NHR
08/06/15
Item No. 18

AN ORDINANCE 2015-08-06-0645

AUTHORIZING AMENDMENT NUMBER 5 TO A CONCESSION AGREEMENT WITH SMARTE CARTE, INC. AT THE SAN ANTONIO INTERNATIONAL AIRPORT.

* * * * * *

WHEREAS, by Ordinance 98373 adopted on October 30, 2003, City Council authorized a Concession Agreement for a five year term with Smarte Carte, Inc., for self-serve rental of passenger luggage carts at San Antonio International Airport; and

WHEREAS, the Concession Agreement was amended and extended by adoption of Ordinance 2006-10-05-1152; Ordinance 2009-05-21-0416; and Ordinance 2011-11-03-0904, and is currently on a month-to-month tenancy; and

WHEREAS, the parties wish to extend the term of the Concession Agreement to provide for an additional five year term with three one year options, installation of new luggage carts and racks, removal and relocation of luggage racks from the hourly parking garage which is being demolished for construction of the Consolidated Rental Car Facility, and an increase in rental rates from $4.00 to $5.00; **NOW THEREFORE,**

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

SECTION 1. The provisions of Amendment Number 5 to the existing Concession Agreement with Smarte Carte, Inc., which: (i) extend the term for an additional five years with three one year options' (ii) provide for installation of new luggage carts and racks and removal and relocation of luggage racks from the hourly parking garage; and (iii) increase rental rates from $4.00 to $5.00, are approved. The City Manager or her designee is hereby authorized to execute the Amendment, a copy of which is set out in **Exhibit 1**.

SECTION 2. Funds generated by this Ordinance will be deposited into Fund 51001000, Internal Order 233000000101 and General Ledger 4405923.

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

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

NHR
08/06/15
Item No. 18

PASSED and APPROVED this 6th day of August, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Agenda Item:	**18 (in consent vote: 5, 6, 7, 9, 11, 12, 15, 16, 17, 18, 20, 21, 22, 23, 26A, 26B)**
Date:	08/06/2015
Time:	11:05:50 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the amendment of the concession agreement with Smarte Carte, Inc. for luggage cart racks and luggage carts at the San Antonio International Airport to extend the term for an additional five years with three one-year renewal options with a Minimum Annual Guarantee of $25,000.00. [Carlos Contreras, Assistant City Manager; Frank Miller, Director, Aviation]
Result:	Passed

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

EXHIBIT 1

AMENDMENT NO. 5
TO THE
SAN ANTONIO INTERNATIONAL AIRPORT
CONCESSION AGREEMENT
BETWEEN CITY OF SAN ANTONIO
AND
SMARTE CARTE, INC.

THIS AMENDMENT NO. 5 ("Amendment No. 5") to the San Antonio International Airport Concession Agreement is entered into by and between **SMARTE CARTE, INC.**, a Minnesota corporation authorized to conduct business in the State of Texas ("Concessionaire"), acting by and through its duly authorized corporate representative, and the **City of San Antonio** ("City"), pursuant to Ordinance _____ passed and approved by the City Council of the City of San Antonio on _____, 2015, which amendment is set forth below:

WHEREAS, City and Concessionaire are parties to a Concession Agreement dated November 1, 2003, Lease Number 133066, authorized pursuant to Ordinance 98373 passed and approved by City Council on October 30, 2003 ("Concession Agreement"), pursuant to which Concession Agreement the term was to expire October 31, 2008; and

WHEREAS, the Concession Agreement was amended effective October 1, 2006 pursuant to an Amendment authorized by City Council on October 5, 2006 pursuant to Ordinance 2006-10-05-1152 ("Amendment No. 1"); and

WHEREAS, the Concession Agreement was amended effective March 30, 2010 pursuant to an Amendment authorized by City Council on May 21, 2009 pursuant to Ordinance 2009-05-21-0416 ("Amendment No. 2"), under which the term was extended until October 31, 2010; and

WHEREAS, the Concession Agreement was amended effective November 1, 2010 pursuant to an Amendment authorized by City Council on May 21, 2009, also pursuant to Ordinance 2009-05-21-0416 ("Amendment No. 3"), under which the term was extended until November 1, 2011; and

WHEREAS, the Concession Agreement was amended effective November 18, 2011 pursuant to an Amendment authorized by City Council on November 3, 2011 pursuant to Ordinance 2011-11-03-0904 ("Amendment No. 4"), under which the Agreement is currently on a month-to-month tenancy; and

