

AN ORDINANCE 2008-06-12-0527

AUTHORIZING THE EXECUTION OF FIVE-YEAR CONCESSION AGREEMENTS AT SAN ANTONIO INTERNATIONAL AIRPORT WITH VARIOUS COMPANIES REPRESENTING THE FOLLOWING CAR RENTAL AGENCIES FOR COMBINED GUARANTEED TERM RENTAL OF \$45,724,096.00: ADVANTAGE, ALAMO, AVIS, BUDGET, DOLLAR/THRIFTY, ENTERPRISE, HERTZ, AND NATIONAL.

* * * * *

WHEREAS, the City issued a Request for Proposals on January 21, 2008 for nine car rental concession operators at San Antonio International Airport ("SAT"); and eight companies submitted proposals; and

WHEREAS, it is now necessary to authorize the execution of a Car Rental Lease and Concession Agreement for each of the eight companies; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee is authorized to execute a Car Rental Lease and Concession Agreement for operations at San Antonio International Airport, in a form substantially similar to the document set out as Attachment 1, with each of the following companies at the indicated approximate five-year minimum guarantee:

Avis Rent A Car System, LLC	\$11,000,000.00
The Hertz Corporation	\$10,101,300.00
DTG Operations, Inc. d/b/a Dollar Rent A Car and Thrifty Car Rental	\$6,509,725.00
Enterprise Rent-A-Car Company of Texas	\$5,375,000.00
Alamo Rental (US), Inc.	\$4,726,476.00
National Rental (US), Inc.	\$4,147,530.00
Southwest-Tex Leasing Co., Inc. d/b/a Advantage Rent-A-Car	\$2,150,560.00
Satrac, Inc. d/b/a Budget Rent-A-Car	\$1,713,505.00

SECTION 2. Funds generated by this ordinance will be deposited into Fund 51001000 Aviation Operations, Internal Order 233000000007 Multi-terminal, General Ledger 4409027 Aviation Car Rental Fees.

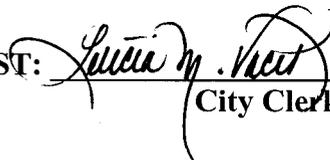
SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General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

GS
06/12/08
Item No. 21

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 12th day of June, 2008.


**MAYOR
PHIL HARDBERGER**

ATTEST: 

City Clerk

APPROVED AS TO FORM: 
for _____
City Attorney

ATTACHMENT I



Request for
**COUNCIL
ACTION**

City of San Antonio



Agenda Voting Results - 21

Name:	21
Date:	06/12/2008
Time:	11:18:50 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing five-year concession agreements at San Antonio International Airport with various companies representing the following car rental agencies for combined guaranteed term rentals of \$45,724,096: Advantage, Alamo, Avis, Budget, Dollar/Thrifty, Enterprise, Hertz, and National. [Penny Postoak Ferguson, Assistant City Manager; Mark Webb, Director, Aviation]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x			x	
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				

**CAR RENTAL LEASE AND CONCESSION AGREEMENT
AT SAN ANTONIO INTERNATIONAL AIRPORT**

This Agreement entered into this _____ day of _____, 2008, by and between the City of San Antonio, a Texas Municipal Corporation acting by and through its City Manager, pursuant to Ordinance Number _____ passed and approved by the City Council on _____, hereinafter called "City" and _____, a Corporation chartered under the laws of _____, acting by and through its authorized officers pursuant to a resolution of its Board of Directors, hereinafter called "Concessionaire".

WITNESSETH:

WHEREAS, the City of San Antonio is the owner and operator of the San Antonio International Airport, hereinafter referred to as "the Airport" and;

WHEREAS, the Concessionaire is a corporation engaged in the business of renting motor vehicles to others, and;

WHEREAS, the proposal of _____, to operate a car rental concession at San Antonio International Airport, was submitted to the City on _____; and

WHEREAS, the City wishes to grant to Concessionaire the right to operate a concession for certain car rental facilities at the Airport under a non-exclusive agreement containing mutually satisfactory terms and covenants.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, privileges, obligations and agreements herein contained, the City and the Concessionaire hereby mutually undertake, promise and agree, each for itself, and its successors and assigns as follows:

ARTICLE I. DEFINITIONS

- 1.1 "Agreement" as used herein contemplates and includes the lease of city-owned property (referred henceforth as Assigned Areas) and permission for Concessionaire to use such city-owned property for the conduct of a car rental concession within said city-owned property under the terms and conditions expressly set forth herein.
- 1.2 "Airport Terminals" and "Terminals" shall mean the Terminal Buildings at San Antonio International Airport known as Terminal 1 and Terminal 2.
- 1.3 "Assigned Area" is the area or areas of the Airport Terminal(s) designated by this Agreement and the Exhibits thereto as the place or places where the business of Concessionaire may be conducted.
- 1.4 "City of San Antonio" and "City" shall include such public officials and public bodies as may, by operation of law, succeed to any or all the rights, powers or duties which lawfully reside in the City Council of San Antonio.

1.5 "Aviation Director" and "Director" shall mean the Director or Acting Director of San Antonio International Airport as from time to time appointed by the City Manager and shall include such person or persons as may from time to time be authorized in writing by the City Manager or by the Director to act for him with respect to any or all matters pertaining to this Agreement.

1.6 "Gross Revenue" with respect to sales to San Antonio International Airport passengers, customers and tenants shall mean all monies or other consideration paid or payable to the Concessionaire derived from, arising out of, or payable on account of the business conducted by the Concessionaire or from the operations of Concessionaire under this Agreement, whether for cash or credit and without any deduction for credit card discounts, and whether the same shall be paid or unpaid.

(a) Included in, but not limited to "Gross Revenue" are any and all monies or other consideration paid or payable to the Concessionaire for:

1. Sale or lease of ancillary items (baby car seats, bikes, etc.);
2. Fees, commissions and charges derived from the rental or sale of cellular or mobile phones, GPS, navigational aids/services, satellite radio or other services and/or amenities;
3. Net fees after customer discounts (such discounts must be stated in the rental transaction invoice), paid for the rental or leasing of vehicles pursuant to daily or time charges and/or mileage; discounts granted or paid to any organization other than the actual individual customer will not be allowed as a deduction to gross revenue nor will volume discounts/rebates or commissions paid to companies;
4. Customer supplies;
5. One-way or drop-off charges, for or with respect to Motor Vehicle rentals and leases accrued to or billed by Concessionaire for or in conjunction with the rental or lease of said Motor Vehicles to the public, whether on a cash, credit, charge or other basis;
6. Any fees(s) or charge(s) designed to collect from customers the rentals that Concessionaire must pay to City for the privilege of operating at the Airport. Should such a fee be instituted by Concessionaire, it shall not exceed 11.11% of Gross Revenue as defined herein. Additionally, this fee or charge shall not be labeled a tax or given any other name implying that the fee is a charge or pass through similar to a tax that is mandated by a governmental entity. All such fees assessed and collected in excess of the 11.11% limitation from Concessionaire's customers, the excess shall be remitted to the City or refunded to the Concessionaire's customers. Documented verification will be required for customer refunds;
7. Fifty percent (50%) of all amounts charged to rental car customers for Casualty/ Loss Damage Waiver;

8. All payments received in connection with operations authorized under the Agreement, regardless of the manner in which stated and collected, must be included in Gross Revenue;
9. All fees assessed to the Concessionaire's customers to recover the cost of vehicle registration, vehicle licensing, personal property taxes, or similar recovery costs not specifically required by law to be assessed to the Concessionaire's customer.

(b) Excluded from "Gross Revenue" are:

1. The amounts of any federal, state, or municipal sales taxes or other similar taxes separately stated and required by law to be assessed and collected from customers, whether currently or hereinafter levied or imposed;
2. Amount of gratuities paid or given by patrons of Concessionaire to employees of the Concessionaire;
3. Receipts from the sale of Motor Vehicles, gasoline or other fuels;
4. Receipts from the sales at cost of uniform or clothing to the Concessionaire's employees where such uniforms are required to be worn by such employees;
5. Receipts from acceptance of Personal Accident Insurance; and
6. Sums received as proceeds for damage repairs to Motor Vehicles owned or controlled by Concessionaire or to property of Concessionaire, or for loss, conversion or abandonment of such Motor Vehicles, or for replacement of keys.
7. Sales to customers who are not patrons of San Antonio International Airport and who present a valid driver's license with an address in Bexar County, Texas or adjoining counties. A list of zip codes for Bexar County and adjoining counties is attached hereto as Exhibit 1.
8. Parking tickets, tolls, towing, impound fees, traffic infractions any such fees/cost recovered at cost, without any mark-up, by Concessionaire from its customers.

1.7 "Minimum Annual Guarantee" is the minimum amount of money due City annually from Concessionaire in consideration of the rights granted Concessionaire. Payment shall be made on a monthly basis according to the terms of this Agreement.

