same. Lessee shall indemnify, defend and hold harmless Lessor 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 Lessee to surrender the Leased 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 Lessee founded upon such failure.

28.3 "**Appraisal Process**" means the process followed by the parties to arrive at a fair market value of the Improvements to be constructed by Lessee that will be utilized to set rental rates

during a holding over period in the event this Agreement expires and Lessee continues to occupy the Leased Premises on the basis of a month-to-month tenancy in accordance with this **Article 28**. Said process consists of the following: Lessor shall, at Lessor's cost, cause an appraisal to be conducted of the Leased Premises ("Lessor's Appraisal"). The appraisal shall be undertaken by a recognized, qualified and impartial Member of the Appraisal Institute (MAI) or equivalent appraiser, experienced in airport appraisals, selected by the Aviation Director. The Lessor's Appraisal shall be performed within the twelve (12) month period preceding the date upon which a change in rental rates is due to be implemented. In the event that Lessee states, in writing, to the Aviation Director that it does not agree with the Lessor's Appraisal, then and in such event Lessee shall retain a recognized, qualified and impartial MAI or equivalent appraiser, experienced in airport appraisals (hereinafter, "Lessee Appraiser") to conduct an appraisal of the Leased Premises at Lessee's cost (hereinafter "Lessee's Appraisal"). Such retention shall be signed and noticed in writing from Lessee to Lessor. Lessor's Appraiser, along with Lessee's Appraiser, shall, in turn, appoint a third appraiser, qualified as stated above, to render an opinion of value of the Leased Premises and the cost of such third appraiser shall be shared and paid equally by Lessee and Lessor. If Lessee fails to retain an appraiser for a period of twenty (20) days after receipt of Lessor's Appraisal, then Lessor's Appraisal shall stand as if uncontested. No two appraisers may be employed by, or office within, the same company, firm or organization, or family of organizations or companies.

ARTICLE 29. ASSIGNMENT AND SUBLET

29.1 Lessee is not permitted under any circumstances to transfer or assign this Agreement or Lessee's interest in or to the Leased Premises without having first obtained Lessor's prior written consent, which may be given only by or pursuant to an ordinance enacted by the City Council of the City of San Antonio ; provided, however, that the foregoing shall not apply to and prevent the assignment of this Agreement by Lessee, with the prior written consent of the Aviation Director, to any Affiliate or Subsidiary of Lessee.

29.2 Lessee shall not sublet the Leased Premises or any part thereof without having first obtained the Aviation Director's written consent. In the event Lessee requests permission to sublease, the request shall be submitted to the Aviation Director, prior to the effective date of the sublease requested, and shall be accompanied by a copy of the proposed sublease agreement(s) and of all agreement(s) collateral thereto. The identity of the sublessee, the area or space to be subleased, the rental to be charged, the type of business to be conducted, reasonable financial history and all other information reasonably requested by the Aviation Director shall be specified. Lessee shall not sublease a total of more than fifty percent (50%) of the Leased Premises without the written approval of the Aviation Director. If such limit is exceeded without the Aviation Director's written approval, Lessor shall have the right, upon thirty (30) days' written notice, to recapture the space described in the sublease, and terminate the entire Agreement on the expiration of such thirty (30) day period. In the event of any recapture, Lessee's rental payments shall be adjusted on a pro-rata basis; provided, however, that all rights and remedies of Lessor contained in **Article 27 - Default and Remedies**, shall be available to Lessor.

29.3 In the event of a sublease where the rental per square foot established in the sublease exceeds the rental for same established in the Agreement, Lessee shall pay to Lessor, as additional rent, the excess of the rental received from the sublessee over that specified to be paid by Lessee herein per square foot; provided that Lessee may charge a reasonable fee for administrative costs in addition to the sublease rental, not to exceed fifteen percent (15%) of the

specified sublease rental. Such fifteen percent (15%) shall not be considered as excess rental. Nothing herein shall prevent Lessee from charging a reasonable fee to others for the use of capital equipment and facilities on the subleased premises or charging for use of utilities and other services being paid for by Lessee. Should any method of computation of rental to be paid by a sublessee, other than computation based upon a rental rate per square foot, be employed, the provisions of this paragraph will apply if the rental received for the proportionate area of the Leased Premises by Lessee exceeds the rental paid to Lessor for said proportionate area of the Leased Premises.

29.4 Each subletting to which there has been consent shall be by written instrument, in a form reasonably satisfactory to Lessor, and shall be executed by sublessee, who shall agree, in writing, for the benefit of Lessor, to be bound by and to perform the terms, covenants and conditions of this Agreement. Four (4) executed copies of such written instrument shall be delivered to Lessor. Failure either to obtain Lessor's prior written consent or to comply with the provisions herein contained shall operate to prevent any such subletting from becoming effective.

ARTICLE 30. DAMAGE OR DESTRUCTION OF LEASED PREMISES

30.1 In the event any of the Improvements on the Leased Premises are destroyed or damaged to the extent that they are unusable, Lessee shall have the election of repairing or reconstructing the Improvements substantially as they were immediately prior to such casualty, or in a new or modified design, or not to construct the Improvements. Lessee shall give the Aviation Director written notice of its election within sixty (60) days after the occurrence of such casualty. If the entirety or substantially all of the Improvements are damaged or destroyed and Lessee elects not to repair or reconstruct the damaged Improvements within the sixty (60) day election period, the Aviation Director may terminate this Agreement by written notice to Lessee given within sixty (60) days following expiration of Lessee's election period, whereupon (i) this Agreement shall terminate, Lessee shall clear the Leased Premises of any remaining improvements or debris, and Lessee shall thereupon abandon the Leased Premises and (ii) the insurance proceeds covering the Improvements shall be paid to Lessee. If such damage or destruction is to less than substantially all of the Improvements, and Lessee elects not to repair or reconstruct the damaged Improvements within the said 60-day period following such damage or destruction, then (i) this Agreement shall be deemed modified so as to terminate the Agreement as to such damaged Improvements, and (ii) the insurance proceeds covering the Improvements shall be paid to Lessee. In the event of damage or destruction to any of the Improvements, Lessor shall have no obligation to repair or rebuild the Improvements or any fixtures, equipment or other personal property installed by Lessee on the Leased Premises.

