

AGREEMENT FOR OPERATION OF
VALET PARKING SERVICES
CONCESSION

SAN ANTONIO INTERNATIONAL
AIRPORT

by and between

THE CITY OF SAN ANTONIO, TEXAS

and

JACOBSEN/DANIELS ASSOCIATES, LLC
D/B/A
FLY-AWAY VALET

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**AGREEMENT FOR OPERATION OF VALET PARKING SERVICESVALET
CONCESSION AT
SAN ANTONIO INTERNATIONAL AIRPORT**

This Agreement for Operation of Valet Parking Services Concession at San Antonio International Airport (“**Agreement**”) is entered into this _____ day of _____, 2017, by and between the **City of San Antonio (“City”)**, a Texas Municipal Corporation acting by and through its City Manager, pursuant to Ordinance Number _____ passed and approved by the City Council on _____, and **Jacobsen/Daniels Associates, LLC d/b/a Fly-Away Valet, a Michigan limited liability company**, authorized to conduct business in the State of Texas, , hereinafter called “**Concessionaire**”.

WITNESSETH:

WHEREAS, the City is the owner and operator of the San Antonio International Airport (“**Airport**”); and,

WHEREAS, the City of San Antonio, as a service to the traveling public, desires to provide valet parking services at the Airport; and

WHEREAS, the City solicited proposals for the valet parking services and in response to said solicitation, Concessionaire submitted a proposal for valet parking services; and

WHEREAS, the City wishes to grant to Concessionaire the right to operate the Airport Valet Parking Services 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 1 DEFINITIONS

“**Airport**” means San Antonio International Airport.

“**Airport Concessions Disadvantaged Business Enterprise**” (“**ACDBE**”) is defined in **Section 13.1**.

“**Airport Valet Service**” means a service whereby patrons’ automobiles are parked and retrieved by an attendant for a fee.

“**Airport Terminals**” and “**Terminals**” mean the Terminal Buildings known as Terminal A and Terminal B and/or at other new terminals constructed at San Antonio International Airport.

“Allowable Exclusions” is defined in **Section 4.1.4.2.**

“Annual Audit Statement” is defined in **Section 4.7.**

“Applicable Law” means all applicable laws, ordinances, orders, directives, rules, codes and regulations of all Authorities and all grant assurances provided by City to any Authorities in connection with City’s ownership or operation of the Airports, as the same may be amended, modified or updated from time to time.

“Authorities” means the United States of America, and any state, county, city or other local governmental or quasi-governmental authorities, or any department, office, or agency of the foregoing now existing or hereafter created.

“Aviation Director” or **“Director”** means the Director of the City’s Aviation Department or his designee.

“City Standards” means the Airport Rules and Regulations (Chapter 3 of the City code) , the Airport Security Plan, as they now exist or may be amended from time to time.

“Commencement Date” is defined in **Section 3.1.**

“Concession Fee” is defined in **Section 4.1.**

“Designated Locations” means those locations at the Airport designated by the Director for transaction of Valet Parking Services operations by Concessionaire (**“Airport Designated Locations”**).

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

“Effective Date” means the date that the respective documents are fully executed by all parties to the applicable agreement.

“Gross Revenue” is defined in **Section 4.1.4.**

“Minimum Annual Guaranteed Concession Fee” or **“MAG”** means the minimum amount of money due City annually from Concessionaire in consideration of the rights granted Concessionaire under this Agreement. Payment shall be made on a monthly basis according to the terms of this Agreement.

“Monthly Revenue Report” is defined in **Section 4.2.1.**

“Percentage Payment” means the sum of money due City on account of City’s share of Gross Revenue from all sales and revenues as hereinafter provided.

“Performance Guarantee” is defined in **Section 9.1.**

“Term” is defined in **Section 3.1**.

ARTICLE 2 GRANT OF CONCESSION

City hereby awards and grants to Concessionaire, and Concessionaire hereby accepts, the right and the obligation to operate an Airport Valet Service during the Agreement Term for the purpose of providing valet parking services at the Airport. The concession rights and privileges granted and awarded to Concessionaire are expressly made subject to all of the terms, covenants and conditions of this Agreement. The privilege granted herein is for the operation of an Airport Valet Service and for no other purpose, and does not extend to or encompass any other activity or area.

ARTICLE 3 TERM AND PREMISES

3.1 Term

This Agreement shall be effective and binding between the parties as of the Effective Date. The Term shall be for five (5) years, unless earlier terminated pursuant to the provisions of this Agreement.

Termination for Convenience. In addition to all other rights to termination specifically set forth in this Agreement or available at law or in equity, City shall have the right to terminate this Agreement without cause by providing written notice to Concessionaire at least thirty (30) days prior to the date on which such termination shall take effect.

3.2 PREMISES

3.2.1 In furtherance of its operations hereunder, and subject to the conditions set forth below, Concessionaire shall construct or remodel, at its sole cost, or lease from City, A customer pick-up / drop off area(s) storage or office area space(s), and any other facilities deemed required to provide the agreed upon services within the airport premises. All locations and service areas used for the operations of the Valet service shall be agreed upon in advance and in writing between Concessionaire and City as shown in **Exhibits 1 through 3** attached hereto and incorporated by reference (“**Premises**”). In the event that construction is required, certified plans for such Premises shall be delivered by Concessionaire to the Director for approval, not later than ninety (90) days after the execution of this Agreement. Construction of Premises shall be completed no later than one hundred eighty (180) calendar days after execution of this Agreement, unless this construction period is extended, in writing, by the Director. The final plans for location, appearance and nature of all such Premises will be subject to the prior written approval of the Director, and Concessionaire shall not commence construction of, or begin operation from, such Premises until written approval has been obtained. All repairs, modifications and maintenance of any Premises constructed or operated by Concessionaire shall be the sole financial responsibility of Concessionaire.

3.2.2 The City hereby licenses to Concessionaire and Concessionaire hereby accepts for occupancy as the Premises the footprint location designated for placement of each part of the operation in accordance with **Subsection 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. Airport Designated Locations for the storage of patrons' vehicles by Concessionaire shall be provided at any current or future Airport parking facility and in such quantity and area as approved by the airport Director as shown in **Exhibit 3**.