1.8 "Motor Vehicle" shall mean automobiles, vans, minibuses, and trucks only, as determined by the state of Texas for the purposes of registration of vehicles. For purposes of this Agreement, "car", "Motor Vehicle" and "automobile" are used interchangeably.

1.9 "Percentage Payment" is the sum of money due City on account of City's share of Gross Revenue from all sales and revenues as hereinafter provided.

ARTICLE II. TERM

The term of this Agreement shall commence on July 1, 2008 and will expire on June 30, 2013, provided, however, that the City shall have the right to terminate this Agreement upon written notice at least 180 days before the effective date of termination. The City shall use its best efforts to deliver the Assigned Areas on the commencement date, however, if delivery of the Assigned Areas shall be delayed beyond such commencement date, City shall not be liable to Concessionaire for any damage resulting from such delay.

ARTICLE III. PRIVILEGES AND OBLIGATIONS OF THE CONCESSIONAIRE

3.1 (a) The Concessionaire has the right, privilege and obligation to operate a first class vehicle rental service within its Assigned Areas of the Airport Terminals as depicted in Exhibits 2 & 3 as such Assigned Areas exist as of the commencement of this Agreement. Concessionaire agrees and fully understands that the right herein granted is not an exclusive right and that the City may and shall grant other similar rights to any other individuals, companies, corporations or entities engaging in like activity at the Airport provided, however, that any other or future non-exclusive vehicle rental concessionaire shall not be granted terms or conditions more favorable than those granted to Concessionaire.

(b) Concessionaire shall operate the following brand(s) under this Agreement and no others:

_____.

3.2 The privilege granted herein is for the operation of a vehicle rental concession and for no other purpose and does not extend to or encompass any other activity or area including, but not limited to, vending machines, pay telephones, passenger parking or employee parking. Notwithstanding the foregoing, and upon receipt by the Concessionaire of the prior written approval of the Director, ancillary sales and services may be offered by Concessionaire and all monies or other consideration received by Concessionaire therefrom shall be included in the Gross Revenue of Concessionaire hereunder. Sales and services are considered to be ancillary when they form a part of the car rental services and not when they constitute an independent transaction.

3.3 The Concessionaire has the right to install and maintain upon the rear wall of its Assigned Areas a company logo or sign provided that the design, installation and maintenance of such sign shall be consistent with the graphic standards of the Airport and shall have the written approval of the Director prior to installation as to the conformance of such graphic standards. Concessionaires occupying the two corner car rental locations in Terminal 1 may, at their cost and with the written approval of the Director, place additional directional signage if a mutually agreeable location for such signage can be determined and may also place signage displaying only their company name on the back wall abutting Lease Area F. Additionally, Concessionaire may place computer terminals for customer usage on its ticket counter and signage on the sidewalls or on or behind its ticket counter advertising the rates and/or services of Concessionaire. However, handwritten signs of any kind shall not be allowed nor shall banners or signs hang or extend beyond either the top of the ticket counter or the sidewalls. The area in front of the ticket counter shall be used for queuing and for no other

purpose. In assigning counters and phone booths for car rental concessionaires, City shall utilized the methodology set out in Exhibit 4.

- 3.4 The Concessionaire has the rights of ingress and egress from its Assigned Area over the Airport roadways, including common use roadways, subject to any rules or regulations which may have been established or shall be established in the future by the Airport, the City of San Antonio or the State of Texas. Such rights of ingress and egress shall apply to the Concessionaire's employees, guests, patrons, invitees, suppliers and other authorized individuals. The rights of ingress and egress likewise apply to the transport of equipment, material, machinery and other property.
- 3.5 (a) In respect to its operations at San Antonio International Airport, Concessionaire shall conform to the City's Airport Concessions Disadvantaged Business Program (ACDBE) Program, the provisions of which have been extended in principle and practice to Concessionaires at San Antonio International Airport. This will require compliance with all applicable provisions of the ACDBE Program contained in Exhibit 5, as well as submittal of a detailed written plan for utilizing certified disadvantage business enterprises in the procurement of goods and services necessary for operating the concession. In furtherance of the City's policy of assuring a maximum opportunity to involve such businesses to the greatest extent feasible, the City has established the following goals:

ACDBE Goal 4%

- (b) Accordingly, Concessionaire shall make good faith efforts to purchase from DBE certified businesses, the specified percentage of goods and services as such percentage currently exists or may be amended in the future. Concessionaire agrees to furnish to City, on a quarterly basis, such documentation ("quarterly reports") as City shall require verifying such purchase and such good faith efforts. Quarterly reports are due to the Disadvantaged Business Enterprise Liaison Officer (DBELO) as follows: by April 30 for the calendar quarter spanning January 1- March 31; by July 30 for the quarter spanning April 1-June 30; by October 30 for the quarter spanning July 1 to September 30; and by January 30 for the quarter spanning October 1 – December 31. If Concessionaire fails to furnish to the DBELO any quarterly report as required by this Section 3.5, then Concessionaire shall pay to City a late fee of \$100.00 per day until such statement is delivered to the DBELO. This remedy shall be in addition to other remedies provided herein or by law to the City.
- (c) Failure to furnish such documentation within 30 days following receipt by Concessionaire of written demand from City for such documentation and/or willful or unjustified failure, as determined by City, on the part of the Concessionaire to make such good faith efforts shall, at the option of the City, cause this Agreement to terminate as of the date specified in a written termination notice to Concessionaire provided by City acting through the Director.
- (d) During the term of the contract, the contractor (concessionaire) must report the actual payments to all subcontractors (suppliers) utilized on this contract agreement in the time intervals and format prescribed by the City of San Antonio's Aviation Department. Any unjustified failure to comply with the levels of ACDBE participation identified in

Concessionaire's proposal to the RFP under which this contract was awarded and affirmed in the Good Faith Effort Plan shall be considered a material breach of contract. The City reserves the right, at any time during the term of the contract to request additional information, documentation or verification of payments made to subcontractors (suppliers) in connection with the contract. Verification of amounts being reported may take the form of requesting copies of canceled checks paid to ACDBE/DBE participants and/or confirmation inquiries directly to the DBE participants. Proof of payments, such as copies of canceled checks must properly identify the project name or project number to substantiate ACDBE/DBE payment for this project.

- 3.6 Concessionaire shall use its best efforts to ensure that the vendors from which it purchases its goods and services in accordance with its Good Faith Effort Plan shall also be considered to satisfy to ACDBE criteria set forth in 49 CFR Parts 23 as it now exists or as it may be amended or replaced in the future. The goal shall be measured as percentage of the total estimated Gross Revenue earned by Concessionaire hereunder. ACDBE participation may be in the form of any legal arrangement meeting the eligibility standards in 49 CFR Parts 23. Concessionaire shall submit such reports as may be required by City in the form specified by City for the purpose of demonstrating compliance with the provisions set forth in this paragraph.
- 3.7 Further, in compliance with requirements of the Department of Transportation, the following are specifically made a part of this Agreement:
- (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 award or performance of any concession agreement, management agreement, or subcontract, purchase, lease agreement, or other agreement covered by 49 CFR part 23.
 - (b) The Concessionaire agrees to include the above statements in any subsequent concession agreements or contracts covered by 49 CFR part 23 that it enters and cause those businesses to similarly include the statements in further agreements.
- 3.8 The Airport, while providing parking facilities to the 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 utilizing these parking facilities.
- 3.9 Concessionaire shall use the counter and office area (if any) of its Assigned Areas only for the purpose of rental and return of vehicles owned or controlled by Concessionaire. Concessionaire's employees or persons under their control shall not solicit customers or congregate in front of their assigned counter areas. This paragraph shall be construed to prohibit any unfair, loud or unprofessional behavior to occur at or near the counter areas.
- 3.10 Concessionaire shall be limited to parking only one passenger pickup vehicle in each passenger pickup area. The passenger pickup location and the number of Concessionaire's passenger pickup vehicles that may be parked in a passenger pickup area may be adjusted as determined in the sole discretion of the Director. Additionally, the number, size, and

frequency of passenger pickup vehicles operating on Airport premises may be restricted at the sole discretion of the Director.