30.2 If Lessee elects to repair or reconstruct the Improvements, Lessee shall use its insurance proceeds from the policy covering the destroyed Improvements. If the insurance proceeds are not sufficient, Lessee agrees to pay the deficiency. If Lessee elects to repair or reconstruct, Lessee shall, at its expense, replace and repair any and all fixtures, equipment and other personal property necessary to properly and adequately continue its authorized activities on the Leased Premises. In no event shall Lessee be obligated to provide equipment and fixtures in excess of those existing prior to the damage or destruction. Lessee agrees that such work will be commenced and completed with due diligence.

30.3 Prior to any repair or reconstruction described above, Lessee shall submit plans and specifications to the Aviation Director for his written approval. Such repair or reconstruction

shall be in accordance therewith. Any changes must be approved in writing by the Aviation Director.

ARTICLE 31. LAWS AND ORDINANCES

Lessee agrees to comply promptly with all laws, ordinances, orders, rules and regulations, as amended from time to time, affecting the Leased Premises, including, but not limited to, those related to its cleanliness, safety, operation, use, and business operations. Lessee shall comply with all Federal and State regulations concerning its operation on the Airport and shall indemnify and hold harmless Lessor, its officers and employees, from any charges, fines or penalties that may be assessed or levied by any department or agency of the United States or the State of Texas, by reason of Lessee's failure to comply with the terms of this Article or with any other terms set forth in this Agreement.

ARTICLE 32. TAXES AND LICENSES

Lessee shall, at its sole cost and expense, pay on or before their respective due dates, to the appropriate collecting authority, all Federal, State and local taxes and fees, which are now or may hereafter be levied upon the Lessee, Leased Premises, the business conducted thereon or upon any of Lessee's property used in connection therewith including, but not limited to, any possessory interest taxes. Lessee shall also maintain, in current status, all Federal, State, and local licenses and permits required for the operation of its business.

ARTICLE 33. NONDISCRIMINATION AND AFFIRMATIVE ACTION REGULATIONS

33.1 Lessee 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. As part of said compliance, Lessee shall adhere to Lessor's Non-Discrimination Policy in the solicitation, selection, hiring or commercial treatment of vendors, suppliers or commercial customers; further, Lessee shall not retaliate against any person for reporting instances of such discrimination.

33.2 Lessee for itself, its heirs, representatives, successors and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained or otherwise operated on the Leased Premises, for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

33.3 Lessee for itself, its representatives, successors and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that: (1) no person, on the grounds of race, color, creed, sex, age, religion, national origin or handicap, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, in the use of said facilities; (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, creed, sex, age, religion, national origin or handicap shall be excluded from participation, denied the benefits of, or otherwise be subjected to discrimination;

and (3) that Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

33.4 Lessee agrees that it will comply with applicable statutes, Executive Orders and such rules as are promulgated by applicable state, federal or municipal agencies to assure that no person shall be excluded from participating in any activity conducted with or benefiting from Federal assistance on the basis of race, creed, color, national origin, sex age, or handicap. Lessee, its successors and assigns, shall be obligated to comply with the provisions of this **Section 33.4** for the period during which Federal assistance is extended to the Airport, except where Federal assistance is to provide, or is in the form of, personal property or real property or interest therein or structures or improvements thereon. In these cases, this **Section 33.4** shall apply to Lessee, its successors and assigns, through the later of: (a) the period during which such property is used by Lessor, its successors and assigns for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which Lessor, is successors or assigns, retains ownership or possession of the Leased Premises.

ARTICLE 34. WAGES

Lessee shall pay at least the minimum wage, as required by Federal and State statutes and City ordinances, to employees of its operations hereunder.

ARTICLE 35. FORCE MAJEURE

If either party shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, war, terrorism, inability to procure materials, restrictive governmental laws or regulations or other cause, without fault and beyond the control of the party obligated (the financial inability of the party excepted), performance of such act shall be extended by a period equal to the period of such delay; provided, however, that nothing in this paragraph shall excuse Lessee from the prompt payment of any rental except as may be expressly provided otherwise in this Agreement; and further provided that the party relying on this paragraph shall provide written notice to the other party notifying such other party of the force majeure event promptly after such force majeure event, and shall proceed with all diligence to complete the performance of the act upon the cessation of the force majeure event.

ARTICLE 36. ATTORNEYS' FEES AND COSTS

In the event that either party brings an action under this Agreement, and prevails therein, it shall be entitled to recover from the other party its reasonable attorneys' fees and court costs, including but not limited to constable and eviction fees and expenses, not to exceed the actual amount incurred in the defense or prosecution thereof.

ARTICLE 37. SEVERABILITY

If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws, it is the parties' intention that the remainder hereof not be affected. In lieu of each clause or provision that is illegal, invalid or unenforceable, the parties intend that there be added, as a part of this Agreement, a clause or provision, as similar in terms to such illegal,

invalid or unenforceable clause or provision, as may be possible, yet be legal, valid and enforceable.

ARTICLE 38. AMENDMENT

This Agreement, together with its authorizing ordinance, constitutes the entire agreement between the parties. No amendment, modification or alteration of the terms of this Agreement shall be binding, unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

ARTICLE 39. RELATIONSHIP OF PARTIES

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship, between the parties hereto. It is understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto, creates a relationship other than one of Lessor and Lessee.

ARTICLE 40. CUMULATIVE REMEDIES NO WAIVER - NO ORAL CHANGE

The specific remedies of the parties under this Agreement are cumulative and do not exclude any other remedies to which they may be lawfully entitled in law or equity, in the event of a breach or threatened breach hereof. The failure of either party to insist upon the strict performance of any covenant of this Agreement, or to exercise any option herein contained, shall not be construed as its future waiver or relinquishment thereof. Lessor's receipt of a rent payment, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach. Further, no waiver, change, modification or discharge by either party of any provision of this Agreement shall be deemed to have been made or be effective, unless in writing and signed by the party to be charged. In addition to other remedies herein, the parties shall be entitled to an injunction restraining the violation, or attempted violation, of any of the covenants, conditions or provisions hereof, or to a decree compelling performance of same; subject, however, to other provisions herein.

