

AN ORDINANCE

2011-03-03-0174

**AUTHORIZING A FIVE-YEAR AGREEMENT WITH CITY TOURS, INC. TO OPERATE THE DOWNTOWN HOTEL SHUTTLE SERVICE CONCESSION FOR SAN ANTONIO INTERNATIONAL AIRPORT FOR A MINIMUM ANNUAL GUARANTEE OF \$240,000.00 IN THE FIRST YEAR.**

\* \* \* \* \*

**WHEREAS**, on November 30, 2010, the City issued a Request For Proposals for the operation of a shared-ride ground transportation service of persons and baggage between San Antonio International Airport and the City's downtown hotels, motels, and Convention Facilities; and

**WHEREAS**, on January 25, 2011, an evaluation committee reviewed the three proposals submitted in response to the RFP and recommended the proposal submitted by City Tours, Inc. d.b.a. Go Airport Shuttle for contract award; and

**WHEREAS**, it is in the best interest of the City to enter into a concession agreement with City Tours, Inc. as recommended by the evaluation committee; **NOW THEREFORE:**

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

**SECTION 1.** The City Manager or her designee is hereby authorized to execute a five-year agreement with City Tours, Inc. for operation of the downtown shuttle service concession for San Antonio International Airport. The agreement shall have with a five-year option in favor of the City, a minimum annual guarantee of \$240,000.00 and ticket booth rentals of \$12,000.00 in the first year, and the agreement shall be in substantially the same form and content as the document set out in Attachment I.

**SECTION 2.** Funds generated by this Ordinance will be deposited into Fund 51001000 per the table below.

| Amount (\$)                   | Internal Order | General Ledger |
|-------------------------------|----------------|----------------|
| 240,000.00                    | 233000000084   | 4405921        |
| 6,000.00                      | 233000000016   | 4409018        |
| 6,000.00                      | 233000000017   | 4409018        |
| Total Amount:<br>\$252,000.00 |                |                |

**SECTION 3.** The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO 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  
03/03/2011  
Item No. 27

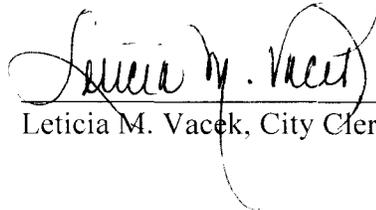
**SECTION 4.** This Ordinance shall take effect immediately upon passage by eight (8) affirmative votes; otherwise it shall be effective ten (10) days after its passage.

**PASSED AND APPROVED** this 3<sup>rd</sup> day of March, 2011.



M A Y O R  
Julián Castro

**ATTEST:**

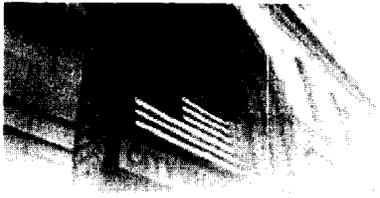


\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**



\_\_\_\_\_  
Michael Bernard, City Attorney



Request for  
**COUNCIL  
ACTION**

City of San Antonio



## Agenda Voting Results - 27

| <b>Name:</b>           | 6, 7, 8, 10, 11, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25A, 25B, 25C, 25D, 25E, 25F, 25G, 25H, 26, 27, 28, 29, 30, 31   |             |     |     |         |        |        |
|------------------------|---|-------------|-----|-----|---------|--------|--------|
| <b>Date:</b>           | 03/03/2011  |             |     |     |         |        |        |
| <b>Time:</b>           | 03:14:19 PM   |             |     |     |         |        |        |
| <b>Vote Type:</b>      | Motion to Approve   |             |     |     |         |        |        |
| <b>Description:</b>    | An Ordinance authorizing a five-year Airport Shuttle Concession agreement to City Tours, Inc. to operate shuttle services for the San Antonio International Airport for the Minimum Annual Guarantee of \$240,000.00 in the first year. [Pat DiGiovanni, Deputy City Manager; Frank Miller, Director, Aviation] |             |     |     |         |        |        |
| <b>Result:</b>         | Passed  |             |     |     |         |        |        |
| Voter                  | Group   | Not Present | Yea | Nay | Abstain | Motion | Second |
| Julián Castro          | Mayor   |             | x   |     |         |        |        |
| Mary Alice P. Cisneros | District 1  |             | x   |     |         |        |        |
| Ivy R. Taylor          | District 2  |             | x   |     |         |        |        |
| Jennifer V. Ramos      | District 3  |             | x   |     |         |        |        |
| Philip A. Cortez       | District 4  |             | x   |     |         | x      |        |
| David Medina Jr.       | District 5  |             | x   |     |         |        | x      |
| Ray Lopez              | District 6  |             | x   |     |         |        |        |
| Justin Rodriguez       | District 7  |             | x   |     |         |        |        |
| W. Reed Williams       | District 8  |             | x   |     |         |        |        |
| Elisa Chan             | District 9  |             | x   |     |         |        |        |
| John G. Clamp          | District 10   |             | x   |     |         |        |        |

**Item No. 27**  
**03/03/2011 Agenda**  
**Ordinance Attachment I**

**AGREEMENT FOR OPERATION OF  
DOWNTOWN HOTEL SHUTTLE SERVICE  
CONCESSION  
FOR SAN ANTONIO INTERNATIONAL AIRPORT**

**2011**

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**AGREEMENT FOR OPERATION OF  
THE DOWNTOWN HOTEL SHUTTLE SERVICE CONCESSION  
FOR SAN ANTONIO INTERNATIONAL AIRPORT**

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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 **City Tours, Inc.**, a Texas corporation acting by and through its respective duly authorized officer(s), hereinafter called "Concessionaire".

**WITNESSETH:**

**WHEREAS**, the City of San Antonio is the owner and operator of the San Antonio International Airport, and;

**WHEREAS**, the City of San Antonio as a service to the traveling public, desires to provide a for hire shared-ride service between the Airport, downtown and other destinations; and

**WHEREAS**, on January 18, 2011, the Concessionaire submitted a proposal to the City to provide such service and its proposal was recommended for acceptance by the City, and

**WHEREAS**, the City wishes to grant to Concessionaire the right to operate the Airport Shuttle Service Concession under an agreement containing mutually satisfactory terms and covenants; and

**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 shall be this Agreement for Operation of Downtown Hotel Shuttle Service Concession for San Antonio International Airport.
- 1.2 "Airport" shall mean the San Antonio International Airport, owned and operated by the City of San Antonio.
- 1.3 "Airport Shuttle Service" shall mean a for-hire shared-ride service which departs from Airport Designated Locations and Downtown Designated Locations, and at the option of the Concessionaire, other Off-Airport locations, in accordance with standards set forth in this Agreement, for various locations within the City of San Antonio.
- 1.4 "Airport Terminals" and "Terminals" shall mean the Terminal Buildings known as Terminal A and Terminal B and/or at other new terminals constructed at San Antonio International Airport.
- 1.5 "Aviation Director" and "Director" shall mean the Director or Interim Director of Aviation at the San Antonio International Airport, 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 or her with respect to any or all matters pertaining to this Agreement.
- 1.6 "City Manager" shall mean the City Manager or Interim City Manager of the City of San Antonio, from time to time appointed by the City Council, and shall include such persons as may from time

to time be authorized in writing by the City Council or the City Manager to act for him or her with respect to any and all matters pertaining to this Agreement.

- 1.7 "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 of the rights, powers or duties which lawfully reside in the City of San Antonio.
  - 1.8 "Contract Year" shall be a period of twelve consecutive months beginning on the Commencement Date of this Agreement and every twelve months thereafter.
  - 1.9 "Designated Locations" shall mean those locations at the Airport designated by the Director for pick-up and delivery of passengers and baggage by Concessionaire ("Airport Designated Locations") and hotels and motels, within Downtown San Antonio to which service is guaranteed to be provided by Concessionaire. ("Downtown Designated Locations")
  - 1.10 "Downtown" shall mean the area of the City of San Antonio contained within and the area approximately ½ mile outside the area whose boundaries are IH 10 to the south, IH 37 to the east and IH 35 to the west and north.
  - 1.11 "Gross Revenue" shall include the following:
    - (a) All receipts and revenues of every kind and character derived from, arising out of, or payable on account of the Airport Shuttle operation conducted by Concessionaire under this Agreement, whether such sales are evidenced by cash, credit or debit card, (without any deduction for credit/debit card fees, if any, charged by credit card company to Concessionaire) exchange or otherwise, including but not limited to, revenue from all tickets (including discounted tickets) that are, sold to any third-party or organization for transportation to the Airport, from the Airport, or on a round trip basis, regardless of where or by what such tickets are sold method (e.g. pre-sale, internet or fax sales, by mechanical or vending devices, at ticket booth, or at Downtown Destination Locations);
    - (b) All revenues and charges to third-parties for any other item or service related to, derived from, or arising out of Airport Shuttle operations of Concessionaire, regardless of where or by what method such items or services are sold, including but not limited to all revenue generated from sale of advertising affixed to or displayed in or on any vehicle, ticket booth, or any other property of Concessionaire which is used in connection with the Airport Shuttle Service;
- 1.11.1 Excluded from "Gross Revenue" are amounts received from any of the following sources:
- (a) The amounts of any sales tax or similar tax imposed by any federal, state, or municipal governmental authority, added to the selling price of Airport Shuttle Services or related items, and paid directly by Concessionaire to such governmental authority, whether currently or hereinafter levied or imposed;
  - (b) Amount of gratuities paid or given by patrons of Concessionaire to employees of the Concessionaire;
  - (c) Receipts from the sales of uniform or clothing to the Concessionaire's employees where such uniforms are required to be worn by such employees.