ARTICLE IV. IMPROVEMENTS BY CITY

- 4.1 Assigned Areas existing as of the date of the execution of this Agreement will be delivered to Concessionaire in an "AS IS" condition and the parties hereto expressly agree that City has made no representations and has no duty to perform any improvements to, within or concerning the Assigned Areas. Any city-owned improvements, fixture or other items in or on the Assigned Areas at the commencement of the term of this Agreement which Concessionaire does not desire to use in its operations hereunder shall be removed by Concessionaire at its sole expense. Concessionaire shall expeditiously provide City with a written accounting of the disposition of such improvements, fixtures or other items. Funds, if any, received by Concessionaire for such improvements, fixtures or other items in excess of the cost of removal and disposition of same shall be promptly paid by Concessionaire to City.
- 4.2 Walls, flooring, ceiling lighting and counter shells (front and top minus inserts) will be provided by the City to those Concessionaires which occupy new or reconfigured car rental concession areas. The parties expressly agree that City has made no other representations and has no duty to perform any other improvements to, within or concerning the Assigned Areas.
- 4.3 City and Concessionaire acknowledge that improvements to the Terminals may be undertaken during the term of this Agreement. City will attempt to perform such improvements in a manner so as not to unreasonably interfere with the operations of Concessionaire authorized hereunder. Concessionaire hereby expressly waives any and all claims for damages occasioned by the loss of profits, if any, as a result of the interruption of business of Concessionaire that may arise as a result of such improvements undertaken by City.
- 4.4 Throughout the term of this Agreement, City shall provide electrical current at such locations as determined by City and in reasonable amounts for the operation of the business of Concessionaire authorized hereunder. In consideration of such provision, Concessionaire hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defect, deficiency or impairment of any such utility or the delivery or removal system therefor, or Act of God, tornado, civil commotion, riot, explosion, collapse of building, fire or collision.

ARTICLE V. IMPROVEMENTS BY CONCESSIONAIRE

- 5.1 Concessionaire shall, without cost to City, provide the Assigned Areas with all improvements not provided by City for the customary operation of services in a first class car rental facility.
- 5.2 Should Concessionaire perform improvements to its Assigned Areas, such improvements shall be at the sole cost and sole risk of Concessionaire. Five sets of plans and specifications must be submitted to the Director for his review prior to the commencement of such improvements. Work shall not commence until written approval from the Director is received and the plans are stamped "approved". The Director shall, within fifteen (15) days of receipt of any such plans either approve or disapprove the plans and/or specifications

submitted by the Concessionaire. The approval by the Director of any plans and specifications refers only to the conformity of such plans and specifications to the general architectural and aesthetic plan for the concession areas and such approval shall not be unreasonably withheld.

- 5.3 No changes or alterations shall be made to said plans and specifications after initial approval by the Director. No structural alterations or improvements shall be made to or upon the Assigned Area at any time throughout the terms of this Agreement without prior written approval of the Director. Upon approval of the plans and specifications, Concessionaire shall proceed in a reasonably diligent manner to perform such approved improvements. Concessionaire shall at all times be responsible for damage to the person or property of a third party or the City resulting from the acts or omission of Concessionaire, its agents, servants, employees or independent contractors engaged by Concessionaire.
- 5.4 All improvements made to the Assigned Area and additions and alterations thereto made to the Assigned Area by the Concessionaire, shall be and remain the property of the Concessionaire until the expiration of the term of this Agreement, as set forth in Article II, or upon termination of this Agreement (whether by expiration of the term, cancellation, forfeiture, or otherwise, whichever first occurs), at which time the said improvements shall become the property of the City, provided, however, that any trade fixtures, signs and other personal property of the Concessionaire not permanently affixed to the Assigned Areas shall remain the property of Concessionaire and shall so remain unless Concessionaire shall fail within fourteen (14) days following the termination of this Agreement to remove its trade fixtures, signs and other personal property of Concessionaire not permanently affixed to the Assigned Areas in which event, at the option of the City, title to same shall vest in City at no cost to City or City may elect to exercise its rights set forth in Paragraph 14.6 of this Agreement.
- 5.5 The Concessionaire shall not remove or demolish, in whole or in part, any improvements upon the Assigned Area without the prior written consent of the Director, which may be conditioned upon the obligation of Concessionaire to replace the same by an improvement specified in such consent.

ARTICLE VI. PRIVILEGE FEES, CHARGES, AND ACCOUNTABILITY

- 6.1 The Concessionaire agrees to pay to the City, for Concessionaire's use and access to the Airport, the greater of the Minimum Annual Guarantee or the Percentage Payment. Other than as provided below, the Minimum Annual Guarantee shall be not less than the amount set forth in this paragraph 6.1 nor subject to reduction or renegotiation unless otherwise provided in this Agreement.

Concessionaire agrees to pay a Minimum Annual Guarantee to the City in the following amounts:

Year 1: _____
Year 2: _____
Year 3: _____
Year 4: _____
Year 5: _____

6.2 The Concessionaire agrees to pay to City a Percentage Payment of 10% of Gross Revenue as defined and stated in Paragraphs 1.6, 1.9 and 6.6 of this Agreement.

6.3 In addition to the above-described Percentage Payment of Gross Revenue, as set forth in Section 6.2, for Concessionaire's use and access to the Airport, Concessionaire shall also pay an additional sum for rental for the terminal counter space. The counter rental shall be at the prevailing terminal rental rate and shall be the square foot area occupied by Concessionaire, as depicted in Exhibits 2 and 3 attached hereto, multiplied by the average rental charge in effect for each terminal building at the beginning of each contract year. Such prevailing terminal rate shall be adjusted yearly on October 1. One-twelfth of the counter rental shall be paid to the City in advance by check or electronic funds transfers, on the first day of each and every month during the term hereof, without requirement of a notice to the Concessionaire. The amount shall be pro-rated for time periods less than one month, based upon a fraction for which the numerator shall be the number of days in the month that concessionaire occupies the Assigned Area and the denominator should be the number of days in the month. For payments prescribed under this Section 6.3, Concessionaire shall pay a late fee of \$100 per day for any payment received by City after the 5th day of the month.

6.4 As long as Concessionaire is not in default in any of the terms and conditions contained in this Agreement, the Minimum Annual Guarantee set forth above shall be abated on a monthly basis if during the term hereof through no fault of Concessionaire either or both of the following conditions should occur:

- (a) The number of monthly passengers deplaning on scheduled airline flights at the Airport shall be less than eighty percent (80%) of the number of deplaning passengers as compared with the same month during the first year of the term of this Agreement.
- (b) The business of Concessionaire authorized hereunder shall be affected by shortages or other disruptions in the supply of automobiles, gasoline or other goods necessary for operation of Concessionaire's business which result in twenty-five percent (25%) or greater reduction in monthly Gross Revenue of Concessionaire hereunder as compared with the same month during the first year of the term of this Agreement.

During any period of abatement, Concessionaire will pay to the City ten percent (10%) of Gross Revenue in lieu of the Minimum Annual Guarantee as well as all other applicable sums set forth in this Agreement. Said abatement shall be in effect for each month that either or both of the aforesaid conditions shall continue to exist.

6.5 One-twelfth of the Minimum Annual Guarantee will be paid by electronic funds transfers or check to the City in advance, on the first day of each and every month during the term hereof, without the requirement of a notice to the Concessionaire. The amount shall be pro-rated for time periods less than one month, based upon a fraction for which the numerator shall be the number of days in the month that concessionaire occupies the Assigned Area and the denominator should be the number of days in the month. For payments prescribed under this Section 6.5, Concessionaire shall pay a late fee of \$100 per day for payments received by City after the 5th day of the month.

- 6.6 Concessionaire shall furnish to the City by the twentieth (20th) day of each month a statement showing total Gross Revenue, as defined herein, for the preceding month, and in the prescribed format as defined in Exhibit 6. With each monthly statement the Concessionaire shall remit to the City ten percent (10%) of its aggregate Gross Revenue derived through the end of the preceding calendar month during such contract year, only to the extent that such percentage of said aggregate exceeds the payments made through the end of the preceding calendar month to the City. For the purposes of this Agreement, a contract year shall be a period of twelve consecutive months beginning on the commencement date of this Agreement and every twelve months thereafter. For monthly reports and/or payments received after the due date prescribed under this Section 6.6, Concessionaire shall pay a late charge of \$100.00 per day for each day that Concessionaire is late in submitting the monthly statement/payment.
- 6.7 On the twentieth (20th) day of the month following the anniversary date of the effective date of this Agreement for each contract year of the term hereof, the Concessionaire shall pay to the City at the office of the Director the balance of the fees and charges, if any, due to the City for the preceding period on account of the percentage payment provisions hereof, it being understood that the fees and charges, though payable monthly, shall be computed on an annual basis, except where expressly stated otherwise. If any credit is due to the Concessionaire, such credit shall be given only after the City has received the annual statement certified by an authorized representative of Concessionaire or by an independent Certified Public Accountant which is required under paragraph 6.10 of this Agreement. Such credit, if any, shall be given within 30 days of the date the City reviews and approves a credit.
- 6.8 Fees and charges paid to the City shall not include any taxes, fees or license charges that are required to be levied, assessed or charged by any governmental entity. The Concessionaire agrees to pay such taxes, fees or license charges directly to the appropriate taxing authority by the due date of such tax return.
- 6.9 Concessionaire shall keep full and accurate books and records including, Point of Sale detail records showing the Gross Revenue of Concessionaire by categories as reported to the City and duplicate rental agreement invoices (physical or electronic copies), showing all of the Gross Revenue of Concessionaire. Concessionaire shall issue a numbered invoice with each sale/transaction. City shall have the right through its representative, during normal business hours, to inspect Concessionaire's books and records, including State of Texas sales tax return records for airport transactions. The Concessionaire agrees that all such records and instruments are and will be made available to the City of San Antonio for at least a four-year period following the end of each annual period of this Agreement. Concessionaire shall provide the requested records and instruments within twenty business days after of receipt of the City's written request to inspect. Concessionaire shall pay a late fee of \$100.00 for each day that it fails to produce records for the City's inspection as prescribed by this Section 6.9.
- 6.10 Subsequent to each contract year, Concessionaire shall furnish a written audit to the City for the preceding year (July 1 through June 30) with enough detail so that the City may adequately review the statement and draw conclusions as to whether Concessionaire properly reported gross revenues during such preceding year. Such audit shall be accompanied by a written statement signed by an authorized representative of Concessionaire or independent

