GS
2/21/13
Item No. 21

AN ORDINANCE 2013-02-21-0136

AUTHORIZING A FIVE-YEAR CONCESSION AGREEMENT WITH GOODFELLOWS SHOESHINE – TEXAS, INC. AT SAN ANTONIO INTERNATIONAL AIRPORT WITH GUARANTEED ANNUAL RENTALS OF $9,000.00.

* * * * * *

WHEREAS, on January 6, 2013 the City issued a request for proposals (RFP) for operation of the shoe shine concession at San Antonio International Airport ("Airport"); and

WHEREAS, three proposals were received by the City in response to the RFP and evaluated by the selection committee; and the selection committee deemed the proposal submitted by Goodfellows Shoeshine – Texas, Inc. as the best proposal; and

WHEREAS, Aviation staff recommends that the City enter into a concession agreement with Goodfellows Shoeshine – Texas, Inc. to operate the shoeshine concession at the Airport, **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee is hereby authorized to execute a five-year concession agreement with Goodfellows Shoeshine – Texas, Inc. with guaranteed rentals of $9,000.00 during the first year of the agreement. The concession agreement in substantially final form is set out in **Attachment I** to this Ordinance.

SECTION 2. Funds generated by this Ordinance will be deposited into Fund 51001000, Internal Order No. 233000000074, and General Ledger No. 44005923.

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

SECTION 4. This Ordinance shall take effect immediately upon passage by eight (8) affirmative votes; otherwise it shall be effective ten (10) days after its passage.

PASSED AND APPROVED this 21st day of February, 2013.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Michael D. Bernard, City Attorney

Request for COUNCIL ACTION

City of San Antonio

Agenda Voting Results - 21

Name:	9, 10, 12, 13, 15, 16A, 16B, 17, 18, 19, 20, 21, 25, 26A, 26B, 26C
Date:	02/21/2013
Time:	09:56:55 AM
Vote Type:	Motion to Approve
Description:	An Ordinance awarding a five-year contract to Goodfellows Shoeshine – Texas Inc. for shoe shine services at the San Antonio International Airport with an expected annual revenue of $9,000.00. [Ed Belmares, Assistant City Manager; Frank Miller, Director, Aviation]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				x
David Medina Jr.	District 5		x				
Ray Lopez	District 6	x					
Cris Medina	District 7	x					
W. Reed Williams	District 8		x			x	
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

ATTACHMENT I

SAN ANTONIO INTERNATIONAL AIRPORT
CONCESSION AGREEMENT

Between

City of San Antonio

And

GOODFELLOWS SHOESHINE – TEXAS, INC.

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SAN ANTONIO INTERNATIONAL AIRPORT
CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT ("Agreement") is made and entered into on _____, 20___, by and between the **CITY OF SAN ANTONIO** ("City"), a Texas home-rule municipality, acting by and through its City Manager, pursuant to Ordinance No. _____, passed and approved by the San Antonio City Council. and **GOODFELLOWS SHOESHINE – TEXAS, INC.** ("Concessionaire"), acting by and through its authorized officers.

For good and valuable consideration, the City, does hereby lease unto Concessionaire, and Concessionaire hereby leases from the City, the Premises identified herein which are in and part of Terminals A and B (hereinafter "Terminal" or Terminals) at San Antonio International Airport. **Exhibit A1** is a general site plan of the Airport including the locations of the Terminal.

ARTICLE I. DEFINITIONS

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

"Additional Rent" shall mean those amounts payable by Concessionaire to City, consisting of applicable storage fees, if any, and other monthly recurring charges associated with use of the Premises.

"**Airport**" shall mean San Antonio International Airport.

"Commencement Date" shall mean the date that City executes this Agreement.

"Day" shall mean calendar day and not business day.

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

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

"Fixed Improvements" shall mean_any addition, alteration, annexation or improvement which shall become affixed to the Premises which cannot be removed, modified or changed without damage to, or destruction of, either itself or any portion of the Premises.

"Floor Area" shall_mean, with respect to any leasable area of the Premises, the aggregate number of square feet of interior floor space of all floor levels therein, which shall be measured: (i) with respect to the front and rear width thereof, from the exterior face of the adjacent exterior or corridor wall, or if none, to the center of the demising partition, and (ii) with respect to the depth thereof, from the front of the lease line as shown on **Exhibit A2** to the exterior face of the exterior wall, or corridor wall, or if none, to the center of the demising partition. No deduction or exclusion from Floor Area shall be made by reason of columns, ducts, stairs, elevators, escalators, shafts or other interior construction or equipment.

"Gross Receipts" shall mean and include all monies paid or payable to Concessionaire, whether for cash, credit or otherwise, for sales made and services rendered at or from the Terminal or Airport regardless of when or where the order therefor is received and outside the Terminal or Airport if the order is received at the Terminal or Airport and other revenues of any type arising out of or in connection with Concessionaire's operations at the Terminal or Airport, 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, although said orders may be filled elsewhere; 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 Concessionaire's business interruption insurance policy because of business interruptions; 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 Concessionaire's sole responsibility and shall not be excluded from Gross Receipts. Gross Receipts shall include all such sales, revenues or receipts generated by Concessionaire's subtenants or anyone else conducting business pursuant to an arrangement with Concessionaire within the Premises.

Gross Receipts shall not include: (i) any sums 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 services but only if separately stated from the sales price and only to the extent paid by Concessionaire to any duly constituted governmental/taxing authority; (ii) the portion of the sales price for all merchandise and products returned by customers and accepted for credit to the extent of the credit actually given to the customer as well as rebates, exchanges or allowances made to customers; (iii) shipping and delivery charges if there is no profit to Concessionaire and such charges are merely an accommodation to customers; (iv) sale of trade fixtures, equipment or property which are not stock in trade and not in the ordinary course of business; (v) receipts in the form of refunds from or the value of merchandise and products; services, supplies or equipment returned to vendors, shippers, suppliers or manufacturers including volume discounts received from vendors, suppliers or manufacturers; (vi) customary discounts given by Concessionaire on sales of merchandise and products or services to Concessionaire's employees, if separately stated, and limited in amount to not more than 1% of Concessionaire's Gross Receipts per Lease Month; (vii) gratuities for services performed by employees of Concessionaire which are paid by Concessionaire's customers to such employees; (viii) exchange of merchandise and products between stores or warehouses owned by or affiliated with Concessionaire (where such exchange is made solely for the convenient operation of the business of Concessionaire and not for purposes of consummating a sale which has theretofore been made in or from the Premises and/or for the purpose of depriving the City of the benefit of a sale which otherwise would be made in or from

the Premises); (ix) 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 Concessionaire's recordkeeping system or have been recognized as income; (x) the sale or transfer in bulk of the inventory of Concessionaire to a purchaser of all or substantially all of Concessionaire's assets in a transaction not in the ordinary course of Concessionaire's business; (xi) except with respect to proceeds received for business interruptions paid on a gross earnings business interruption insurance policy as provided in the definition of Gross Receipts, receipts from all other insurance proceeds received by Concessionaire as a result of a loss or casualty, and (xii) unless otherwise agreed by Director, sales reported by Concessionaire under another Lease with the City.

"Guaranteed Rent" shall mean the Minimum Annual Guaranteed Rent ("MAG") more fully described in Section 3.01.

"Lease Year" shall mean a period of 12 consecutive calendar months commencing on the first day of the month following delivery of the Leased Premises and each ensuing 12-month period, or fraction thereof, until the Agreement terminates.

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

"**Operating Equipment**" shall mean any removable trade furniture, furnishings, equipment and fixtures that are fabricated, furnished and installed by Concessionaire and used in its operations in the Premises, but does not include Fixed Improvements nor any displays, advertising materials or decorations that are of a seasonal or temporary promotional nature.

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

"**Public Areas**" shall mean, to the extent provided by City, all improved interior and exterior areas within the Terminal which are not devoted to the exclusive use by any airline, concessionaire or other occupant occupying space in the Terminal including, without limitation, public

transportation loading and unloading facilities, pedestrian walkways and horizontal pedestrian movers, delivery areas, landscaped areas, community rooms, elevators, escalators, stairs and ramps, public restrooms and comfort stations, service areas, service and fire exit corridors, passageways and parking facilities.

"Rental Commencement Date" shall mean the first day that Concessionaire offers services to the public.

"Rents" and "Rentals" shall mean the amounts payable by Concessionaire to City including Guaranteed Rent, Percentage Rent, and Additional Rent.

"Terminal A Renovation Program" shall mean the City's capital project in Terminal A involving infrastructure upgrades, flooring upgrades, wall refinishings, fire suppression upgrades, etc. that will be under construction during calendar years 2012 and 2013.

ARTICLE II. PREMISES, GRANT AND TERM

Section 2.01 PREMISES. The Premises as shown on **Exhibit A2**, are comprised of two post-security locations, one in Terminal A and one in Terminal B, that may be substituted during the term of this Agreement. A2 shows the locations from which Concessionaire is expected to operate. Additional locations may be added upon mutual agreement of the parties.

Section 2.02 CONDITIONS OF GRANT. The City has the right to make any modifications to the Airport. Concessionaire acknowledges that the City may change the shape, size, location, number and extent of the improvements generally shown on **Exhibits A1 and A2** and eliminate or add any improvements to any portion of the Terminal and the Airport at any time without Concessionaire's consent. The City shall have the right to locate, install, maintain, use, repair and replace pipes, utility lines, conduits, ducts, flues, refrigerant lines, drains, sprinkler mains and valves, wires and wiring and structural elements leading through the Premises serving the Premises or any other parts of the Terminal. The City, to the extent possible, shall use reasonable efforts to locate any such items (other than existing items and/or necessary structural elements) in locations

that do not materially interfere with Concessionaire's use of the Premises. Concessionaire, upon approval by the Aviation Director or his designee, shall have the right to install those utilities lines which exclusively serve the Premises in the area between Concessionaire's finished ceiling and the roof above at Concessionaire's sole cost. In the event the City elects to enlarge or alter the Airport or the Terminal, the City may include the additional area in the definition of either Airport or Terminal for purposes hereof.

Section 2.03 **COMMENCEMENT AND ENDING DATE OF TERM.** The Term shall commence upon execution by City and shall end at 11:59 pm upon completion of the 5th Lease Year, unless sooner terminated in accordance with this Agreement. Unless otherwise approved in writing by the Director, Concessionaire shall open the Premises for business to the public (with all required improvements substantially completed and the Premises fully fixtured, stocked with high quality merchandise and products and with Concessionaire prepared to engage in selling high quality merchandise and products and/or services as permitted hereunder).

Section 2.04 **HOLDING OVER.** Any holding over after expiration of the Term with the consent of the Director shall be construed to be a tenancy from month to month pursuant to the terms hereof at one-twelfth (1/12th) of the Guaranteed Rent required to be paid by Concessionaire (as established for a Lease Year under Section 3.01(b) hereof, together with Percentage Rent and an amount estimated by the City for the monthly Additional Rent payable pursuant hereto, and shall be on the same terms and conditions as herein specified so far as applicable. Without City waiving any rights, any other holding over shall be construed to be a tenancy from month to month pursuant to the terms hereof at 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, and an amount estimated by the City for the monthly Additional Rent payable pursuant hereto, and shall be on the same terms and conditions as herein specified so far as applicable. In the event of such hostile holdover, City shall be entitled to reenter the Premises at any time in order to retake possession of the same. Concessionaire shall indemnify, defend and hold harmless the City from and against any and all loss, claims, demands, liabilities, damages (including, without limitation, consequential damages), costs and/or expenses (including, without limitation, attorneys' fees and expenses) resulting from any failure by Concessionaire to surrender the Premises in the

manner and condition required by this Agreement upon the expiration of the Term or earlier termination of this Agreement, including, without limitation, any claims made by any proposed new concessionaire founded upon such failure.

Section 2.05 **LATE OPENING.** Except as otherwise provided in Section 26.04, if Concessionaire fails to open for business in all Premises by _____, and such failure shall be due to the fault of Concessionaire including, but not limited to, obtaining any required permits or certificates from the City, and not due to delays caused by the City for: (a) City's failure to timely approve or provide comments to Concessionaire's plans after submittal by Concessionaire; provided, however, such plans strictly meet the requirements set forth in this Agreement and the construction requirements referred to herein; or (b) City's failure to timely deliver the Premises; then the parties agree that it is and will be impracticable to determine the actual damages suffered by the City. The parties have agreed that in order to compensate the City for its loss, Concessionaire shall pay the location(s) MAG for spaces that fail to open until the location(s) opens. The MAG shall be prorated in an equitable manner so as to only apply on a per day basis for each location that fails to open timely. This remedy shall be in addition to any other remedies available to the City in the event of such failure to open by Concessionaire.

ARTICLE III. RENTAL

From and after the Rental Commencement Date, Concessionaire shall pay to the City the greater of Minimum Annual Guaranteed Rent or Percentage Rent. Concessionaire shall also pay Additional Rent and other charges set forth herein.

Unless otherwise provided in this Agreement, Concessionaire's obligation to pay Guaranteed Rent and Percentage Rent shall commence upon opening the Premises for business.