ARTICLE 41. CONFLICT OF INTEREST

41.1 Lessee 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.

41.2 Pursuant to the subsection above, Lessee 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. Lessee further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

ARTICLE 42. GENERAL PROVISIONS

42.1 Incorporation of Exhibits. All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.

42.2 Nonexclusive Rights. It is understood and agreed that nothing herein contained shall be construed to grant to Lessee any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Lessee shall have the right to exclusive possession of the Leased Premises.

42.3 Airport Access License/Permit. Lessor reserves the right to establish a licensing or permit procedure for vehicles requiring access to the Airport operational areas and to levy directly against Lessee or its suppliers a reasonable regulatory or administrative charge to recover the cost of any such program for issuance of such Airport access license or permit.

42.4 Compliance with Part 77, Title 14, CFR. Lessee agrees to comply with the notification and review requirements covered in Part 77, Title 14, Code of Federal Regulations, FAA Regulations, in the event future construction of a building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

42.5 Reservations re: Airspace and Noise There is hereby reserved to Lessor, its successors, and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises.

42.6 Inspection of Books and Records. Each party hereto, at its expense and on reasonable notice, shall have the right from time to time to inspect and copy the books, records, and other data of the other party as reasonably required in order to verify a party's compliance with the provisions hereof, provided (i) such inspection is made during regular business hours, and (ii) such examination is not prohibited by the U.S. Government..

42.7 Independent Contractor. Lessee is not an employee or agent of Lessor by reason of this Agreement, or otherwise. Lessee shall be solely responsible for its acts and omissions arising from or relating to its operations or activities at Airport, or lease of property herein.

42.8 Authority of Agreement. Lessee warrants and represents that it has the right, power, and legal capacity to enter into, and perform its obligations under this Agreement, and no approvals or consents of any persons are necessary in connection with it. The execution, delivery, and performance of this Agreement by the undersigned Lessee representatives have been duly authorized by all necessary corporate action of Lessee, and this Agreement constitutes a legal, valid, and binding obligation of Lessee, enforceable in accordance with its terms.

42.9 Authority of the Aviation Director. The Aviation Director shall administer this Agreement on behalf of Lessor. Whenever this Agreement calls for approval by Lessor, such approval shall be evidenced, in writing, by either the Aviation Director or the City Manager of the City of San Antonio or his designee. In no event shall this language be considered a waiver by Lessee to

object to decisions by the Aviation Director which it considers to be arbitrary, capricious or inconsistent with any express obligations to act reasonably set forth herein.

42.10 Consent. Whenever the consent or approval of either party hereto is required or authorized hereunder, such consent or approval shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.

42.11 Net Agreement. It is the intent and purpose of Lessor and Lessee that all rental payable by Lessee herein shall be absolutely net to Lessor so that this Agreement shall yield to Lessor the entire rent specified, in each year of this Agreement, free of any charges, assessments, impositions or deductions of any kind or character which may be charged, assessed, or imposed on or against Lessee or the Leased Premises, without abatement, deduction or set-off by Lessee.

42.12 Noise Control. Lessee, for itself and each of its officers, representatives, agents, employees, guests, patrons, contractors, subcontractors, licensees, subtenants, invitees, or suppliers shall not conduct any operation or activity on the Leased Premises, or elsewhere at Airport, in which the sound emitting therefrom is of such volume, frequency or intensity at such time as to constitute a nuisance. The Aviation Director shall have the sole and exclusive authority to determine what constitutes a nuisance under the provisions of this Agreement except that operations and activities having noise levels not in violation of federal, State, or local governmental standards shall not be deemed a nuisance.

42.13 Time is of the Essence. Time shall be of the essence in complying with the terms, conditions and provisions of this Agreement.

42.14 Vehicular and Equipment Parking. Vehicular and equipment parking in areas other than the Leased Premises by Lessee, its officers, representatives, agents, employees, guests, patrons, volunteers, contractors, subcontractors, licensees, suppliers or other invitees shall be restricted to such areas at Airport as are designated by the Aviation Director.

42.15 Notices. Unless otherwise expressly provided elsewhere in this Agreement, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or United Parcel Service) for expedited delivery to be confirmed in writing by such courier.

If intended for LESSOR, to:

City of San Antonio
Aviation Department
Attn: Aviation Director
9800 Airport Boulevard
San Antonio, TX 78216

If intended for Lessee, to:

Northwest Petroleum, LP
Attn: Fazil Malik
17171 Park Row Drive
Suite 295
Houston, Texas 77084

ARTICLE 43. PARTIES BOUND

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as permitted hereby.

ARTICLE 44. TEXAS LAW TO APPLY

All obligations under this Agreement are performable in Bexar County, Texas, and shall be construed pursuant to the laws of the State of Texas, except where state law shall be preempted by any rules, laws or regulations of the United States. Venue for any actions brought to enforce or interpret this Agreement shall be Bexar County, Texas.

ARTICLE 45. GENDER

Words of either gender used in this Agreement shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

ARTICLE 46. CAPTIONS

The captions of the provisions contained herein are for convenience in reference and are not intended to define, extend or limit the scope of any provision of this Agreement.

ARTICLE 47. ENTIRE AGREEMENT

This Agreement comprises the final and entire agreement, including all terms and conditions thereof, between the parties hereto, and supersedes all other agreements, oral or otherwise, regarding the subject matter hereof, none of which shall hereafter be deemed to exist or to bind the parties hereto. The parties intend that neither shall be bound by any term, condition or representation not herein written.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the dates set forth below.