WHEREAS, due to the proposed construction of the Consolidated Rental Car Facility and new hourly parking garage, which requires the demolition of the hourly parking garage currently in operation at San Antonio International Airport, and will necessitate the removal of certain of the Concessionaire's luggage cart racks and luggage carts, the parties wish to enter into this Amendment No. 5 to extend the term of the Concession Agreement for an additional five (5) year term with three one (1) year renewal options, as well as make other modifications to the Concession Agreement as set forth herein;

NOW THEREFORE:

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

I. The Concession Agreement, as previously amended, is hereby modified as follows:

a. **Section 1.02: Commencement and Ending Date of Term**, page 1 (Data Sheet) of the Concession Agreement is amended to read as follows:

> ***Section 1.02: Commencement and Ending Date of Term***
>
> ***Effective Date:*** *This Amendment No. 5 shall be effective the first day of the month following execution by City. As of the Effective Date, the month-to-month tenancy established under Amendment No. 4 is terminated.*
>
> ***Latest Rental Commencement Date:*** *November 1, 2003*
>
> ***Expiration Date of Term:*** *The last day of the fifth (5th) year following the Effective Date of this Amendment No. 5 ("Term"). Notwithstanding the foregoing, upon Lessee's providing not less than 90 days written notice to Lessor prior to the end of the Term established under this Amendment No. 5, or 90 days written notice prior to the end of any subsequent one year extension term, Lessee may request authorization from the City to exercise up to three (3) options to extend the lease term for one additional year per option. City authorization for Lessee's exercise of any of the one year options shall be in City's sole discretion.*

The remainder of Section 1.02, which is set forth on page 4 of the Concession Agreement, is deleted in its entirety, and the following substituted in its place:

> *The Term established under this Amendment No. 5 shall commence on the Effective Date. Concessionaire's obligation to pay Guaranteed Rent, Percentage Rent, and Additional Rent under this Amendment No. 5 shall commence upon the Effective Date. Any occupancy of the Premises by Concessionaire following the Commencement Date and prior to the Rental Commencement Date shall be subject to all terms and conditions hereof other than payment of Rental. The Term hereof shall end on the Expiration Date set forth herein, unless sooner terminated in accordance with this Concession Agreement. Unless otherwise approved in writing by the Director, Concessionaire shall open its concession for business to the public (with all required improvements substantially completed and the Premises fully fixtured, stocked with high quality merchandise and products and staffed, with Concessionaire prepared to engage in selling high quality merchandise and products and/or services as permitted hereunder) by the Latest Rental Commencement Date.* ***"Lease Year"*** *shall mean any*

successive twelve (12) month period commencing on the Effective Date.

b. **Section 2.01: Minimum Annual Guaranteed Rent ("Guaranteed Rent" or "MAG"),** page 1 of Concession Agreement is amended to read as follows:

*(a) **Guaranteed Rent**: Commencing with the Effective Date of this Amendment No. 5, MAG shall be Twenty-Five Thousand and Zero/Hundred Dollars ($25,000.00) during the first Lease Year of the Term established under this Amendment No. 5, payable in equal consecutive monthly installments of Two Thousand Eighty-Three Dollars and Thirty-Three/One Hundred Dollars ($2,083.33). The MAG for the second Lease Year and each succeeding Lease Year shall be calculated by multiplying 85% by the total amount of concession fees (consisting of MAG and Percentage Rent) due from Operator to the City in the immediately preceding twelve-month period and be provided to Concessionaire within 30 days of the beginning of the succeeding Lease Year. For example, assuming that the Lease Year begins in January, in order to provide the MAG to the Concessionaire in December, the MAG would be based on the Rents due, excluding Additional Rents, for the sales during the prior twelve month period between November 1 through October 31. In no event, however, shall the MAG for any Lease Year beginning with the Effective Date be less than $25,000.00.*

(b) Percentage Rent: Commencing with the Effective Date of this Amendment No. 5, and for the first two Lease Years of the Term established under this Amendment No. 5, Percentage Rent shall be twenty percent (20%) of all Gross Receipts per Lease Month, payable monthly, for those months in which the year-to-date Percentage Rent exceeds the year-to-date MAG. For Lease Years 3 through 5 of the Term established under this Amendment No. 5, and for any extension options exercised under this Amendment No. 5, Percentage Rent shall be twenty percent (20%) of the first $200,000 in Gross Receipts per Lease Year, and twenty-two percent (22%) of Gross Receipts over $200,000 per Lease Year, payable monthly.