Section 3.01 **MINIMUM ANNUAL GUARANTEED RENT ("MAG")**

(a) From and after the beginning of the first Lease Year and subject to all applicable provisions of this Agreement, Concessionaire shall pay to the City Guaranteed Rent of Nine Thousand Dollars ($9,000.00) per year. Concessionaire 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 Director in accordance with customary business practices. Guaranteed Rent for any partial month before the Lease Year begins shall be pro-rated and paid with the first Percentage Rent.

(b) The MAG for the second Lease Year and each succeeding Lease Year shall be calculated by multiplying 85% by the total amount of concession fees (consisting of MAG and Percentage Rent) due from Concessionaire to the City in the immediately preceding twelve-month period and be provided to Concessionaire within 30 days of the beginning of the succeeding Lease Year. For example, assuming that the Lease Year begins in January, in order to provide the MAG to the Concessionaire in December, the MAG would be based on the Rents due, excluding Additional Rents, for the sales during the prior twelve month period between November 1 through October 31. In no event, however, shall the MAG for any Lease Year be less than the first Lease Year, except as provided in Section 3.01(d) below.

(c) The MAG shall abate on a monthly basis if the following two events occur: (i) the number of enplanements decreases by twenty-five (25%) for a period covering the immediately prior three consecutive months when compared with the previous year's corresponding period and (ii) Concessionaire's gross sales do not trigger the payment of Percentage Rent during the period of the enplanements decrease. Percentage Rent shall never abate.

Section 3.02 <u>PERCENTAGE RENT</u>.

(a) In addition to Guaranteed Rent, Additional Rent and other charges set forth herein, after opening of one or more stores, Concessionaire shall pay to the City, for each month of the Term, Percentage Rent for those months in which the year-to-date Percentage Rent exceeds the year-to-date MAG. The Percentage Rent shall be equal to the product of the Percentage Rent Rate, by category, times Concessionaire's year-to-date Gross Receipts (as defined below) minus the sum of the year-to-date MAG 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 MAG + Percentage Rent paid year-to-date]*. Concessionaire shall pay Percentage Rent, if any, to the City monthly

without prior notice or demand within 15 days after the expiration of each calendar month. Percentage Rent shall apply at all times during the term of this Agreement.

Percentage Fee Rate
Twelve percent (12 %)

(b) If, at the end of any Lease Year, the total amount of monthly installments of MAG and Percentage Rent paid for such Lease Year are less than the total amount of annual MAG and Percentage Rent required to be paid for such Lease Year, Concessionaire shall pay the amount of such deficiency on or before the time Concessionaire provides "Concessionaire's Annual Statement". If, at the end of any Lease Year, the total amount of monthly installments of MAG and Percentage Rent paid based on Gross Receipts for such Lease Year exceeds the total amount of annual MAG and Percentage Rent required to be paid for such Lease Year, as indicated in Concessionaire's Annual Statement, Concessionaire shall receive a credit equivalent to such excess, which shall be credited by the City to the next monthly payment(s) of Percentage Rent and/or MAG due from Concessionaire to the City hereunder. If at the end of the final Lease Year the total amount of Percentage Rent paid by Concessionaire exceeds the total amount of annual Percentage Rent required to be paid by Concessionaire for such final Lease Year (calculated in the same manner provided hereinabove for non-final Lease Years), such excess shall be refunded to Concessionaire within 60 days after Concessionaire has vacated the Premises at the conclusion of this Agreement and the Premises are in the condition required by this Agreement, and any other sums due the City from Concessionaire under this Agreement have been paid in full or the City shall be entitled to deduct such remaining sums due from any such excess.

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

Section 3.03 ADDITIONAL RENT (also Storage Premises Rent).

If requested by concessionaire and made available by City, commencing on the date of actual delivery of the Storage Premises, Concessionaire shall pay as Additional Rent, the amount set forth in the related Storage Premises Lease or other written document as determined by the City from time to time and thereafter all of the terms, provisions and conditions of Concessionaire's use and occupancy of the Premises set forth herein shall apply fully to Concessionaire's use and occupancy of the Storage Premises and for all purposes of this Agreement, the Premises shall be deemed to include the Storage Premises. Rent for the Storage Premises shall be payable in equal consecutive monthly installments in advance on or before the first day each month, without prior demand or notice. If delivery occurs on a date other than the first day of a month, the Additional Rent for the Storage Premises shall be prorated on a daily basis for any such partial month.

Section 3.04 MISCELLANEOUS CHARGES. The following charges shall be collectively referred to as "Miscellaneous Charges"

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

(b) Identification Security Badges. All persons employed at the Airport, including Concessionaire's employees, are required to obtain identification security badges from the City and the City reserves the right to institute a reasonable charge for the issuance and replacement of these identification security badges. Such charges shall be evidenced by an invoice from the City and shall be promptly paid to the City, with payment directly at the office of the Aviation Director at the Airport at such intervals as shall be demanded by the City from time to time.

(c) Maintenance and Repairs Performed by the City. If the City is required to perform any emergency and other routine maintenance and repairs to the Premises as provided in Section 11.03,

the cost of all labor and materials required to complete the work will be paid by Concessionaire to the City within ten (10) days following written demand from the Director for said reimbursement payment at the City's standard rates then in effect plus any overhead which may be reasonably determined by the Director. Such charges shall be evidenced by an invoice from the City and shall be promptly paid to the City, with payment directly at the office of the Aviation Director at the Airport at such intervals as shall be demanded by the City from time to time.

Section 3.05 **OTHER CONTRACTUAL CHARGES**. Concessionaire 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 City to pursue other contractual or legal remedies:

Section	Violation	Amount for fee
4.02(c)	Late Monthly Statements	$100.00 per late statement.
4.02(d)	Late Annual Audit	$100.00 per month until submitted
8.01	Failure to remove objectionable item from display, service or sale	$50.00 per day until item is removed.
8.02 (n)	Failure to operate during required hours	$50.00 per day until compliant.
8.02 (q)	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.

Section 3.06 **PAYMENTS.**

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

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

Section 3.07 **TIME OF PAYMENT.** The following sets forth the time of Concessionaire payments of rents, fees, and charges to City which shall all be paid without deduction or set-off.

(a) Guaranteed Rent and Additional Rent as applicable 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 fifteenth (15th) day of the month for the prior month.

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

Section 3.08 **LATE PAYMENT CHARGES.** If any Rentals, charges, or fees required to be paid to the City hereunder are not made when such Rentals, charges and fees are due, including amounts identified as a result of any audit findings, are delinquent for a period of thirty (30) days or more from the date when such payment is due to City, Concessionaire shall pay City late fees thereon, from the date such Rents, fees, or charges became payable to the date of payment at the rate of one and one-half percent (1.5%) per month; provided, however, that if the maximum rate then provided by law is less than one and one-half percent (1.5%) per month, then the rate shall be such maximum legal rate. City may, but is not obligated to, provide Concessionaire with a written reminder when invoiced rents, fees, or charges have not been received within thirty (30) days of the due date. The parties hereto agree that such late payment charge represents a fair estimate of expenses the City will incur by reason of any such late payment. The City's acceptance of partial payments or late payment charges shall not constitute a waiver of Concessionaire's default with respect to Concessionaire's nonpayment nor prevent the City from exercising all other rights and remedies available to the City under this Agreement or at law.

Section 3.09 **CONCESSIONAIRE'S PAYMENT OBLIGATIONS.** The City may apply any payments received from Concessionaire to any Rentals which are then due. If the City shall not

make any specific application of a payment received from Concessionaire, then any such payment received shall be applied first to the Rentals which have been overdue for the longest period of time. No designation of any payment by Concessionaire for application to a specific portion of Concessionaire's financial obligations hereunder shall be binding unless otherwise required under the Texas law. Concessionaire covenants to pay all Rentals hereunder independent of any obligation of the City. No breach of this Agreement by the City shall relieve Concessionaire of its obligation and duty to pay all such Rentals when due under the terms hereof. Except as otherwise specifically set forth herein, all Rentals shall be paid by Concessionaire to the City without set-off, deduction, demand, notice or abatement. All payments received by the City shall be credited and be deemed to be on account of the Rental and other charges first then due. No statements or endorsements on any check or any letter accompanying any check or payment of Rental or other charges shall be deemed an accord and satisfaction of any debt or obligation of Concessionaire hereunder. The City reserves the right to accept any check or payment without prejudicing in any way the City's right to recover the balance of any and all Rental and other charges due from Concessionaire after receipt of any such check or payment or to pursue any other remedy provided herein or by law.

Section 3.10 **PERFORMANCE GUARANTEE.** Concessionaire shall deliver to the City and shall keep in force throughout the term of this Agreement either an irrevocable standby letter of credit in favor of City drawn upon a bank satisfactory to City or a surety bond payable to City. If a letter of credit is delivered it shall be in the exact form as set forth in **Exhibit B.** If a bond shall be delivered, it shall be issued by a sound indemnity company authorized to do business in Texas. The amount of the irrevocable letter of credit or surety bond to be delivered by Concessionaire to the Director on or before the effective date of the Agreement and shall be in an amount not less than fifty percent (50%) of the minimum annual guarantee for the first Lease Year. For each subsequent Lease Year, the amount of the performance guarantee shall be adjusted so that it all times equals not less than fifty percent (50%) of the MAG then in effect. The City shall retain said performance guarantee for the benefit of the City throughout the Term of this Agreement as security for the faithful performance by Concessionaire of all of the terms, covenants and conditions of this Agreement. If Concessionaire defaults with respect to any provision of this Agreement, including but not limited to the provisions relating to the payment of

Rentals, the City may use, apply or retain all or any part of the performance guarantee for the payment of any Rentals or any other sum in default, or for the payment of any loss or damage which the City may suffer by reason of Concessionaire's default, or to compensate the City for any other amount which the City may spend or become obligated to spend by reason of Concessionaire's default. In no event, except as specifically hereinafter provided, shall the City be obliged to apply the same to Rentals or other charges in arrears or to damages for Concessionaire's failure to perform said covenants, conditions and agreements; however, the City may so apply the performance guarantee, at its option. The City's right to bring a special proceeding to recover or otherwise to obtain possession of the Premises before or after the City's declaration of the termination of this Agreement for non-payment of Rentals or for any other reason shall not in any event be affected by reason of the fact that the City holds the performance guarantee. In the event that the City regains possession of the Premises, whether by special proceeding, reentry or otherwise, because of Concessionaire's default or failure to carry out the covenants, conditions and agreements of this Agreement, the City may apply such performance guarantee to all damages suffered through the date of said repossession and may retain the performance guarantee to apply to such damages as may be suffered or shall accrue thereafter by reason of Concessionaire's default or breach. In the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against Concessionaire, or its successors or assigns, or any guarantor of Concessionaire hereunder, such performance guarantee shall be deemed to be applied first to the payment of any Rentals and/or other charges due the City for all periods prior to the institution of such proceedings, and the balance, if any, of such performance guarantee may be retained by the City in partial liquidation of the City's damages. The performance guarantee shall not constitute a trust fund. In the event the City applies the performance guarantee in whole or in part, Concessionaire shall, within 10 days after written demand by the City, 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 Concessionaire to supply such additional funds shall entitle the City to avail itself of the remedies provided in this Agreement for non-payment of Rentals by Concessionaire. If Concessionaire fully and faithfully performs every provision of this Agreement to be performed by it, the performance guarantee or any balance thereof, less any sums then due the City from Concessionaire under this Agreement, shall be returned to Concessionaire (or, at the City's option

to the last assignee of Concessionaire's interest thereunder) within 30 days following the later of the expiration of the Term of this Agreement, the earlier termination thereof or Concessionaire's vacating and surrendering possession of the Premises to the City.

ARTICLE IV. RECORDS AND SALES REPORTS

Section 4.01 CONCESSIONAIRE'S RECORDS. (a) Concessionaire shall keep and maintain full and accurate books and source documents, in accordance with generally accepted accounting principles ("GAAP"), of the Gross Receipts, whether for cash, credit or otherwise, of Concessionaire's business at any time operated within the Premises and of the operations of each subconcessionaire, joint venture partner or licensee and shall require and cause all such parties to prepare and keep books, source documents, records and accounts sufficient to substantiate those kept by Concessionaire (collectively, "Records"). The Records to be kept by Concessionaire at its principal business office in the United States shall include, without limitation, true copies of all federal, state and local sales and use tax returns and reports, daily receipts from all sales (including those from mail, electronic or telephone orders), duplicate bank deposit slips, invoices, journals, ledgers and other pertinent original sales records and records of any other transactions conducted in or from the Premises. Pertinent original sales records shall also include a point of sale system of record keeping and such other reasonable documentation which would normally be examined by an independent accountant pursuant to GAAP in performing an audit of Concessionaire's sales sufficient to provide determination and verification of Gross Receipts and the exclusions therefrom.

(b) Concessionaire must also provide an electronic cash control system which will provide all significant point-of-sale information reasonably satisfactory to the Director which must include:

i. sales by general product category, if applicable, by each location and total for all locations;

ii. sales transactions by time of day and day of week, if requested by the Director; and

iii. average sales transactions.