CITY OF SAN ANTONIO

By:_____
City Manager

Date:_____

Approved as to form:

_____
City Attorney

NORTHWEST PETROLEUM, LP
Through its General Partner
Fuel Management GP, LLC

By:_____

Printed Name: Fazil Malik
Title: Manager

Date:_____

EXHIBIT 1
LEASED PREMISES

EXHIBIT 1-A
Field Notes

EXHIBIT 1-A

FIELD NOTES FOR
A 2.024 ACRE TRACT
(LEASE AREA)

A 2.024 acre tract of land situated in the City of San Antonio, Bexar County, Texas and being out of Lot 7, Block 1, New City Block 16435 of the San Antonio International Airport - Unit 13 Subdivision of record in Volume 9568 Pages 18-19 of the Deed and Plat Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a set ½" iron rod with a blue plastic cap stamped "KFW Surveying" for the southwest corner of the tract described herein, from which a found PK nail in the north right-of-way line of Loop 410, a variable width right-of-way, and for an interior corner in the southwest line of Lot 7 bears, S 44° 39' 46" E, a distance of 161.09 feet;

THENCE: Over and across Lot 7 the following eight (8) courses:

1. **N 04° 12' 55" E**, a distance of **265.17 feet** to a set ½" iron rod with a blue plastic cap stamped "KFW Surveying" for the most westerly northwest corner of the tract described herein,

2. **N 43° 01' 31" E**, a distance of **43.06 feet** to a set ½" iron rod with a blue plastic cap stamped "KFW Surveying" for the most northerly northwest corner of the tract described herein, from which a found PK nail in the north right-of-way line of Northern Boulevard of record in Volume 1625 Page 307 of the Deed an Plat Records of Bexar County, Texas and an exterior of Lot 7 bears, N 43° 06' 12" W, a distance of 127.57 feet,

3. **N 84° 55' 58" E**, a distance of **171.00 feet** to a set PK nail with a washer stamped "KFW Surveying" for the most northerly northeast corner of the tract described herein, from which a found ½" iron rod with a plastic cap stamped "CDS/Muery" for an interior corner of Lot 7 bears, N 55° 42' 38" W, a distance of 135.61 feet,

4. **S 05° 04' 02" E**, a distance of **55.10 feet** to set ½" iron rod with a blue plastic cap stamped "KFW Surveying" for an interior corner of the tract described herein,

5. **S 86° 19' 41" E**, a distance of **49.12 feet** set ½" iron rod with a blue plastic cap stamped "KFW Surveying" for the most easterly northeast corner of the tract described herein,

6. **S 26° 58' 55" E**, a distance of **98.91 feet** to a set PK nail with a washer stamped "KFW Surveying" for an angle of the tract described herein,

7. **S 04° 12' 55" W**, a distance of **187.79 feet** to a set PK nail with a washer stamped "KFW Surveying" for the southeast corner of the tract described herein, from which a found PK nail in the north right-of-way line of Loop 410 and for a southeast corner of Lot 7 bears, S 30° 01' 11" W, a distance of 161.76 feet, and

8. **N 85° 47' 05" W**, a distance of **304.99 feet** to the **POINT OF BEGINNING** and containing 2.024 acres or 88,165 square feet of land more or less in the City of San Antonio, Bexar County, Texas. The basis of bearings is the State Plane Coordinate System established for the Texas South Central Zone 4204, North American Datum (NAD) of 1983(2011).

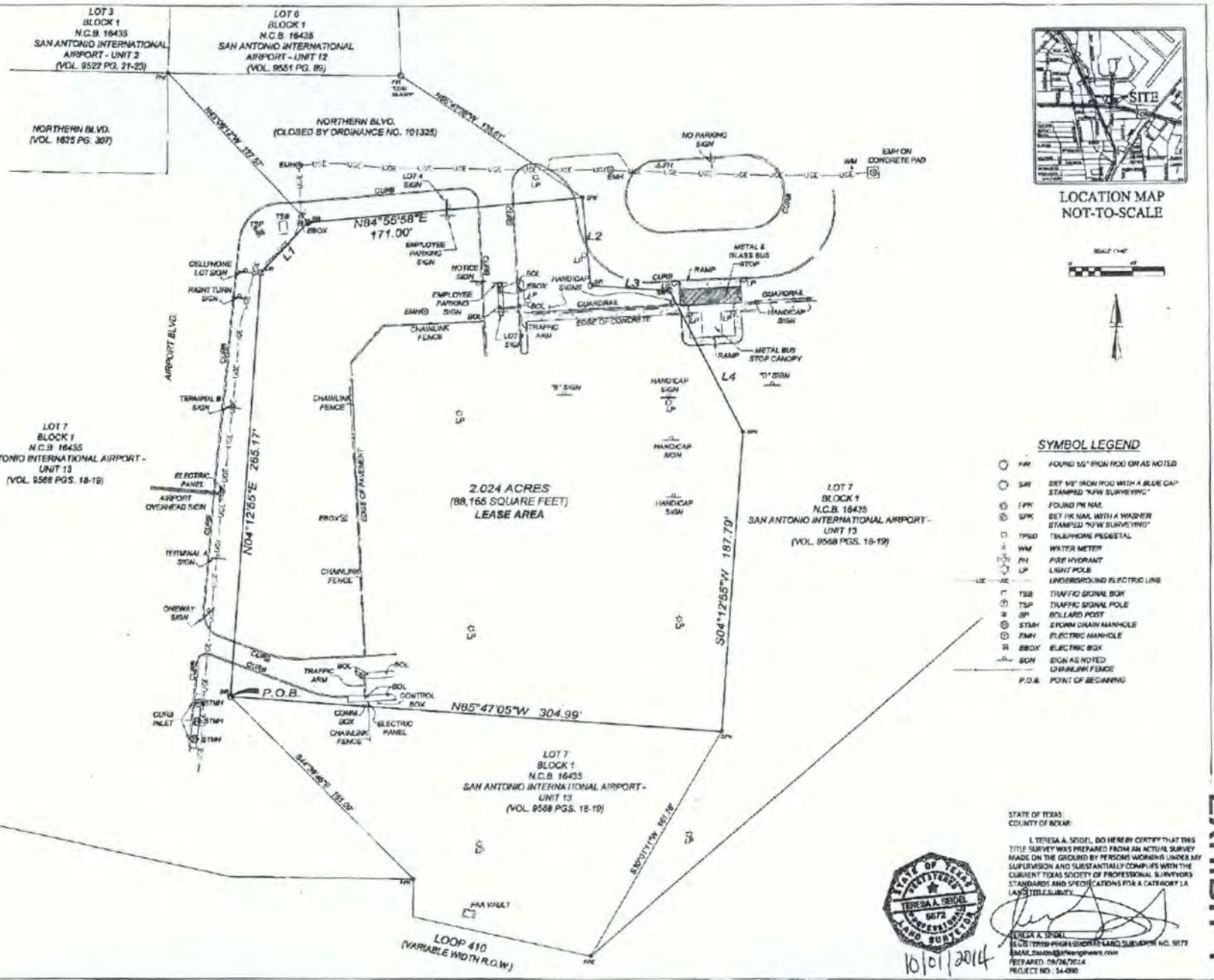
Job No.:	14-090
Prepared by:	KFW Surveying
Date:	September 26, 2014
File:	S:\Draw 2014\14-090 S.A. Airport Lease-Topo\DOCS\ Field Notes 2.02