CPA certifying that in his/her opinion the Minimum Annual Guarantee and the Percentage Payment paid by the Concessionaire to the City during the preceding year (July 1 through June 30) pursuant to this Agreement were made in accordance with the applicable terms of this Agreement. Such statement shall also contain a list of the Gross Revenue as shown on the books and records of Concessionaire which were used to compute the Percentage Payments made to City during the period covered by the statement. This written audit and statement shall be delivered to the City within one hundred and twenty (120) days of the anniversary date of the contract year or October 31. If the written audit shows that Concessionaire owes a balance of fees or charges, such fees and charges shall be delivered at the same time as the written audit. Concessionaire shall pay a late fee of \$100.00 for each day that it fails to deliver an audited statement as prescribed by this Section 6.10.

6.11 If as a result of concessionaire's audit, it is determined that additional funds are due to the City, the Concessionaire shall pay to the City interest thereon at the rate of ten percent (10%) per annum from the date such item was due and payable until paid.

6.12 The City reserves the right to audit the Concessionaire's books and records at any time for the purpose of verifying the Gross Revenue hereunder. If, as a result of such audit, it is established that the Concessionaire has understated the Gross Revenue received by it from all operations by three percent (3%) or more (after the deductions and exclusions provided for herein) in the amount reported to the City during the previous annual reporting period under this Agreement, all reasonable expenses of said audit shall be borne by the Concessionaire. Any additional percentage fees due shall forthwith be paid by the Concessionaire to the City with interest thereon at ten percent (10%) per annum from the date such additional percentage fees became due. Such interest shall not accrue with respect to disputed items being contested in good faith by Concessionaire. If, however, as a result of the City's audit, it is found that Concessionaire has overpaid any amounts, the City shall credit Concessionaire the amount of such overpayment within thirty (30) days of issuance of the City's final audit report.

6.13 Courtesy notice of late fee payment/reporting. As a courtesy, City will notify Concessionaire when a late fee is triggered for late payment or late reporting. Failure to issue such a courtesy notice will not relieve or suspend the accumulation of late fees against Concessionaire nor shall afford Concessionaire a defense against late fees.

ARTICLE VII. OPERATIONAL STANDARDS

7.1 The Concessionaire will be required to be open or available for business at least sixteen (16) hours per day, seven (7) days per week, between the hours of seven o'clock (7:00) a.m. and eleven o'clock (11:00) p.m. It is expressly understood that the hours of operations required by the City may be up to twenty-four (24) hours per day and any change in the hours of service required by the City hereunder shall be delivered to the Concessionaire in writing at least five (5) days prior to the effective date thereof.

7.2 The Concessionaire agrees to operate and maintain the Assigned Areas in a safe, clear, orderly and inviting condition. The Concessionaire agrees to furnish and maintain a standard of service and quality comparable to that of similar high-quality facilities in the San Antonio area, while at the same time striving to maximize revenues. Concessionaire will provide the

public an adequate supply and variety of late model and low mileage Motor Vehicles which shall be maintained by the Concessionaire in first class operating and mechanical condition and repair; and in clean and attractive condition. Concessionaire agrees that it will at no time use Motor Vehicles whose year model is more than (2) years older than the current model. The City reserves the right to disapprove of any Motor Vehicle supplied by Concessionaire for public use which is more than two (2) years older than the current year model. Notice of such disapproval shall be submitted to Concessionaire by the Director in writing with the reasons therefor and Concessionaire shall take immediate action to withdraw such unsatisfactory Motor Vehicle from service.

- 7.3 Concessionaire shall take all reasonable measures in a proper and ethical manner to maintain, develop and increase the business conducted by it hereunder and shall not divert or cause to be diverted any car rental business from the Airport. Concessionaire shall not, however, permit its agents, servants or employees to engage in solicitation of services offered by Concessionaire on or about the Airport nor shall Concessionaire engage in open or public disputes or conflicts tending to be incompatible with the best interests of the public at the Airport. The City shall be the sole judge as to whether the conduct of Concessionaire's representatives in the solicitation of business constitutes a violation of this paragraph. The City shall have the right to resolve all such disputes or conflicts, and its determination thereof concerning the manner in which Concessionaire shall thereafter operate shall be binding upon Concessionaire.
- 7.4 The Concessionaire agrees to assign a qualified representative to be in charge of the Assigned Areas, services and facilities and to be available to insure the proper conduct of the Concessionaire's operation.
- 7.5 The operations of Concessionaire, its employees, invitees, suppliers and contractors shall be conducted in an orderly and proper manner so as not to annoy, disturb or be offensive to others. All employees of the Concessionaire must conduct themselves at all times in a courteous manner toward the public and in accordance with the rules, regulations and policies developed by the Concessionaire.
- 7.6 Courtesy shuttle vehicles of Concessionaire shall pick up and discharge its customers only at such locations as shall be designated by City from time to time.

ARTICLE VIII. MAINTENANCE

- 8.1 City shall not be required to make repairs or improvements of any kind at the Concessionaire's Assigned Area if said repairs or improvements are the result of any willful or negligent act of Concessionaire, its employees or those under the control of Concessionaire. Further, the City shall not be required to make repairs or improvements of any kind at the Concessionaire's Assigned Area except for structural repairs to the roof, floor and exterior walls and windows of the Airport Terminal. Should City be required to make any repairs or improvements under the provisions herein contained, City shall not be liable to Concessionaire for any damage caused by disrepair of any kind until City has had reasonable opportunity to perform repairs after being notified in writing of the need for same by Concessionaire.

8.2 The Concessionaire agrees to provide at its own expense such cleaning services and supplies as may be necessary or required in the operation and maintenance of its Assigned Area. The Concessionaire also agrees to keep and maintain the interior of its Assigned Area in a clean, neat, sanitary, and attractive condition.

8.3 Moreover, the Concessionaire agrees to maintain and make necessary repairs, structural or otherwise, to the interior of all of its Assigned Area and the fixtures and equipment therein and appurtenances thereto, including, without limitation, the interior windows, doors and entrances, storefronts, signs, show cases, floor coverings, interior walls and ceiling, the interior surface, the surfaces of interior columns exclusive of structural deficiencies, any columns erected by Concessionaire, partitions and lighting within its Assigned Area and serving Concessionaire. Concessionaire shall be responsible for structural repairs only when such are required as a result of concessionaire's actions. Prior to making any repairs other than to its own equipment, all work and the vendors that will be performing such work must be approved by the Director or his representative.

8.4 All repairs done by the Concessionaire or on its behalf shall be of first class quality in both materials and workmanship. All repairs will be made in conformity with the rules and regulations prescribed from time to time by federal, state or local authority having jurisdiction over the work in the Concessionaire's Assigned Area.

8.5 The Director or his duly appointed representative shall have the right to enter the Concessionaire's Assigned Area to:

- (a) Inspect the Assigned Area at reasonable intervals during the Concessionaire's regular business hours or at any time in case of emergency to determine whether the Concessionaire has complied with and is complying with the terms and conditions of this Agreement. The Director may, at his discretion, require the Concessionaire to effect repairs at the Concessionaire's own cost.
- (b) Perform any and all things which the Concessionaire is obligated to and has failed after reasonable written notice to do so, including: maintenance, repairs and replacements to the Concessionaire's Assigned Area.
- (c) Exercise the City's police power.

Prior to entering Concessionaire's Assigned Area under Section 8.5 a-b above, the Director or his designee shall provide Concessionaire 24-hours' advance notice. Such advance notice provision shall not apply in the case of an emergency or when the City is exercising its police powers.

8.6 If the Concessionaire refuses or neglects to undertake the maintenance, repair or replacements requested in writing by the Director; or if the City is required to make any repairs necessitated by the negligent acts or omissions of the Concessionaire, its employees, agents, servants or licensees, the City shall have the right to make such repairs on behalf of and for the Concessionaire. Such work shall be paid for by the Concessionaire within ten (10) days following written demand by Director for said payment at the City's standard rates plus any overhead which may be determined by the Director.