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

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

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 Concessionaire and its subcontractors for a period of five (5) years following the expiration of the Term or earlier termination of this Agreement. All Records maintained pursuant hereto shall at all reasonable times, during Concessionaire's normal business hours after 20 days prior written notice, be open to the inspection of, and may be copied or extracted from, in whole or in part, by, the City, or the City's designated management representatives or agents, including City's internal or external auditors.

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

(a) Concessionaire shall deliver to the City:

i. within 15 days after the expiration of each Lease Month, a written statement on a form reasonably satisfactory to the Director signed by an officer of Concessionaire, showing the Gross Receipts made from the Premises during such period including an itemization

of any exclusions or deductions made to Gross Receipts and the amount of Percentage Rent paid, if any, ("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 Director signed by an officer of Concessionaire and audited by an independent certified public accountant ("CPA") employed by Concessionaire ("Annual Statement") showing in reasonable detail the amount of Gross Receipts made by Concessionaire from the Premises during the preceding Lease Year including an itemization of any exclusions or deductions made to Gross Receipts, the payments of Guaranteed Rent, Percentage Rent and Additional Rent paid among other matters. Concessionaire shall certify in its Annual Statement that

    1) such statements have been prepared in accordance with the terms of this Agreement and GAAP,
    2) that all revenues derived from Concessionaire's activities hereunder which are required to be included in Gross Receipts have been so included, and
    3) that all payments of Guaranteed Rent, Percentage Rent and Additional 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 Statement required above shall state that, in the independent CPA's opinion, Concessionaire's total Gross Receipts for the previous Lease Year and the Guaranteed Rent, Percentage Rent and Additional Rent paid by Concessionaire to the City were calculated and reflected by Concessionaire in its Annual Statement in accordance with the applicable terms of this Agreement and prepared in accordance with GAAP.

iv. The Monthly Statements and Annual Statements prepared by Concessionaire shall also provide an analysis of operations, which shall include the following data:

    1) total Gross Receipts and, if requested, Concessionaire shall calculate such Gross Receipts per square foot of Floor Area in the Premises;
    2) sales by general product category and location;

3) total number of transactions per location;

4) average dollar amount per transaction per location.

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

(b) If Concessionaire fails to furnish City with the Monthly Statement required above, Concessionaire's monthly sales shall be determined by assuming that the total sales during the preceding month were one hundred fifty percent (150%) of gross sales for the highest month in the preceding 12-month period. Any necessary adjustment in such Percentage Rent shall be calculated after an accurate report is delivered to the Director by Concessionaire for the month in question, and resulting surpluses or deficits shall be applied to Concessionaire for the next succeeding month. An accounting fee of $100 per late monthly statement will be charged to Concessionaire and shall be payable by Concessionaire for the additional services required by City pursuant to this paragraph. This remedy shall be in addition to other remedies provided herein or by law to the City.

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

ARTICLE V. AUDIT

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

Receipts in and from the Premises and the amount of all Rentals.

Section 5.02 **AUDIT.** The City may at any time upon thirty (30) days' prior written notice to Concessionaire, cause a complete audit to be made by an auditor or accountant selected by the City of the entire records and operations of Concessionaire and/or any subconcessionaires, licensees and/or assignees, if any, relating to the Premises for the period covered by any statement issued or required to be issued by Concessionaire as above set forth in Article IV. Concessionaire shall make available to the City's auditor at its office in the Airport within thirty (30) days following the City's written notice requiring such audit, all of the books, source documents, accounts, records and sales tax reports of Concessionaire which such auditor deems necessary or desirable for the purpose of making such audit. If the audit is conducted after the expiration of this Agreement, Concessionaire shall make the records available at the address indicated by City. If such audit discloses that Concessionaire's Gross Receipts as previously reported for the period audited were understated, Concessionaire shall immediately pay to the City the additional Percentage Rent due for the period audited together with interest at the Interest Rate from the date(s) such amount was originally due. Further, if such understatement was in excess of three percent (3%) of Concessionaire's actual Gross Receipts as disclosed by such audit, Concessionaire shall immediately pay to the City or to the City's designee the reasonable and actual cost of such audit, within 30 days of an invoice therefor. If such understatement was in excess of five percent (5%) of Concessionaire's Gross Receipts as disclosed by such audit due to Concessionaire's intentional, willful or fraudulent act or omission, the City may declare this Agreement terminated and the Term ended, in which event this Agreement shall cease and terminate on the date specified in such notice with the same force and effect as though the date set forth in such notice were the date set forth in this Agreement for expiration of the Term, and Concessionaire shall vacate and surrender the Premises on or before such date in the condition required by this Agreement for surrender upon the expiration of the Term. If upon examination or audit the City's auditor, accountant or representative reasonably determines that sufficient documentation is not maintained, retained, recorded, or available in accordance with GAAP to verify Concessionaire's actual Gross Receipts, Concessionaire shall pay for the reasonable and actual cost of such audit and, in addition, should the City deem it necessary, Concessionaire shall reconstruct, at its sole cost and expense, all records for the

determination of Gross Receipts for any period being audited.

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

ARTICLE VI. CONSTRUCTION OF PREMISES

Section 6.01 CONSTRUCTION OF PREMISES. (a) The City shall deliver and Concessionaire will take possession of the Premises in an "AS IS", "WHERE LOCATED" condition. All necessary improvements to be made to the Premises shall be fully coordinated with City and, to the extent applicable, permitted in accordance with all applicable laws and regulations and any other requirements required by the City. Concessionaire shall construct and install all of its improvements (including both Fixed Improvements and Operating Equipment) to the Premises so that the Premises will provide attractive, well-designed concession facilities that promote the marketing of merchandise, products and/or services and present a positive image to the Terminal's users.

(b) All such construction, if any, and installation shall be completed free and clear of all liens, encumbrances and security instruments.

(c) All contracts and subcontracts for the performance of Concessionaire's work shall require (1) that all contractors and subcontractors provide labor that can work in harmony with other labor employed or to be employed at the Airport in accordance with this Agreement, properly bonded and badged for Airport security purposes; (2) insurance coverage and suretyship reasonably satisfactory to the City; (3) that all contractors and subcontractors comply with all of the requirements of this Agreement, all applicable permits, and/or as otherwise required by code.

Section 6.02 DELIVERY AND CONDITION OF PREMISES. (a) Except as otherwise specifically provided herein, Concessionaire hereby agrees that upon delivery of possession of the

Premises to Concessionaire, Concessionaire shall accept such delivery of possession of individual locations that comprise the Premises in its then existing **"AS IS"** condition, and Concessionaire acknowledges that

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

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

iii. except as may be expressly provided herein, neither the City nor any of the City's employees, agents, designated management representatives, contractors nor brokers has made any representation or warranty of any kind respecting
   - the condition of the Premises, and/or the Terminal,
   - the suitability thereof for Concessionaire's permitted use or the conduct of Concessionaire's business, or
   - occupancy or operation within the Terminal by any other airline, person or entity including forecasted or estimated enplaned passenger volume in the Terminal.

(b) Concessionaire irrevocably waives any claim based upon or related to any such claimed representation by the City or its designated management representatives as to public traffic to be expected at the Premises or sales to be expected at the Premises. Concessionaire's taking possession of the Premises shall constitute Concessionaire's formal acceptance of the same and acknowledgment that the Premises are in the condition called for hereunder, subject to all field conditions existing at the time of delivery of possession. In no event shall the City be liable for damages or otherwise as a result of any failure to make the Premises available within the time and/or in the condition provided herein.

ARTICLE VII. ALTERATIONS, CHANGES AND ADDITIONS

Section 7.01 **ALTERATIONS BY CONCESSIONAIRE.** Concessionaire shall not make or cause to be made any alterations, additions or improvements to the Premises without the prior written approval of Director.

Section 7.02 **REMOVAL BY CONCESSIONAIRE.** All Fixed Improvements and any alterations thereto made by Concessionaire shall be deemed to have permanently attached to the Premises and title shall immediately be deemed vested in the City. Upon the expiration or earlier termination of this Agreement, Concessionaire shall not remove any of such Fixed Improvements; provided, however, that Operating Equipment, removable trade fixtures installed by Concessionaire and not permanently affixed to the Premises and Concessionaire's personal property shall remain the property of Concessionaire and may be removed throughout the Term hereof or upon expiration or earlier termination of the Term hereof if all Rental and other charges due hereunder are paid in full and Concessionaire is not otherwise then in default of any of the covenants, terms or provisions of this Agreement beyond applicable notice and cure periods; provided that Concessionaire immediately repairs any damage caused by such removal. Under no circumstances shall fixed improvements be demolished or removed except with the prior written consent of the Director. If Concessionaire shall fail to remove any of its personal property and Operating Equipment, the City may, at its option, retain either any or all of such property, and title thereto shall thereupon vest in the City without compensation to Concessionaire; or the City may remove all or any portion of the property from the Premises and dispose of the property in any manner, without compensation to Concessionaire. In the latter event, Concessionaire shall, upon demand, pay to the City the reasonable and actual expense of such removal and disposition and the repair of any damage to the Premises resulting from or caused by such removal. Concessionaire shall, at its expense, execute all documents requested and deemed necessary by the City to evidence the title to any fixed improvements. The obligations contained in this Section 7.02 shall survive the expiration or earlier termination of this Agreement.

Section 7.03 **CHANGES AND ADDITIONS.** The City reserves the right at any time, and from time to time, to make extensive renovations and/or alterations to, and to build additional stories on,

the Terminal and to construct other buildings and improvements in the Airport, including any extensive modifications of the Public Areas in connection therewith, to enlarge or reduce the Terminal, to add decks or elevated parking facilities, and to sell or lease any part of the land comprising the Airport, for the extensive construction thereon of a building or buildings which may or may not be part of the Airport. The City reserves the right at any time to relocate, reduce, enlarge, or reconfigure the Terminal, the Airport, parking areas and other Public Areas shown on **Exhibits A1** and **A2**. Concessionaire agrees to accommodate and cooperate with the City in such matters, even though Concessionaire's own operations may be inconvenienced or impaired thereby and Concessionaire agrees that no liability shall attach to the City (including its agents, contractors, designated management representatives, directors, employees, officers and subcontractors) by reason of such inconvenience or impairment and Concessionaire hereby waives any and all claims for damages and other consideration by reason of such inconvenience or impairment. The City shall use reasonable efforts not to materially inconvenience Concessionaire or materially impair Concessionaire's operations and the Director shall give reasonable notice to Concessionaire of any such construction, repair or related activity. The City shall have the exclusive right to use all or any part of the roof of the Terminal for any purpose; to erect additional stories or other structures over all or any part of the Premises; to erect in connection with the construction thereof temporary scaffolds and other aids to construction on the exterior of the Premises, provided that access to the Premises shall not be materially impaired; and to install, maintain, use, repair and replace within the Premises pipes, ducts, conduits, wires and all other mechanical equipment serving other parts of the Terminal, the same to be in locations as will not unreasonably deny Concessionaire's use thereof. The City may make any use it desires of the side or rear walls of the Premises (including, without limitation, freestanding columns and footings for all columns) and the City, at its expense, shall repair all damage to the Premises resulting from any work related to such use. The City is in the design phase of the Terminal A Renovation Project. It is expected that this project could have an impact on the Premises of Concessionaire including opening of the Premises to the public, access to and from the Premises, and store operating hours. Concessionaire is further expected to coordinate with City, as needed, during all phases of the Terminal A Renovation Project.

Notwithstanding the foregoing, in the event any Airport renovations or constructions result in limited public access to the Premises or reduces traffic or sales by more than twenty percent (20%),

Concessionaire may request relocation of the affected vending unit. In the event an alternative location is not available or agreeable to the parties, Concessionaire may terminate as to the affected vending unit upon thirty (30) days prior written notice.

Section 7.04 RELOCATION, REDUCTION OR TERMINATION.