1.11.2 There shall be no offset from Gross Revenue for the "cost of doing business." Cost of doing business items include, but are not limited, to the following:

(a) Franchise taxes, or other taxes levied on Concessionaire in connection with its Airport Shuttle operations, concession activities, facilities, equipment or on real or personal property, unless otherwise provided in this Definition 1.11.1

(b) Commissions paid to travel agents, tour companies, travel arrangers, meeting planners and others who pre-book Airport Shuttle Services and grant discounts to said purchasers.

1.12 "Minimum Annual Guarantee" is the minimum fee paid annually to the City by Concessionaire in consideration of the rights and privileges granted Concessionaire. For purposes of this Agreement the initial Minimum Annual Guarantee shall be the sum of Two Hundred Forty Thousand Dollars (\$240,000.00), which shall be payable in equal consecutive monthly installments of Twenty Thousand DOLLARS (\$20,000.00).

1.13 "Proposal" is the response of Concessionaire to the Request for Proposals for the Shuttle Service Concession at the San Antonio International Airport. A copy of said response is on file at the Office of the Director and, to the extent that said response does not conflict with any of the provisions herein, the commitments contained therein shall be binding on the Concessionaire.

## **Article II. TERM**

2.1 The term of this Agreement shall commence on the later of June 1, 2011 or the first day of the month following City Council approval of an Ordinance approving this Agreement, ("Commencement Date") and shall continue for a period of five years unless sooner terminated as set forth herein. Provided that the Concessionaire is not in default of any terms and/or conditions of the Agreement, and subject to approval by U. S. Department of Transportation-Office of Civil rights, if such is required, the term of this Agreement may be extended for a five-year period at the sole discretion of the City. Should City desire this Agreement be extended as hereinbefore provided, Director shall provide such notice in writing to Concessionaire at least one hundred and twenty (120) calendar days prior to the date that the extension is to commence.

2.2 It is agreed and understood that any continued provision of Airport Shuttle Service by Concessionaire, after expiration of the final regular term this Agreement shall renew and extend same on a month to month basis, until terminated at the discretion of the City. Concessionaire agrees, in the event of such continuation of service, to pay to the City the privilege fees and premises rentals that are in effect at the end of the regular term of the Agreement. Concessionaire shall be liable to the City for all loss or damage on account any continuation of Airport Shuttle Service against the City's will, after the termination, 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 or continue to provides service, nor shall it constitute a waiver by the City of its right to immediate possession.

## **Article III. PRIVILEGES AND OBLIGATIONS OF THE CONCESSIONAIRE**

3.1 **Operation of Shuttle Service.** The rights and privileges granted herein are for the exclusive operation of a first-class Airport Shuttle Service. It shall not limit the right of passengers of

patrons of the Airport to use other public transportation service that may be authorized by the City to provide public transportation to and from the Airport such as taxi, limousine, charter vehicles, or other services governed by City Code Chapter 33. It is the understanding of the parties that airport shuttle service (shared-ride service charged on a per passenger basis to and from the) to and from destinations within the City of San Antonio and other approved areas is not governed by Chapter 33.

3.1.1 If any service or commodity that is not specifically named herein is offered to the public by Concessionaire as a part of, or incident to, its operations under the rights granted herein, and such service or commodity, in the Director's sole judgment, is not within the scope of the rights granted herein, Concessionaire will no later than five (5) calendar days following receipt of written demand from the Director cease and desist from any further offer or sale of such service or commodity.

3.1.2 In its provision of Airport Shuttle Service, Concessionaire shall have the right of ingress and egress over Airport roadways, subject to any rules and regulations which have been established or shall be established in the future by the Airport, the City of San Antonio or the State of Texas.

### 3.2 **Ticketing Facilities.**

3.2.1 In furtherance of its operations hereunder, and subject to the conditions set forth below, Concessionaire shall construct, at its sole cost, or lease from City ticket booths within Terminals A and/or B at the locations specified in **Exhibits 1 & 2** of this Agreement. In the event that construction is required, certified plans for such booths shall be delivered by Concessionaire to the Director for approval, not later than ninety (90) days after the execution of this contract. Construction of these booths shall be completed not later than one hundred eighty (180) calendar days of the execution of this Contract, unless this construction period is extended, in writing, by the Director. The final plans for location, appearance and nature of all such ticket booths will be subject to the prior written approval of the Director, and Concessionaire shall not commence construction of, or begin operation from, such ticket booths until written approval has been obtained. Concessionaire agrees to operate and maintain the booth(s) in a first class, safe, clean, orderly and inviting condition. All repairs, modifications and maintenance of any ticket booths constructed or operated by Concessionaire shall be the sole financial responsibility of Concessionaire.

3.2.2 The following terms and conditions apply to the ticket booths addressed in the foregoing Paragraph 3.2.1 above:

- (a) **Premises Leased.** The City hereby licenses to Concessionaire and Concessionaire hereby accepts for occupancy the footprint location designated for placement of each ticket booth in accordance with Paragraph 3.2.1 above, subject to the terms and conditions of this Agreement and any rules and regulations promulgated by the Airport for the use of the Premises. A berth for Concessionaire's vehicles shall be provided at existing Terminals and at any new terminal constructed.
- (b) **Lease Payments.** The Concessionaire shall pay to the City the sum of \$500.00 per booth location, for each month or any part thereof that the booth(s) remain in service. Such payment shall be made on or before the first day of the month at the Office of the Director without the requirement of notice or demand, both of which are expressly waived. The City shall, at its cost, provide electricity to the booths. Concessionaire shall provide its own data and communications services and shall install the same in full compliance with applicable airport policies.

- (c) **Relocation and Construction of Ticket Booths.** The parties specifically agree that any or all ticket booth(s) required or allowed pursuant to Paragraph 3.2.1 herein, may be relocated upon prior written notice to Concessionaire, when such relocation is deemed necessary or advisable by the Director due to operational requirements, or for other reasons deemed by the Director to be in the best interests of the traveling public. Because the ability to sell tickets at the Terminals (whether curbside or in the interior of the terminals) is critical to fulfill the objectives of this contract, should such relocation be necessary, the Director shall make a good faith-effort to offer Concessionaire a suitable alternate location(s). Concessionaire specifically waives any and all remedies or claim to damages in connection with such relocation. Concessionaire agrees to vacate, remove, and relocate the ticket booth(s) at its sole cost if such booth(s) were installed by the Concessionaire.
- (d) **Operation of Ticket Booths.** With the exception of personnel in training, or when the prior written approval of the Director or his representatives has been obtained, no more than two service representatives of Concessionaire may work from each ticket booth at any one time. The function of service representatives shall be strictly limited to the sale of tickets, the provision and dissemination of service information, and coordination of the loading of shuttle vehicles. Such representatives shall not be permitted to engage in the solicitation of services offered by Concessionaire nor shall tickets be sold in any Airport location outside the ticket booths. Notwithstanding the above, the Director or his representative, after receipt of a written explanation as to the need therefore, may authorize the temporary use by Concessionaire of additional service representatives to assist in periods of peak demand. The granting of such authorization shall be at the sole discretion of the Director or his representative, it being clearly understood by the parties hereto that Concessionaire by entering into the Agreement shall have no automatic right to such authorization.
- (e) **Concessionaire Modification of Booths and/or Location.** Requests for modifications in the ticket booth location and/or appearance, and the justification therefore, shall be submitted by the Concessionaire in writing, to the Director. Such alteration in ticket booth location and/or appearance will be permitted only upon receipt by Concessionaire of the written approval of the Director. Any modifications requested by Concessionaire shall not be effective until revised plans have been marked "Approved" and signed by the Director.