The remainder of Section 2.01, pages 1 and 5 of the Concession Agreement, shall remain unchanged.

c. **Section 5.01 Construction of Premises**, page 10 of the Concession Agreement, is amended to add a new subparagraph (e) to read as follows:

(e) No later than July 15, 2015, Concessionaire shall remove the luggage racks and carts from the short-term and long-term garages to accommodate demolition of the short-term public parking garage and construction of the Consolidated Rental Car Facility. No later than January 1, 2016, Concessionaire shall remove all of the current luggage cart racks and luggage carts located in the Terminals, and install new state-of-the-art luggage cart racks and

luggage carts at the locations depicted in Exhibits **A-2a, A-2b, A-2c, A-2d, and A-2e**. *Concessionaire shall install no fewer than 8 luggage cart racks, providing no fewer than 175 luggage carts servicing the Airport Terminals at any one time. Upon completion of the Consolidated Rental Car Facility to be constructed on the site of the current short-term public parking garage, Concessionaire may, with the approval of the Aviation Director, install luggage racks and carts on the public parking levels of the Consolidated Rental Car Facility and in the long-term parking garage.*

The remainder of Section 5.01 shall remain unchanged.

d. **Exhibits A-1, A-2a, A-2b, A-2c, A-2d, and A-2e,** attached hereto and incorporated by reference herein, replace in their entirety Exhibits A-1, A-2a, A-2b, and A-2c attached to the Concession Agreement. **Exhibits A-2a, A-2b, A-2c, A-2d, and A-2e** show the locations where the new state-of-the-art luggage racks and luggage carts are to be places ("Premises").

e. **Exhibit F, Street Pricing Policy and Requirements,** of the Concession Agreement, Subsection E, General Pricing Requirements, is deleted in its entirety, and following substituted in its place:

General Pricing Requirements.
In all other situations and circumstances for which no specific pricing requirements has been established, Concessionaire shall abide by the following pricing requirements:

Concessionaire shall offer for sale only goods and/or services of first-class quality. For such goods and/or services, Concessionaire shall charge fair, reasonable and competitive prices. When an item has a suggested retail price premarked and established by the manufacturer or distributor, Concessionaire shall not charge the public a price higher than the suggested retail premarked price without the prior written approval of the City, through the Aviation Director, which approval shall not be unreasonably withheld. When an item has no suggested retail price or premarked price, the item shall be sold at a price first approved by the City, through the Aviation Director, which approval shall not be unreasonably withheld.

Pursuant to **Exhibit F, Street Pricing Policy and Requirements,** of the Concession Agreement, Subsection E, General Pricing Requirements, the City authorizes Concessionaire to charge no more than Five Dollars ($5.00) per luggage cart rental, commencing on the Effective Date.

II. This Amendment No. 5 sets forth the entire agreement between the parties regarding the subject matter hereof. Unless modified herein, the terms and conditions of the Concession Agreement, as amended by Amendments No. 1, No. 2, No. 3, and No. 4 remain in full force and effect.

III. This Amendment is executed in multiple counterparts each of which contains all required original signatures and shall be considered an original on its own.

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

SMARTE CARTE, INC.