STATE OF TEXAS REGISTERED TERRY A. SEIDEL 5672 PROFESSIONAL LAND SURVEYOR

10/01/2014

EXHIBIT 1-B
Survey

NOTES
1. BEARINGS ARE BASED ON THE STATE PLANE COORDINATE SYSTEM ESTABLISHED FOR THE TEXAS SOUTH CENTRAL ZONE 4204, NORTH AMERICAN DATUM (NAD) OF 1983(2011).
2. NO TITLE COMMITMENT PROVIDED.
3. REFERENCED PROPERTY IS IN ZONE X, AREAS DETERMINED TO BE OUTSIDE THE 500 YEAR FLOODPLAIN, AS SCALED FROM FEMA FLOOD MAP 255 OF 783, COMMUNITY PANEL NO. 48180C0255G, DATED SEPTEMBER 29, 2010.
4. THE TRACT SHOWN HEREON IS SUBJECT TO ALL CITY OF SAN ANTONIO AND BEXAR COUNTY ORDINANCES AND RESTRICTIONS.
5. METES AND BOUNDS WERE PREPARED FOR THIS SURVEY.
6. SET IRON PINS ARE 1/2" DIAMETER REBAR WITH A BLUE CAP STAMPED "KFW SURVEYING".
7. FIELD WORK COMPLETED ON 07/31/2014.



LINE TABLE		
LINE	LENGTH	BEARING
L1	43.06'	N43°01'31"E
L2	55.10'	S05°04'02"E
L3	49.12'	S86°15'41"E
L4	98.91'	S26°58'55"E

LOCATION MAP
NOT-TO-SCALE

SYMBOL LEGEND

FIR	FOUND 1/2" IRON ROD OR AS NOTED
SIR	SET 1/2" IRON ROD WITH A BLUE CAP STAMPED "KFW SURVEYING"
FPK	FOUND PK NAIL
SPK	SET PK NAIL WITH A WASHER STAMPED "KFW SURVEYING"
TPED	TELEPHONE PEDESTAL
WM	WATER METER
FH	FIRE HYDRANT
LP	LIGHT POLE
UE	UNDERGROUND ELECTRIC LINE
TSB	TRAFFIC SIGNAL BOX
TSP	TRAFFIC SIGNAL POLE
BP	BOLLARD POST
STMH	STORM DRAIN MANHOLE
EMH	ELECTRIC MANHOLE
EBOX	ELECTRIC BOX
SGN	SIGN AS NOTED
	CHAINLINK FENCE
P.O.B.	POINT OF BEGINNING

STATE OF TEXAS
COUNTY OF BEXAR:

I, TERESA A. SEIDEL, DO HEREBY CERTIFY THAT THIS TITLE SURVEY WAS PREPARED FROM AN ACTUAL SURVEY MADE ON THE GROUND BY PERSONS WORKING UNDER MY SUPERVISION AND SUBSTANTIALLY COMPLIES WITH THE CURRENT TEXAS SOCIETY OF PROFESSIONAL SURVEYORS STANDARDS AND SPECIFICATIONS FOR A CATEGORY 1A LAND TITLE SURVEY.

STATE OF TEXAS REGISTERED TERESA A. SEIDEL 5672 PROFESSIONAL LAND SURVEYOR

10/01/2014

TERESA A. SEIDEL
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5672
EMAIL: tseidel@kfwengineers.com
REPORTED: 09/26/2014
PROJECT NO.: 14-090

EXHIBIT 1-B

TITLE SURVEY OF

A 2.024 ACRE TRACT OF LAND(LEASE AREA) SITUATED IN THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS AND BEING OUT OF LOT 7, BLOCK 1, NEW CITY BLOCK 16435 OF THE SAN ANTONIO INTERNATIONAL AIRPORT - UNIT 13 SUBDIVISION OF RECORD IN VOLUME 9568 PAGES 18-19 OF THE DEED AND PLAT RECORDS O FBEXAR COUNTY, TEXAS.

KFW SURVEYING
14603 HUEBNER ROAD, BLDG. 40
SAN ANTONIO, TEXAS 78230
PHONE (210) 979-8444
FAX (210) 979-8441
FIRM LICENSE NO. 10122300

REVISIONS

JOB NO. 14-090
DATE: 09/26/2014
CHECKED: TAS
DRAWN: KLP

SHEET NUMBER:
1 OF 1

EXHIBIT 1-C
SURVEY OF FAA EASEMENT

EXHIBIT 1-C

NOTES
1. BEARINGS ARE BASED ON THE STATE PLANE COORDINATE SYSTEM ESTABLISHED FOR THE TEXAS SOUTH CENTRAL ZONE 4204, NORTH AMERICAN DATUM (NAD) OF 1983. DISTANCES SHOWN HEREON ARE SURFACE DISTANCES USING AN AVERAGE COMBINED SCALE FACTOR OF 0.9998300289.
2. THE TRACT SHOWN HEREON IS SUBJECT TO ALL CITY OF SAN ANTONIO AND BEXAR COUNTY ORDINANCES AND RESTRICTIONS.
3. METES AND BOUNDS WERE PREPARED FOR THIS EXHIBIT.