3.3 **On Board Ticket Sales.** In the event Concessionaire desires to sell tickets to passengers already aboard shuttle vehicles, then and in that event, Concessionaire shall issue a multi-part bonded and sequentially numbered ticket, (with sufficient parts for sales-tracking and audit purposes as well as for proper customer service). The on-shuttle vehicle ticketing system must be reviewed and approved, in writing, by the City's Aviation Department before implementation.

3.4 **Restrictions on Representatives.** Service representatives and drivers alike shall not quote prices for other ground transportation services, and shall refer all such requests for information about other services to City personnel. Concessionaire may not utilize the ticket booths for other transportation activity, prearranged or otherwise, not authorized by this Agreement. The display of advertisements unrelated to the Airport Shuttle Service (e.g. brochures) at the ticket booths is prohibited. Booths must be maintained in a clean, first-class condition, and trash must be removed nightly from the Airport premises and properly disposed of by Concessionaire.

3.5 **Compliance With Federal Law.**

3.5.1 **DBE Participation.** Concessionaire shall use its best efforts to ensure that the vendors from which it purchases its goods and services in accordance with City Policy and Concessionaire's Good Faith Effort Plan, as contained in **Exhibit 3**, satisfy Disadvantaged

Business Enterprise (DBE) criteria set forth in 49 CFR Parts 23 and 26 as they now exist or as they may be amended or replaced in the future. City agrees that it shall notify Concessionaire in the event that regulations are issued by the U.S. Department of Transportation (DOT) implementing Section 511(h) of the Airport and Airway Improvement Act (AAIA) of 1982, as amended. Following such notification, Concessionaire shall be required to take all necessary and reasonable steps to achieve a DBE goal, which shall be the greater of ten percent (10%) or such other applicable DBE goal as shall be established by the Department of Transportation during the term of this Agreement or any extension thereof, and to comply with other appropriate provisions of 49 CFR Parts 23 and 26. The goal shall be measured as a percentage of the total estimated annual Gross Revenue earned by Concessionaire hereunder. DBE participation may be in the form of any legal arrangement meeting the eligibility standards in 49 CFR Parts 23 and 26. 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. If Concessionaire fails to furnish such documentation within thirty (30) calendar days following receipt by Concessionaire of written demand from City for such documentation, or if the City, in its sole discretion, determines Concessionaire's failure to use good faith efforts to achieve the DBE goal to be willful and unjustified, the City, at its option, may immediately terminate this Agreement, by providing written notice to Concessionaire.

**3.5.2 Department of Transportation Requirements.** 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 the award or performance of its concession agreement, or any management contract, or subcontract, purchase, lease agreement, or other agreement covered by 49 CFR Part 23.
- (b) The Concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

- 3.6 **City's Nondiscrimination Clause.** Concessionaire shall also comply with City's Nondiscrimination Clause, to include the submission of Concessionaire's Affirmative Action plan for equal employment opportunity. Concessionaire shall review this plan on a regular basis and update it when necessary to ensure compliance with applicable regulations. The plan shall be monitored through the submission of an annual status report summarizing the activity for the prior year if such is requested by City.
- 3.7 **Compliance with City Code.** Concessionaire shall also comply with any and all applicable provisions of the Code of Ordinances for the City of San Antonio and all amendments thereto. The City reserves the right to impose the requirements of Chapter 33, VEHICLES FOR HIRE, upon this Agreement.
- 3.8 **Air Quality Compliance.** In furtherance of the City's effort to reduce harmful emissions, the Concessionaire's vehicles shall not be left idling at passenger pick-up areas on Air Quality Health Alert Days. The Director, in his sole discretion, may institute other measures to reduce emission due to vehicle idling. Concessionaire shall endeavor to reduce harmful emissions by utilizing only low emission vehicles and/or vehicles that operate on clean burning fuels (e.g., ultra low sulfur diesel, propane, natural gas), in 100% of its vehicle fleet

3.9 **Ridership and Fuel Consumption Reports.** In furtherance of the City's effort to monitor Concessionaire's performance, Concessionaire shall maintain, throughout the term of this Agreement and for four (4) years after the termination of this Agreement, Monthly Ridership Reports.

(a) **Monthly Ridership Reports:** Beginning the 20<sup>th</sup> day of the month in which this Agreement is executed, and not later than the 20<sup>th</sup> day of each month thereafter, Concessionaire shall deliver Monthly Ridership Reports containing the following information:

- 1) the number of one-way tickets sold by Concessionaire for Airport Shuttle Service from the Airport to Downtown Designated Locations.
- 2) the number of one-way tickets sold by Concessionaire for Airport Shuttle Service from Downtown Designated Locations to the Airport;
- 3) the number of round-trip tickets sold by Concessionaire for Airport Shuttle Service regardless of the location of sale;
- 4) the number of one-way or round trip tickets sold by Concessionaire for Airport Shuttle Service to any other location regardless of location of sale;
- 5) the number of disabled customers (as defined by the ADA) transported; and
- 6) the number of tickets refunded.

(b) **Monthly Fuel Consumption Reports:** The City reserves the right to require Concessionaire to submit fuel consumption reports. In the event that such reports are required, the reports shall be submitted not later than the 20<sup>th</sup> day of each month for thereafter, Concessionaire shall deliver Fuel Consumption Reports containing the following information:

- 1) the specific type of fuel used by the Airport Shuttle Fleet;
- 2) the number of gallons used by the fleet, broken down by fuel type; and
- 3) The percentage of each fuel type used with respect to the total gallons of fuel consumed for the month.

3.10 **Monthly Meetings.** Concessionaire or its representative shall meet with Aviation Department personnel on a monthly basis, or as needed, to discuss contractual/operational issues and concerns. The meeting shall be held at San Antonio International Airport at a time and date mutually agreed upon by the Director or his designee, and Concessionaire.

3.11 **Third-party Advertising.** Concessionaire shall be entitled to affix to and display advertising of third-party goods or services on the inside or outside of the shuttle vehicles, provided that all proposed advertising, its size, and the proposed location on the vehicle, be approved in writing, by the Director or his designee, prior to its display on any shuttle vehicle. No third-party advertising shall be permitted on the Airport Shuttle ticket booths.

-----continued on next page -----

**Article IV.  
VEHICLES AND EQUIPMENT**

- 4.1 **Fleet Size.** Concessionaire shall operate and maintain a minimum fleet of fifteen (15) vehicles dedicated specifically to the provision of Airport Shuttle Service under this Agreement. Any modification requested by Concessionaire in the minimum number of dedicated vehicles and the justification therefore, shall be submitted in writing to the Director and may be permitted only upon written approval of the Director. Any modifications, whether requested by City or Concessionaire, shall not be effective until a revised written approval is signed by the Director
- 4.2 **Vehicle Age Requirements.**
- 4.2.1 **Upon Commencement of Contract.** All vehicles initially placed in service this agreement shall be not more than six (6) months old, based on the manufacturer's delivery date to the Concessionaire or first owner, if any. Such vehicles will be initially placed in service not later than one hundred eighty (180) calendar days following execution of this Agreement.
- 4.2.2 **Ongoing Requirements.** No vehicle older than sixty (60) months shall be used in the provision of Airport Shuttle Service, and all vehicles, upon reaching this sixty month limit shall be immediately taken out of service. Concessionaire shall at all times keep its motor vehicles and other equipment used in the performance of this Agreement, in a first-class operable state of repair, including the heating and air conditioning equipment, and consistently maintain clean and neat in appearance. Vehicles shall not be operated unless they are in such condition, and are free from defect or damage to interior, exterior, equipment, mechanisms or structure. Concessionaire shall maintain all necessary motor vehicles, materials and other items, including spare parts, requisite to the continued and consistent performance of its Shuttle Service operations in accordance with its obligations and in the manner contemplated by this Agreement.
- 4.3 **Fleet List.** Upon commencement of operations hereunder, Concessionaire shall furnish Director with a list of all vehicles, owned or leased by Concessionaire, proposed for, or use in connection with its Airport Shuttle Service under this contract, including those that will be equipped with lifts and other equipment necessary to serve individuals who use wheelchairs. The information provided should include current State License Numbers, Vehicle Identification Number, (VIN), the year, make, model and type of each vehicle, the Concessionaire's fleet number, and the date of its acquisition. Thereafter, such information will be maintained at all times, with an updated list provided to the Director upon request, but in no event less than quarterly, with copies submitted to the Aviation Department, Contract Compliance Officer and Operations Division.
- 4.4 **Safety Equipment and Signage.** Upon commencement of operations under this Agreement, Concessionaire agrees that all vehicles to be used in its Shuttle Service operations under this contract, will be equipped with all safety and passenger assistance equipment committed to by Concessionaire and outlined in its Proposal.
- 4.5 **Passenger Capacity.** Vehicles used in the provision of Airport Shuttle Service shall have a manufacturer's rated passenger capacity of no fewer than nine (9) and not greater than twenty-five (25) passengers. At times when a large volume of passengers is expected to require transportation services from the Downtown Area to the Airport (e.g. after a convention ends), or from the airport to the Downtown Area, Concessionaire may request a waiver of the maximum passenger capacity from the Director, in writing, to allow Concessionaire to use vehicles with a greater capacity.
- 4.6 **Seat Belt Requirements.** Notwithstanding the foregoing, maximum vehicle passenger capacity shall in all circumstances be limited to the number of seat belts present for use by the passengers

and driver. Seat belts shall be maintained in a first-class condition, fully operable, be readily accessible for passenger use, and their use strongly encouraged.