By: James N May

Its: CFO

Date: 5-26-15

CITY OF SAN ANTONIO
A Texas home-rule municipality

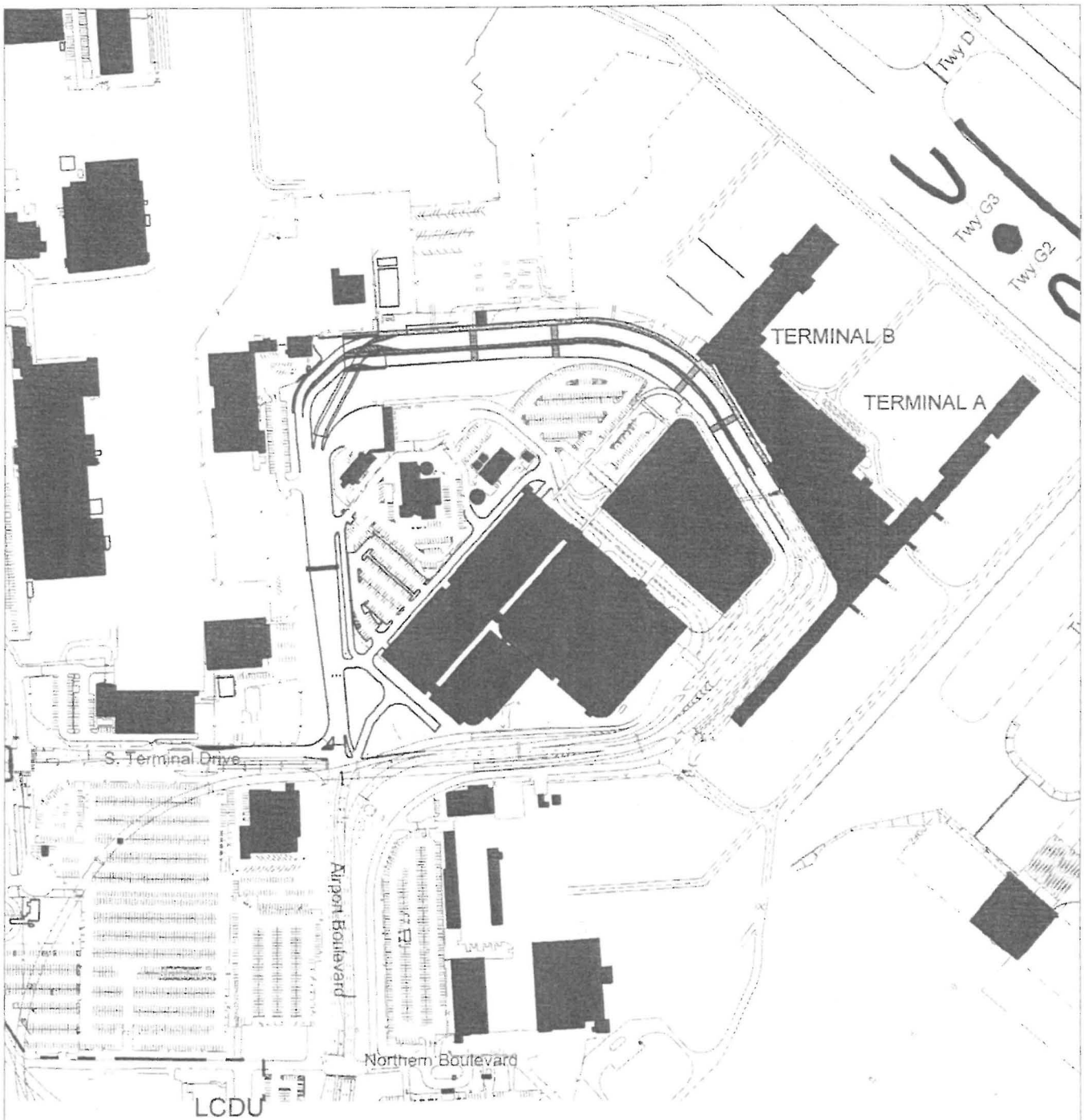
By:_____
City Manager

Date:_____

Approved as to form:

_____
City Attorney

Drawing Name: P:\Lease Exhibits\SAIA\CAD BASE drawings\2015_ALP.dwg User: dd17510 May 11, 2015 - 3:27pm