3.2.3 The parties specifically agree that any or all Premises required or allowed pursuant to **Subsection 3.2.1** herein may be relocated, at Concessionaire's sole expense, upon prior written notice to Concessionaire from the Director, 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 or Airport operations.

ARTICLE 4 PRIVILEGE FEES, CHARGES, RENT, AND ACCOUNTABILITY

4.1 Concession Fee

4.1.1 Minimum Annual Guaranteed Concession Fee.

During the first Contract Year, and subject to all applicable provisions of this Agreement, Concessionaire shall pay to the City Minimum Annual Guaranteed Rent ("**MAG**") of \$200,000. Should any Contract Year contain less than 12 calendar months, MAG shall be prorated in a manner determined by the Director in accordance with customary business practices.

The MAG for the second Contract Year, and each succeeding Contract Year, shall be the greater of the MAG for the preceding year or eighty-five percent (85%) of the total rent (consisting of MAG and Percentage Rent) paid for the preceding year. In no event, however, shall the MAG for any year be less than 100% of the MAG for the first Contract Year.

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

4.1.2 Minimum Annual Guaranteed Concession Fee Payment

One-twelfth of the MAG will be paid by electronic funds transfer or check to the City in advance, on the first day of each and every month during the term hereof, without the requirement of a notice to the Concessionaire. The amount shall be pro-rated for time periods less than one month or less than one year, based upon a fraction for which the numerator shall be the number of days in the month that Concessionaire operates the Valet, and the denominator shall be the total number of days in the month.

4.1.3 Percentage Fees

(a) In addition to MAG and other charges set forth herein, Concessionaire shall pay to City, for each month of the Term, Percentage Fees for those months in which the year-to-date Percentage Fees exceeds the year-to-date MAG. The Percentage Fees shall be equal to the product of the applicable Percentage Fee Rate, times Concessionaire's year-to-date Gross Receipts (as defined below) minus the sum of the year-to-date MAG amount and percentage fee paid year-to-date as set forth below [$Percentage\ Fee = (Percentage\ Fee\ Rate \times year-to-date\ Gross\ Receipts) - (year-to-date\ MAG + percentage\ fee\ paid\ year-to-date)$]. Concessionaire shall pay Percentage Fee, if any, to the City monthly without prior notice or demand within 15 days after the expiration of each calendar month. Percentage Fee shall apply at all times during the term of this Agreement.

Percentage Fees are as follows (“Percentage Fees”):

Revenue Category	Year 1	Year 2	Year 3	Year 4	Year 5
Parking	25%	30%	35%	37%	39%
Car Wash (Service)	10%	10%	10%	10%	10%
Oil Change (Service)	10%	10%	10%	10%	10%
Food Delivery (Service)	10%	10%	10%	10%	10%

(b) Annual Reconciliation. If, at the end of any year during the Term, the total amount of monthly installments of MAG and Percentage Fees paid for such year is less than the total amount of annual MAG and Percentage Fees required to be paid for such year, Concessionaire shall pay the amount of such deficiency on or before the time Concessionaire provides Concessionaire's Annual Audit Statement, which shall be certified and signed by an authorized official of Concessionaire. If, at the end of any year during the Term, the total amount of monthly installments of MAG and Percentage Fees paid based on Gross Revenues for such year exceeds the total

amount of annual MAG and Percentage Fee required to be paid for such year, as indicated in Concessionaire's Annual Statement, Concessionaire shall receive a credit equivalent to such excess, which shall be credited by the City to the next monthly payment(s) of Percentage Fee and/or MAG due from Concessionaire to the City hereunder. If at the end of the final year of the Term the total amount of Percentage Fee paid by Concessionaire exceeds the total amount of annual Concession Fees required to be paid by Concessionaire for such final year of the Term (calculated in the same manner provided hereinabove), such excess shall be refunded to Concessionaire within ninety (90) days after Concessionaire has vacated the Premises and ceased Airport Valet Service operations at the termination of this Agreement, the Premises are in the condition required by this Agreement, City has received the final Concessionaire's Annual Audit Statement, and any other sums due the City from Concessionaire under this Agreement have been paid in full or the City shall be entitled to deduct such remaining sums due from any such excess.

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

(d) In the event that the MAG is abated or reduced to \$0.00, pursuant to Section 4.1.5 below, Percentage Fee shall still apply.

4.1.4 Gross Revenues

4.1.4.1 "Gross Revenues" 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 Valet Service operation conducted by Concessionaire at the Airport under this Agreement, whether such sales are evidenced by cash, credit or debit card (after deduction for commissions, discounts and refunds, but 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, net revenue from all valet parking fees and any value-added services shall be subject to the Concession Fee set forth in 4.1.3;

(b) All revenues and charges to third parties for any other item or service related to, derived from, or arising out of Airport Valet Service operations of Concessionaire, regardless of where or by what method such items or services are sold.

4.1.4.2 Excluded from “Gross Revenues” are amounts received from any of the following sources (“**Allowable Exclusions**”):

- (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 Valet 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;
- (d) Receipts received by Concessionaire from operators and independent contractors for system use fees, vehicle leases payments, insurance payments, etc.

4.1.4.3 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 Franchise taxes, or other taxes levied on Concessionaire in connection with its Airport Valet Service operations, concession activities, facilities, equipment or on real or personal property, unless otherwise provided in the definition of “Gross Revenue”.

4.1.5 Abatement of Minimum Annual Guaranteed Concession Fee

If during the term of this Agreement, through no fault of Concessionaire, either or both of the conditions listed in Subsections (a) and/or (b) below should occur, the MAG set forth above shall be abated, and Concessionaire will pay to the City a pro-rata reduced percentage of the of monthly Gross Revenue in lieu of the MAG, 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, the Concession percentage shall be reduced by the amount of the percentage decrease.
- (b) The business of Concessionaire authorized hereunder shall be affected by shortages or other disruptions in the supply of vehicles, gasoline or other goods necessary for the operation of Concessionaire’s business which results 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. The Concession percentage shall be reduced by the amount of the percentage decrease.