- 4.7 **Air Conditioning and Heating Requirements.** All vehicles used by Concessionaire hereunder shall be equipped with operable factory-installed heating and air-conditioning equipment sufficient to assure the year-round comfort of passengers. The air discharged from the air-conditioning interior vent system shall cool to a minimum of 60 Degrees Fahrenheit. The air discharged from the heating system shall heat to a minimum of 75 Degrees Fahrenheit. The air conditioning and heating equipment shall be operated when prudent, with the comfort of the passengers in mind. Notwithstanding the foregoing, vehicle engines should not be idled excessively while parked at Designated Locations.
- 4.8 **Maintenance Personnel Requirements.** Concessionaire shall furnish at its own expense and cost: supervisors, mechanics, uniformed drivers, and such other employees as shall be necessary for the proper conduct and operation of the service, and all of such employees shall have all permits, licenses, approvals, and certificates, required by any applicable ordinance of the City or law of the State of Texas or of the United States. Current copies of such permits, licenses, approvals and certificates shall be maintained by Concessionaire and made available to the Director or his designee for inspection upon request.
- 4.9 **Communications Equipment.** All vehicles used by Concessionaire for the transportation of passengers hereunder shall be equipped with operable two-way radio communications equipment capable of sending and receiving messages to and from Concessionaire's communication base station from any point on the routes used by the vehicles.
- 4.10 **Passenger Baggage Handling.** All vehicles shall provide adequate space for passenger baggage. Such space shall be adequately protected so that baggage will not be damaged by exposure to weather, by the loading or unloading processes, or by shifting about the vehicle while en route. The baggage area shall be loaded in a manner to assure that it is not a hazard to the passengers, and shall be separated from the passenger seating area by a shield, net, guard or barrier, in order to assure that it does not create a hazard to passengers, and the baggage.

**Identification and Signage.** Each vehicle used by Concessionaire in carrying out its obligations under this Agreement shall be identified as such in a manner acceptable to the Director. Such identification shall include, but will not necessarily be limited to, Concessionaire's insignia and a fleet number, set out in easily discernible writing painted on each side and on the rear of the vehicle. Primary vehicle markings shall not be the same as, or substantially similar to the extent of causing confusion with, any other vehicles used by Concessionaire in the course of other not for-hire transportation services it may conduct for profit. (e.g. car rental, limousine service, hotel shuttle). The intent of this provision is to avoid confusion of the traveling public, by clearly distinguishing the airport shuttle vehicles from other not for-hire vehicles that may be operated by the Concessionaire. Concessionaire shall not, however, be prohibited from indicating its corporate identity and ownership on its vehicles, as long as such identification is clearly secondary to the primary markings and, when the vehicle is viewed as a whole the Concessionaire's shuttle service is clearly distinguishable from Concessionaire's other services.

4.11 **ADA Compliance.**

4.11.1 **ADA Equivalent Service.** The parties recognize that Title III of the Americans with Disabilities Act ("ADA") prohibits discrimination on the basis of disability in public transportation services provided by private entities. Under the ADA, a demand responsive system, when viewed in its entirety, must provide a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service such system provides to

individuals without disabilities (“ADA Equivalent Service”). Concessionaire agrees to comply with the foregoing by consistently providing ADA Equivalent Service, and to comply with all other applicable ADA requirements in its provision of Airport Shuttle Service, and outfitting no less than ten (10) fleet vehicles to be ADA-accessible. Beginning one hundred eighty (180) days following the execution of this Agreement, in the event Concessionaire fails to provide such a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service such system provides to individuals without disabilities (“ADA Equivalent Service Failure”) on more than one occasion in any six month period, then and in that event, Concessionaire shall be subject to the following escalating scale of contractual penalties:

- a. Concessionaire's first ADA Equivalent Service Failure within any six (6) month period shall result in a written warning from the Director or Director's designee;
- b. Concessionaire's second ADA Equivalent Service Failure within any six (6) month period shall result in a contractual penalty of \$500.00 being assessed to the Concessionaire;
- c. Concessionaire's third ADA Equivalent Service Failure within any six (6) month period shall result in a contractual penalty of \$1,000.00;
- d. Concessionaire's fourth ADA Equivalent Service Failure within any six (6) month period shall result in Concessionaire deemed in default under this Agreement and the Agreement may be subject to cancellation in accordance with the provisions of the Agreement.

#### 4.11.2 **Correction of ADA Equivalent Service Failure.**

- (a) Upon written notification of an occasion of ADA Equivalent Service Failure due to malfunctioning equipment, Concessionaire shall take the vehicle with malfunctioning equipment out of use as soon as practicably possible for repair of the equipment. In the event the equipment is not repaired within ten (10) business days, the Concessionaire will be deemed to have committed an additional violation, triggering the applicable penalty.
- (b) Upon written notification of an occasion of ADA Equivalent Service Failure for any reason (e.g. ADA customer waited more than a reasonable time for service while other non-ADA customers departed to the same or nearby destinations; the reasonableness of waiting time will vary on time of day) Concessionaire shall identify the cause of the ADA Equivalent Service Failure and submit a written plan to City to avoid a recurrence of similar future service failures. Concessionaire must submit its written plan within ten (10) business days.
- (c) In the event Concessionaire does not agree with the determination that Concessionaire has failed to provide an equivalent level of service, then Concessionaire may submit a written appeal of such determination to the Director. During the pendency of the appeal, the deadline for correction shall be abated. In reaching a decision, the Director shall use the standard set out in Section 4.11.1. The decision of the Aviation Director shall be final.

#### 4.12 **City Inspection and Permits.**

4.12.1 The Concessionaire at its sole expense, arrange for a mechanical and safety inspection of each vehicle to be used in Airport Shuttle Service, by a third-party certified vehicle inspector,

before the vehicle is placed in service. A Department of Transportation ("DOT") inspection and certification shall be sufficient to satisfy this requirement for new vehicles being placed in service. Upon receipt of the vehicle inspection report, indicating that the vehicle has passed such inspection, an annual Airport-issued permit decal will be affixed to the vehicle, to indicate its suitability for service. Third-party inspections shall be conducted annually for mechanical and safety compliance; the Airport will conduct an annual cosmetic inspection. Upon receipt by the Director or his designee of the certification of these three inspections, the Airport will issue an Airport permit decal for the year. Notwithstanding the foregoing, the Director may waive or suspend the requirement of inspections by a third-party certified inspector if he determines that the DOT inspections are sufficient proof of safety and proper mechanical condition of the vehicles.

4.12.2 In addition to these third-party inspections, upon the expiration of six (6) months from the date of issuance of the initial permit decal, and each and every six (6) months thereafter, while the vehicle is in service, each vehicle used in Airport Shuttle Service will be inspected, by a staff ground transportation service designee for compliance with this Agreement, as well as, all other applicable rules, safety standards, regulations and laws.

4.12.3 In addition, all vehicles servicing the Airport shall be made available for inspection by a staff ground transportation service designee at any time determined by the Director to be reasonable and necessary.

4.12.4 No vehicle shall be used for provision of Airport Shuttle Service without a current Airport-issued permit decal. Other than the inspections required herein, and collection of a reasonable and customary inspection fee for same, the City shall not require Concessionaire to obtain any additional permits or pay any additional Airport Shuttle Service permit fees. Vehicles shall not be operated with an expired, forged, altered, defaced, or counterfeit City-issued inspection decal nor shall inspection decals be transferred from one vehicle to another. Concessionaire's operation of a vehicle with an expired, forged, altered, defaced or counterfeit inspection decal will be an event of default under this Agreement and may be grounds for termination.