- 8.7 In a timely manner, the Concessionaire will provide for the adequate sanitary handling and removal of all trash, garbage and other refuse caused as a result of the Concessionaire's operations. The Concessionaire agrees to provide and use suitable covered receptacles for all garbage, trash and other refuse in its Assigned Area. Piling of boxes, cartons, barrels or similar items shall not be permitted in a public area.
- 8.8 The City shall provide, or cause to be provided, during the term of this Agreement, security protection similar to that afforded to other Concessionaires at the Airport, and it will issue and enforce rules and regulations with respect to all portions of the Airport. The Concessionaire shall have the right, but shall not be obligated, to provide such additional or supplemental public protection as it may desire at its own cost. Such right, whether or not exercised by the Concessionaire, shall not in any way be construed to limit or reduce the obligations of Concessionaire hereunder. Any extra security protection shall be subject to the authority granted to the Airport's police force and shall in no way hinder or interfere with their duties.

ARTICLE IX. COMPLIANCE

- 9.1 The Concessionaire, its officers, agents, servants, employees, contractors, licensees and any other person whom the Concessionaire controls or has the right to control shall comply with all present and future laws, ordinances, orders, directives, rules, and regulations of the United States of America, the State of Texas, the City of San Antonio, and their respective agencies, departments, authorities or commissions which may either directly or indirectly affect the Concessionaire or its operations on or in connection with the premises of the Airport.
- 9.2 Concessionaire shall pay, on or before their respective due dates, to the appropriate collecting authority, all federal, state, and local taxes which are now or may hereafter be levied upon the premises, or upon Concessionaire, or upon the business conducted on the premises, or upon Concessionaire's property used in connection therewith, provided, however, that the Concessionaire may at its sole expense dispute and contest same and in such case such disputed item need not be paid until finally adjudged to be valid. Concessionaire shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by Concessionaire.
- 9.3 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.
- 9.4 This Agreement is governed by the laws of Texas. Any disputes relating to this Agreement must be resolved in accordance with the laws of Texas.
- 9.5 Concessionaire shall pay any and all parking citations related to its rental car fleet or operations at least on a quarterly basis. However, any outstanding parking citations related to the car fleet of operations shall be paid within 10 days of notice by the City of such outstanding citations.

ARTICLE X. ASSIGNMENT AND SUBLEASING

- 10.1 Concessionaire shall not assign this Agreement or allow same to be assigned by operation of law or otherwise without the prior written consent of City which may be given only by or

pursuant to an ordinance enacted by City Council of San Antonio, Texas provided, however, that the foregoing shall not apply to and shall not prevent the assignment of this Agreement to any corporation with which Concessionaire may merge or consolidate or which may succeed to a controlling interest in the business of Concessionaire.

- 10.2 Concessionaire shall not sublet the Assigned Areas or any part thereof without first having obtained the written consent of the Director. Requests for subleases shall be submitted to the Director prior to the effective date thereof and shall be accompanied by a copy of the proposed sublease agreements and of all agreements collateral thereto. The identity of the proposed sublessee, the area or space to be subleased, the rental to be charged, the type of business to be conducted, reasonable financial history, and all other information requested by the Director shall be specified in writing by Concessionaire.
- 10.3 Each transfer, assignment or subletting to which there has been consent shall be by instrument in writing, in form satisfactory to City and shall be executed by the transferee, assignee or sublessee who shall agree in writing for the benefit of 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 Director. Failure to first obtain in writing 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.
- 10.4 Should the assignment of this Agreement be approved by City and to the extent that such assignee assumes Concessionaire's obligation hereunder, Concessionaire shall by virtue of such assignment be released from such obligation. Should the subletting of the Assigned Areas or any part thereof be approved by City, however, Concessionaire agrees and acknowledges that it shall remain fully and primarily liable under this Agreement, notwithstanding any such sublease and that any such sublessee shall be required to attorn to City under the terms of this Agreement.
- 10.5 The receipt by City of rent from an assignee, subtenant or occupant of the Assigned Areas 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 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 City unless such waiver is in writing, signed by the Director.
- 10.6 In no case may the activities, uses, privileges and obligations authorized herein or the Assigned Areas or any portion thereof be assigned, for any period or periods after a default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by the Concessionaire.

ARTICLE XI. INSURANCE REQUIREMENTS

- 11.1 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's Aviation Department, which shall be clearly labeled "**Airport Car Rental Concession**" 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 applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

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

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Personal Injury d. Contractual Liability e. *Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. f. Broad form property damage, to include fire legal liability	For <u>Bodily Injury</u> and <u>Property Damage</u> 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	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Property Insurance For Physical damage to the property of lessee including improvements and betterments to the leased premises.	Coverage for replacement value with a minimum co-insurance factor of 80% of the cost of lessee's property.

* If Applicable

11.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration 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.

City of San Antonio
Attn: Aviation Department
9800 Airport Blvd.
San Antonio, Texas 78216

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

11.8 It is agreed that Concessionaire's insurance shall be deemed primary and non-contributory

with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

- 11.9 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.
- 11.10 If a Concessionaire has been approved as a self-insurer under the Texas Motor Vehicle Safety Responsibility Act and complies with the City of San Antonio Self-Insurance Requirements for Vehicles Permitted for Hire set forth in Exhibit 7 hereto, City may accept the Concessionaire's certificate of self-insurance as equivalent to, and, substitute for, the Business Automobile Liability insurance above required. Notwithstanding such acceptance, if any, City in its sole discretion reserves the right to rescind such acceptance, if any, City in its sole discretion reserves the right to rescind such acceptance or to amend the terms and conditions set forth in Exhibit 7 upon the provision to Concessionaire of thirty (30) days advance notice thereof.
- 11.11 **Performance Bond** – Concessionaire shall deliver a performance bond, to the Aviation Director, at the address in Section 11.4 of this Agreement, no later than ten (10) days following execution of this Agreement, and maintain throughout the term of this Agreement, either an irrevocable letter of credit or a performance bond in the amount of fifty percent (50%) of the average minimum annual guarantee (equal to the sum of the MAGs divided by five). The performance bond or irrevocable letter of credit shall insure the full and faithful performance by Concessionaire of all the covenants, terms and conditions of this Agreement, shall stand as security for payment by Concessionaire of all valid claims by the City under this Agreement and shall be in form and content acceptable to the Director.

ARTICLE XII. INDEMNITY

- 12.1 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 and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONCESSIONAIRE'S activities under this Agreement, including any acts or omissions of CONCESSIONAIRE, any agent, officer, director, representative, employee, consultant or subcontractor of CONCESSIONAIRE, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONCESSIONAIRE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO**

THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

12.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONCESSIONAIRE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONCESSIONAIRE known to CONCESSIONAIRE related to or arising out of CONCESSIONAIRE'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONCESSIONAIRE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONCESSIONAIRE of any of its obligations under this paragraph.

ARTICLE XIII. DEFAULT BY CITY

13.1 The following contingencies shall be a condition of default by City:

- (a) The permanent abandonment of the Airport.
- (b) The issuance by any court of competent jurisdiction of any injunction preventing or restraining the use of the Airport in such a manner as to substantially restrict the Concessionaire from conducting its Car Rental Concession and the remaining in force of such injunction for at least sixty (60) days.
- (c) The breach by the City of any of the terms, covenants, or conditions of this Agreement to be kept, performed, and observed by the City, and the failure of the City to remedy such breach for a period of sixty (60) days after written notice from the Concessionaire of the existence of such breach has been received by City or if more than sixty (60) days shall be required because of the nature of such breach, if City shall fail within the said sixty (60) day period to commence and thereafter diligently proceed to cure such default.
- (d) The assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport and its facilities in such a manner as to substantially restrict the Concessionaire from conducting its Car Rental Concession if such restriction continues for a period of three (3) months or more.

13.2 In the event any condition of default shall occur (notwithstanding any waiver, license, or indulgence granted by Concessionaire with respect to any condition of default in any form or instance; and notwithstanding and any rights and interests thereby created to be terminated) Concessionaire may seek any and all available damages or remedies at law or in equity, whether or not herein stated.

ARTICLE XIV. DEFAULT BY CONCESSIONAIRE

14.1 Each of the following shall constitute an event of default by Concessionaire:

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

- (b) Concessionaire shall neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained, and on Concessionaire's part to be performed or in any way observed, and if such neglect or failure should continue for a period of thirty (30) days after receipt by Concessionaire of written notice of such neglect or failure, or if more than thirty (30) days shall be required because of the nature of the default, if Concessionaire shall fail within said thirty (30) day period to commence and thereafter diligently proceed to cure such default.
- (c) 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 to answer seeking a reorganization or the readjustment of its indebtedness under the federal bankruptcy law 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.
- (d) An Order for 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.
- (e) 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 thirty (30) days after the filing thereof.
- (f) 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 fifteen (15) days.
- (g) Concessionaire shall become a corporation in dissolution or voluntarily or involuntary forfeit its corporate charter.
- (h) 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 its connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation, or other proceedings or occurrence described in paragraphs (c) through (g) of this Provision 13.1
- (i) Concessionaire shall fail to take possession of its Assigned Areas.
- (j) Concessionaire shall abandon all or any part of its Assigned Areas or shall discontinue the conduct of its operations in all or any part of its Assigned Areas.