SAN ANTONIO AIRPORT SYSTEM

SAN ANTONIO INTERNATIONAL AIRPORT GENERAL SITE PLAN

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

DEPARTURE LEVEL

May 11, 2015

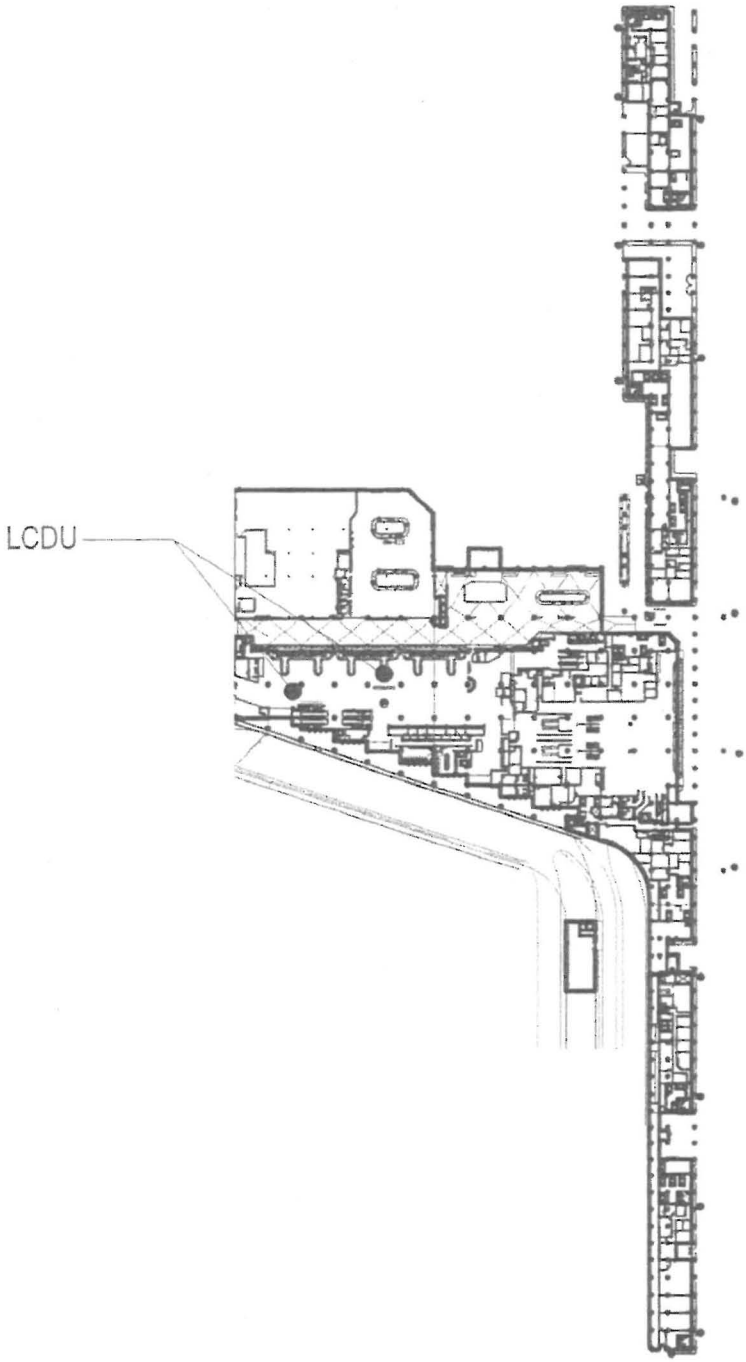
LCDU LOCATION

PAGE 1 OF 6

EXHIBIT

A1

Drawing Name: P:\Lease Exhibits\SAIA\CAD BASE drawings\TERMINALS- ARRIVAL LEVEL.dwg User: dd17510 May 11, 2015 - 3:28pm