(a) At any time during the Term hereof, due to the nature of the commercial air public transportation facilities in general, it may be necessary to relocate and/or reduce all or any part of the Premises if the Director determines such action to be necessary for airline and/or airport operational considerations (e.g., the operation of non-concession services in the Terminal, the operation of non-concession services for any airline or Airport operations in the Terminal or due to public health or safety issues relating to the operation of the Terminal). For purposes hereof, relocation is defined as the City's decision to terminate possession of an existing concession facility and to provide a reasonably comparable space for the substitute concession facility in terms of size, location, relation to airline gates and exposure to the Terminal's users' pedestrian traffic flow patterns (particularly enplaned passengers) within the Terminal. Reduction of the Premises includes, but is not limited to, the movement of walls of the Premises or any other action which may reduce the Floor Area of the Premises. In the event the Director elects to exercise any such rights as the City deems reasonably necessary or desirable, it shall advise Concessionaire by no less than 15 days' prior written notice and Concessionaire hereby agrees to be bound by such election and to execute; upon receipt from the Director, whatever amendments, terminations or other instruments as may be necessary. Any such relocation or reduction of the Premises shall be accomplished, with Concessionaire's complete cooperation, as expeditiously as is reasonable under the circumstances but in no event later than the date specified by the Director to ensure the proper and efficient operation of the Terminal. In the event any such relocation or reduction occurs after the Premises have been constructed and opened for business to the public, the City agrees to reimburse Concessionaire (through appropriate credits against future payments of Guaranteed Rent and/or Percentage Rent, through direct reimbursement, or by bearing costs directly, or a combination of any methods legally available to City) for the reasonable and proper costs of renovating the relocated and/or reduced Premises (in accordance with Final Drawings and total renovation costs approved by the Director) so that the same are reasonably comparable to the original Premises. The City also agrees to reimburse Concessionaire (through appropriate credits

against future payments of Guaranteed Rent and/or Percentage Rent, through direct reimbursement, or by bearing costs directly, or a combination of any methods legally available to City) for the reasonable and proper costs of moving Concessionaire's Operating Equipment and exterior storefront signage. Concessionaire shall be responsible for any and all other costs involved. The City shall not have any liability for such relocation or reduction of the Premises other than as specifically set forth in this Section 7.04(a) and Concessionaire hereby waives any such claims, including, without limitation, claims for lost business opportunity, claims for lost profits and claims for relocation benefits under Federal and any state law. If Concessionaire is unable to operate its business in the Premises or any portion thereof as a result of the exercise of any of the City's rights, Concessionaire's payment of Guaranteed Rent shall be abated during the period which Concessionaire is unable to operate. Notwithstanding the foregoing, if the Director desires to relocate Concessionaire to a substitute concession facility as provided in this Section 7.04(a) above, Concessionaire shall have the right, in its sole discretion, to terminate this Agreement within 30 days after receipt of the Director's relocation notice. If Concessionaire elects to terminate this Agreement as provided in this Section 7.04(a) due to the proposed relocation of the Premises, this Agreement shall terminate on the effective date thereof as reasonably specified by the Director and Concessionaire shall remain liable for the payment of all Rentals and the performance of all other accrued obligations of Concessionaire under this Agreement up to and including the effective date of such termination. Upon the early termination of this Agreement by the Concessionaire as provided in this Section 7.04(a), other than by reason of Concessionaire's default, Concessionaire shall be entitled to be reimbursed by the City for any unamortized investment in Fixed Improvements to the nearest full month as established by its amortization period for Cost of Fixed Improvements in accordance with the requirements set forth in Section 7.04(b) below.

Notwithstanding the foregoing, Director will make its best efforts not to relocate the vending units during the term of the Agreement; however, if relocation is necessary, Director will provide Concessionaire with thirty (30) days prior written notice. In the event the new location is not reasonably acceptable to Concessionaire or its brand partner, Concessionaire may terminate as to the affected vending unit upon thirty (30) days prior written notice. Concessionaire agrees that the temporary relocation due to the Terminal A Renovations Project shall not be grounds for

termination of the Terminal A location.

(b) In the event the Director in its reasonable judgment believes it desirable for the City to obtain possession of the Premises, or any portion thereof, for airline and/or airport operational considerations (e.g., the operation of non-concession services in the Terminal, the operation of non-concession services for any airline or Airport operations in the Terminal or due to public health or safety issues relating to the operation of the Terminal), the Director, upon 90 days prior notice in writing to Concessionaire, may terminate this Agreement. In the event of such termination, within 120 days following the date that Concessionaire shall have vacated and surrendered possession of the Premises to the City in the condition required under this Agreement, paid all Rentals and performed all other accrued obligations hereunder through the effective date of such termination.

ARTICLE VIII. CONDUCT OF BUSINESS BY CONCESSIONAIRE

Section 8.01 PERMITTED USE. Concessionaire shall use the Premises only for the purpose of conducting the business of selling those items of merchandise and products and/or providing services specifically set forth below ("Permitted Use") and for no other use or purpose. Any other use shall require the advance written approval of the Aviation Director.

Space/ Location	Permitted Use
TA & TB	For the operation of a service and retail concession facility offering shoe shine, shoe repair and shoe care services and the sale at retail of shoe care products.

Notwithstanding anything to the contrary contained herein, including Concessionaire's Permitted Use, if the Director reasonably determines that any item and/or service displayed, offered for sale or sold by Concessionaire is objectionable or inappropriate for display or sale at the Terminal and/or Airport, Concessionaire shall, within 1 day after delivery of the Director's written notice to the 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 Director from time to time, Concessionaire shall remove such offensive or potentially dangerous item and/or service immediately upon verbal notice from the Director or his/her designee) and Concessionaire shall not thereafter display, offer for sale or sell any such objectionable or inappropriate item and/or service. If Concessionaire shall fail to remove any such item and/or service from display as may be required from time to time by the City within such 1 day period, then Concessionaire shall pay, within 10 days of demand therefor by the Director, Contractual Charges in the amount of not more than $50.00 per day until such time as Concessionaire 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 the City. Concessionaire 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 Concessionaire 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. Concessionaire shall submit any of the foregoing for inspection by the City from time to time. Concessionaire, at Concessionaire's expense, shall at all times comply with the requirements of any and all such certificates, permits, licenses or other entitlements.

In the event Concessionaire is no longer able to offer the Permitted Use at the Airport due to inability to renew or extend necessary store/brand license agreements/franchise, and an alternative new use is either not available or agreeable to the parties, Concessionaire may terminate this Agreement as to the affected vending unit, or in its entirety if all vending units are affected, upon thirty (30) days prior written notice to City.

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

(a) Concessionaire agrees to be open for business and to continuously and uninterruptedly operate in all of the Premises during the entire Term following the Rental Commencement Date, to actively and diligently conduct its business at all times in a first class and reputable manner, making every reasonable and lawful effort to develop, maintain and increase Concessionaire's business, using best efforts to achieve maximum sales volumes, customer satisfaction and maintaining at all times a complete stock of high quality merchandise and products.

(b) Concessionaire shall not employ at or about the Premises any person who shall use offensive language, makes persistent announcements of its merchandise and products and/or services over loud speakers or whose conduct is loud or offensive or otherwise detrimental to the best interests of the Terminal and/or Airport. Concessionaire also agrees not to divert or allow or cause to be diverted any business from the Terminal and/or Airport. Concessionaire agrees that it will reasonably and promptly respond to all customer complaints regarding unsatisfactory service and/or unsatisfactory quality of merchandise, products and/or services, including all refunds as appropriately requested from time to time by any customer.

(c) Concessionaire agrees to accept at least two (2) nationally recognized credit cards for payment of purchases made at the Premises. Concessionaire shall not abandon or permanently vacate the Premises without the prior, advance written approval of the Director. For purposes hereof, "abandonment" shall mean closing the Premises to public trade for five (5) or more consecutive days, unless other provisions hereof permit such closing.

(d) Concessionaire shall be obligated to be open for business and to operate continuously, except for necessary maintenance and repair in conformance with requirements stated in the Agreement. Concessionaire understands and agrees that its operation hereunder is a service to airline customers and the users of the Terminal and the Airport.

(e) Notwithstanding the requirements set forth herein, the Director shall have the right to make reasonable objections to the prices for merchandise and products sold, the number or quality of articles sold, the character of the service offered to the public, responses to customer complaints and the appearance and condition of the Premises. Concessionaire agrees to take reasonable steps to promptly comply with the Director's reasonable objections.

(f) Concessionaire, at its expense, shall promptly comply with all present and future laws, ordinances, orders, rules, regulations, applicable business licenses and requirements of the City and all governmental authorities having jurisdiction affecting or applicable to the Premises or the cleanliness, safety, occupancy, operation and use of the same, whether or not any such law,

ordinance, order, rule, regulation or requirement is foreseen or unforeseen, ordinary or extraordinary, shall necessitate changes or improvements (other than structural changes or structural improvements) and/or interfere with the use and enjoyment of the Premises. Concessionaire shall promptly correct any deficiencies reported by the City and all other governmental authorities having jurisdiction. Concessionaire shall not do or permit anything to be done in or about the Premises, nor bring anything therein, which will in any way conflict with any such law, ordinance, order, rule, regulation or requirement affecting the occupancy or use of the Premises or the Terminal which has been or may hereafter be enacted or promulgated by the City and all governmental authorities, or in any way obstruct or interfere with the rights of others, nor shall Concessionaire use or allow the Premises to be used for any improper, immoral or objectionable purposes or do any act tending to injure the reputation of the Terminal and/or Airport.

(g) Any area occupied by Concessionaire and all equipment and materials used by Concessionaire shall at all times be kept clean, sanitary, and free from rubbish, refuse, dust, dirt, offensive or unclean materials, flies and other insects, rodents and vermin in accordance with any and all applicable rules, regulations and requirements of the City and in accordance with any and all laws, statutes, ordinances and regulations that may be promulgated from time to time by governmental agencies and authorities. All apparatus, devices, machines and piping used by Concessionaire shall be constructed so as to facilitate the cleaning and inspection thereof and shall be properly cleaned.

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

(i) Other than equipment approved by Director for installation on the Premises, Concessionaire shall not permit the installation or operation of any coin operated or vending machines or pay telephones in the Premises, including, but not limited to, sales of entertainment event tickets and lottery tickets, pre-paid telephone calling cards and reservations for ground transportation, hotels or other lodging.

(j) Concessionaire shall not sell or display any merchandise and products or service except within

the retail vending equipment unless such sale or display shall be approved by the Director, in writing. Concessionaire shall not use the areas adjacent to or outside the Premises for business purposes or any other purposes, including the display and sale or merchandise, products or services in any areas outside of the Premises without the Director's advance written approval, which approval may be withheld in the Director's sole discretion. Concessionaire shall not store anything in service or exit corridors.

(k) All receiving and delivery of goods and merchandise and products for the Premises, and all removal of merchandise and products, supplies, equipment, trash and debris and all storage of trash and debris from the Premises shall be made only by way of or in the areas provided therefor. No trash, trash containers, hand trucks, carts, racks or movable fixtures designed for the movement of merchandise and products and/or trash within the Premises or to or from the Premises may be left unattended at any time and/or in any place. Concessionaire shall be solely responsible for prompt disposal of all trash and debris from the Premises.

(l) Concessionaire shall not use or permit the use of any portion of the Premises for any unlawful purposes or, except as specifically permitted in Section 8.01. Concessionaire shall not install any radio, television, communication dish or other similar device or related equipment exterior to the Premises, shall not cause or make any penetration of the roof of the Premises or the building in which the Premises is located and shall not erect any aerial or antenna on the roof or exterior walls of any building within the Terminal.

(m) If Concessionaire shall fail to comply with any of the provisions of this Section 8.02(g)-(m), then Concessionaire shall pay, within 10 days of demand therefor by the City, Contractual Charges in the amount of not more than $150.00 per day until such time as Concessionaire is in compliance. This remedy shall be in addition to any and all other remedies provided in this Agreement or by law to the City.

(n) As the owner and operator of the Airport, the City has the right to regulate and control certain aspects of Concessionaire's operations at the Premises including but not limited to the matters listed below in this Section 8.02(n):

i. **Hours of Operation.** The City has the right to control the hours of operation of all concessions at the Terminal. The hours of operation for the shoe shine concession are, at a minimum 6 a.m. to 6 p.m. central s time, 7 days per week, 365/366 days per year except as may otherwise be approved in writing by the Director. Hours of operation are subject to periodic modification at the sole discretion of the Director upon 15 days advance notice to Concessionaire (if the City determines that passenger traffic conditions, flight scheduling, flight delays or other considerations make it necessary, in the reasonable opinion of the Director, services shall be available at times not then scheduled). Hours may be established by the City to account for various zones within the terminal building. Any modifications to the required operating hours that may be requested from time to time by Concessionaire shall be subject to the Director's prior written approval determined in its discretion. Concessionaire agrees to otherwise abide by all hours of operation as set by the Director. Concessionaire shall assure that a local representative of Concessionaire is available, by telephone, on a 24 hours-per-day, 7 days-per-week, basis in case of emergencies and Concessionaire shall notify the City of the name and telephone number of such representative and shall update such information promptly as necessary.

ii. **Street Pricing.** The City requires that Concessionaire provide to customers high quality products and services and competitively price all products sold and services rendered from the Premises such that the prices are non-discriminatory and substantially comparable to average "street" prices for similar brands sold by retailers in the San Antonio metropolitan area so that customers do not expect to pay more for products and services in the Terminal than they would for average prices in locations outside the Terminal. Concessionaire agrees to adjust its prices to ensure that they meet the "street" pricing criteria in accordance with the City's pricing policy and enforcement guidelines without any further notice or immediately upon written notice from the Director if Concessionaire is not in compliance therewith. Prior to opening for business, Concessionaire agrees to supply to the Director a detailed list of all products and services to be offered at the Premises and the prices to be charged therefor. Concessionaire agrees to continue to provide this data on an annual basis throughout the Term hereof. Concessionaire shall, at all times, observe and comply with

the City's street pricing policy. Further, for the benefit of the users of the Terminal, the City has the right to promote a "free market" competitive environment within the Terminal and, to the extent possible, the City may cluster concession operators with similar products and services in groups to help stimulate competition, provide superior service and competitive pricing, and under no circumstances shall Concessionaire receive any type of "exclusives" or protection related thereto. To ensure that Concessionaire is in compliance with the quality of products, pricing and service standards set forth in this Section 8.02(c), and the City's objectives are met, the City or its designated management representative may perform service audits, such as "mystery shopper programs," of the conduct of Concessionaire's operation in the Premises at any time. The results of such service audits performed on behalf of either the City may be employed by the City to enforce Concessionaire's obligations hereunder.

iii. Concessionaire agrees that after it has taken delivery of the Premises, it will contact the Airport Concessions Manager on all operational matters pertaining to its occupancy including but not limited to the following areas: (a) hours of operation, (b) employee parking and security requirements, (c) customer inquiries and complaints, (d) facility maintenance issues, (e) utility services, and (f) staffing issues.