14.2 In the event any condition of default shall occur (notwithstanding any waiver, license or indulgence granted by City with respect to any condition of default in any form or instance) City, then or at any time thereafter, shall have the right, at its election, either to terminate this Agreement by giving at least five (5) days written notice to Concessionaire at which time

Concessionaire will then quit and surrender the Assigned Areas to City, but Concessionaire shall remain liable as hereinafter provided, or, 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 rent or preceding breach of covenant and without any liability to Concessionaire or those claiming under Concessionaire for such repossession.

- 14.3 City's repossession of the Assigned Areas shall not be construed as an election to terminate this Agreement nor shall it cause a forfeiture of rents or other charges remaining to be paid during the balance of the term hereof, unless a written notice of such intention be given to Concessionaire, or unless such termination is decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by City because of any default by Concessionaire, City may at any time after such reletting elect to terminate this Agreement for any such default.
- 14.4 Upon repossession, City shall have the right (at its election and whether or not this Agreement shall be terminated) to relet the Assigned Areas or any part thereof for such period or periods (which may extend beyond the term of this Agreement) at such rent or rents and upon such other terms and conditions as City may, in good faith, deem advisable. 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 Assigned Areas, or in the event same are relet, for failure to collect any rentals or other sums due under such reletting.
- 14.5 In the event that City shall elect to relet, then rentals received by City from such reletting shall be applied: first, to the payment of any indebtedness other than rent due hereunder from Concessionaire to City; second, to the payment of any reasonable cost for such reletting; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by City and applied in payment of future rent as the same may become due and payable hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by Concessionaire hereunder, then Concessionaire shall pay such deficiency to City. Such deficiency shall be calculated and paid monthly. Concessionaire shall also pay to City, as soon as ascertained, any costs and expenses incurred by City in such reletting not covered by the rentals received from such reletting of the Assigned Areas.
- 14.6 If City shall terminate this Agreement or take possession of the Assigned Areas by reason of a condition of default, Concessionaire and those holding under Concessionaire, shall no later than fourteen (14) days following such termination or possession remove its goods and effects from the Assigned Areas. If Concessionaire or any such claimant shall fail to effect such removal, City may, at its option, exercise the rights set forth in Section 5.8 herein or 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 City, or, at City's election, and upon given 15 days written notice to Concessionaire of date, time and location of sale, City may sell the same at public auction or private sale on such terms and conditions as to price, payment and otherwise as City in its sole discretion may deem advisable. If, in 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, City shall have the right to dispose of such goods in any manner City may deem advisable.

- 14.7 Concessionaire shall be responsible for all costs of removal, storage and sale, and City shall have the right to reimburse itself from the proceeds of any sale for all such costs paid or incurred by City. If any surplus sale proceeds shall remain after such reimbursement City may deduct from such surplus any other sum due to City hereunder and shall pay over to Concessionaire any remaining balance of such surplus sale proceeds.
- 14.8 If City shall enter into and repossess the Assigned Areas 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 reenter the Assigned Areas to restore its operations hereunder, and Concessionaire hereby waives the right to such redemption and reentrance under any present or future law, and hereby further, for any party claiming through or under Concessionaire, expressly waives its right, if any, to make payment of any sum or sums of rent, 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.
- 14.9 All rights and remedies of 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 advisable.
- 14.10 If proceedings shall at any time be commenced for recovery of possession as aforesaid and compromise or settlement shall be effected either before or after judgment whereby Concessionaire shall be permitted to retain possession of the Assigned Areas, 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.
- 14.11 Any amount paid or expense or liability incurred by City on account of Concessionaire according to the provisions of this Agreement may be deemed to be additional rental and the same may, at the option of City, be added to any rent then due or thereafter falling due hereunder.
- 14.12 The Concessionaire agrees to keep all insurance policies in effect through surrender of its Assigned Areas.

ARTICLE XV. HOLDING OVER

It is agreed and understood that any holding over of Concessionaire after the termination of this Agreement shall not renew and extend same but shall operate and be construed as a tenancy from month to month. During any period of holding over, Concessionaire shall pay to the City rental payments in accordance with the rental provisions in effect during the last year of the contract. Concessionaire shall be liable to the City for all loss or damage on account of any holding over against the City's will after the termination of this Agreement, whether such loss or damage may be contemplated at this time or not. It is expressly agreed

that acceptance of the foregoing payment by the City in the event that Concessionaire fails or refuses to surrender possession shall not operate to give Concessionaire any right to remain in possession nor shall it constitute a waiver by the City of its right to immediate possession.

ARTICLE XVI. FIRE AND OTHER DAMAGE

- 16.1 In the event that structural or permanent portions of the building within an Assigned Area(s) shall be partially damaged by fire or other casualty, the Concessionaire shall give immediate notice thereof to the Director and the same shall be repaired at the expense of the City without unreasonable delay unless City determines that the damage is so extensive that repair or rebuilding is not feasible. From the date of such casualty until said area is so repaired, monthly payments hereunder shall abate in such proportion as may be reasonably determined by the Director whose determination shall be conclusive; provided, however, that if an area shall be so slightly injured in any such casualty as not to be rendered unfit for occupancy, the rent hereunder shall not cease or be abated during any repair period. In the event that the damage to an area should be so extensive as to render it untenable, the rent for such area shall cease until such time as it shall again be put in repair, but in the event of the area being 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, this Agreement as it applies to said area shall cease and come to an end, and the rent hereunder shall be apportioned and paid up to date of such damage. If the City elects to rebuild said areas, the City shall notify Concessionaire of such intention within thirty (30) days of the date of the damage, otherwise, the Agreement as it applies to said area shall be deemed canceled and of no further force or effect.
- 16.2 The City's obligations to rebuild or repair under this Article shall in any event be limited to restoring said area to substantially the condition that existed prior to the commencement of improvements by Concessionaire and shall further be limited to the extent of the insurance proceeds available to City for such restoration. Concessionaire agrees that if the City elects to repair or rebuild as provided in this Article, then Concessionaire will proceed with reasonable diligence and at its sole cost and expense to rebuild, repair and restore its signs, fixture, furnishings, equipment, improvements and other items provided or installed by Concessionaire, in or about the Assigned Area in a manner and to a condition at least equal to that which existed prior to its damage or destruction.

ARTICLE XVII. SECURITY

- 17.1 Where applicable, Concessionaire shall provide for the security of the Air Operations Area (A.O.A.) and/or Security Identification Display Areas (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 provision now exists or may be amended in the future. Where applicable, physical barriers to prevent access to A.O.A. and/or S.I.D.A. must be placed by Concessionaire upon the Assigned Areas and, in appropriate cases, supervised by Concessionaire during construction by Concessionaire upon the Assigned Areas.
- 17.2 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.

17.3 Concessionaire shall comply with the mandates of the Federal Aviation Administration 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.

17.4 Concessionaire shall indemnify and hold harmless City, its officers and employees from any charges, fines or penalties that may be assessed or levied by any department or agency of the United States of America or of the State of Texas by reason of Concessionaire's failure to comply with any applicable security provisions and/or with any provision or requirement for compliance set forth in this Article XVI.

ARTICLE XVIII. ATTORNEY'S FEES

18.1 In case either party hereto brings any action under this Agreement, and prevails in said action, then the prevailing party shall be entitled to recover from the party who does not prevail its court ordered reasonable attorney's fees incurred as a result of said action.

ARTICLE XIX. AMENDMENT

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

ARTICLE XX. RELATIONSHIP OF PARTIES

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

ARTICLE XXI. 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 of San Antonio agencies such as City of San Antonio 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 it nor any person having an interest in this Agreement is an officer or employee of the City of San Antonio or any of its agencies.

ARTICLE XXII. APPROVALS BY CITY

Whenever this Agreement calls for approval by the City, such approval shall be evidenced by the written approval of the Aviation Director of the City of San Antonio or the City Manager of the City of San Antonio or her designee.

Article XXIII. GENERAL PROVISIONS

23.1 Nondiscrimination – The Concessionaire, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree: (1) that no person, on the grounds of race, color, creed, national origin, political ideas, sex, age, or physical or mental handicap, shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements and the furnishing of services, no person on the grounds of race, color national origin, creed, political ideas, sex, age, or physical or mental handicaps, shall be excluded from participation in , denied the benefits of, or otherwise be subjected to discrimination; (3) that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended; (4) that the Concessionaire shall use the Assigned Area in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended; (5) that should the City provide handicapped accessible ingress and egress in specific locations, Concessionaire shall not block or close or otherwise cause the accessway to be nonfunctional without providing alternative means of access approved in writing by the Director.

The Concessionaire shall furnish its accommodations and/or services on a fair, equal, and nondiscriminatory basis to all qualified users thereof, and it shall charge fair, reasonable and nondiscriminatory prices; however, the Concessionaire may be allowed to make reasonable discounts or other similar type of price reductions to purchasers on a non-discriminatory basis.