## **Article V. SCHEDULE OF OPERATIONS**

5.1 **Hours of Operation.** The Concessionaire shall furnish Airport Shuttle Service between the Airport Designated Locations and Downtown Designated Locations (regardless of where service is initiated) between the hours of three thirty (3:30) a.m. and one thirty (1:30) a.m., and shall have a service representative at each Airport Ticket Booth between the hours of seven o'clock (7:00) a.m. and one thirty o'clock (1:30) a.m., seven (7) days per week, 365 days per year; provided however, that if Director deems it necessary, Concessionaire agrees to provide a service representative at such locations for longer periods, within five (5) calendar days of the Director's written notification of such need. Any change in the approved schedule of hours or days of operation requested by the Concessionaire requires written approval from the Director.

5.2 **Minimum Scheduled Departures.**

**Airport Designated Locations.** Shuttle vehicles shall be scheduled for and shall depart from each Terminal every fifteen (15) minutes during peak periods and every thirty (30) minutes during non-peak periods, as established by the Aviation Director or his designee, and communicated in writing to the Concessionaire. Concessionaire is not prohibited from providing more frequent departures to improve service, as long as Concessionaire strictly adheres to the departure schedule set forth above, and in **Exhibit 4**, at a minimum. Beginning the date that the first vehicle provided in the new fleet shall be placed in service, and in any event not later than one

hundred eighty (180) calendar days following execution of this Agreement, if Concessionaire shall fail to comply with the minimum departure schedule required by this Provision 5.2, Concessionaire shall be subject to a contractual penalty payable with its monthly reports, equal to the number of ticketed passengers waiting for the late Shuttle, multiplied by the one-way fare.

5.2.1.1 **Active Loading Exception.** In the event that a vehicle is in the process of loading passengers and/or baggage when the departure time elapses, the driver/loader can complete loading and immediately depart, without violating this requirement.

5.2.1.2 **No Passenger Exception.** A departure from the Airport need not occur at a scheduled time if there is not a ticketed passenger waiting at a boarding area or aboard the Concessionaire's Vehicle scheduled to depart.

5.2.1 **Downtown Designated Locations.** No minimum departures to the Airport have been established herein from Designated Locations in Downtown San Antonio or from other citywide locations. However, it is the intention of the parties hereto that passengers be transported to the Airport in a timely and convenient fashion. In furtherance of that policy, Concessionaire agrees to provide time-certain pick-up of Downtown Designated Locations by reservation, and to provide 24-hour web-based and telephone-based reservation lines, for passenger utilization in making such reservations. The need for a return trip reservation and the reservation line number shall be prominently displayed on all tickets sold as well as displayed in any area where rates and scheduled are displayed.

5.3 **Increase in Demand.** It is the intention of the parties entering into this Agreement to provide adequate, convenient, safe and timely Airport Shuttle Service. It is understood and agreed that if, during the term of this Agreement, the demand for the Airport Shuttle Service shall increase to the extent that, in the opinion of the Director, Concessionaire's operations, equipment or facilities are no longer able to provide timely and consistent service, Concessionaire shall upon written request by the City at the Concessionaire's expense, provide additional personnel, equipment, facilities and capital to the extent deemed necessary to meet such increased demand.

5.4 **Modification of Schedule by Concessionaire.** Any modification requested by Concessionaire in the service schedule, and the justification therefore, shall be submitted in writing to the Director and may be permitted only upon written approval of the Director. Any modifications, whether requested by City or Concessionaire, shall not be effective until written approval of such change is provided by the Director.

## **Article VI. PRIVILEGE FEES, CHARGES AND ACCOUNTABILITY**

6.1 **Privilege Fees and Charges.**

6.1.1 **Minimum Guaranteed Fee.** From and after the Commencement Date, the Concessionaire agrees to pay to the City, one-twelfth of the Minimum Annual Guarantee ("Minimum Monthly Guarantee"), in advance, on the first day of each and every month during the term hereof, without the requirement of a notice to the Concessionaire. For the first contract year, the Minimum Annual Guarantee shall be Two Hundred Forty-Thousand Dollars (\$240,000.00). For subsequent contract years, the Minimum Annual Guarantee shall be eighty-five (85%) of the total fees payable by Concessionaire to City for the preceding contract year provided, however, that the Minimum Guaranteed Fee shall never be less than that of the first contract year.

6.1.2 **Percentage Payments.** From and after the Commencement Date, Concessionaire shall furnish to the City by the 10<sup>th</sup> day of each month a statement disclosing its Gross Revenue for the

preceding calendar month. ("Monthly Revenue Statement). Such Monthly Revenue Statement shall be in the form attached hereto as **Exhibit 8**, and detail the following:

a. the Cumulative Year to Date Gross Revenue up to and including \$2.5 million; due to ticket sales, baggage and fees, multiplied by fifteen percent (15%);

b. the Cumulative Year to Date Gross Revenue in excess of \$2.5 million Dollars, due to ticket sales, baggage and fees will be multiplied by twenty percent (20%);

c. the Cumulative Year to Date Gross Revenue for Advertising sales, if any, multiplied by twenty percent (20%);

d. if the sum of a, b, and c in this Section 6.1.2 is greater than the Year to Date Minimum Annual Guarantee and percentage payments made, then, the difference shall be remitted to the City with the Monthly Revenue Statement. If the sum of that calculation is less than the Year to Date payments made, then no additional percentage payment shall be due for that month.

**6.1.3 Annual Reconciliation.** On the 20th day of the month following the anniversary date of the Commencement Date of this Agreement for each 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. If any credit is due the Concessionaire, such credit shall be given only after the City has received the annual written audit by an independent Certified Public Accountant required by this Agreement.

**6.2 Currency and Proration of Monthly Guaranteed Fee.** All sums payable hereunder shall be paid in U.S. currency or other customary commercial manner at the address set forth herein, or such other place as the Director may designate in writing, without any deductions or offsets whatsoever. Should the Commencement Date be established by agreement to occur on a day other than the 1st day of a calendar month, then Monthly Guaranteed Fee for such fractional month shall be 1/365th of the Guaranteed Fee multiplied by the number of calendar days remaining in the month. Should any Contract Year contain less than 12 calendar months, the Monthly Guaranteed Fee shall be prorated.

**6.3 Abatement Under Certain Circumstances.** If during the term of this Contract, through no fault of Concessionaire, either or both of the conditions listed in Sections (a) and/or (b) below should occur, the Minimum Monthly Guarantee set forth above shall be abated, and Concessionaire will pay to the City fifteen percent (15%) of Monthly Gross Revenue in lieu of the Minimum Monthly Guarantee, as well as all other applicable sums set forth in this Agreement.

a. The number of monthly passengers deplaning on scheduled airline flights at the Airport shall be less than seventy-five percent (75%) 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 the operation of Concessionaire's business which result in a 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.

6.4 **Third-Party Obligations.** In addition to the Minimum Annual Guarantee or Percentage Payment, the Concessionaire agrees to timely pay any and all taxes, fees or license charges directly to the appropriate taxing authority as they come due.

6.5 **Accountability.**

6.5.1. **Ticket Tracking.** Concessionaire shall establish and maintain a computerized, real-time point of sale ticket system with the ability to track each and every transaction at each point of sale, including but not limited to each curbside ticket booth, inside-Terminal ticket booth location, and each Destination Location ticket booth. All proposed ticketing systems must be reviewed and approved, in advance, by the City's Aviation Department. At a minimum, the ticketing system will be required to include the ability to issue a four (4) part, bonded, and sequentially numbered ticket (one part to be given to the driver, one part to be given to the customer for a one-way trip and two parts to be given to the customer for a round-round trip ticket, one for retention by Concessionaire).

6.5.2 **Records.** The Concessionaire shall keep full and accurate books and records showing all of its said Gross Revenue, including but not limited to all pertinent original records and accounts to show daily receipts from all sales made in connection with the operation of the Airport Shuttle Service in accordance with this Agreement, and will maintain such records for a period of four (4) years following the end of the term of this Agreement. The City shall have the right through its representatives, and at all reasonable times, to inspect and audit Concessionaire's books and records. 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.

6.5.3 **Reports.** Concessionaire shall furnish Director on or before the 20<sup>th</sup> day of each month, a report of the number of Airport Shuttle passengers carried to and from the Airport, the type and category of fares charged the Airport Shuttle passengers, the number of trips made during the immediately preceding calendar month, the number of refunded tickets, and any other information as shall reasonably be requested by the Director.

6.5.4 **Annual Audit by Concessionaire.** Within one hundred and twenty (120) calendar days of the anniversary date of each Contract Year, Concessionaire shall employ an independent Certified Public Accountant, who shall prepare an audit of the Gross Revenues reported by Concessionaire during the prior contract year, and Concessionaire's calculation of the Percentage Payments, if any, made to the City. The auditor, in its written report, shall certify that, in its opinion the Minimum Annual Guarantee and the Percentage Payments, if any, paid by the Concessionaire to the City during the preceding year were made in accordance with the terms of this Agreement and correctly calculated. Such report shall also contain a list of the monthly 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.