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

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

(b) The concessionaire agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

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

(d) Concessionaire shall make a good faith effort to adhere to the ACDBE program submitted with Concessionaire's Proposal, which assures that __100%__ of the gross receipts derived from the operation of its business at the Airport be attributed to certified ACDBEs throughout the concession term.

(e) Concessionaire has advised the City that it will use the ACDBEs listed on attached **Exhibit C** in providing the services described thereon. Concessionaire agrees that within 30 days after the expiration of each calendar quarter during the term of this Agreement, it will provide an expenditure report to the City, in a form acceptable to the City, describing the goods and services utilized by Concessionaire in fulfilling the obligations prescribed by this Agreement. Such expenditure report shall also include goods and services for each ACDBE described on attached **Exhibit C** and each substitute ACDBE obtained pursuant to Section 8.03(h), calculated in accordance with the requirements of 49 CFR Part 23.

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

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

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

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

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

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

Section 8.04 **ENVIRONMENTAL COMPLIANCE.** (a) Concessionaire shall, in conducting any activity on the Premises, comply with all environmental laws and regulations, including but not limited to environmental laws and regulations regarding the generation, storage, use,

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

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

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

(d) In addition to any other rights of access regarding the Premises herein contained, the City shall have access to the Premises to inspect the same in order to confirm that the Concessionaire is using the Premises in accordance with all applicable environmental laws and regulations. Concessionaire shall, upon the Director's demand and at Concessionaire's sole expense, demonstrate to the Director (through such tests, professional inspections, or samplings, or otherwise as is in the Director's reasonable judgment sufficient for the purpose) that Concessionaire has not caused or permitted any release of hazardous substances or contaminants

in excess of quantities or volumes permitted by applicable federal, state or local law. Any such tests and assessments shall be conducted by qualified independent experts chosen by Concessionaire and subject to the City's approval. Copies of reports from any such testing or assessments shall be provided to the City upon receipt by Concessionaire. Should Concessionaire not provide such tests, inspections, or samplings, or assessments, the City may conduct or cause to be conducted such tests, inspections, samplings and assessments and Concessionaire shall reimburse the City for all costs of such actions, no later than thirty (30) days following receipt by Concessionaire of invoices therefor. The City reserves the right to conduct any of the above actions at the Director's discretion, when in the opinion of the Director, additional or supplemental assessment is in the best interest of the City. Concessionaire, at the request of the City, shall make available for inspection and copying upon reasonable notice and at reasonable times, any or all of the documents and materials the Concessionaire has prepared pursuant to any environmental law or regulation, which may be retained by the City or submitted to any governmental regulatory agency; provided, that such documents and materials relate to environmental regulatory compliance and are pertinent to the Premises, the Terminal or the Airport. If any environmental law or regulation requires the Concessionaire to file any notice or report of a release or threatened release of regulated materials on, under or about the Premises, the Terminal or the Airport, Concessionaire shall promptly submit such notice or report to the appropriate governmental agency and shall simultaneously provide a copy of such report or notice to the City. In the event that any allegation, claim, demand, action or notice is made against Concessionaire regarding Concessionaire's failure or alleged failure to comply with any environmental law or regulation, Concessionaire immediately shall notify the City in writing and shall provide the City with copies of any such written allegations, claims, demands, notices, or actions so made.

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

(f) The parties to the Concession Agreement, including subconcessionaires who may enjoy a

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

ARTICLE IX. PUBLIC AREAS

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

Section 9.02 USE OF PUBLIC AREAS. Concessionaire shall have as appurtenant to the Premises the right to the non-exclusive use in common with others all Public Areas in the Terminal as designated by the Director from time to time, and such reasonable access, during Concessionaire's normal operating hours, to the Premises. Such appurtenant rights shall be subject to such reasonable rules, regulations, fees and security directives from time to time established by the City by suitable notice. The City shall have the right, but not the obligation, from time to time, to modify the Public Areas, remove portions of the Public Areas from common use, to permit entertainment events, advertising displays, educational displays and other displays in the Public Areas that in the City's judgment tend to attract the public, and to allow the City to lease retail merchandising units or temporary pushcarts or carts ("RMUs"). If the City determines in its discretion to place RMUs in the Public Areas near the Premises, such placement shall not be within 15 feet of Concessionaire's storefront entrance and shall not materially interfere with ingress or

egress to the Premises by the public. Concessionaire shall not be entitled to any credit for income earned by the City with respect to the Public Areas.

Concessionaire and its employees shall not park their cars or any other vehicles in the parking facilities except in the areas specifically designated by the Director for employee parking. There is no free parking at the Airport for Concessionaire or any of Concessionaire's employees, contractors or customers. Concessionaire and its agents, employees, contractors or subcontractors shall comply with the City's rules and regulations with respect to parking as the same may be amended or modified from time to time and will be subject to any enforcement action (including towing) pursued by the City's airport police without any notice thereof. The City may at any time close any Public Areas to make repairs or changes, to prevent the acquisition of public rights in such area, to use areas for attendant or valet parking, and may do such other acts in and to the Public Areas as in its judgment may be desirable.

ARTICLE X. SIGNS

Section 10.01 CONCESSIONAIRE'S SIGNS. The design, construction, location, use and maintenance of Concessionaire's signs are subject to the approval of Director. Concessionaire shall pay all costs of fabricating, constructing, operating and maintaining of any signs requested by Concessionaire and approved by Director. Concessionaire shall keep said sign well lighted, if applicable, during such business hours and shall maintain said sign in good condition and repair at all times.

ARTICLE XI. MAINTENANCE AND REPAIRS

Section 11.01 CITY'S MAINTENANCE AND REPAIRS. The City shall keep and maintain the Terminal property, which is not part of the Premises, and the roof (excluding any skylights, Concessionaire installed rooftop HVAC units and/or roof penetrations made by Concessionaire, any of which shall only be permitted with the Director's prior written consent), structural elements and structural foundation and the exterior surface of the exterior walls of the building in which the Premises is located (exclusive of storefronts, doors, door frames, door checks, other entrances,

windows or window frames which are part of the Premises or which are not part of the Public Areas of Terminal), the Public Areas of the Terminal adjacent to the Premises in good repair, except that the City shall not be required to undertake any maintenance or repair required or occasioned by any act, negligent act or omission to act of Concessionaire, its agent, employees, licensees, contractors or subcontractors or caused by any alteration, addition, construction or improvement by Concessionaire, its agents, employees, licensees, contractors or subcontractors. Such maintenance of the Terminal required by the City herein shall be maintained in a condition which the City determines for the proper operation thereof, determined in the City's sole discretion. The City shall not be called upon or required to make any other improvements or repairs of any kind upon the Premises and appurtenances, except as specifically required under this Agreement. In no event shall the City be liable for any damages, whether consequential damages or otherwise or lost profits claimed to be caused by any failure of maintenance or repair by the City and nothing contained in this Section 11.01 shall limit the City's right to reimbursement from Concessionaire for maintenance costs, repair costs and replacement costs confirmed elsewhere in this Agreement.

Section 11.02 <u>CONCESSIONAIRE'S MAINTENANCE AND REPAIRS</u>. (a) Except as provided in Section 11.01, Concessionaire, at it's sole cost and expense, shall keep and maintain in a first-class appearance, reasonable wear and tear and damage by fire and other casualty excepted, and in a safe, clean, neat, sanitary and lawful order, good condition and repair (including replacement of parts and equipment), the Premises and every part thereof and any and all trade fixtures, Fixed Improvements, and Operating Equipment.

(b) Concessionaire shall also keep and maintain the Premises in accordance with applicable City regulations and all directions, rules and regulations of the applicable health, fire and building inspector officials or other proper officials of governmental agencies having jurisdiction. Concessionaire shall comply with all requirements of laws, ordinances and otherwise affecting the Premises at Concessionaire's sole cost and expense. At the end of the Term or upon the earlier termination of this Agreement, Concessionaire shall surrender the Premises broom-clean and in good order, condition and repair, reasonable wear and tear and damage by fire, loss or other casualty not covered or required to be covered by Concessionaire's insurance or not otherwise

attributable to Concessionaire's fault or negligence excepted.

(c) Concessionaire's maintenance and repair of the Premises includes all of the following duties, to be performed at Concessionaire's sole cost and expense:

i. At all times, Concessionaire shall use the Premises with care. Maintenance, repairs and replacements shall be accomplished as necessary to maintain the Fixed Improvements and Operating Equipment and trade fixtures in good condition.

ii. Provide complete and adequate arrangements for the sanitary handling and disposal of all trash, garbage, recycling materials and other refuse generated in the Premises, including suitable receptacles situated in locations reasonably determined by the Director. Such shall be removed at times and in a manner which will cause minimum interference with the use of the Terminal by the public and other authorized persons. Piling of boxes, cartons, containers or other similar items in the Public Areas or in the Premises is not permitted;

iii. Concessionaire shall provide a comprehensive preventive maintenance program for everything that it is responsible for maintaining and submit the same to the Director and shall maintain such program on a current basis and provide evidence to the Director from time to time by submission of paid invoices. Concessionaire shall report all malfunctions to all systems, lines, devices and equipment installed or located within the Premises to the City in accordance with the City's regulations and as promptly as possible after discovery and provide timely notice to the City as required by this Agreement with respect to maintenance; and

iv. All repairs, replacements and maintenance by Concessionaire hereunder shall comply with all of the applicable provisions of the City's permitting process, as the same may be amended from time to time by the City in its sole discretion, shall be performed in accordance therewith and shall be subject to the City's prior written approval (except in the case of emergencies when only prior notice to the City shall be required), such

approval to be determined in the City's sole discretion.

All such maintenance, repairs and replacements shall be of a quality equal to the original in materials and workmanship, the City shall have the right to disapprove any improvements, replacements or alterations which, in its judgment, are of a design, quality, condition or in any color or in any other way deemed to be inconsistent with its practices or the permitting process.

Section 11.03 RIGHTS OF THE CITY. If at any time Concessionaire shall fail to comply with any of its obligations under Section 11.02 hereof, the City reserves the right to perform and complete such maintenance, repairs, replacements or alterations after reasonable notice to Concessionaire of its default thereunder and Concessionaire's failure to timely cure the same, and charge back to Concessionaire the full cost thereof for such work performed on behalf of Concessionaire. The City, during Concessionaire's business hours and with prior reasonable notice to Concessionaire (if such notice is possible and does not interfere or limit City's exercise of its governmental functions or powers), may enter the Premises and make inspections as often as it considers necessary, to determine the proper maintenance of the Premises by Concessionaire. Further, the City reserves the right to interrupt, temporarily, all utility services provided by the City when necessary to make repairs, alterations, replacements or improvements in such systems. The City shall not have any responsibility or liability to Concessionaire (including consequential damages and lost profits) for failure to supply heat, air conditioning, all other utilities or plumbing or, when prevented from doing so by laws, orders or regulations of any federal, state or local agency as a result of strikes, accidents, force majeure or by any other cause whatsoever beyond the City's control. The City shall provide Concessionaire with as much advance notice as reasonably possible and under the circumstances shall use reasonable efforts to avoid interrupting Concessionaire's business operations except as deemed necessary by the Director.

ARTICLE XII. INSURANCE AND INDEMNITY

Section 12.01 INSURANCE

(a) Prior to the commencement of any work under this Agreement, Concessionaire shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the

City of San Antonio Aviation Department, 9800 Airport Boulevard, San Antonio, Texas 78216, Attn: Airport Concessions Manager, which shall be clearly labeled "***Airport Shoe Shine***" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to perform under this Agreement until such certificate and endorsements have been received and approved by the City's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

(c) A Concessionaire's financial integrity is of interest to the City; therefore, subject to Concessionaire's right to maintain reasonable deductibles in such amounts as are approved by the City, Concessionaire shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Concessionaire's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted 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:

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TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$5,000,000/$500,000
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	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence If AOA operation is required, $5,000,000 per occurrence is necessary.
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

(d) The City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the City, 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). Concessionaire shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the

requested change. Concessionaire shall pay any costs incurred resulting from said changes. All notices shall be given to the City at the following address:

City of San Antonio
Aviation Concessions Management
Terminal A, Suite 2091
9800 Airport Boulevard
San Antonio, Texas 78216

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

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

ii. 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;

iii. Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and

iv. Provide thirty (30) days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) days advance written notice for nonpayment of premium.