4.2 Revenue Reports and Payments

4.2.1 Monthly Revenue Reports and Payments

From the Commencement Date until the end of the month following the final month of the Term, Concessionaire shall, on or before the fifteenth (15th) day of each month, submit to City a monthly revenue report (“**Monthly Revenue Report**”) in the form of **Exhibit 6** attached hereto (which may be amended by City from time to time) that details the total Gross Revenue for such preceding month. The Monthly Revenue Report shall also list any Allowable Exclusions from Gross Revenue, itemized separately with corresponding dollar amounts. The Monthly Revenue Report shall be signed by an authorized official of the Concessionaire certifying that Gross Revenue and exclusions are reflected in accordance with the terms of this Agreement. The Monthly Revenue Reports shall be sent to the Remittance Address set forth in **Section 4.4**.

With each Monthly Revenue Report the Concessionaire shall remit to the City the Percentage Fee as calculated per **Section 4.1.3** above.

4.2.2 Annual Reports and Payment

On the fifteenth (15th) day of the month following the end of each year of the Term, Concessionaire shall pay to the City at the Remittance Address set forth in **Section 4.4** the balance of the fees and charges, if any, due to the City for the preceding period on account of the percentage payment provisions hereof, it being understood that the fees and charges, though payable monthly, shall be computed on an annual basis, except where expressly stated otherwise. If any credit is due to Concessionaire, such credit shall be given only after the City has received the Annual Audit Statement certified by an independent Certified Public Accountant which is required under **Section 4.7**. Such credit, if any, shall be given within thirty (30) days of the date the City reviews and approves a credit, such approval shall not be unreasonably withheld.

4.3 CONCESSION MARKETING FUND City shall cause to be provided a central marketing and promotional program which, in the City's sole judgment, will serve to promote the overall concession program and facilities in the Airport. Concessionaire, along with other concession facility operators will contribute to the fund for this program, which shall be known as the Concession Marketing Fund. Concessionaire, from and after the Rental Commencement Date, shall contribute during each month, as Concessionaire's share to the Concession Marketing Fund, and pay to the City as Additional Rent, an amount equal to one half of one percent (0.5%) of Concessionaire's monthly Gross Receipts. This amount is payable to the City and must be paid no later than the 15th day following the end of each Lease Month. The City shall not be obligated to expend more for marketing and promotional programs than is actually collected from Concessionaire and other concession facility operators in the Airport. Any services and personnel so provided shall be under the exclusive control and supervision of the Director, who shall have the sole authority to employ and discharge personnel, retain third party independent contractors and to establish all budgets with respect to the Concession Marketing Fund. The primary purpose, but in no way a limitation, of the Concession Marketing Fund, will be used to fund intra-Airport promotional and advertising programs such as permanent directories, graphics, take-one directory pamphlets and establishing customer service and training programs with respect to the operations of the concession facilities in the Airport, such as customer surveys, "secret shopper" programs and sales technique seminars or on any other items that may enhance

the user's overall experience in the Airport, and a Customer Loyalty Program, if instituted by City. The City shall conduct quarterly meetings to discuss the promotional and advertising programs and customer service and training programs. The City reserves the right at any time to terminate the Concession Marketing Fund and, in such event, shall notify Concessionaire in writing. Thereafter, in the event of such termination, Concessionaire shall no longer be obligated to make any further contributions to the Concession Marketing Fund and any remaining funds previously contributed to the Concession Marketing Fund shall be used by the City to promote the overall concession program and facilities within the Airport. If the City opts to institute a Customer Loyalty Program at any time during the pendency of this Concession Agreement, Concessionaire shall participate with this program exclusively.

4.4 Remittance Address.

All non-electronic fund transfer payments required herein shall be tendered to:

City of San Antonio, Aviation Department
c/o Frost Bank
P.O. Box 1958
San Antonio, Texas, 78297

(**“Remittance Address”**). The Remittance Address for payment may be changed at any time by the Aviation Director upon ten (10) days prior written notice to Concessionaire. Concessionaire assumes all risk of lost payments if payments are made by mail.

Payments may also be made by ACH transfer, or other alternative means, if agreed to, in writing, by all parties.

4.5 Late Payment and/or Late Reporting Fees.

All rentals and payments unpaid for thirty (30) days after the date due shall bear interest at the rate of twelve percent (18%) per annum which interest shall accrue from the date due; however, in no event shall the interest rate charged exceed the maximum rate allowable by law. The fee for late reports required under this Agreement shall be \$100.00 per month. The City and Concessionaire recognize that the damages which City will suffer as a result of Concessionaire's failure to timely pay amounts due hereunder are difficult or impracticable to ascertain, and agree that such interest and late charge are a reasonable approximation of the damages which City will suffer in the event of Concessionaire's late payment or late tender of required reports. This provision shall not relieve Concessionaire from payment of amounts due hereunder at the time and in the manner herein specified.

4.6 Accounting Procedures.

The Concessionaire shall keep full and accurate books and records showing all of its 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 Valet Service. Concessionaire shall maintain its books and records in full and complete accordance with generally accepted accounting principles and otherwise reasonably satisfactory to the City for the determination of any and all sums owing by Concessionaire under the Agreement, and information necessary for verification of invoices and payments for any reimbursement requests, or other computations, or both, which may be necessary or essential in carrying out the terms 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 expiration or termination of this Agreement; provided, however, that the City may (prior to the expiration of the relevant retention period) require that any such records be retained for a longer period of time not to exceed an additional two (2) year period, in which case Concessionaire, at its option, may deliver such records into the custody of the City.