6.5.5 **Audits by City.** For the purpose of verifying the Gross Revenues hereunder, or any other reasonable business purpose, the City reserves the right to audit the Concessionaire's books and records of receipts at any time during the term of this Agreement, and any extensions thereof. If, as a result of such audit, it is established that the Concessionaire has understated its Gross Revenues by three percent (3%) or more of the amount reported to the City during the previous annual report period under this Agreement, all reasonable expenses of said audit shall be borne by the Concessionaire and any additional Percentage Payments due, shall immediately be paid by the Concessionaire to the City, with interest thereon at a rate of eighteen percent (18%) per annum, from the original date the Percentage Payments became due.

**6.5.6 Payment of Additional Fees or Charges.** If any audit shows that Concessionaire owes additional fees or charges, such fees and charges shall be delivered to the City at the same time as the written audit. In the event that Concessionaire is delinquent for a period of fifteen (15) calendar days or more in paying any fees payable hereunder to the City, interest shall accrue on such outstanding sums at the rate of eighteen percent (18%) per annum from the date such item was due and payable until paid. Such interest shall not accrue with respect to disputed items being contested in good faith by Concessionaire.

**6.5.7 Review of Revenue Control Systems.** Prior to commencement of operations hereunder, the City at its cost may require that an independent Certified Public Accountant and/or the City review the revenue control system(s) to be utilized by Concessionaire, in conformance with paragraphs 19 through 21, Section 640, American Institute of Certified Accountants Statement of Auditing Standards. At the end of each twelve months of operation during the term of this Agreement, the City may require said independent Certified Public Accountant and/or the City to conduct any necessary tests to assure compliance with the revenue control system, in conformance with the same provisions of the Statement of Auditing Standards. Copies of all reports from the independent Certified Public Accountant shall be provided to the City and to Concessionaire. The City may require the Concessionaire to provide copies of internal control reports used by the Concessionaire. Concessionaire shall at all times observe prudent cash-handling procedures, and it shall immediately implement any new procedures, or revise any existing procedures in whatever manner the City may, in its sole discretion, require from time to time, provided that City gives reasonable written notice thereof to Concessionaire.

## **Article VII. FARES**

- 7.1 Fares Charged.** The fares to be charged by Concessionaire are set forth in **Exhibit 5** hereto.
- 7.2 Additional Baggage Fees.** Concessionaire shall establish a written baggage fee policy and submit such policy for the Director's approval, prior to the effective date of this Agreement. The baggage fee policy shall be stated clearly and concisely for the consumer. Such policy must be posted at each ticket booth and inside of each Shuttle vehicle for passenger reference, and also distributed to passengers, in writing, at the time of ticket sale. No baggage fee policy, or change thereto, shall become effective until approved in writing by the Director. Such approval shall not be unreasonably withheld. Upon approval, the baggage policy shall be incorporated into this Agreement as **Exhibit 6**.
- 7.3 Fare Increases.** No fare increase shall be permitted during the first two (2) years of this Agreement for downtown rates provided that fuel prices remain under \$3.50 per gallon. Should fuel prices (for the type of fuel used in Concessionaire's fleet) exceed \$3.50 per gallon, the Aviation Director may authorize a fuel surcharge.

At any time after the first two years of this Agreement, upon request of the Concessionaire, the Director, in his or her sole discretion, may approve a rate increase. Should Concessionaire request a change in existing fares or the addition of other fares after the second year of this Agreement, such request shall be submitted in writing to the Director and shall be accompanied by an explanation and written justification for proposed fare change. The Director agrees that, within two (2) weeks after receiving such request, Director will make a good faith effort to inform Concessionaire whether such request has been approved, denied, or remains under consideration and further information is needed. The parties agree to use their best efforts to exchange all necessary information so that a final decision may be made within 30 days of the original request. The parties hereto specifically agree that the Director, in his sole discretion, may withhold approval of any requested change in fares. No new fares shall become effective

until the rate change has been approved in writing that is signed by the Director. No other charge may be made by Concessionaire in connection with the services provided hereunder. Refunds shall be immediately given without delay upon passenger request if services have not been rendered. Tickets shall not display any non-approved shuttle advertisements, coupons, or messages to convey that refunds are not given. Any advertising on the shuttle tickets must be solely to promote the airport shuttle services. All shuttle ticket advertisements must be approved, in writing by the Director and shall not be used without such prior written approval.

- 7.4 **Display of Fares.** Shuttle rates, refund policy and baggage policy and fees, if any, shall also be prominently displayed in the interior of each vehicle used in the operation of the Airport Shuttle Service, and be easily visible to passengers upon entry or while seated in the vehicle.
- 7.5 **Fare Discounts.** Concessionaire shall have the right to discount fares in advance (e.g., direct mail coupons, pre-sold tickets, etc.); however, Concessionaire shall not have the right, nor shall Concessionaire be allowed, to discount tickets sold at the Airport (i.e., Concessionaire shall not give a discount to a walk-up passenger at the Airport, unless said passenger presents a pre-sold discounted ticket or a discount coupon which the passenger received prior to his or her arrival at the Airport) nor to discount tickets sold to third-party resellers.
- 7.6 **Refund Policy.** Concessionaire shall establish a written refund policy and submit such policy for the Director's approval, prior to the effective date of this Agreement. No refund policy shall become effective until approved in writing by the Director. Upon approval, the baggage policy shall be incorporated into this Agreement as **Exhibit 7**.

#### **Article VIII. OPERATIONAL STANDARDS**

- 8.1 **Fair and Equal Provision of Service.** The Concessionaire shall furnish all service authorized under this Agreement, on a fair, equal and non-discriminatory basis to all persons or users thereof and shall not refuse to transport a properly ticketed passenger, unless such passenger is intoxicated or otherwise is deemed, in the reasonably exercised judgment of the Concessionaire's driver, loading coordinator or supervisor on duty, to be a threat to the safety and welfare of the other passengers, drivers or employees of Concessionaire.
- 8.2 **Standards of Service.** Concessionaire, its representatives, agents, servants and employees, in the operation of the Airport Shuttle Service, shall maintain the highest degree and standard of service, and a courteous, polite and inoffensive demeanor.
- 8.3 **Conduct of Representatives.** Concessionaire shall, at all times, control the conduct, demeanor and appearance of its officers, agents, employees and representatives. Concessionaire shall not permit its agents, servants or employees to engage in solicitation or "hawking" of its services on the grounds of the Airport or the public right-of-ways of the City of San Antonio. Upon written objection from the Director concerning the conduct demeanor or appearances of any of Concessionaire's officers, agents, employees or representatives, Concessionaire shall, no later than five (5) calendar days following receipt of Director's objection, take all steps necessary to remedy the cause of the objection. Concessionaire shall not provide consideration of any kind or character, to individuals, hotel employees or others, to encourage use of the Airport Shuttle Service. Notwithstanding the foregoing, Concessionaire may, as permitted by Paragraph 7.5 above, grant discounts to purchasers who purchase in bulk (20 one-way or 10 round-trip segments or more), such as convention planners, corporate or business accounts and hotel management or commissions paid to travel agents, tour companies, travel arrangers, meeting planners and others who pre-book Airport Shuttle Services and grant discounts to said purchasers. All employees of Concessionaire, while operating any of Concessionaire's vehicles,

shall display identification badges, identifying themselves as such employees, and be in possession of and properly display a current City chauffeur's license.

- 8.4 **Customer Feedback.** Each vehicle used in Airport Shuttle Service and each ticket booth shall be equipped with passenger comment/complaint cards in a location readily available to passengers. The Concessionaire shall provide the Director with information about comments/complaints received upon request.
- 8.5 **Parking and Passenger Loading.** In servicing the Airport, Concessionaire shall park its Airport Shuttle vehicles solely at Airport Designated Location(s), and shall not create congestion in the passenger loading and unloading areas or on the driveways or parking areas. Absent the prior written approval of the Director, no more than two (2) of Concessionaire's vehicles may be parked, at any one time, at an Airport Designated Location. One (1) Airport Shuttle vehicle is permitted to stage at the designated area(s); however, additional vehicles may be permitted to stage at such designated area(s) at the sole discretion of the Director. Vehicles operated by the Concessionaire, but not listed on the current Airport Shuttle fleet report as being utilized for Airport Shuttle Service under this Agreement, shall not load in or adjacent to Designated Locations. In no event shall Concessionaire use the Airport's public parking lot or any parking space on the Airport for the storage of its Airport Shuttle vehicles.