(f) Within five (5) days of a suspension, cancellation, or non-renewal of coverage, Concessionaire shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Concessionaire's performance

should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.

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

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

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

(j) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

(k) Concessionaire and any Subcontractors are responsible for all damage to their own equipment and/or property.

Section 12.02 <u>INDEMNITY</u>.

Concessionaire covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind or nature, including but not limited to, personal or

bodily injury, death and property damage, made upon the City directly or indirectly arising out of, or resulting from or related to Concessionaire's activities under this Agreement, including any acts or omissions of Concessionaire, any agent, officer, director, representative, employee, consultant, contractor or subcontractor of Concessionaire and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this Agreement, all without however, waiving any governmental immunity available to the City under Texas law and without waiving the defenses of the parties under Texas law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT. Concessionaire shall advise the City in writing within 24 hours of any claim or demand against the City or Concessionaire known to Concessionaire related to or arising out of Concessionaire's activities under this Agreement and shall see to the investigation and defend of such claim or demand at Concessionaire's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Concessionaire of any of its obligations under this Section.

It is the EXPRESS INTENT of the parties to this Agreement, that the INDEMNITY provided in this Section, is an INDEMNITY extended by Concessionaire to INDEMNIFY, PROTECT and HOLD HARMLESS, the City from the consequences of the City's OWN NEGLIGENCE provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. Concessionaire further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the City and its elected officials, employees, officers, directors, volunteers and designated management representatives, in connection with any such injury, death or damage for which

this INDEMNITY shall apply, as set forth in this Section.

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

Section 12.03 INJURY CAUSED BY THIRD PARTIES. Concessionaire covenants and agrees that the City (including its agents, employees, officers, directors, elected officials, designated management representatives and shareholders) shall not be responsible or liable to Concessionaire, or any entity or person claiming by, through or under Concessionaire, for any injury, death or damage to persons or property resulting from any latent defect in the Premises, the Terminal, the Airport and appurtenant areas; or from any acts or omissions of entities, persons, concessionaires or other occupants occupying adjoining premises in the Terminal or any other part of the Airport or the agents, servants, employees, contractors or invitees of such entities, persons, concessionaires or occupants; or from fire, electricity, water, snow or leaks from any part of the Terminal or Terminal systems, including sprinkler systems; or from any other cause of whatever nature, unless caused by or due to the direct and sole negligence or direct and sole misconduct of the City, its agents and employees.

ARTICLE XIII. UTILITIES

Section 13.01 UTILITY SERVICES AND CHARGES. (a) The City shall provide access to commercially reasonable and normal amounts (as determined by the City) of electric, heat, and air conditioning, and if applicable, gas, domestic cold water, high temperature hot water and sewage services to the Premises for use by Concessionaire provided by utility systems, connections and related equipment existing as of the Premises delivery date but shall have no obligation to provide telephone or data communication services to the Premises. With respect to telephone and data transmission services, Concessionaire (including all retail, service and food & beverage concessions) shall make separate arrangements with the applicable public utility service provider and shall pay directly to the applicable public utility service provider all charges incurred. Should Concessionaire require access to utility services over and above those provided by the City as

determined by the Director from time to time, Concessionaire shall pay directly for the costs of extending those additional utilities to the Premises and Concessionaire shall pay for all such additional utilities consumed within the Premises within 10 days following receipt of an invoice from the City. Concessionaire shall be solely responsible for and shall promptly pay for the construction and installation of all utility submeters required for electricity and gas (if applicable) to be consumed by Concessionaire within the Premises as well as all fees, deposits and charges, including use and/or connection fees, hook-up fees, standby fees, and/or penalties for discontinued or interrupted service, and the like, for water (domestic cold and high temperature hot, if applicable), gas (if applicable), sewage (if applicable), electric, fire alarm, burglar alarm, telephone, data transmission, cable television, sewer and sanitation, solid waste disposal and any other service or utility used in or upon or furnished to the Premises, including, without limitation, any services to be supplied by the City, irrespective of whether any of the foregoing are initially paid in advance by the City, or otherwise. Any such submeters required for the conduct of Concessionaire's business operations in the Premises shall be installed by Concessionaire, at its sole cost and expense, in locations approved by the City and/or the appropriate public utility service provider.

(b) In no event shall the City be liable for damages, loss of business, loss of profits or otherwise for any interruption, reduction, disruption, curtailment or failure in the supply, quality or character of electricity, services from a central utility plant or any other utility or other service, or if either the quantity, quality or character thereof supplied to or by the City is changed or is no longer available for Concessionaire's requirements, nor shall any such interruption, reduction, disruption, curtailment, failure or change in quantity, quality or character constitute or be deemed to constitute actual or constructive eviction of Concessionaire, or excuse or relieve Concessionaire from its obligations hereunder, including but not limited to the payment of Rental or all other sums, damages, fees, costs and expenses payable under this Agreement. Any obligation of the City to furnish light, power and services from a central utility plant shall be conditioned upon the availability of adequate energy sources. The City shall have the right to reduce heating, cooling and lighting within the Premises and the Public Areas as required by any mandatory or voluntary fuel or energy saving allocation, or similar statute, regulation, order or program. Notwithstanding anything to the contrary contained in this Section 13.01(c), if any utility to the Premises is supplied

by or through the City and, due to the sole negligence of the City, such utility to the Premises is interrupted which forces Concessionaire to close its business within the Premises for more than 2 complete and consecutive days, then Guaranteed Rent shall abate for the period commencing on the 3rd day after Concessionaire is forced to close its business within the Premises and shall continue until the earlier of: (i) the date such utility is restored to the Premises, or (ii) the date Concessionaire reopens its business in the Premises.

(c) If Concessionaire desires to install any equipment which shall exceed the capacity of any utility facilities provided by City or which shall require additional utility facilities, Concessionaire shall not have the right to do so without the Director's prior written approval of Concessionaire's plans and specifications therefor. If such installation is approved by the Director, and if such additional facilities are provided to accommodate Concessionaire's installation, Concessionaire agrees to pay the City, on demand, the cost of providing such additional utility facilities or utility facilities of greater capacity. Concessionaire shall in no event use any of the utility facilities in any way which would overload or overburden the utility systems at the Terminal and the Airport. The City shall have the right to impose reasonable restrictions and require Concessionaire to comply with any state or local regulations or measure adopted from time to time with respect to conservation of any utilities including water usage.

ARTICLE XIV. SUBORDINATION AND TIME OF EMERGENCY

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

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

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

ARTICLE XV. ASSIGNMENT AND SUBLETTING

Section 15.01 RESTRICTIONS, PROCEDURES AND OTHER ASPECTS GOVERNING THE CONCESSIONAIRE. (a) Concessionaire shall not transfer or assign this Agreement or Concessionaire's interest in or to the Premises or any part thereof without having first obtained the prior written consent of the City which may be given only by or pursuant to an ordinance enacted by the City Council of San Antonio, Texas; provided, however, the transfer of Concessionaire's securities in connection with Concessionaire becoming a publicly held company or issuing securities in connection with an additional public offering of securities shall not constitute a transfer or assignment of this Agreement. The public trading of Concessionaire's securities on a nationally recognized exchange or on the NASDAQ market shall not constitute or be considered to result in any such transfer or assignment of this Agreement. Notwithstanding the foregoing and for so long as any pledge or collateral assignment of Concessionaire's interest in the Agreement shall be by instrument substantially in such form as shall have previously been approved by the City Council, the consent of the City to such pledge or collateral assignment may be given by the City acting by and through the Director. Each transfer, assignment or subletting to which there has been consent shall be by instrument in writing, in form satisfactory to the City, and shall be executed by the transferee, assignee or subconcessionaire who shall agree in writing for the benefit of the City to be bound by and to perform the terms, covenants and conditions of this Agreement. Four executed copies of such written instrument shall be

delivered to the City. Failure to first obtain in writing the City's consent, or failure to comply with the provisions herein contained shall operate to prevent any such transfer, assignment or subletting from becoming effective. The receipt by the City of rent from an assignee, subtenant or occupant of the Premises shall not be deemed a waiver of the covenant in this Agreement against assignment and subletting or an acceptance of the assignee, subtenant or occupant as a tenant or a release of the Concessionaire from further observance or performance by Concessionaire of the covenants contained in this Agreement. No provision of this Agreement shall be deemed to have been waived by the City unless such waiver be in writing, signed by the Director.

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

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

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

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

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

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

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

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

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

(d) In the event of a sublease where the rental per square foot established in the sublease exceeds the rental per square foot established in this Agreement, Concessionaire shall pay to the City as Additional Rent the excess of the rental received from the subconcessionaire over that specified to be paid by Concessionaire herein per square foot. Should any method of computation of rental to be paid by a subconcessionaire, 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 Premises by Concessionaire exceeds the rental paid to the City for said proportionate area of the Premises.

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

ARTICLE XVI. WASTE OR NUISANCE

Section 16.01 WASTE OR NUISANCE. Concessionaire shall not commit nor permit any of its employees, contractors, subcontractors, licensees, subconcessionaires or agents to injure, deface or otherwise harm the Premises, the Terminal or the Airport, nor commit any waste upon the Premises, the Terminal or the Airport, and shall not place a load upon the floor of the Premises which exceeds the floor load per square foot which such floor was designed to carry. Concessionaire shall not commit nor permit any of its employees, contractors, subcontractors, licensees, subconcessionaires or agents to commit any nuisance or other act or thing which may constitute a menace or which may impact either the City's operation of the Terminal or the Airport or disturb the quiet enjoyment of any other occupant or concessionaire of the Airport. Concessionaire shall not use or permit to be used any medium that might constitute a nuisance, such as loudspeakers, sound amplifiers, tape decks, compact disc players, radios, televisions, or any other sound producing or other device which will carry sound or odors outside the Premises

except as may otherwise be approved in advance in writing by the Director and, upon notice from the Director to Concessionaire's business representative at the Premises, Concessionaire shall cause any such noise or odors to cease immediately. Concessionaire shall not allow any use of the Premises or any other portion of the Terminal and/or Airport in a manner which is a source of annoyance, disturbance or embarrassment to the City, or to the other concessionaires and occupants of the Terminal and/or Airport or which is deemed by the City, in its sole discretion, as not in keeping with the character of the Terminal and/or Airport. The Premises shall not be used for any unlawful or immoral purpose or which will invalidate or increase the premiums on any of the City's insurance.

ARTICLE XVII. TRADE NAME & SOLICITATION OF BUSINESS

Section 17.01 TRADE NAME. Concessionaire shall operate its business in the Premises under the names specifically set forth below ("Trade Name") and shall not change the advertised name or character of the business operated in the Premises without the prior written approval of the Director, which may be withheld in the City's absolute discretion.

Space/ Location	Trade Name
TA & TB	Goodfellows Shoeshine

Section 17.02 SOLICITATION OF BUSINESS. Concessionaire shall not give samples, approach customers, distribute handbills or other advertising matter or otherwise solicit business in the parking or other Public Areas or any part of the Terminal or the Airport other than in the Premises. In the event Concessionaire violates the foregoing, Concessionaire shall, at Concessionaire's sole cost and expense, be responsible to clean the area of any such materials so distributed by Concessionaire, its agents or employees. Notwithstanding the foregoing, the Director may approve in writing activities, prohibited in this Section 17.02, to be conducted for a limited period of time.

ARTICLE XVIII. DAMAGE AND DESTRUCTION

Section 18.01 FIRE AND OTHER DAMAGE. (a) If the Premises shall be partially damaged by fire or other casualty, the Concessionaire shall give immediate notice thereof to the City and the same shall be repaired at the expense of the City without unreasonable delay unless the City determines that the damage is so extensive that repair or rebuilding is not feasible. From the date of such casualty until said building is so repaired, monthly Rental payments hereunder shall abate in such proportion as the part of the Premises thus destroyed or rendered untenable bears to the total Floor Area of the Premises; provided, however, that if the Premises shall be so slightly injured in any such casualty as not to be rendered unfit for occupancy, the Rentals hereunder shall not cease or be abated during any repair period. In the event that the damage to the Premises should be so extensive as to render it untenable, the Rentals shall cease until such time as it shall be put in repair, but in the event the Premises is damaged by fire or other casualty to such an extent as to render it necessary in the exclusive judgment of the City not to rebuild the same, then at the option of the City, and upon notice to Concessionaire, this Agreement shall cease and come to an end and the Rentals hereunder shall be apportioned and paid up to date of such damage. If the City elects to rebuild the Premises, the City shall notify Concessionaire of such intention within thirty (30) days of the date of the damage, otherwise this Agreement shall be deemed canceled and of no further force or effect. Notwithstanding any provision above, should the destruction or damage to the Premises (to the extent of work that is to be provided as part of the City's obligation) be so great that it will not be reasonably repaired or restored by the City within one hundred twenty (120) days to the state of fitness that existed prior to the commencement of improvements, if any, performed by Concessionaire, Concessionaire may, at Concessionaire's option, terminate this Agreement by written notification of same given to the City within thirty (30) days after the occurrence of such casualty, or upon notification that the work will not be completed within the one hundred twenty (120) days.