4.7 Concessionaire Audit.

Within one hundred twenty (120) days after the end of each year of the Term, Concessionaire, at its own expense, shall provide to City an audited annual accounting statement of the Concessionaire's Gross Revenue and Concession Fees due City for such year ("**Annual Audit Statement**"). The Annual Audit Statement shall be prepared in accordance with generally accepted accounting principles applicable to private entities. Such audit shall be accompanied by a written statement signed by an independent Certified Public Accountant, and shall include an opinion on whether the statement of Gross Revenue and Concession Fees has been completely and accurately presented, calculated and reported according to the terms of this Agreement, and whether Concession Fees due City have been completely and accurately calculated and paid according to the terms of this Agreement. Such Annual Audit Statement shall also contain a list of the Gross Revenue as shown on the books and records of Concessionaire which were used to compute the Percentage Payments made to City during the period covered by the statement. This obligation shall survive termination of this Agreement. If the Annual Audit Statement shows that Concessionaire owes a balance of fees or charges, such fees and charges shall be delivered at the same time as the written audit. Concessionaire shall pay a late fee of \$100.00 for each month that it fails to deliver an Annual Audit Statement. If as a result of Concessionaire's audit, it is determined that additional funds are due the City, City reserves the right to require the Concessionaire to pay to the City interest thereon at the rate of twelve percent (12%) per annum from the date such item was due and payable until paid, or the maximum allowable rate under law.

4.8 City Inspection and Audit of Books and Records.

The City shall be allowed to inspect and audit Concessionaire's books of accounts and records with reference to the determination of any matters relevant to this Agreement at all reasonable times, upon prior written notice to Concessionaire for the period of time that Concessionaire is obligated to maintain books and records as set forth in **Section 4.6** above. The City shall specifically be entitled to inspect and audit any records necessary to complete the audit in a manner consistent with generally accepted accounting principles. Concessionaire agrees to provide appropriate workspace to conduct the audit and free access to copiers, fax machines and other needed office equipment. Concessionaire shall provide contact information for Concessionaire's accounting manager or the like who has a thorough knowledge of the accounting system as it pertains to this Agreement and who will be available to the City during any such audit. The cost of such audit shall be borne by the City unless the results of such audit reveal a discrepancy of more than three percent (3%) for any twelve (12) month audit period. In the event of such discrepancy, the full cost of the audit shall be borne by the Concessionaire, and Concessionaire shall promptly pay all additional fees owing to the City together with interest on such sums from the date originally due until the date paid. Any additional Percentage Fees due

shall forthwith be paid by the Concessionaire to the City with interest thereon at eighteen percent (18%) per annum from the date such item was due and payable until paid, or the maximum allowable rate under law. Such interest shall not accrue with respect to disputed items being contested in good faith by Concessionaire. If, however, as a result of the City's audit, it is found that Concessionaire has overpaid any amounts, the City shall credit Concessionaire the amount of such overpayment within thirty (30) days of issuance of the City's final audit report.

4.9 Books and Records Outside San Antonio Region.

In the event that Concessionaire's books and records are not maintained in the San Antonio region, they shall be made available for audit locally within twenty (20) business days of a written request by the City, or Concessionaire shall pay in full any and all travel related expenses incurred by the City to travel to the location outside the San Antonio region.

4.10 Electronic Data.

In those situations where Concessionaire's records have been generated from computerized data (whether mainframe, minicomputer, or PC-based computer systems), Concessionaire agrees to provide extracts of data files in a computer readable format on data disks, e-mail with attached files, or suitable alternative computer data exchange formats.

4.11 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 year of the Term, 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.

4.12 MISCELLANEOUS CHARGES

The following charges shall be collectively referred to as "**Miscellaneous Charges**":

(a) Employee Parking. The City, while providing parking facilities at the San Antonio International Airport to Concessionaire's employees in common with employees of other concessionaires and users of the Airport, retains the right to institute a reasonable charge for the privilege of using these parking facilities. Employee parking of personal vehicles is not allowed in any public parking areas or within Premises or vehicle storage areas used by the Valet Operator. Such charges shall require a non-refundable deposit for the parking card(s) and will require that a valid credit card remain on the account file for the automatic payment of the monthly charges. These shall be handled separately from the revenue Reports and Payments and shall not be considered an allowable expense.

(b) Non-Revenue Parking Cards. Concessionaire shall be issued media or HID proximity cards that shall allow access into and out of the approved valet parking storage areas. The initial issuance fee and fees for replacing lost or damaged cards shall apply as laid out in Chapter 3 of the City code. This is currently \$15.00 for each card. No other fees apply to the use of these cards.

(c) Identification Security Badges. There are currently no badging requirements for the employees of vendors or contractors who work only in public areas of San Antonio International Airport. If public area badging requirements are established for such employees during the term of this contract, the Concessionaire shall conform to the requirements within the timelines established for implementation and shall thereafter provide, at any time requested by City, validation that all employees have obtained the required badge. Concessionaire shall pay such charges at the time incurred.

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

(e) Use of Airport Owned and Provided Property. If the City has available materials, tools, office space, or any other space which the Valet operator can use for providing valet or other services which is not designated as Premises additional fees may apply for the rent or use of that space.

ARTICLE 5 PRIVILEGES, OBLIGATIONS, AND OPERATIONAL STANDARDS

5.1 OPERATION OF VALET SERVICE.

The rights and privileges granted herein are for the exclusive operation of a first-class Airport Valet Service. Concessionaire shall have the right to utilize employees, independent contractors and / or subcontractors for the Airport Valet Service.

5.1.1 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.

5.1.2 In its provision of Airport Valet 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, the State of Texas, or the United States Government.

5.1.3 Except as indicated elsewhere in this Agreement, Concessionaire shall provide its own Information Technology (IT) services, equipment, maintenance and repair.

5.2 SALES FACILITIES.

5.2.1 Valet Booth Operation Concessionaire shall maintain secure custody and control of all receipts and customer property at all times. Concessionaire shall be allowed to accept gratuities from customers but shall not openly solicit gratuities by displaying a tip jar, cash, or signage.

5.2.2 Concessionaire Modification of Premises Requests for modifications to the Premises location(s) and/or appearance, and the justification therefor, shall be submitted by the Concessionaire, in writing, to the Director. Any such alteration in location(s) 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.

5.2.3 Signs Concessionaire shall not install any signs on Airport Property unless approved in writing by Director, subject to all applicable permitting requirements.