SAN ANTONIO AIRPORT SYSTEM

SAN ANTONIO INTERNATIONAL AIRPORT
TERMINAL A
9800 AIRPORT BLVD., SAN ANTONIO, TX 78216

BAGGAGE LEVEL

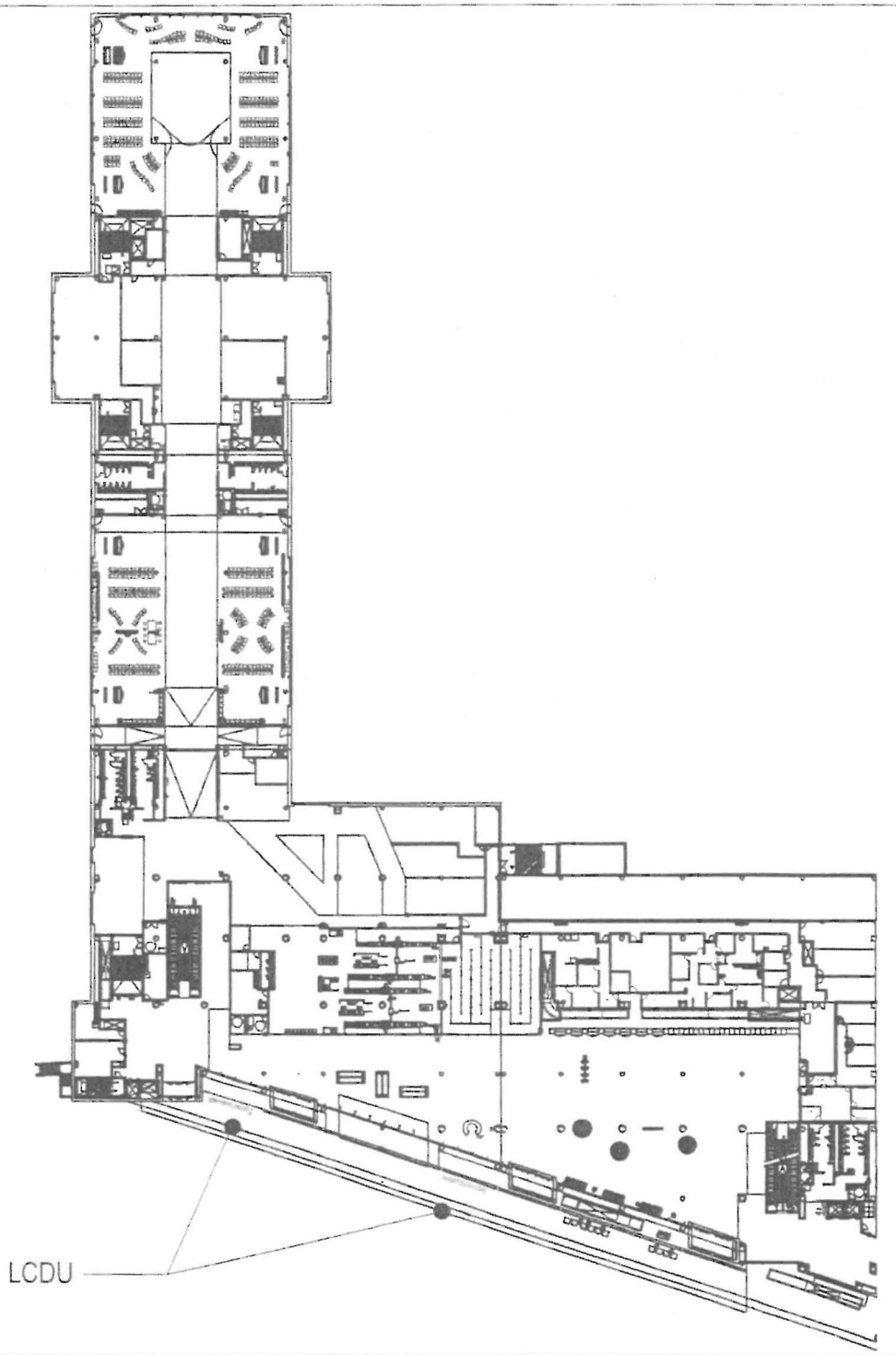
May 11, 2015

LCDU LOCATION

PAGE 2 OF 6

EXHIBIT
A2-a

Drawing Name: P:\Lease Exhibits\SAIA\CAD BASE drawings\TERMINALS- DEPARTURE LEVEL.dwg User: dd17510 May 11, 2015 - 3:20pm