Noncompliance shall constitute a material breach hereof, and in the event of such noncompliance, within a reasonable period, the City shall have the right to terminate this Agreement.

23.2 Federal Aviation Act, Section 308 – Nothing herein contained shall be deemed to grant the Concessionaire any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act or the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, the Concessionaire shall have the right to possess the Assigned Area under the provisions of this Agreement.

23.3 Subordination to Agreements With the United States Government – This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between the City and the United State Government, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to the City for airport purposes, or the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the

Federal Aviation Act of 1958, as it has been amended from time to time. The City covenants that it has no existing agreements with the United States Government in conflict with the express provisions hereof.

23.4 Nonwaiver of rights – No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as a waiver of any subsequent default or any terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

23.5 Notices – Contractual notices required herein may be given by registered or certified mail by depositing the same in the United States mail in the continental United States, postage prepaid. Any such notice so mailed shall be presumed to have been received by the addressee seventy-two (72) hours after deposit of same in the mail. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until such change is made, contractual notices to City shall be delivered as follows:

Aviation Director
City of San Antonio
9800 Airport Boulevard
San Antonio, Texas 78216

Notices to Concessionaire shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to Concessionaire at the address set forth beneath the signature of Concessionaire herein. If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

23.6 Captions – The headings of the several articles of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

23.7 Severability – If one or more clauses, sections, or provisions of this Agreement shall be held to be unlawful, invalid, or unenforceable, it is agreed that the remainder of the Agreement shall not be affected thereby.

23.8 Agent for Service of Process – It is expressly understood and agreed that if the Concessionaire is not a resident of the State of Texas, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then in any such event the Concessionaire does designate the Secretary of State, State of Texas, its agent for the purpose of service of process in any court action between it and the City arising out of or based upon this Agreement, and the service shall be made as provided by the laws of the State of Texas for service upon a non-resident. It is further expressly agreed, covenanted, and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, Concessionaire may be personally served with such process out of this State by the registered mailing of such complaint and process to the Concessionaire at the address set forth herein. Any such service out of this State shall constitute valid service upon the Concessionaire as of the date of mailing to respond thereto. It is further expressly agreed that the Concessionaire is amenable to and hereby agrees to the

process so served, submits to the jurisdiction, and waives any and all obligations and protest thereto, any laws to the contrary notwithstanding.

23.9 Waiver of Claims- The Concessionaire hereby waives any claim against the City of San Antonio and the State of Texas and its officers, or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit proceeding declaring this Agreement null, void or voidable, or delaying the same or any part hereof, from being carried out.

23.10 Right to Develop Airport – (a) It is further covenanted and agreed that the City reserves the right to further develop or improve the Airport and all landing areas and taxiways as it may see fit, regardless of the desires or views of the Concessionaire and without interference or hindrance. The City further reserves the right to alter, recapture, and/or relocate any and all rental car counters, phone banks, and rental car passenger pick-up areas as necessary, in the sole discretion of the City, to carry out any of its development/improvement plans.

(b) In developing the Airport, the City shall endeavor to give Concessionaire as much notice as possible of any planned alteration, recapture or relocation of rental car counters and/or phone banks . Further, City covenants not to give preferential treatment to other car rental concessionaires to the detriment of Concessionaire.

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

23.12 Incorporation of Required Provisions – The parties incorporate herein by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

23.13 Nonliability of Agents and Employees – No member, officer, agent, director or employee of the City or the Concessionaire shall be charged personally or held contractually liable by or to the other party under the terms and provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

23.14 Successors and Assigns Bound – This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Agreement.

23.15 Right to Amend- In the event that the Federal Aviation Administration or its successor requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, the Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required.

23.16 Time of Essence – Time is expressed to be of the essence of this Agreement.

23.17 Gender – Words of any gender used in this lease shall be held and construed to include any other genders and words in the singular number shall be held to include plural, unless the context otherwise requires.

23.18 Force Majeure – Neither the City nor the Concessionaire shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargos, shortage of material, act of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not within its control. In the event that the airport is closed for commercial aircraft operations for a period of ten (10) consecutive days or longer, Concessionaire may terminate this Concession Agreement by giving written notice to the City of Concessionaire’s election to terminate. Upon such election, all financial obligations of Concessionaire under this contract shall be determined as of the date the airport ceased to operate.

*23.19 Open Records Notice – City hereby discloses to Concessionaire that City is subject to the Texas Public Information Act; and that any records submitted by Concessionaire to City may be subject to disclosure upon a request from the public. In the interest of assisting Concessionaire to timely assert any exemptions from disclosure that may be available to Concessionaire, **City will notify Concessionaire as soon as practicably possible of any request for information that, in City’s good faith belief, may be protected under the Texas Public Information Act.***

ARTICLE XXIV. ENTIRE AGREEMENT

24.1 It is understood and agreed that this instrument contains the entire agreement between the parties hereto. It is further understood and agreed by Concessionaire that City and City’s agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by Concessionaire against City for, and City shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other written or parol agreement with City being expressly waived by Concessionaire, it being understood that the Charter of the City requires all agreements with the City to be in writing and adopted by an ordinance.

The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

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The parties hereto acknowledge that they thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel necessary for them for a full and complete understanding of all rights and obligations herein; and, having so done, do hereby execute this Agreement on the day and year first above mentioned.

CONCESSIONAIRE

CITY OF SAN ANTONIO

By: _____

By: _____

City Manager

Printed or typed name:

Title: _____

Attest: _____

City Clerk

Address:

_____ Federal Tax Identification Number

APPROVED AS TO FORM:

City Attorney

EXHIBIT 1

ZIP CODES FOR BEXAR COUNTY AND ADJACENT COUNTIES

<u>78002</u>	<u>78124</u>	<u>78223</u>	<u>78261</u>
<u>78003</u>	<u>78130</u>	<u>78224</u>	<u>78262</u>
<u>78004</u>	<u>78131</u>	<u>78225</u>	<u>78263</u>
<u>78006</u>	<u>78132</u>	<u>78226</u>	<u>78264</u>
<u>78008</u>	<u>78133</u>	<u>78227</u>	<u>78265</u>
<u>78009</u>	<u>78135</u>	<u>78228</u>	<u>78268</u>
<u>78011</u>	<u>78143</u>	<u>78229</u>	<u>78269</u>
<u>78012</u>	<u>78147</u>	<u>78230</u>	<u>78270</u>
<u>78013</u>	<u>78148</u>	<u>78231</u>	<u>78275</u>
<u>78015</u>	<u>78150</u>	<u>78232</u>	<u>78278</u>
<u>78016</u>	<u>78152</u>	<u>78233</u>	<u>78279</u>
<u>78023</u>	<u>78154</u>	<u>78234</u>	<u>78280</u>
<u>78026</u>	<u>78155</u>	<u>78235</u>	<u>78283</u>
<u>78027</u>	<u>78156</u>	<u>78236</u>	<u>78284</u>
<u>78039</u>	<u>78160</u>	<u>78237</u>	<u>78285</u>
<u>78050</u>	<u>78163</u>	<u>78238</u>	<u>78286</u>
<u>78052</u>	<u>78201</u>	<u>78239</u>	<u>78287</u>
<u>78054</u>	<u>78202</u>	<u>78240</u>	<u>78288</u>
<u>78055</u>	<u>78203</u>	<u>78241</u>	<u>78289</u>
<u>78056</u>	<u>78204</u>	<u>78242</u>	<u>78291</u>
<u>78059</u>	<u>78205</u>	<u>78243</u>	<u>78292</u>
<u>78062</u>	<u>78206</u>	<u>78244</u>	<u>78293</u>
<u>78063</u>	<u>78207</u>	<u>78245</u>	<u>78294</u>
<u>78064</u>	<u>78208</u>	<u>78246</u>	<u>78295</u>
<u>78065</u>	<u>78209</u>	<u>78247</u>	<u>78296</u>
<u>78066</u>	<u>78210</u>	<u>78248</u>	<u>78297</u>
<u>78069</u>	<u>78211</u>	<u>78249</u>	<u>78298</u>
<u>78070</u>	<u>78212</u>	<u>78250</u>	<u>78299</u>
<u>78073</u>	<u>78213</u>	<u>78251</u>	<u>78638</u>
<u>78074</u>	<u>78214</u>	<u>78252</u>	<u>78670</u>
<u>78101</u>	<u>78215</u>	<u>78253</u>	<u>78850</u>
<u>78108</u>	<u>78216</u>	<u>78254</u>	<u>78861</u>
<u>78109</u>	<u>78217</u>	<u>78255</u>	<u>78883</u>
<u>78112</u>	<u>78218</u>	<u>78256</u>	<u>78885</u>
<u>78114</u>	<u>78219</u>	<u>78257</u>	<u>78886</u>
<u>78115</u>	<u>78220</u>	<u>78258</u>	
<u>78121</u>	<u>78221</u>	<u>78259</u>	
<u>78123</u>	<u>78222</u>	<u>78260</u>	

EXHIBIT 2

**SAN ANTONIO INTERNATIONAL AIRPORT
TERMINAL 1 CAR RENTAL COUNTERS**

EXHIBIT 3

**SAN ANTONIO INTERNATIONAL AIRPORT
TERMINAL 2 CAR RENTAL PHONE BANKS**

**SAN ANTONIO INTERNATIONAL AIRPORT
EXHIBIT 4**

**RANKING METHODOLOGY
CAR RENTAL TERMINAL COUNTERS & PHONE BOOTHS**

The various car rental concessionaires shall be ranked according to the five-year gross minimum annual guarantees in descending order. The concessionaire ranked with the highest gross five-year gross minimum annual guarantees shall choose first, before all other car rental concessionaires, the Terminal 1 counter and Terminal phone bank location of its choice from locations made available to rental car concessionaires. The second highest ranked shall be entitled to choose from the remaining available locations, and so on until all concessionaires have chosen a location.