5.2.4 Security Cameras Concessionaire may install security cameras in any premises location upon approval from the director providing that the airport is granted a direct feed from those cameras installed and the placement of such cameras is not in conflict with any other cameras that the airport controls. It is recommended that the Valet Operator work with our current system integrator to accomplish this goal as the Airport may be able to reciprocate and provide access to current camera views that are deemed applicable to the Valet operation providing this is not in conflict with the Airport Security requirements. .

5.4 STANDARDS OF SERVICE Concessionaire, its representatives, agents, and employees, in the operation of the Airport Valet Service, shall maintain the highest degree and standard of service, and a courteous, polite and inoffensive demeanor.

5.4.1 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. Concessionaire shall not employ or retain any person who uses offensive language, makes persistent announcements of its merchandise and products and/or services over loud speakers or whose conduct is loud or offensive or otherwise detrimental to the best interests of the Terminals and/or Airport. Concessionaire also agrees not to divert or allow or cause to be diverted any business from the Terminals, any other service provider and/or Airport. Concessionaire shall not give samples, approach customers, distribute handbills or other advertising matter or otherwise solicit business in

the parking or other public areas or any part of the Terminals or the Airport. In the event Concessionaire violates the foregoing, Concessionaire shall, at Concessionaire's sole cost and expense, be responsible for clearing the area of any such materials so distributed by Concessionaire, its agents or employees. Upon written notification from the Director concerning the conduct, demeanor, or appearance of any of Concessionaire's officers, agents, employees or representatives, Concessionaire shall, no later than five (5) calendar days following receipt of Director's notification, take all steps necessary to remedy the cause of the objection. Concessionaire shall not provide consideration of any kind or character, to anyone, to encourage use of the Airport Valet Service.

5.4.2 Personnel Appearance

When on duty, all of Concessionaire's employees and representatives who deal with passengers shall maintain a clean, neat and well-groomed appearance and shall wear seasonably appropriate uniforms or professional dress and identification badges or pins identifying themselves as employees or representatives of Concessionaire, or appropriate attire as established by Concessionaire with Concessionaire's logo conspicuously displayed. Concessionaire's employees and representatives shall wear an Airport badge if required. Concessionaire's employees may not traffic in, use or possess at the Airport alcohol, illegal drugs, controlled substances, or firearms. Concessionaire shall closely monitor its employees to insure consistent, high quality first-class service. The Aviation Director reserves the right to direct the removal from the Airport of any Concessionaire employee or representative who fails to consistently meet acceptable standards of decorum or who violates the provisions of this Agreement.

5.4.3 No Solicitation

Concessionaire employees, representatives and drivers shall not solicit business or quote prices for other ground transportation services, and shall refer all such requests for information about other services to City personnel.

5.7 City Codes and Standards

Concessionaire shall abide by City Codes and Standards and City's decisions and operational orders regarding operations, activities, safety and security matters and general use of the Airports.

5.8 Acceptable Forms of Payment

Acceptable forms of payment for valet tickets shall be cash, traveler's checks, debit and credit cards.

5.9 Safety

Concessionaire shall perform all operations and activities authorized under this Agreement in a manner that ensures the safety of people and the Airports, the protection of public health and the environment, and the safety and integrity of the Airports. Concessionaire shall employ or contract qualified personnel and maintain equipment sufficient for the purposes of this provision. Concessionaire shall immediately notify the City of any condition, problem, malfunction or other occurrence that Concessionaire reasonably knows to be an imminent threat to the safety of people or the Airports, harm to public health or the environment, or the safety or integrity of the

Airports.

5.10 FAIR AND EQUAL PROVISION OF SERVICE

The Concessionaire shall furnish all services authorized under this Agreement, on a fair, equal and non-discriminatory basis to all persons or users thereof and shall not refuse service to any person, unless such person is intoxicated or otherwise is deemed, in the reasonably exercised judgment of the Concessionaire's employee, to be a threat to the safety and welfare of other customers, drivers or employees of Concessionaire.

5.11 PARKING AND PASSENGER LOADING

In servicing the Airport, Concessionaire shall park its Airport Valet Service 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.

5.12 Complaints

Concessionaire shall have a survey and complaint system available to customers of the Airport Valet Service. The Concessionaire shall provide the Director with information about comments/complaints received upon request.

If City receives and forwards to Concessionaire any complaint concerning Concessionaire's operation of its Airport Valet Service, Concessionaire shall promptly respond to complainant in writing, with a copy to City, within seven (7) business days of its receipt and shall make a good faith attempt to resolve the cause of such complaint.

5.13 Sufficient Trained Personnel

Concessionaire shall employ a sufficient number of trained personnel to handle customer service and office and administration duties necessary for the efficient and effective operation of Concessionaire's Airport Valet Service. Concessionaire shall train all of its employees in the proper operation of its business and compliance with Applicable Laws, City Standards, the provisions of this Agreement, and the provision of good service to customers. Concessionaire shall ensure that all employees, Concessionaires and agents conduct themselves in a professional and courteous manner at all times.

5.14 Concession Management

The operation of Concessionaire's Airport Valet Service shall be supervised at all times by an active, qualified, competent manager on duty or a qualified assistant manager on duty, who shall have full authority to make day-to-day business and operational decisions.

5.15 Personnel Conduct

Concessionaire shall not permit its agents or employees to use pressure sales tactics or to personally solicit customers of the Airport for Airport Valet Service offered by Concessionaire under this Agreement. City shall be the sole judge of whether conduct amounts to a violation of this section. Upon written notice from City, Concessionaire shall take all necessary steps to immediately eliminate conduct in violation of this section and to prevent its recurrence. All employees and Concessionaire representatives must conduct themselves at all times in a courteous manner toward the public and in accordance with Airport rules, regulations and policies.

5.16 Concessionaire's Decision-making Representatives

Concessionaire shall provide City a current list of Concessionaire's decision-making representatives and their telephone numbers and e-mail addresses and direction as to how those representatives may be reached on a 24-hour basis for emergency purposes.