(b) The City's obligations to rebuild or repair under this Article shall, in any event, be limited to restoring the Premises to substantially the condition that existed prior to the commencement of improvements, if any, performed by Concessionaire and shall further be limited to the extent of the insurance proceeds available to the City for such restoration. Concessionaire agrees that if

the City elects to repair or rebuild as set forth herein, then Concessionaire will proceed with reasonable diligence and, at its sole cost and expense, to rebuild repair and restore its improvements, signs, fixtures, furnishings, equipment and other items provided or installed by Concessionaire in or about the Premises in a manner and to a condition at least equal to that which existed prior to the damage or destruction. Should the commencement, construction or completion of said repair, reconstruction or replacement be prevented or delayed by reason of war, civil commotion, acts of God, strikes, governmental restrictions or regulations, fire or other casualty, or any other reason beyond the control of either party, the time for commencing or completing the repair, reconstruction or replacement, as the case may be, shall automatically be extended for the period of each such delay.

(c) City's election to repair the premises, as provided in this Article XVIII, shall not be construed as a waiver or limitation of City's right to pursue and/or recover damages/losses suffered by City.

ARTICLE XIX. NON-DISCRIMINATION

Section 19.01 GENERAL PROHIBITION. Any discrimination by Concessionaire, its agents or employees on account of race, creed, color, sex, age, disability, religion or national origin, in employment practices or in the use of or admission to the Premises is prohibited. Concessionaire, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, that: (a) no person on the grounds of race, creed, color, sex, age, disability, religion or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises, (b) that in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age disability, religion or national origin shall be excluded from participation, denied the benefits of, or otherwise be subjected to discrimination, (c) that Concessionaire shall use the 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 and/or supplemented.

Section 19.02 AFFIRMATIVE ACTION. To the extent required by law, Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, sex, age, disability, religion or national origin be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Concessionaire assures that it will require that its covered sub-organizations provide assurances to Concessionaire that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect. Concessionaire shall comply with the City's Nondiscrimination Clause as set forth in the Concessionaire Handbook which shall include submittal of Concessionaire's affirmative action plan for equal employment opportunity relating to the conduct of its business in the Premises. If requested by the City, this plan shall be submitted on an annual basis and monitored through the submission of an annual status report reflecting prior year activity. Quarterly affirmative action status reports shall also be provided, if requested by the City.

ARTICLE XX. DEFAULT

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

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

ii. Concessionaire shall neglect or fail to perform or observe any of the other terms, conditions, or covenants herein contained, and on Concessionaire's part to be

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

iii. Concessionaire shall fail to commence construction of Concessionaire's Work within 30 days of the City's issuance of the City's building permits and such failure is not occasioned by reason of force majeure;

iv. Concessionaire shall fail to move into the Premises and to initially open for business on or before the Latest Rental Commencement Date and such failure is not occasioned by reason of force majeure;

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

vi. Concessionaire shall voluntarily discontinue its operations at the Premises for a period of three (3) consecutive days and such failure is not occasioned by reason of force majeure or permitting this Agreement to be taken under any writ of execution or similar writ or order;

vii. Concessionaire shall become insolvent, shall take the benefit of any present or future insolvency statute, shall make a general assignment for the benefit of creditors, shall file a voluntary petition in bankruptcy or a petition or answer seeking a reorganization

or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any state thereof, or shall consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property;

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

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

x. by or pursuant to or under the authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Concessionaire and such possession or control shall continue in effect for a period of 60 days;

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

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

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

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

xv. if applicable, the failure of Concessionaire to initially obtain and thereafter maintain continuously throughout the Term, its eligibility and certification from the City of its DBE status and/or to renew such eligibility and certification as may be required by the City from time to time and such failure shall continue for a period of 30 days.

(b) If any condition of Concessionaire's event of default shall occur which shall not be timely cured as provided in Section 20.01(a), in addition to any other rights or remedies the City may have by law, the City, then, or at any time thereafter, but prior to the removal of such event of default shall have the right, either to terminate this Agreement by giving at least 5 days written notice to Concessionaire at which time Concessionaire will then quit and surrender the Premises to the City, but Concessionaire shall remain liable as hereinafter provided, or, to enter upon and take possession of the Premises (or any part thereof in the name of the whole), without demand or notice, and repossess the same as of the City's former estate, expelling Concessionaire and those claiming under Concessionaire, forcibly if necessary, without prejudice to any remedy for arrears of Rentals or preceding breach of covenant and without any liability to Concessionaire or those claiming under Concessionaire for such repossession, in which event the City shall have the right to enforce all of the City's rights and remedies hereunder including the right to recover all Rentals and other charges payable by Concessionaire hereunder as they become due hereunder. The City's repossession of the Premises shall not be construed as an election to terminate this Agreement nor shall it cause a forfeiture of Rentals or any other charges remaining to be paid during the balance of the Term hereof, unless a written notice of such intention be given to Concessionaire, or unless such termination is decreed by a court of competent jurisdiction. If the City elects to terminate this Agreement, the City shall have the right to recover immediately from Concessionaire damages calculated as follows: (i) all unpaid Rentals that had been earned at the time of termination of the Agreement; and (ii) the worth at the time award of the amount by which the unpaid Rentals which would have been earned after termination until

the time of the award exceeds the amount of the loss of such Rentals that Concessionaire affirmatively proves has been or could have reasonably been avoided; (iii) the worth at the time of award of the amount by which the unpaid Rentals for the balance of the Term after the time of award exceeds the amount of the loss of Rentals that Concessionaire affirmatively proves could reasonably be avoided; and (iv) any other amount necessary to compensate the City for all damages proximately caused by Concessionaire's default or which in the ordinary course would likely result therefrom (for purposes of subsection (ii) above, "worth at the time of award" shall be computed by allowing interest at the maximum rate permitted by Texas law and for purposes of subsection (iii) above, "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank whose jurisdiction includes the Airport at the time of the award, plus one (1%) percent per annum to its present worth). Upon repossession, the City shall have the right (at its election and whether or not this Agreement shall be terminated) to relet the Premises or any part thereof for such period or periods (which may extend beyond the Term of this Agreement) at such rent or rent and upon such other terms and conditions as the City may, in good faith, deem advisable. Notwithstanding any law or anything contained herein to the contrary, to the full extent permitted under applicable law, Concessionaire and the City agree that the City's duty to relet the premises or otherwise to mitigate damages under this Agreement shall be limited to those requirements set forth in the Texas Property Code, as amended. The City shall in no event be liable and Concessionaire's liability shall not be affected or diminished in any way whatsoever for failure to relet the Premises, or in the event the Premises are relet, for failure to collect any rent under such reletting, so long as the City uses objectively reasonable efforts to comply with said Texas Property Code. The City and Concessionaire agree that any such duty shall be satisfied and the City shall be deemed to have used objective reasonable efforts to relet the Premises and mitigate the City's damages by: (1) posting a "For Lease" sign on the Premises; (2) advising the City's leasing agent, if any, of the availability of the Premises; and (3) advising at least one outside commercial brokerage entity of the availability of the Premises.

(c) If the City shall elect to relet, then rent received by the City from such reletting shall be applied: first, to the payment of any indebtedness other than Rentals due hereunder from Concessionaire to the City under this Agreement, second, to the payment of any cost of such

reletting; third, to the payment of Rentals due and unpaid hereunder; and the residue, if any, shall be held by the City and applied hereunder. Should that portion of such rent received from such reletting during any month, which is applied to the payment of Rentals hereunder, be less than the Rentals payable during that month by Concessionaire hereunder then Concessionaire shall pay such deficiency to the City. Such deficiency shall be calculated and paid monthly. Concessionaire shall also pay to the City, as soon as ascertained, any costs and expenses incurred by the City in such reletting not covered by the rent received from such reletting of the Premises.

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

(e) If the City shall enter into and repossess the Premises for reason of the default of Concessionaire in the performance of any of the terms, covenants or conditions herein contained,

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

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

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

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

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

iii. the default by the City of any of the terms, covenants or conditions of this Agreement to be kept, performed or observed by the City and the failure of the City to remedy such default for a period of 60 days after written notice from Concessionaire of the existence

of such default has been received by the City or if more than 60 days shall be required because of the nature of such default, if the City shall fail within said 60 day period to commence and thereafter diligently proceed to cure such default;

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

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

ARTICLE XXI. BANKRUPTCY OR INSOLVENCY

Section 21.01 CONCESSIONAIRE'S INTEREST NOT TRANSFERABLE. Neither Concessionaire's interest in this Agreement, nor any estate hereby created in Concessionaire nor any interest herein or therein, shall pass to any trustee or receiver or assignee for the benefit of creditors or otherwise by operation of law except as may specifically be provided pursuant to the United States Bankruptcy Code, as amended ("Code").

Section 21.02 ELECTION TO ASSUME AGREEMENT. Even though this is an Agreement of real property in an airport, the parties contractually agree that this Agreement shall be construed to

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

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

ARTICLE XXII. ACCESS BY THE CITY

Section 22.01 RIGHT OF ENTRY. (a) The City, its agents and designated management representatives shall have the right to enter the Premises for any reasonable purpose (including inspecting the condition of the Premises) upon reasonable notice to Concessionaire. Concessionaire shall cooperate upon receipt of any such notice and arrange for its personnel to be available during any such entry. The City shall have the further right to enter the Premises to make such repairs, alterations, improvements or additions as it may deem necessary or desirable, and shall be allowed to take all material into and upon the Premises that may be required without the same constituting an eviction of Concessionaire in whole or in part, and Guaranteed Rent, Percentage Rent, Additional Rent and other charges reserved hereunder shall not abate while said

repairs, alterations, improvements or additions are being made, by reason of loss or interruption of business of Concessionaire, or otherwise.

(b) If the City exercises the foregoing rights and as a result thereof there is a material adverse effect to Concessionaire's use and occupancy of the Premises to the extent that Concessionaire is forced to close its business in the Premises for two (2) or more complete consecutive days, Concessionaire's obligation to pay Guaranteed Rent shall be abated during the period that Concessionaire is totally prohibited from operating. Upon the reopening of the Premises, which Concessionaire shall reopen on the day following the cessation of such material adverse effect, Concessionaire's payment of Guaranteed Rent to the City shall immediately recommence on the date of the reopening of the Premises.

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

ARTICLE XXIII. CONCESSIONAIRE'S PROPERTY

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

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

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

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

ARTICLE XXIV. RULES AND REGULATIONS

Section 24.01 RULES AND REGULATIONS. Concessionaire agrees to comply with and

observe all reasonable rules and regulations, including, without limitation, the Concessionaire Handbook, established by the City from time to time, with respect to the Airport, the Terminal, the Premises or any related matter. Concessionaire and its employees shall faithfully observe and comply with any other reasonable rules which the Director may from time to time make after notice to Concessionaire, provided such rules apply to all similarly situated concession operators in the Airport and are reasonably related to the safety, care, appearance, reputation, operation or maintenance of the Terminal or the Airport or the comfort of occupants and others using the Airport. The City shall not have any duty or obligation to enforce such rules or the terms and conditions in any other concession agreement, lease or sublease as against any other concessionaire, lessee or tenant and the City shall not be liable to Concessionaire for violations of the same by other concessionaires, lessees, tenants, subtenants, invitees, their servants, employees, contractors, subcontractors and agents. Concessionaire's failure to keep and observe said rules and regulations shall constitute a breach of the terms hereof in the same manner as if the rules and regulations were contained herein as covenants.

ARTICLE XXV. QUIET ENJOYMENT

Section 25.01 CITY'S COVENANT. Subject to the terms and conditions hereof, upon payment by Concessionaire of the Rentals herein provided and other charges payable by Concessionaire hereunder, and upon the observance and performance of all the covenants, terms and conditions on Concessionaire's part to be observed and performed, Concessionaire shall peaceably and quietly hold and enjoy the Premises for the Term hereby demised without hindrance or interruption by the City.

ARTICLE XXVI. MISCELLANEOUS

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

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

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

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

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

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

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

If to the City:

City of San Antonio
Attention: Airport Concessions Manager
9800 Airport Blvd., Mezzanine
San Antonio, TX 78216

If to Concessionaire:

Goodfellows Shoeshine – Texas, Inc.
Attention: Shelley Bonner Carson
4135 West Bell Drive
Las Vegas, Nevada 89118

With a Copy to:
City of San Antonio
Attention: Airport Concessions Manager
P.O. Box 839966
San Antonio, Texas 78283-3966

Concessionaire's Billing Address:
Goodfellows Shoeshine – Texas, Inc.
Attention: Shelley Bonner Carson
4135 West Bell Drive
Las Vegas, Nevada 89118

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

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

Section 26.07 BROKER'S COMMISSION. Each party shall be solely responsible for the payment of any claims for brokerage commissions or finder's fees due as a result of such party retaining a broker or similar entity in connection with this Agreement, and Concessionaire agrees to indemnify the City and hold the City harmless from all liabilities arising from any claim for brokerage commissions and finder's fees in connection with this Agreement. Such indemnity shall survive the termination hereof.