SCALE: 1" = 100'
0' 100'

LOCATION MAP
NOT-TO-SCALE

SYMBOL LEGEND

O FIR	FOUND 1/2" IRON ROD OR AS NOTED
⊗ FPK	FOUND PK NAIL OR AS NOTED
POB	POINT OF BEGINNING
POC	POINT OF COMMENCEMENT

Line Table

LINE #	LENGTH	DIRECTION
L1	67.10'	N84°55'58"E
L2	20.28'	N84°55'58"E
L3	63.79'	S04°29'24"W
L4	251.65'	S04°04'25"E
L5	155.79'	S85°47'05"E
L6	20.21'	N85°47'05"W
L7	250.24'	N04°04'25"W
L8	61.92'	N04°29'24"E

ANY COMPLAINTS REGARDING THE SERVICES YOU HAVE RECEIVED CAN BE DIRECTED TO
THE TEXAS BOARD OF PROFESSIONAL LAND SURVEYING
12100 PARK 35 CIRCLE BLDG A, SUITE 156 MC-230 AUSTIN, TX 78753
PHONE 512-239-5263, FAX 512-239-5253

STATE OF TEXAS
REGISTERED
KYLE L. PRESSLER
6528
PROFESSIONAL
LAND SURVEYOR

7/1/2015

Kyle L. Pressler

KYLE L. PRESSLER
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6528
EMAIL: KPRESSLER@KFWENGINEERS.COM
DATE OF SURVEY: 6/30/15
PROJECT NO.: 14-090

KFW SURVEYING

EXHIBIT OF
A 0.1441 OF AN ACRE TRACT OF LAND, A 20 FOOT WIDE FIBER OPTIC EASEMENT, BEING OVER AND ACROSS LOT 7, BLOCK 1, N.C.B. (NEW CITY BLOCK) 16435 OF THE SAN ANTONIO INTERNATIONAL AIRPORT - UNIT 13 SUBDIVISION, A PLAT OF RECORD IN VOLUME 9568 PAGES 18-19 OF THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS.

REVISIONS	ISSUE DATE

JOB NO	14-090		
DATE	06/30/2015	DESIGNER	TAS
DRAWN	MO	CHECKED	KLP

SHEET: 1 OF 1

THIS DOCUMENT HAS BEEN PRODUCED FROM MATERIAL THAT WAS STORED AND/OR TRANSMITTED ELECTRONICALLY AND MAY HAVE BEEN INADVERTENTLY ALTERED. RELY ONLY ON FINAL HARDCOPY MATERIALS BEARING THE CONSULTANT'S ORIGINAL SIGNATURE AND SEAL.

EXHIBIT 1-D
FAA Easement Field Notes

KFW SURVEYING

FIRM LICENSE NO. 10122300

FIELD NOTES FOR
A 0.1441 OF AN ACRE TRACT
(20 FOOT WIDE FIBER OPTIC EASEMENT)

A 0.1441 of an acre tract of land, a 20 Foot Wide Fiber Optic Easement, being over and across Lot 7, Block 1, N.C.B. (New City Block) 16435 of the San Antonio International Airport - Unit 13 Subdivision, a plat of record in Volume 9568 Pages 18-19 of the Deed and Plat Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING at a found PK nail in the north right-of-way line of Northern Boulevard of record in Volume 1625 Page 307 of the Deed an Plat Records of Bexar County, Texas, for the southeast corner of Lot 3, Block 1, N.C.B. 16435 of the San Antonio International Airport – Unit 2, a plat of record in Volume 9522 Pages 21-23 of the Deed and Plat Records of Bexar County, Texas, the southwest corner of Lot 6, Block 1, N.C.B. 16435 of the San Antonio International Airport – Unit 12, a plat of record in Volume 9551 Page 89 of the Deed and Plat Records of Bexar County, Texas and an exterior of Lot 7;

THENCE: Over and across Lot 7 the following two (2) courses:

1. S 43° 06' 12" E, a distance of 127.57 feet to a point for the northwest corner of a proposed 2.024 acre lease area, and
2. N 84° 55' 58" E, continuing over and across Lot 7 and along and with a northerly line of the proposed 2.024 acre lease area, a distance of 67.10 feet to the **POINT OF BEGINNING** and for the northwest corner of the easement described herein;

THENCE: N 84° 55' 58" E, continuing over and across Lot 7 and along and with a north line of the proposed 2.024 acre lease area, a distance of **20.28 feet** to a point for the northeast corner of the easement described herein;

THENCE: Continuing over and across Lot 7, departing a north line and over and across the proposed 2.024 acre lease area, the following two (2) courses:

1. **S 04° 29' 24" W**, a distance of **63.79 feet** to a point for an interior corner of the easement described herein, and
2. **S 04° 04' 25" E**, a distance of **251.65 feet** to a point in the south line of the proposed 2.024 acre lease area for the southeast corner of the easement described herein, from which a point for the southeast corner of the proposed 2.024 acre lease area bears, S 85° 47' 05" E, a distance of 155.79 feet, from which a found PK nail in the north right-of-way line of Loop 410, a variable width right-of-way, and for a southeast corner of Lot 7 bears, S 30° 01' 11" W, a distance of 161.76 feet;

THENCE: N 85° 47' 05" W, continuing over and across Lot 7 and along and with the south line of the proposed 2.024 acre lease area, a distance of **20.21 feet** to a point for the southwest corner of the easement described herein;

THENCE: Continuing over and across Lot 7, departing the south line and over and across the proposed 2.024 acre lease area, the following two (2) courses:

1. **N 04° 04' 25" W**, a distance of **250.24 feet** to a point for an exterior corner of the easement described herein, and

2. **N 04° 29' 24" E**, a distance of **61.92 feet** to the **POINT OF BEGINNING** and containing **0.1441 acres** or 6,276 square feet of land more or less in the City of San Antonio, Bexar County, Texas. The basis of bearings is the State Plane Coordinate System established for the Texas South Central Zone 4204, North American Datum (NAD) of 1983(2011). Distances recited herein are surface distances using an average combined scale factor of 0.9998300289.