EXHIBIT 5

**CITY OF SAN ANTONIO
AIRPORT CONCESSION DISADVANTAGED BUSINESS PROGRAM
(insert from rfp/proposals documents)**

EXHIBIT 6

**City of San Antonio
Aviation Department
Monthly Revenue and Commission Report**

Concessionaire

Monthly Reporting Period

Monthly Revenue Subject to Commission

Gross Revenue From Operations	Contract Exclusions Allowed¹:
Time and Mileage \$	- 50 % of Collision/Loss Damage Waiver \$ -
Upgrades \$	- Personal Accident Insurance \$ -
Baby Seat \$	- Non-Patron ² \$ -
Additional Driver \$	- <i>If excluding, itemize on left:</i>
Underage Driver \$	- Taxes \$ -
100% Collision/Loss Damage Waiver \$	- Gratuities \$ -
Personal Accident Insurance \$	- Sale of Gasoline or Other fuels \$ -
Personal Effects Insurance \$	- Sale of Employee Uniforms \$ -
Supplemental Liability Insurance \$	- Damage Repair Proceeds \$ -
Uninsured Motorist Protection \$	- Other - \$ -
Personal Effects Coverage \$	- Other - \$ -
Mexico Insurance Coverage \$	- Other - \$ -
Other Insurances \$	- Total Contract Exclusions \$ -
Drop Charges \$	
Cellular Telephone \$	
GARS \$	
Airport Access/Recovery Fees \$	
Vehicle License/Tax Fees \$	
Frequent Flier Fees \$	
Fuel/Gasoline Charges \$	
Taxes- \$	
Gratuities- \$	
Other ³ - [Insert name(s) of Revenue Account(s) here.] \$	
Other ³ - [Insert name(s) of Revenue Account(s) here.] \$	
Other ³ - [Insert name(s) of Revenue Account(s) here.] \$	
Other ³ - [Insert name(s) of Revenue Account(s) here.] \$	
Total Revenue \$	-

Notes:

1. Exclusions claimed must be included and separately listed in Gross Revenue from Operations.
2. Sales to customers who are not patrons of San Antonio International Airport and who reside in Bexar County and surrounding counties.
3. Use these optional fields to report revenue from accounts other than those listed above, if any.

Total Revenue	\$	-
Less Contract Exclusions	\$	-
Amount Subject to Percentage Payment Rate	\$	-
Percentage Payment Rate		10.00%
Percentage Payment Due	\$	-
Less MAG Paid	\$	-
Balance Due with Report	\$	-

EXHIBIT 7

City of San Antonio Self-Insurance Requirements for Vehicles Permitted for Hire

For the City of San Antonio to accept self-insurance in-lieu-of a commercially purchased insurance program, you and your company in addition to meeting the State of Texas requirements for self-insurance must also meet the City of San Antonio's self-insurance requirements.

The City is willing to accept a true self-insurance program that is funded and properly serviced. To be accepted by the City as a self-insured program, the following minimum requirements must be met:

1. All vehicles permitted for hire requesting self-insurance must meet the greater of the following required limits:
 - a. \$500,000 per occurrence combined single limits or \$500,000 bodily injury per occurrence, \$100,000 property damage per occurrence, or current State of Texas Tort claims limits for a Texas Municipality, whichever is greater.

(or)

 - b. Special insurance/limits required by specific contract.
2. Your company must provide the City of San Antonio a report of the financial condition of your company's dedicated loss fund annually. This report must include, but not be limited to the following:
 - a. A CPA's audited financial statement detailing your company's dedicated loss fund equal to the amount of the self-insurance your company is carrying. Along with the CPA's statement, your company must present an actuarial statement, from a qualified actuary, verifying your company's loss fund adequacy at a minimum of a seventy-five (75%) confidence rate. The City shall be notified within thirty days if your fund falls below this level. The City will have the right to independently verify this fund and its adequacy.



CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 21
Council Meeting Date: 6/12/2008
RFCA Tracking No: R-3458

DEPARTMENT: Aviation Department

DEPARTMENT HEAD: Mark Webb

COUNCIL DISTRICT(S) IMPACTED:
City Wide

SUBJECT:
Award of Car Rental Concession Agreements at San Antonio International Airport

SUMMARY:
This Ordinance authorizes Concession Agreements at the San Antonio International Airport with various companies representing the following car rental agencies: Advantage, Alamo, Avis, Budget, Dollar/Thrifty, Enterprise, Hertz, and National. The agreements are for a five year term effective July 1, 2008, with minimum guaranteed rentals of \$45,724,096.00 over the term of the agreements.

BACKGROUND INFORMATION:
The City of San Antonio Aviation Department solicited Requests for Proposals (RFP) for nine available car rental locations on January 21, 2008. At that time, the RFP was advertised in the San Antonio Express-News and posted online on the City's and Airport's websites. RFP packets were mailed to a list of potential respondents.

Proposals were received from eight companies: Southwest-Tex Leasing, Inc. dba Advantage Rent-a-Car; Vanguard Car Rental USA, Inc. dba Alamo Rent A Car; Avis Rent A Car System, Inc.; SATRAC, Inc. dba Budget Rent A Car of San Antonio; DTG Operations, Inc. dba Dollar Rent A Car/Thrifty Car Rental; Enterprise Rent-A-Car Company of Texas; The Hertz Corporation; and Vanguard Car Rental USA, Inc. dba National Car Rental.

Based on the evaluation of the proposals by the Selection Committee, all eight of the Respondents were unanimously selected for recommendation. Upon approval of these agreements, Car Rental Concessionaires will be allowed to select customer service counter locations based on the ranking of the proposed Minimum Annual Guarantees from highest to lowest.

ISSUE:
The proposed ordinance is consistent with prior City Council approved airport concession policy. The car rental services to be provided are critical to properly serving the needs of the traveling public who use the San Antonio International Airport.

ALTERNATIVES:

Current Car Rental Concession Agreements expire on June 30, 2008. If this Ordinance is not approved, Concessionaires would continue in hold-over status while a new Request for Proposals is issued, with no guaranteed increase in revenue to the City during that time. A Request for Proposal could be re-issued, however, we do not anticipate a change in the respondents or the proposals as all of the national car rental companies were represented in the current round of solicitation.

FISCAL IMPACT:

Concessionaires will pay the greater of 10% of gross revenues generated at the Airport or Minimum Annual Guarantees ranging from \$325,000.00 to \$2,200,000.00 as indicated in Attachment 1. Additionally, in Terminal 1, each rental company will pay the City an annual rent of \$77.43 per square foot for customer service counter and office space. Rental rates are adjusted annually on October 1. Ring-down telephones are located in Terminal 2 and planned for Terminal B (currently under construction). Car rental concessionaires are not assessed rental charges for the ring-down telephones.

RECOMMENDATION:

Due to the upcoming expiration of the current Airport Car Rental Concession Agreements, staff recommends City Council approval in order to maintain the level of service San Antonio International Airport passengers expect when traveling to San Antonio.

The required signed Discretionary Contracts Disclosure Forms are attached herein.

ATTACHMENT(S):

File Description	File Name
Attachment 1	Attachment 1 (RFCA).doc
DCDF Advantage	Advantage DCDF signed.pdf
DCDF Alamo	Alamo DCDF Signed.pdf
DCDF Avis	Avis DCDF signed.pdf
DCDF Budget	Budget DCDF signed.pdf
DCDF DTAG	DollarThrifty DCDF signed.pdf
DCDF Enterprise	Enterprise DCDF signed.pdf
DCDF Hertz	Hertz DCDF signed.pdf
DCDF National	National DCDF signed.pdf
RAC Concession Agreement	CarRental.KT.03.07.08.format.doc
RAC Agreement Signature Pages	RAC Signature Pages.pdf
Voting Results	

[Ordinance/Supplemental Documents](#)

200806120527.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

Mark Webb Director Aviation Department

APPROVED FOR COUNCIL CONSIDERATION:

Penny Postoak Ferguson Assistant City Manager