SAN ANTONIO AIRPORT SYSTEM

SAN ANTONIO INTERNATIONAL AIRPORT
TERMINAL B
9710 AIRPORT BLVD., SAN ANTONIO, TX 78216

DEPARTURE LEVEL

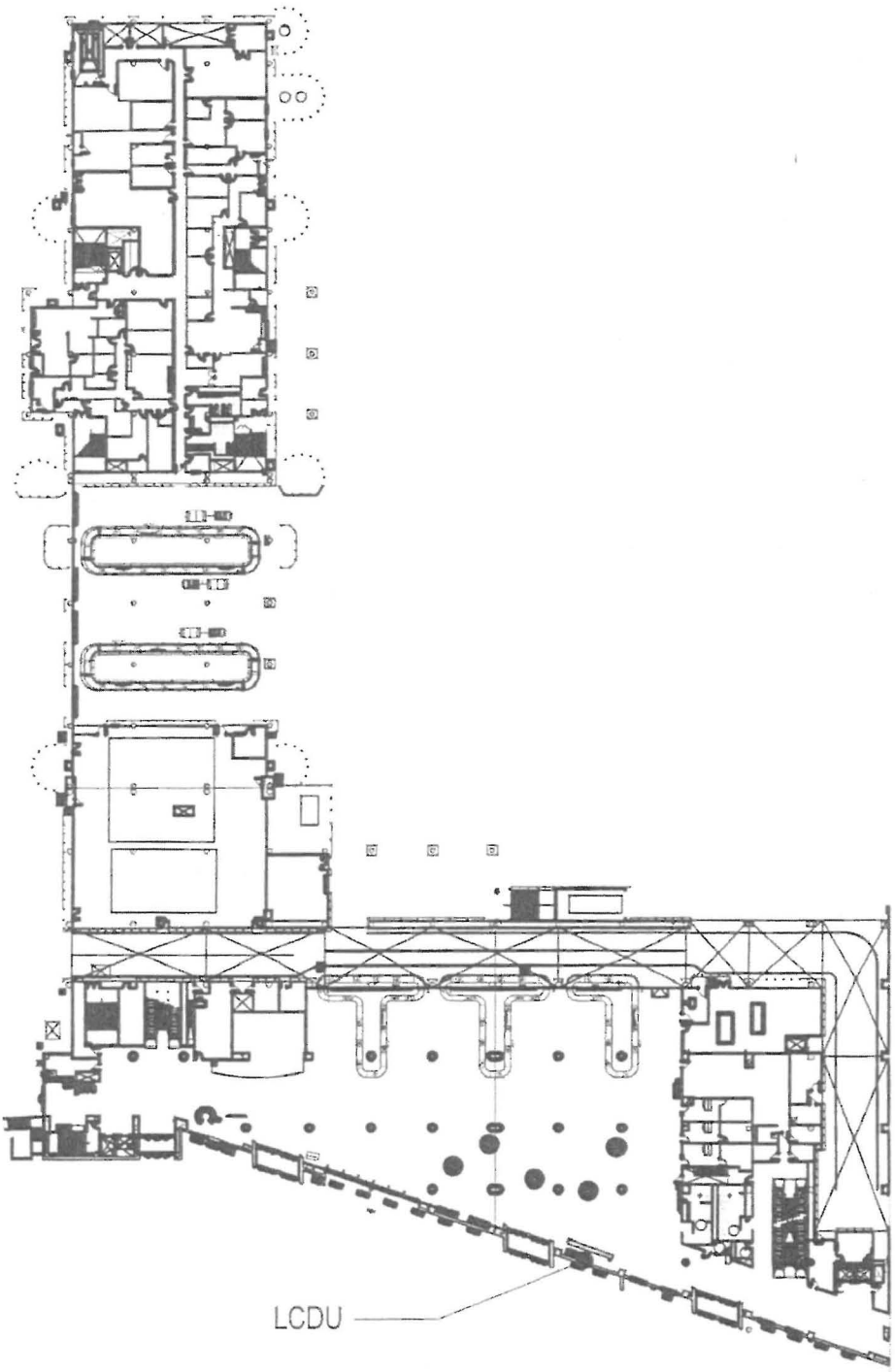
May 11, 2015

LCDU LOCATION

EXHIBIT

A2-b

Drawing Name: P:\Lease Exhibits\SAIA\CAD BASE drawings\TERMINALS- ARRIVAL LEVEL.dwg User: dd17510 May 11, 2015 - 3:21pm