5.17 Airport Security

Employees, agents and representatives of Concessionaire shall comply with the Airport Rules and Regulations and the Airport Security Plan to the extent applicable and all other applicable airport security regulations as adopted or required by the TSA or other Authorities from time to time. If a breach of the Airport Security Plan or such other airport security regulations occurs as a result of the acts or omissions of an employee, agent, representative, Concessionaire or subcontractor of Concessionaire in any manner or form at any time during the Term, Concessionaire immediately shall remedy such breach or assist City, the TSA or other Authorities in remedying such breach, regardless of the circumstances. City reserves the right to take whatever action City determines to be necessary to remedy any such breach in the event Concessionaire fails immediately to do so. Concessionaire shall maintain the integrity of the controlled access security system of the Airport for the Concession Term. Concessionaire also shall take such steps as may be necessary or directed by City to ensure that its subtenants, invitees and guests observe the requirements of this section.

5.18 Concessionaire Responsible

Concessionaire shall obtain all licenses/permissions necessary for, and pay all costs and expenses incurred with respect to, the operation of the Airport Valet Service, it being understood and agreed that City shall not, except as specifically set forth in this Agreement, be required to furnish services of any nature with respect to the operation of the Airport Valet Service, and Concessionaire hereby assumes full and sole responsibility for the supply and payment for all licenses, services and operational costs. This includes, without limitation, all taxes, permit fees, license fees and assessments lawfully levied or assessed upon Concessionaire.

5.19 Additional Security Personnel / Peak Traffic and Special Events

Should the City, at its sole discretion, determine that additional security or traffic control personnel are needed to facilitate traffic flow and insure safe operations within Concessionaire's operating premises during special events or at peak travel times, City shall direct Concessionaire to engage the services of off-duty San Antonio Airport Police Department (SAAPD) officers, if available, or alternate San Antonio Police Department Officers (SAPD) as scheduled and approved by SAAPD to provide traffic control services. Any expenditures resulting from such hiring shall be considered an allowable expense, and may be included as a deduction from Gross Revenues.

ARTICLE 6 FEES AND SERVICES

Proposed Valet Rates:

0 – 1 hour \$10

1 – 2 hours	\$15
2 – 3 hours	\$25
Daily Max	\$33

Assumptions:

- Throughout the term of the agreement, Fly Away Valet will generally maintain an \$8 premium over the daily max for short term garage parking
- All valet rate changes must be approved by the Airport, including but not limited to an introductory rate, discounts and promotions

Value Added Services – Fly Away Valet agrees to pay the Airport a 10% commission on the cost for all value added services and customer amenities. The following represents the base offering of services; with the Airport’s approval, more options and services may be added over the term of the agreement.

1. Vehicle Steam Cleaning

Exterior wash and wax	\$40
Interior steam detail	\$150
Exterior steam detail	\$150
Steam value combo	\$160

2. Vehicle Maintenance

Oil change (conventional)	\$50
Oil change (full synthetic)	\$100

3. Food Delivery Service \$40 (ave)

Notification of commencement of any value added services listed above shall be provided to City ten (10) days prior to initiation. Requests for the initiation of additional value added services, not listed above, shall be submitted to City, in writing. The Aviation Director shall have sole discretion to determine if said services shall be allowed, and the implementation of these services shall require that this Agreement be amended, pursuant to Section 19.1 hereunder.

ARTICLE 7 PROHIBITIONS ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL, OR ENGAGED IN BUSINESS WITH IRAN, SUDAN OR FOREIGN TERRORIST ORGANIZATIONS.

- 7.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
- (1) does not boycott Israel; and

(2) will not boycott Israel during the term of the contract.

7.2 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

7.3 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

7.4 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

7.5 Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organization Prohibited. Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Vendor hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Vendor's certification. If found to be false, or if Vendor is identified on such list during the course of its contract with City, City may terminate the Contract for material breach.

ARTICLE 8 SCHEDULE OF OPERATIONS

8.1 HOURS OF OPERATION.

The Concessionaire shall furnish Airport Valet Service 24/7/365 without interruption.

8.2 INCREASE IN DEMAND.

It is the intention of the parties entering into this Agreement to provide adequate, convenient, safe and timely Airport Valet Service. It is understood and agreed that if, during the term of this Agreement, the demand for the Airport Valet Service increases to the extent that, in the sole opinion or 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, and at Concessionaire's sole expense, provide additional personnel, equipment, facilities and capital to the extent required to meet such increased demand, this includes the right to sub-contract on a temporary basis to meet high demand related to large events, conventions, etc.

ARTICLE 9 PERFORMANCE GUARANTEE

9.1 PERFORMANCE GUARANTEE

Unless such period is specifically extended, in writing, by the Director, Concessionaire agrees, not later than fourteen (14) calendar days following the Effective Date, to post and maintain throughout the term of this Agreement, either an irrevocable letter of credit or a surety bond in the amount of fifty percent (50%) of the Minimum Annual Guarantee (“Performance Guarantee”). The Performance Guarantee 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 subsequent years of the Term shall be no less than fifty percent (50%) of the Minimum Annual Guarantee

9.2 Periodic Performance Guarantee Adjustment.

As the fees and charges adjust during the term of this Agreement, City shall periodically adjust the adequacy of the Performance Guarantee, and may, by written notice to Concessionaire, increase the required amount of the Performance Guarantee. Such notice shall include a calculation of the revised Performance Guarantee, which shall not exceed six months’ Concession Fees due and payable by Concessionaire under this Agreement. Concessionaire shall, within twenty (20) business days of receipt of such written notice from City increasing the Performance Guarantee, deposit the additional amount with City by supplemental letter of credit and/or surety bond or other instrument in accordance with this Article.

9.3 Performance Guarantee Application.

City shall have the right, but not the obligation, to apply all or any part of the Performance Guarantee to cure any default of Concessionaire under this Agreement, including nonpayment of Concession Fees, or any other amounts due from Concessionaire under this Agreement. In such event, Concessionaire must deposit with City an amount equal to the amount so applied by City within twenty (20) business days of written notice from City of the nature and amount of the application.

9.4 Performance Guarantee Return.

The City shall return the Performance Guarantee to Concessionaire, less any amounts applied by City to Concessionaire obligations, within one hundred twenty (120) days after the termination of this Agreement and City’s review and approval of the final Annual Audit Statement.