STATE OF TEXAS
REGISTERED
KYLE L. PRESSLER
6528
PROFESSIONAL
LAND SURVEYOR

7/1/2015

Job No.:	14-090
Prepared by:	KFW Surveying
Date:	July 1, 2015
File:	S:\Draw 2014\14-090 S.A. Airport Lease-Topo\DOCS\ Field Notes 0.1441 acre Fiber Optic Easement.doc

EXHIBIT 2
LESSEE MONTHLY STATEMENT FORM

EXHIBIT 2

Exhibit 2

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	Sales	Less Sales Tax	Total Gross Receipts
Convenience Store Sales (Category A)			$0.00
Fast Food Restaurant Sales (Category B)			$0.00
Commissions Paid to Lessee on Lottery Sales & Payouts - (winnings) (Category C)			$0.00
Total:	**0.00**	**0.00**	**0.00**
Previous Gross Receipts LY to Date Total:			
Total Gross Receipts Received YTD Total:			

	TOTAL
Fuel Delivered - Gallons (Category D)	
ATM Rental (Category E)	$100.00

	Gross Receipts	Percentage Due	Percentage Rent Due
Gross Receipts (Category A) **(A)**	0.00	2%	$0.00
Gross Receipts (Category B) **(A)**	0.00	2%	$0.00
Gross Receipts (Category C) **(A)**	0.00	1%	$0.00
Net Gallons (Category D) **(A)**	0	$0.01 / Gallon	$0.00
ATM (Category E) **(A)**	100.00	$100 / Month	$100.00
		Total:	**100.00**

MONTHLY PAYMENTS

	Ground Rent - xxxx / sq.ft exluding easement ($1.00)	
(A)	Total Gross Receipts Lease Year to Date	
(B)	Total Percent Rent Lease Year to Date @ ?%	
(C)	Total MAG thru Current Month	
(D)	Total % Rent Billed Lease Year to Date	
(E) = B - C - D	**Total Monthly Percentage Rent Due (if any):**	**$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

EXHIBIT 3
LESSEE ANNUAL AUDIT FORM

EXHIBIT 3

Exhibit 3

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

Location Description	Convenience Store Sales Category A	Fast Food Restaurant Sales Category B	Commissions Paid to Lessee on Lottery Sales & Payouts - (winnings) Category C	Fuel Delivered - Gallons Category D	Total ANNUAL Gross
January					0.00
February					0.00
March					0.00
April					0.00
May					0.00
June					0.00
July					0.00
August					0.00
September					0.00
October					0.00
November					0.00
December					0.00
Total:	$0.00	$0.00	$0.00	0	$0.00

	Gross Receipts	Percentage Due	Percentage Rent Due
Annual Store Gross Receipts (Category A)	$0.00	2%	**$0.00**
Annual Fast Food Gross Receipts (Category B)	$0.00	2%	**$0.00**
Annual Lottery Sales / Winnings Gross Receipts (Category C)	$0.00	1%	**$0.00**
Total Net Gallons (Category D)	0	$0.01 / Gallon	**$0.00**
ATM (Category E)	12	$100 / Month	**$1,200.00**
		Total Annual Percentage	**$1,200.00**

ANNUAL PAYMENTS

Annual Gross Receipts	$0.00
Annual Percentage Rent	$1,200.00
Annual MAG	
The Greater of Annual MAG or Annual Percentage Rent	$1,200.00
Annual Ground Rent	
MAG Paid LYD	
Percentage Rent Paid LYD	
Total Payments Received LYD	**$0.00**
Total Annual Payment Due (if any):	**$1,200.00**

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. **This annual statement must be accompanied by a report and opinion from an independent certified public accountant.**

Signature Title Date

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

EXHIBIT 4
LESSEE PROJECT IMPROVEMENTS

EXHIBIT 4

LEGAL DESCRIPTION

[illegible]

BENCHMARKS

[illegible]