#### **Article IX. CITY'S RIGHT OF ACCESS AND INSPECTION**

- 9.1 City, by its officers, employees, agents, representatives and contractors, shall have the right at any and all reasonable times to inspect Concessionaire's vehicles, equipment, and service facilities to verify performance by Concessionaire of its obligations under this Agreement.

#### **Article X. COMPLIANCE**

- 10.1 **Compliance with Laws.** 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.
- 10.2 **Payment of Taxes.** Concessionaire shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State, and local taxes and fees which are now or may hereafter be levied upon the premises, or upon any of Concessionaire's property used in connection therewith; and shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by Concessionaire.
- 10.3 **Minimum Wage.** 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.
- 10.4 **Venue Selection and Choice of Law.** 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 and proper venue shall be in Bexar County, Texas.

**Article XI.  
ASSIGNMENT**

- 11.1 **Assignment Prohibited.** This Agreement is personal to Concessionaire. Concessionaire shall not assign this Agreement, subcontract the rights and duties hereunder, or allow same to be assigned or subcontracted 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. Any purported assignment or subcontract in violation hereof shall be void.
- 11.2 **Merger or Sale of Stock.** The Concessionaire must obtain the consent of the City to keep this Agreement in effect prior to any transfer or merger of ownership between the Concessionaire and any corporation or other entity.

**Article XII.  
INSURANCE**

- 12.1 Any and all employees, representatives, agents or volunteers of Concessionaire while engaged in the performance of any work required by the City or any work related to a Lease of space, License Agreement, or Concession Agreement with the City shall be considered employees, representatives, agents or volunteers of Concessionaire only and not of the City. Any and all claims that may result from any obligation for which Concessionaire may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of Concessionaire.
- 12.2 Prior to the commencement of any work under this Agreement, Concessionaire shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Aviation Department, which shall be clearly labeled "Downtown Hotel- Airport Shuttle Contract" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to 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.
- 12.3 The City reserves the right to review the insurance requirements of this Article during the effective period of the Agreement and any extension or renewal hereof and to modify insurance coverage's and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Agreement, but in no instance will the City allow modification whereupon the City may incur increased risk.
- 12.4 Concessionaire's financial integrity is of interest to City, therefore, subject to right to maintain reasonable deductibles in such amounts as are approved by City, Concessionaire shall obtain and maintain in full force and effect for the duration of the Agreement, and any extension hereof, at Concessionaire's sole expense, insurance coverage written, on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and rated A-(VII) or better by A.M. Best Company, in the following types for an amount no less than the amount listed below:

|    | TYPE                  | AMOUNT                              |
|----|-----------------------|-------------------------------------|
| 1. | Workers' Compensation | Statutory                           |
| 2. | Employers Liability*  | \$1,000,000/\$1,000,000/\$1,000,000 |

|    |   |  |
|----|---|--|
| 3. | Broad Form Commercial General Liability Insurance to include coverage for the following:<br>a. Premises/Operations<br>b. Independent Contractors<br>c. Contractual Liability<br>d. Products/completed operations<br>e. Personal Injury<br>f. Damage to property rented by you | For Bodily Injury and Property Damage of \$1,000,000 per occurrence;<br>\$2,000,000 General Aggregate or its equivalent in Umbrella or Excess Liability Coverage<br><br>f. \$100,000 |
| 3. | Business Automobile Liability*<br>a. Owned/Leased Vehicles<br>b. Non-owned Vehicles<br>c. Hired Vehicles  | Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.   |
|    |   |  |

\*If Applicable

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

12.6 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). 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  
 Department of Aviation - Properties  
 9800 Airport Boulevard  
 San Antonio, Texas 78216

12.7 Concessionaire agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

12.7.1 Name the City and its officers, employees, volunteers and elected representatives as additional insured 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;

12.6.2 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;

- 12.6.3 Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the City;
- 12.6.4 Provide 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.
- 12.7 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.
- 12.8 In addition to any other remedies the City may have upon Concessionaire's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Concessionaire to stop work hereunder, and/or withhold any payment(s) which become due to Concessionaire hereunder until Concessionaire demonstrates compliance with the requirements hereof.
- 12.9 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.
- 12.10 It is agreed that Concessionaire's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- 12.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- 12.12 Concessionaire and any Subcontractors are responsible for all damage to their own equipment and/or property.
- 12.13 A contractor employed by Concessionaire to design or build Leasehold Improvements to the Premises shall be subject to the same insurance requirements applicable to Concessionaire, as described above. In addition, a contractor must also obtain the following coverages, and provide an acceptable Certificate of Insurance evidencing such coverage:
- Property insurance coverage/Builders Risk on an "All Risk of Physical Loss" form for 100% of the value of all improvements leased from City, or constructed by or for Concessionaire on the Airport. Coverage shall include but not be limited to fire, wind, hail, theft, vandalism and malicious mischief. The coverage shall be written on a replacement cost basis. The proceeds from such insurance shall be used to restore the improvements to their original condition in the event of a covered loss.
- 12.14 A contractor employed by Concessionaire to provide professional services for the Premises or a Leasehold Improvement shall be subject to the same insurance requirements applicable to Concessionaire, as described above. Professional services include Architectural, Engineering and Quantity Surveying. In addition, contractors providing professional services must also obtain the following coverages, and provide an acceptable Certificate of Insurance evidencing such coverage:
- Professional Liability Insurance with a minimum limit of ONE MILLION dollars (\$1,000,000.00) per claim and in aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or

specifications prepared or alleged to have been prepared by the assured The policy shall provide for 30 day notice of cancellation in favor of City.

- 12.15 **Performance Bond.** Unless such period is specifically extended, in writing, by the Director, Concessionaire agrees, not later than fourteen (14) calendar days following execution of this Agreement, to post 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 Minimum Annual Guarantee plus six-thousand dollars. The performance bond or irrevocable letter of credit shall secure 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. The performance guarantee for the first contract year shall be one hundred twenty-six thousand dollars (\$126,000.00) and shall at all times, for subsequent contract years, be no less than fifty percent (50%) of the minimum annual guarantee plus half the annual rent for the ticketing booth(s.)

### **Article XIII. INDEMNITY**

- 13.1 Concessionaire covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the City and the elected officials, employees, officers, Directors, and representatives of the City, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including, but not limited to, personal injury or death and properties damage, made upon the City directly arising out of, resulting from or related to, Concessionaire's activities under this Agreement, any acts of omissions of Concessionaire, any agent, officer, Director, representative, employee, licensee, contractor or subcontractor or volunteer of Concessionaire, and its respective officers, agents, employees, Directors and representatives while in the exercise of performance of the rights or duties under this Agreement, all without however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT.** The provisions of this INDEMNIFICATION 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 promptly advise the City in writing 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 of 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 Article.

**IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT, THAT THE INDEMNITY PROVIDED FOR IN THIS ARTICLE IS AN INDEMNITY EXTENDED BY CONCESSIONAIRE TO INDEMNIFY, PROTECT AND HOLD HARMLESS THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE,** provided however, that the INDEMNITY provided for in this Article shall apply only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the NEGLIGENT ACT OF THE City is the sole cause of the resultant injury, death, or damage. Concessionaire further AGREES TO DEFEND, AT ITS OWN EXPENSE, and ON BEHALF OF THE CITY AND IN THE NAME OF City, any claim or litigation brought against

City and its elected officials, employees, officers, Directors, and representatives in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

**Article XIV.  
DEFAULT BY CITY**

- 14.1 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 operations and the remaining in force of such injunction for at least sixty (60) calendar 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) calendar days after written notice from the Concessionaire of the existence of such breach has been received by City or if more than sixty (60) calendar 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 operations if such restriction continues for a period of three (3) months or more.
- 14.2 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) Concessionaire may declare this agreement and all rights and interests thereby created to be terminated.