ARTICLE 10 ASSIGNMENT

10.1 ASSIGNMENT

This Agreement is personal to Concessionaire. Concessionaire shall not assign this Agreement, 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 in violation hereof shall be void.

10.1.1 ASSIGNMENT BY CITY

If, at any point during the pendency of this Agreement, City should engage a management company to administer all parking operations, City reserves the right to assign management of all Airport Valet Parking Concession Services to said company. At City's request, Concessionaire shall assist with and facilitate any transitional matters required to complete this procedure. City shall provide ninety (90) days written notice of its intent to assign any rights under to this Agreement to any third party.

10.2 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 that has a net worth of less than Concessionaire at the time of the merger or sale.

ARTICLE 11 INDEMNIFICATION OF CITY BY CONCESSIONAIRE

CONCESSIONAIRE COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CITY AND THE ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS 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 OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO CONCESSIONAIRE'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF CONCESSIONAIRE, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF CONCESSIONAIRE, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, ITS OFFICERS OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IN THE EVENT CONCESSIONAIRE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLY TERMINATION OF THIS AGREEMENT.

The provision of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other Person or entity. CONCESSIONAIRE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONCESSIONAIRE known to CONCESSIONAIRE related to or arising out of CONCESSIONAIRE's activities under this AGREEMENT LEASE and shall see to the

investigation and defense of such claim or demand at CONCESSIONAIRE's costs. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONCESSIONAIRE of any of its obligations under this paragraph.

ARTICLE 12 INSURANCE

12.1 Insurance Certificates

Prior to the Effective Date, 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 "Airport Valet Service Concession Agreement" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. 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 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.

12.2 Modify Insurance Coverages

The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to reasonably modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk. City will give Concessionaire 30 days advance notice of any change in requirements and Concessionaire has 30 days from time of notification to modify Concessionaire's insurance coverage.

12.3 Insurance Requirements

An Concessionaire's financial integrity is of interest to the City; therefore, subject to Concessionaire's right to maintain reasonable deductibles in such amounts as are approved by City, Concessionaire shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Concessionaire's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation for Employees	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000;
3. Occupational Accident	\$500,000 for independent contractor operators
4. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
5. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence.
6. Garage Keepers Liability Insurance-provided on a direct primary basis	Damage to vehicles, \$ 2,000,000 per occurrence

12.4 Insurance Documents Copies

The City shall be entitled, upon request and without expense, to receive copies of all endorsements to certificates of insurance. 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 ten (10) days.

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

12.5 Insurance Policy Provisions

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

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

- Provide for an endorsement that the “other insurance” clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers’ compensation, employers’ liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- 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.

12.6 Replacement Certificate

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.

12.7 City Remedies

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.

12.8 No Liability Limitation

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 subcontractor’ performance of the work covered under this Agreement.

12.9 Concessionaire’s Insurance Primary

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.

12.10 Insurance Separate From Other Obligations

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.

12.11 Damage to Concessionaire’s Equipment and Property

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

12.12 Concessionaire's Premiums

The Concessionaire shall pay all premiums, deductibles and self-insured retention's, if any, stated in policies.

12.13 Claims Against Concessionaire

If a claim, demand, suit, or other action is made or brought by any person against Concessionaire arising out of or concerning this Agreement, or the Airport Valet Service, Concessionaire shall give written notice thereof, to City within ten (10) business days after being notified of such claim, demand, suit, or action. Such notice shall enclose a true copy of all written claims. If the claim is not written, or the information is not discernible from the written claim, Concessionaire shall state the date of notification of any such claim, demand, suit, or other action, the names and addresses of the person asserting such claim or that instituted or threatened to institute any type of action or proceeding, the basis of such claim, action, or proceeding, and the name of any person against whom such claim is being made. The notice shall be given to the Aviation Director as provided herein.

ARTICLE 13 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES/NON-DISCRIMINATION

13.1 ACDBE 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 ACDBE Good Faith Effort Plan, as contained in **Exhibit 4** satisfy Airport Concession Disadvantaged Business Enterprise ("**ACDBE**") criteria set forth in 49 C.F.R. 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 United States 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 an ACDBE goal, which shall be the greater of thirteen percent (13%) or such other applicable ACDBE goal as shall be established by the DOT during the term of this Agreement or any extension thereof, and to comply with other appropriate provisions of 49 C.F.R. Parts 23 and 26. The goal shall be measured as a percentage of the total estimated annual Gross Revenue earned by Concessionaire hereunder. ACDBE participation may be in the form of any legal arrangement meeting the eligibility standards in 49 C.F.R. 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.

13.2 FAA REQUIREMENTS.

Further, in compliance with FAA requirements, the following are specifically made a part of this Agreement:

13.2.1 Concessionaire agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates Concessionaire for the period during which Federal assistance is extended to the airport through the Airport Improvement Program. In cases where Federal assistance provides, or is in the form of personal property; real property of interest therein; structure or improvements thereon, this provision obligates the Concessionaire for the longer of the following periods: (a) the period during which the property is used by the City or Concessionaire for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the City or Concessionaire retains ownership or possession of the property.

13.2.3 Concessionaire for itself, its heirs, representatives, successors and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained or otherwise operated on the Leased Premises, for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, that Concessionaire shall maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the attached List of Pertinent Nondiscrimination Acts and Authorities attached hereto as a part of **Exhibit 7** (as may be amended), such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

13.2.4 Concessionaire for itself, its representatives, successors and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that: (1) no person, on the grounds of race, color, creed, sex, age, religion, national origin or handicap, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, in the use of said facilities; (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, creed, sex, age, religion, national origin or handicap shall be excluded from participation, denied the benefits of, or otherwise be subjected to discrimination; and (3) that Concessionaire shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to the attached List of Pertinent Nondiscrimination Acts and Authorities attached hereto as **Exhibit 7**.

13.2.5 In the event of breach of any of the above nondiscrimination covenants, City will have the right to terminate this Concession Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if this Concession Agreement had never been entered into.