Section 26.08 RECORDING. Concessionaire shall not record this Agreement or any short form or memorandum hereof.

Section 26.09 FURNISHING OF FINANCIAL STATEMENTS. Concessionaire has provided the City at or prior to the date of this Agreement with statements reflecting its financial condition and a credit report as of a date within the last 12 months as an inducement to the City to enter into this Agreement, and Concessionaire hereby represents and warrants that its financial condition and credit rating have not materially changed since the date of those statements and reports. Upon the Director's written request, Concessionaire shall promptly furnish the City, from time to time, but not more frequently than once in any Lease Year, with financial statements and a credit report reflecting Concessionaire's then current financial condition. The City shall treat such financial statements, credit reports and information provided to it confidentially, and shall not disclose them except to the City's lenders or otherwise as reasonably necessary for the operation of the Terminal or the Airport or administration of the City's business or unless disclosure is required by any judicial or administrative order or ruling.

Section 26.10 CONCESSIONAIRE'S WAIVERS IN ACTION FOR POSSESSION. The City and Concessionaire agree that in any action brought by the City to obtain possession of the Premises, the parties desire an expeditious resolution of such litigation. Accordingly, Concessionaire shall not file and hereby waives the right to file any non-compulsory counterclaim in such action. Concessionaire also shall not file and hereby waives the right to file any defense to such action for possession other than the defense that the default alleged by the City did not occur unless Concessionaire would otherwise be precluded from the filing of any such other defense in a separate action.

Section 26.11 ALL AMOUNTS IN U.S. CURRENCY. All amounts mentioned, calculated, or required in this Agreement shall be in U.S. dollars.

Section 26.12 EXECUTION OF AGREEMENT; NO OPTION. The submission of this Agreement to Concessionaire shall be for examination purposes only, and does not and shall not constitute a reservation of an option for Concessionaire to lease, or otherwise create any interest by

Concessionaire in the Premises or any other premises in the Terminal or the Airport. Execution of this Agreement by Concessionaire and the return of same to the City shall not be binding upon the City, notwithstanding any time interval, until the City has executed and delivered this Agreement to Concessionaire. Once so executed and delivered by the City as aforesaid, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

Section 26.13 GOVERNING LAW. All obligations of the parties created hereunder are performable in Bexar County, Texas. This Agreement shall be construed under and in accordance with the laws of the State of Texas except where state law shall be preempted by any rules, laws or regulations of the government of the United States of America. If any provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, such provision shall be adjusted rather than voided, if possible, in order to achieve the intent of the parties, to the extent possible; in any event, all other provisions hereof shall be deemed valid and enforceable to the full extent.

Section 26.14 SPECIFIC PERFORMANCE OF RIGHTS. Each party shall have the right to obtain specific performance of any and all covenants or obligations of the other party hereunder except to the extent otherwise provided herein for the benefit of the City excusing any such performance by the City, and nothing contained herein shall be construed as or shall have the effect of abridging such right.

Section 26.15 SUCCESSORS. All rights and liabilities herein given to, or imposed upon, the parties hereto shall inure to and be imposed upon the respective heirs, executors, administrators, successors and assigns of the said parties; and if there shall be more than one entity or individual comprising Concessionaire, they shall all be bound jointly and severally by the terms, covenants and agreements herein. No rights, however, shall inure to the benefit of any assignee of Concessionaire unless the assignment to such assignee has been approved in advance by the Director in writing or approved by Ordinance as required by section 26.15 or Article XV.

Section 26.16 SURVIVAL OF OBLIGATIONS. All obligations of either party hereunder which cannot be ascertained to have been fully performed prior to the end of the Term or any earlier termination hereof shall survive any such expiration or termination. All of the terms, conditions, covenants, provisions, restrictions or requirements imposed upon Concessionaire hereunder shall be deemed to extend to Concessionaire's agents, employees, officers, directors, partners, guarantors, contractors, licensees, subconcessionaires and subcontractors and Concessionaire shall cause any such persons or entities to comply therewith and include any applicable provisions in any agreements, contracts, subcontracts or the like entered into by Concessionaire with respect to its activities and operations in the Premises, the Terminal and the Airport.

Section 26.17 CERTAIN RULES OF CONSTRUCTION. Time is of the essence in Concessionaire's performance of this Agreement. Notwithstanding the fact that certain references elsewhere in this Agreement to acts required to be performed by Concessionaire hereunder, or to breaches or defaults of this Agreement by Concessionaire, omit to state that such acts shall be performed at Concessionaire's sole cost and expense, or omit to state that such breaches or defaults by Concessionaire are material, unless the context clearly implies to the contrary, each and every act to be performed or obligation to be fulfilled by Concessionaire pursuant hereto shall be performed or fulfilled at Concessionaire's sole cost and expense, and all breaches or defaults by Concessionaire hereunder shall be deemed material. Concessionaire shall be fully responsible and liable for the observance and compliance by franchisees, sublessees, licensees, and contractors of Concessionaire and with all the terms and conditions of this Agreement, which terms and conditions shall be applicable to franchisees and licensees as fully as if they were the Concessionaire hereunder; and failure by a franchisee or licensee fully to observe and comply with the terms and conditions of this Agreement shall constitute a default by Concessionaire. Nothing contained in the preceding sentence shall constitute consent by the City to any subconcession, subletting or other arrangement. Further, although the printed provisions of this Agreement were drawn by the City, the parties agree that this circumstance alone shall not create any presumption, canon of construction or implication favoring the position of either the City or Concessionaire and the deletion of language from this Agreement prior to its mutual execution shall not be construed to have any particular meaning or to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the

converse, adverse or opposite of the deleted language.

Section 26.18 CONFIDENTIALITY. Any and all information contained in this Agreement or provided to or by Concessionaire and/or the City by reason of the covenants and conditions hereof, economic or otherwise, shall remain confidential between the City and Concessionaire and shall not be divulged to third parties except as required to be disclosed by law. The City shall be permitted to disclose any and all such information consistent with its policies and procedures as such determination is made by the City in its sole and absolute discretion; and, in addition, the City shall be permitted to divulge the contents of statements and reports derived and received in connection with the provisions of Article IV and Article V in connection with any contemplated sales, transfers, assignments, encumbrances or financing arrangements of the City's interest in the Airport or the Terminal or in connection with any administrative or judicial proceedings in which the City is involved where the City may be required to divulge such information.

Section 26.19 ATTORNEY FEES. If the City brings any action under this Agreement, and prevails in said action, then the City shall be entitled to recover from Concessionaire its reasonable and actual attorney's fees incurred in the defense or prosecution of such action to the extent and in the manner that the City is awarded any such fees from the court.

Section 26.20 WAIVER OF TRIAL BY JURY. The City and Concessionaire desire and intend that any disputes arising between them with respect to or in connection with this Agreement be subject to expeditious resolution in a court trial without a jury. Therefore, the City and Concessionaire each hereby waive the right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding or other hearing brought by either the City against Concessionaire or Concessionaire against the City or any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship of the City and Concessionaire, Concessionaire's use or occupancy of the Premises or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

Section 26.21 A.D.A. COMPLIANCE. Concessionaire agrees that within the Premises

Concessionaire shall be fully and solely responsible for compliance with the Americans with Disabilities Act (42 U.S.C. Sec. 12101 et. seq.), and the regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto. Further, Concessionaire agrees to construct its Fixed Improvements and install its Operating Equipment and operate the Premises so that the Premises shall at all times accommodate customers with luggage.

Section 26.22 SECURITY. (a) Concessionaire shall be fully responsible, at its sole cost, for providing security for the Premises with no right of reimbursement from the City. Notwithstanding the foregoing, Concessionaire shall take such reasonable security precautions with respect to the Premises and its operations and personnel as the City in its discretion may require from time to time. To the extent applicable with respect to security requirements for the Air Operations Area (A.O.A.) and/or Security Identification Display Area (S.I.D.A.), Concessionaire shall provide for the security of the A.O.A. and/or S.I.D.A. to prevent entry or movement of unauthorized persons thereupon in accordance with Chapter 3, Section 3-23 of the City Code of San Antonio, Texas as such section currently exists or as it may be amended or replaced in the future. Additionally, in appropriate cases, physical barriers to prevent access to the A.O.A. and/or the S.I.D.A. must be placed by Concessionaire upon the Premises and supervised by Concessionaire during construction upon the Premises. Concessionaire's employees who must have demonstrated a requirement to access the A.O.A. and/or the S.I.D.A. will, after a needs assessment by the Airport Security Compliance Division of the Aviation Department, be provided with a proper identification security badge. Qualified employees must complete the appropriate forms and provide appropriate employment history and other background investigation materials as mandated by law and the City from time to time.

(b) Concessionaire shall comply with all rules, regulations, statutes, orders, directives or other mandates of the United States of America or of the State of Texas regarding security requirements or security measures upon the Airport, including, but not limited to, compliance with any badging requirements for all of its personnel employed at the Airport. Concessionaire shall also comply with the mandates of the FAA and/or the TSA for background investigations of its personnel, as such mandates now exist or as they may be changed, amended or replaced with new and different mandates in the future. Concessionaire shall indemnify and hold harmless

the City, its elected officials, officers, designated management representatives and employees from any charges, fines or penalties that may be assessed or levied by any department or agency of the United States of America, including the FAA, the TSA or of the State of Texas by reason of Concessionaire's failure to comply with any applicable security provision and/or with any provision or requirement for compliance set forth in this Section 27.22.

Section 26.23 LABOR HARMONY AND WAGES. Concessionaire agrees that in the use of the Premises or any work performed in or about the Premises that Concessionaire will employ only labor which can work in harmony with all elements of labor being employed at the Airport or as otherwise reasonably required by the Director from time to time. Concessionaire shall pay wages that are not less than the minimum wages required by Federal and State statutes and City ordinances to persons employed in its operations hereunder.

Section 26.24 CROSS DEFAULT. Notwithstanding anything to the contrary contained in this Agreement, an event of default of Concessionaire's obligations under the provisions of any other agreement with the City covering any other concession facilities within the Airport shall constitute a default by Concessionaire under this Agreement, entitling the City to the rights and remedies provided to it under this Agreement and at law.

Section 26.25 CONFLICT OF INTEREST. Concessionaire acknowledges that it is informed that Texas law prohibits contracts between the City and its "officers" and "employees", and that the prohibition extends to an officer and employee of City agencies such as City owned utilities and certain City boards and commissions, and to contracts with any partnership, corporation or other organization in which the officer or employee has an interest. Concessionaire certifies (and this Agreement is made in reliance thereon) that neither he nor any person having an interest in this Agreement is an officer or employee of the City or any of its agencies.

Section 26.26 APPROVALS BY THE CITY. Whenever this Agreement calls for approval by the City, such approval shall be evidenced by the prior written approval of the Director and/or the City Manager or her designee provided however that this section shall not apply to construction permits or licenses that must be sought outside the Aviation Department.

Section 26.27 **RFP AND CONCESSIONAIRE'S PROPOSAL.** To the extent that they do not conflict with the provisions of this Agreement, City's Request for Proposals (RFP) and RFP Addenda, and Concessionaire's proposal are hereby incorporated into this Agreement. The terms of this Agreement shall control over the terms of the RFP, as amended, and over Concessionaire's Proposal. The terms of the RFP, as amended, shall control over Concessionaire's proposal.

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

GOOD FELLOWS SHOESHINE
TEXAS, INC., A Delaware corporation

By: _____
Shelley Bonner-Carson, President/CEO

CITY OF SAN ANTONIO
a Texas municipal corporation

By: _____
Sheryl L. Sculley, City Manager

ATTEST:

By: _____

Print Name: _____

Its: _____

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A1

[GENERAL SITE PLAN OF SAN ANTONIO INTERNATIONAL AIRPORT]

EXHIBIT A2

[TERMINAL PLAN AND PREMISES FLOOR PLAN]

EXHIBIT B

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

Date: _____

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

To the Addressee:

At the request of _____A_____, we _____B_____, hereby open this IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____C_____ in your favor up to an aggregate of $_____D_____ U.S. Dollars, available by your draft(s) on us at sight.

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

All drafts must be marked "Drawn Under _____B_____ Letter of Credit No. _____C_____ dated _____, 200_ ." Partial drawings under this Letter of Credit are permitted.

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

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

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

_____
Bank Officer/Representative

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

EXHIBIT C
AIRPORT CONCESSIONS
DISADVANTAGED BUSINESS ENTERPRISE,
GOOD FAITH EFFORT PLAN AND APPROVED SUBCONTRACTOR LIST

[INSERT GOOD FAITH EFFORT PLAN ATTACHMENT FROM RFP]

EXHIBIT D

[CONCESSIONAIRE MONTHLY AND ANNUAL STATEMENT CERTIFICATE FORMS].