SAN ANTONIO AIRPORT SYSTEM

SAN ANTONIO INTERNATIONAL AIRPORT
TERMINAL B
9710 AIRPORT BLVD., SAN ANTONIO, TX 78216

BAGGAGE LEVEL

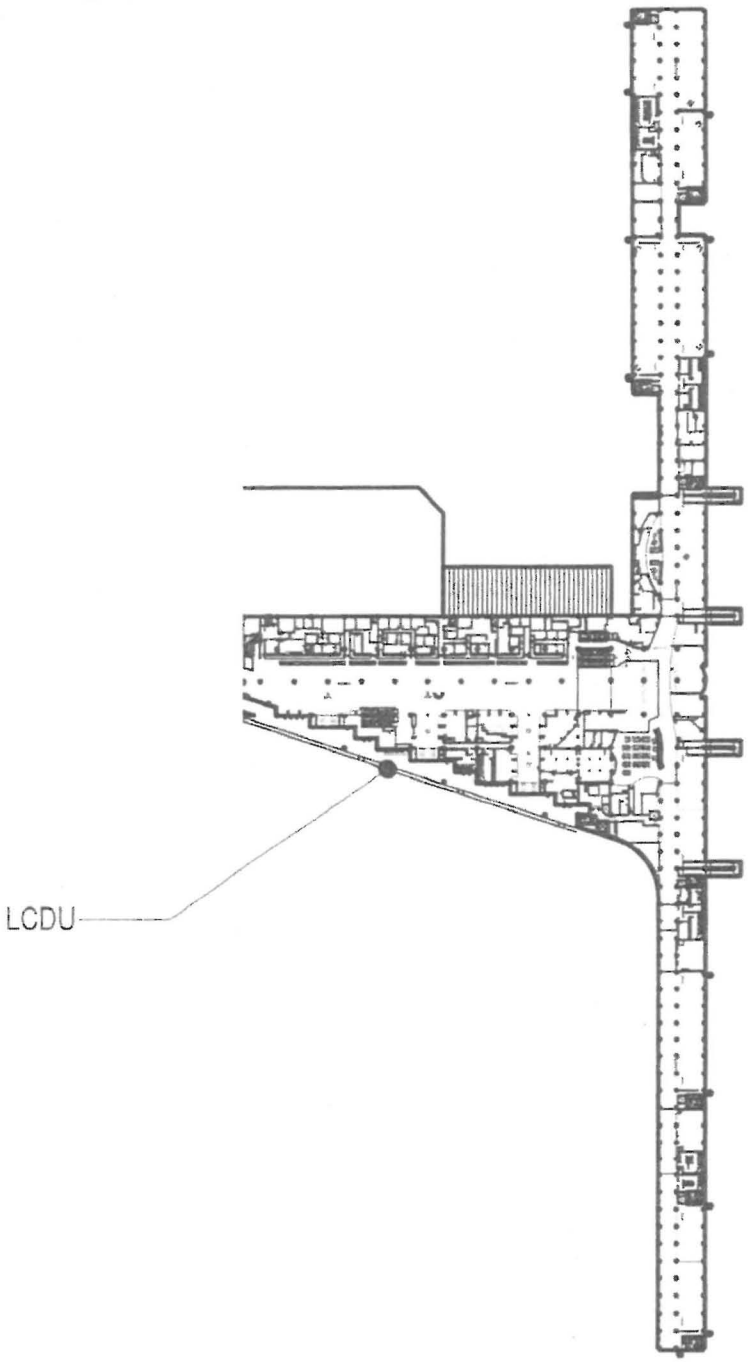
May 11, 2015

LCDU LOCATION

PAGE 4 OF 6

EXHIBIT
A2-c

Drawing Name: P:\Lease Exhibits\SAIA\CAD BASE drawings\TERMINALS- DEPARTURE LEVEL.dwg User: dd17510 May 11, 2015 - 3:18pm



SAN ANTONIO AIRPORT SYSTEM

SAN ANTONIO INTERNATIONAL AIRPORT
TERMINAL A
9800 AIRPORT BLVD., SAN ANTONIO, TX 78216

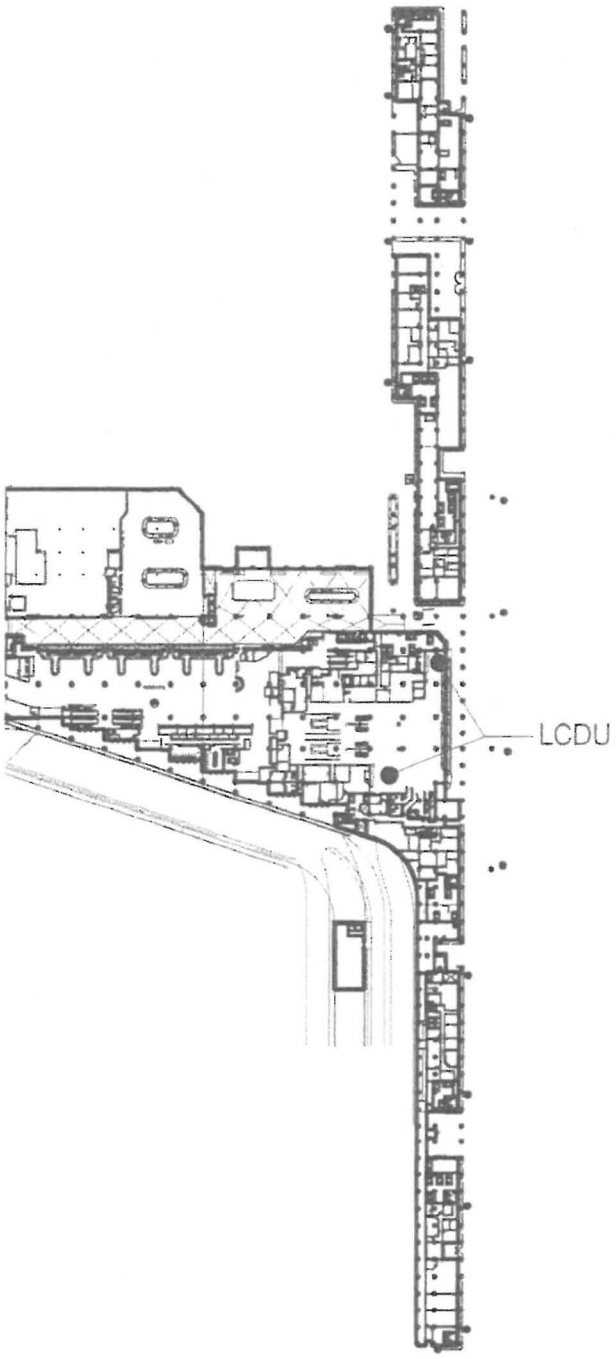
DEPARTURE LEVEL

May 11, 2015

LCDU LOCATION

EXHIBIT
A2-d

Drawing Name: P:\Lease Exhibits\SAIA\CAD BASE drawings\TERMINALS- ARRIVAL LEVEL.dwg User: dd17510 May 11, 2015 - 3:22pm



SAN ANTONIO AIRPORT SYSTEM

SAN ANTONIO INTERNATIONAL AIRPORT
TERMINAL A
9800 AIRPORT BLVD., SAN ANTONIO, TX 78216

U.S. CUSTOMS

May 11, 2015

LCDU LOCATION

EXHIBIT
A2-e