**Article XV.  
DEFAULT BY CONCESSIONAIRE**

- 15.1 Each of the following shall constitute an event of default by Concessionaire:
- a. Concessionaire shall fail to timely pay any monetary obligation or maintain a performance guarantee as provided for in this Agreement, and such failure shall continue for a period of ten (10) calendar 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) calendar days (or for such other time periods as may be specifically stated elsewhere herein) after receipt by Concessionaire of written notice of such neglect or failure.
  - 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 involuntary 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) calendar days after the filing thereof.
  - e. A receiver, trustee, or liquidator is appointed by any legislative act, resolution, rule, order or decree of any court, governmental body, agency, officer, and takes 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 calendar (15) calendar days.
  - f. Concessionaire shall become a corporation in dissolution or voluntarily or involuntarily forfeit its corporate charter.
  - g. 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, as a result of or in connection with Concessionaire's bankruptcy, insolvency, trusteeship, liquidation, or other proceedings or occurrence described in Paragraphs (c) through (e) of this Provision 15.1
  - h. If Concessionaire shall discontinue the conduct of all or any part of its operations required hereunder.
- 15.2 In the event any default shall occur, the City then, or at any time thereafter, but prior to the removal of such condition of default (notwithstanding any indulgence granted by City with respect to any condition of default in any form or instance) the City, then or at any time thereafter, shall have the right, at its option, to terminate this Agreement by giving at least five (5) calendar days written notice to Concessionaire, at which time Concessionaire will then cease its Airport Shuttle Service operations on Airport property, but Concessionaire shall remain liable for all damages or deficiencies under this Agreement. On termination by the City, all rights and privileges of Concessionaire hereunder shall cease and Concessionaire shall immediately vacate any space occupied by it on the Airport property and at any other City premises used in the performance of this Agreement and shall make no claim of any kind whatsoever against the City, its agents, or representatives by reason of termination of any act incident thereto.
- 15.3 No acceptance by City of fees, charges, or other payments, in whole or in part, for any period or periods during or after a default of any of the terms, covenants or conditions to be performed, kept, or observed by Concessionaire, other than payment in full, after a default in the payment of fees and charges, and acceptance thereof by City, shall be deemed a waiver of any right on the part of City to terminate this Agreement on account of such default.
- 15.4 No waiver of City of any default on the part of Concessionaire in the performance of any of the terms, covenants, or conditions hereof to be performed, kept or observed by Concessionaire shall be, or be construed to be, a waiver by City of any other subsequent default in performance of any of said terms, covenants or conditions.
- 15.5 It is understood and agreed, that the City must have the unfettered ability to continue providing consistent and continuous Airport Shuttle Service to the public; therefore, if Concessionaire fails or refuses to remove its property from or vacate the Airport within the time period prescribed for doing so in the written notice of termination, the City may, without liability to Concessionaire or those claiming under Concessionaire, eject Concessionaire and remove all Concessionaire's property used in the performance of this Agreement, that may be found upon or within the Airport or any other City premises. The City at its option, may store same for the account of Concessionaire or of the owner thereof at any place selected by City, or, at City's option, and

upon giving fifteen (15) calendar days' written notice to Concessionaire of date, time and location of sale, Concessionaire may sell the same at public auction or private sale on such terms and conditions as to price, payment and otherwise, as Concessionaire in its sole discretion may deem advisable. If, in City's judgment, the cost of removing and storing, or of removing and selling any such goods and effects, exceeds the value thereof or the probable sale price thereof, as the case may be, City shall have the right to dispose of such goods in any manner the City deems advisable.

- 15.6 Concessionaire shall be responsible for all costs of removal, storage and sale of such property, and City shall have the right to reimburse the Airport Revenue Fund from the proceeds of any sale for all such costs paid or incurred by City. If any surplus sale proceeds 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.
- 15.7 In the event that this Agreement shall have been terminated in accordance with Paragraph 15.2, City shall have the option of terminating Concessionaire's unaccrued obligations hereunder and accepting payment by Concessionaire to City of all sums due it under the terms of the Performance Bond in full satisfaction of Concessionaire obligations hereunder, or of continuing in effect all obligations of Concessionaire hereunder; and in the latter event, all of the obligations of Concessionaire under this Agreement shall survive such termination and shall remain in full force and effect for the full term of this Agreement.
- 15.8 The amount of damages for the period of time subsequent to termination or cancellation shall be the average monthly payment made by the Concessionaire during the twelve months preceding such termination or cancellation multiplied by the number of months in the balance of the term of this Agreement. There shall be credited by City against this obligation of Concessionaire the annual net revenues received by City from a subsequent Concessionaire of the service required herein on an annual basis. Concessionaire will continue to pay to the City on the basis of the average of the twelve prior months, subject to the aforesaid credit which will be applied monthly in arrears, but subject to an annual adjustment at the end of each contract year.
- 15.9 It is understood and agreed that the statement of damages under the preceding Paragraph 15.8 of this Article XIV shall not affect or be construed to affect City's right to damages in the event of termination or cancellation where Concessionaire has not received any actual Gross Revenue under this Agreement or has not received gross revenues for twelve full months. In such event, the monthly payments made by the preceding Concessionaire shall be applied to produce an average monthly payment, to the extent necessary.
- 15.10 City upon termination or cancellation pursuant to Article XV may contract with another party and shall have the right to permit any person, firm, or corporation to furnish the services required under the provisions hereof or for other purposes. Such contract may be for a period of time the same as or different from the balance of the term hereunder remaining, and on terms and conditions the same as or different from those set forth in this Agreement.
- 15.11 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, whenever and as often as deemed desirable.

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**Article XVI.  
ATTORNEY'S FEES**

- 16.1 In the event that City brings an action under this Agreement, and prevails therein, it shall be entitled to recover from Lessee its reasonable attorneys' fees, not to exceed the actual amount of attorneys' fees incurred in the defense or prosecution thereof.

**Article XVII.  
AMENDMENT**

- 17.1 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. The parties specifically agree and recognize that the provisions of this agreement allow for the revision of Exhibits 1 and 2 hereto and that, upon execution, any such properly revised and approved Exhibit shall automatically become a part of this Agreement.

**Article XVIII.  
RELATIONSHIP OF PARTIES**

- 18.1 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 payment due hereunder, nor any other provision contained herein, nor any acts of the parties hereto creates a relationship other than the relationship of sophisticated business persons/entities entering into an arms length commercial contract.

**Article XIX.  
CONFLICT OF INTEREST**

- 19.1 Concessionaire acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity. Pursuant to the subsection above, Concessionaire warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Concessionaire further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

**Article XX.  
APPROVALS BY CITY**

- 20.1 Whenever this Agreement calls for approval by the City, such approval shall be evidenced by the written approval of the Director, or the City Manager or their respective designee. All approvals required under this Agreement whether by City or Concessionaire shall not be unreasonably withheld.

**Article XXI.**  
**GENERAL PROVISIONS**

21.1 **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 access way 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.

21.2 **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.

21.3 **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.

- 21.4 **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 operated 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.
- 21.5 **Notices.** 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, notices to City shall be delivered as follows:

Aviation Director  
 San Antonio International Airport  
 9800 Airport Boulevard  
 San Antonio, Texas 78216

and to

City Clerk  
 P.O. Box 839966  
 San Antonio, TX 78283-3966

Notices to Concessionaire shall be deemed sufficient if in writing and mailed, registered or certified mail or via recognized courier service, postage prepaid, addressed to Concessionaire at the address listed below. 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:

Edward Torres, President  
 City Tours, Inc. d.b.a. Go Airport Shuttle  
 1731 S. San Marcos, Suite 826  
 San Antonio, TX 78207

- 21.6 **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.
- 21.7 **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.
- 21.8 **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.

- 21.9 **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.
- 21.10 **Right to Develop Airport.** 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.
- 21.11 **Incorporation of Exhibits.** All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.
- 21.12 **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.
- 21.13 **Non-liability 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.
- 21.14 **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.
- 21.15 **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.
- 21.16 **Time of Essence.** Time is expressed to be of the essence of this Agreement.
- 21.17 **Gender.** Words of any gender used in this Agreement 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.
- 21.18 **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.
- 21.19 **RFP and CONCESSIONAIRE'S PROPOSAL.** To the extent that they do not conflict with the provisions of this Agreement, City's Request for Proposals (RFP) and RFP Addenda, and Concessionaire's proposal are hereby incorporated into this Agreement. The terms of this Agreement shall control over the terms of the RFP, as amended, and over Concessionaire's Proposal. The terms of the RFP, as amended, shall control over Concessionaire's proposal.

## Article XXII.

### ENTIRE AGREEMENT AND AUTHORITY

- 22.1 **Entire Agreement.** Except specifically noted in this document, 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 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.

22.2 **Authority of Signatories.** 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.

EXECUTED and agreed to by the Parties as of the dates indicated below.

**CITY TOURS, INC.  
D.B.A. GO AIRPORT SHUTTLE**

**CITY OF SAN ANTONIO**

By: \_\_\_\_\_  
Edward Torres, President

By: \_\_\_\_\_  
Sheryl L. Sculley, City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

## **EXHIBITS 1 THROUGH 9**

- Exhibits 1&2 – Maps of ticket booth locations within Terminal A and Terminal B
- Exhibit 3 – City's DBE Policy (extended through RFP) and Concessionaire's Good Faith Effort Plan, submitted with proposal
- Exhibit 4 – Designated Locations & Departure Schedule
- Exhibit 5 – Fares
- Exhibit 6 – Baggage Policy
- Exhibit 7 – Refund Policy
- Exhibit 8 – Sample Monthly Revenue Report Form