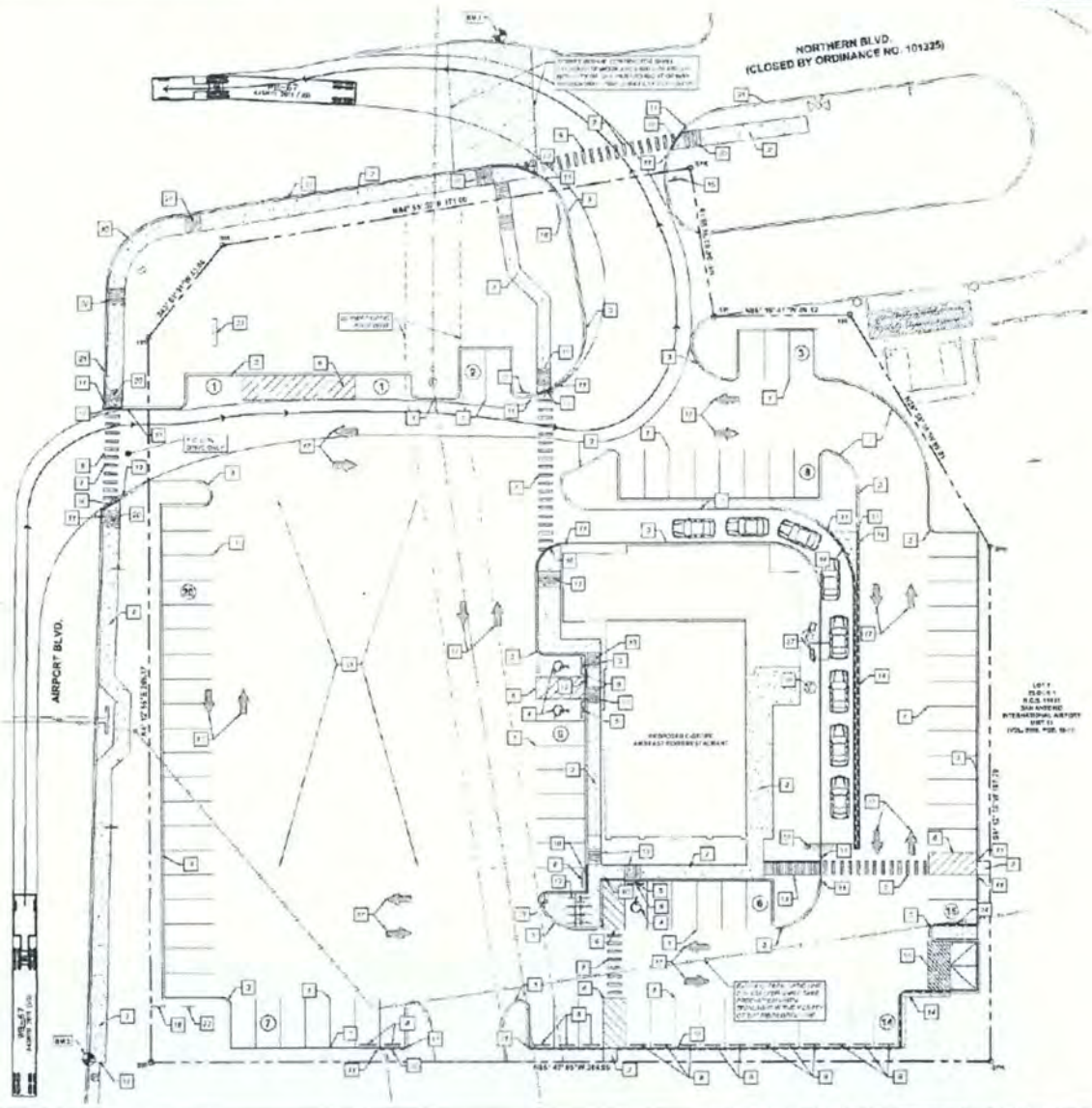
COORDINATION OF TC

1. CONTACT TWC (ONE WINNER CABLE) TO COORDINATE CABLE TV SERVICE. [illegible]
2. CONFIRM REQUIREMENTS AND COORDINATE WITH CPS (CITY PUBLIC SERVICE) FOR EXTENSIONS AND CONDUIT NEEDS FOR PRIMARY AND SECONDARY ELECTRICAL SERVICES. [illegible]
3. CONTACT AT&T TO COORDINATE TELEPHONE SERVICE. [illegible]
4. CONTRACTOR TO COORDINATE NEW LANDSCAPE PLANS WITH PLAN SERVICES. [illegible]
5. CONTRACTOR TO COORDINATE NEW SANITARY SEWER AND WATER SYSTEMS TO PLAN WATER AND SANITARY SEWER SERVICES. [illegible]
6. CONTRACTOR SHALL CONTACT [illegible] A MINIMUM OF [illegible] PRIOR TO THE START OF CONSTRUCTION.

[illegible]

CONTACT TERESA SEGEL, RPLS WITH NEW SURVEYING AT (210) 979-[illegible] FOR CONSTRUCTION STAKING SERVICES ON THIS PROJECT.

SCALE: 1"=20'



LOCATION MAP
NOT TO SCALE

KEY NOTES

1. TYPICAL PARKING SPACES AND PARKING STRIPES (SEE DETAIL [illegible])
2. PROPOSED SIDEWALK (SEE DETAIL [illegible])
3. PROPOSED 6" CURB (SEE DETAIL [illegible])
4. HANDICAP PARKING SYMBOL (SEE DETAIL [illegible])
5. HANDICAP SIGN (SEE DETAIL [illegible])
6. CROSS HATCH STRIPING (SEE DETAIL [illegible])
7. CROSSWALK (SEE DETAIL [illegible])
8. WHEEL STOP (SEE DETAIL [illegible])
9. CONCRETE/ASPHALT PAVEMENT JUNCTURE (SEE DETAIL [illegible])
10. RIBBON CURB (SEE DETAIL [illegible])
11. 2' CURB TRANSITION (SEE DETAIL [illegible])
12. BIKE RACK (SEE DETAIL [illegible])
13. PROPOSED RAMP (SEE DETAIL [illegible])
14. SAW TOOTH CURB (SEE DETAIL [illegible])
15. STOP SIGN (SEE DETAIL [illegible])
16. SIDEWALK/SIDEWALK JUNCTURE (SEE DETAIL [illegible])
17. TRAFFIC FLOW ARROW (SEE DETAIL [illegible])
18. PROPOSED MONUMENT SIGN (REFERENCE ARCHITECTURAL PLANS FOR DETAILS)
19. DUMPSTER ENCLOSURE (REFERENCE ARCHITECTURAL PLANS FOR DETAILS)
20. CCSA CURB RAMP (SEE DETAIL SHEET [illegible])
21. CCSA CURB (SEE DETAIL SHEET [illegible])
22. FIRE LANE SIGN (REFERENCE FIRE PROTECTION PLANS FOR DETAILS)
23. PROPOSED PYLON SIGN (REFERENCE ARCHITECTURAL PLANS FOR DETAILS)
24. PROPOSED GAS PUMPS (REFERENCE ARCHITECTURAL AND MEP PLANS FOR DETAILS)
25. HEIGHT CLEARENCE POLE (REFERENCE ARCHITECTURAL PLANS FOR DETAILS)
26. PRICE BOARD (REFERENCE ARCHITECTURAL PLANS FOR DETAILS)
27. ORDER BOARD (REFERENCE ARCHITECTURAL PLANS FOR DETAILS)

LEGEND

- PROPERTY LINE
- ADJACENT PROPERTY LINE
- EXISTING CONCRETE
- EXISTING CURB
- EXISTING FIRE HYDRANT
- EXISTING SIGN
- EXISTING LIGHT POLE
- EXISTING FIBER OPTIC MANHOLE
- EXISTING FENCE
- EXISTING FIBER OPTIC LINE
- SITE BENCHMARK (SEE DESCRIPTION THIS SHEET)
- PROPOSED SIGN
- PARKING STALL COUNT
- PROPOSED CURB
- PROPOSED RIBBON CURB
- PROPOSED SAW TOOTH CURB
- PROPOSED CONCRETE
- EXISTING TREES, REFERENCE LANDSCAPE PLANS FOR TREE REMOVAL

KFW ENGINEERS + SURVEYING

			DATE