13.3 Nondiscrimination Policy.

As a party to this Agreement, Concessionaire understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex,

sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

13.4 Affirmative Action Program.

With respect to Concessionaire’s exercise of all uses, rights and privileges herein granted, Concessionaire hereby agrees to undertake equal opportunity and affirmative action as required by the City and by all federal and state laws, rules and regulations pertaining to Civil Rights and Equal Opportunity, including but not limited to Title 49, Subtitle A, Part 21; 49 C.F.R. Part 23; 14 C.F.R. Part 152, Subpart E; Executive Orders 11246 and 11478; and Section 504 of the Rehabilitation Act of 1973, to the extent applicable, and as such laws, rules, regulations and orders may be amended. Concessionaire agrees that Concessionaire shall comply with any affirmative action plans submitted pursuant to the directives of any federal agency and in accordance with federal law.

13.5 Concessionaire Bound.

Concessionaire agrees to bind contractually all its sub-organizations and Sub-Concessionaires to all the foregoing terms and conditions.

ARTICLE 14 WASTE OR NUISANCE

Concessionaire shall not commit nor permit any of its employees, contractors, subcontractors, licensees, sub concessionaires or agents to injure, deface or otherwise harm the Premises, the Terminal or the Airport, nor commit any waste upon the Premises, the Terminal or the Airport, and shall not place a load upon the floor of the Premises which exceeds the floor load per square foot which such floor was designed to carry. Concessionaire shall not commit nor permit any of its employees, contractors, subcontractors, licensees, sub concessionaires or agents to commit any nuisance or other act or thing which may constitute a menace or which may impact either the City’s operation of the Terminal or the Airport or disturb the quiet enjoyment of any other occupant or concessionaire of the Airport. Concessionaire shall not use or permit to be used any medium that might constitute a nuisance, such as loudspeakers, sound amplifiers, tape decks, compact disc players, radios, televisions, or any other sound producing or other device which will carry sound or odors outside the Premises except as may otherwise be approved in advance in writing by the Director and, upon notice from the Director to Concessionaire’s business representative at the Premises, Concessionaire shall cause any such noise or odors to cease immediately. Concessionaire shall not allow any use of the Premises or any other portion of the Terminal and/or Airport in a manner which is a source of annoyance, disturbance or embarrassment to the City, or to the other concessionaires and occupants of the Terminal and/or Airport or which is deemed by the City, in its sole discretion, as not in keeping with the character of the Terminal and/or Airport. The Premises shall not be used for any unlawful or immoral purpose or which will invalidate or increase the premiums on any of the City’s insurance.

ARTICLE 15 TRADE NAME Concessionaire shall operate its business under the name(s) specifically set forth below (“Trade Name”) and shall not change the advertised name or character of the business operated without the prior Notice to the Director.

Trade Name	Fly-Away Valet
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ARTICLE 16 ENVIRONMENTAL COMPLIANCE

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

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

16.3 Except for the environmental matters not caused by Concessionaire, **Concessionaire agrees to defend, indemnify and hold harmless the City, its elected and appointed officials, officers, agents, designated management representatives and employees from and against any and all loss, claim, liability, damages, injunctive relief, injuries to person, property or natural resources, cost, expense, enforcement actions, action or cause of action, fines and penalties arising as a result of action or inaction by the Concessionaire, its employees, agents or contractors in connection with the release, threatened release or presence of any hazardous material, contaminants, or toxic chemicals at, on, under, over or upon the Premises, the Terminal and the Airport, whether foreseeable or unforeseeable, regardless of the source of such release or threatened release or when such release or threatened release or presence occurred or is discovered.** The foregoing indemnity includes without

limitation, all costs at law or in equity for removal, clean-up, remediation any kind and disposal of such contaminants, all resultant and associated costs of determining whether the Premises, the Terminal or the Airport is in compliance and causing the Premises, the Terminal or the Airport to be in compliance with all applicable environmental laws and regulations and all costs associated with claims for damages to persons, property or natural resources. **In the event that the City is named in any enforcement action or lawsuit by any party in connection with the environmental condition of the Premises, the Terminal or the Airport caused by the action or inaction of the Concessionaire, Concessionaire shall defend the City and indemnify and hold harmless the City its elected and appointed officials, officers, agents, designated management representatives and employees from any costs, damages, fines and penalties resulting therefrom.**

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

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

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

16.7 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 environmental impacts and harmful emissions by using utilizing only low emission vehicles, vehicles that operate on clean burning fuels (e.g., ultra-low sulfur diesel, propane, natural gas) and/or alternative fuel sources.

ARTICLE 17 DEFAULT BY CONCESSIONAIRE

17.1 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 fails to cure such by making payment in full 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 (15) calendar days.
- (f) Concessionaire shall become a corporation in dissolution or voluntarily or involuntary 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 Section 17.1.
- (h) Concessionaire shall discontinue the conduct of all or any part of its operations required hereunder.

17.2 If an event of default shall occur and continue to occur after the City has followed the notice and right to cure provision set forth in Section 17.1, above, 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 event 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 Valet 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, including the Premises, 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 or any act or incident thereto. Notwithstanding the foregoing, prior to the removal of such condition of default, City shall have the right, at its election, to terminate Concessionaire's right of possession of the Premises, by giving at least five (5) days written notice to Concessionaire, at which time Concessionaire will then quit and surrender the Premises to City, but Concessionaire's obligations under the Agreement shall remain in full force and effect. At the expiration of said five (5) days' notice period, City may enter upon and take possession of the Premises (or any part thereof in the name of the whole), without demand or notice, and repossess the same as of the City's former estate, expelling Concessionaire and those claiming under Concessionaire, forcibly if necessary, without prejudice to any remedy for arrears of amounts owed or preceding breach of covenant and without any liability to Concessionaire or those claiming under Concessionaire for such repossession. City's repossession of the Premises shall not be construed as an election to terminate this Agreement nor shall it cause a forfeiture of any and all charges remaining to be paid during the balance of the term hereof, unless a written

notice of such intention be given to Concessionaire, or unless such termination is decreed by a court of competent jurisdiction.

17.3 Notwithstanding anything to the contrary in this Article, if Concessionaire fails to timely pay any monetary obligation more than three times within any twelve month period, Concessionaire shall be in default and City may terminate this Agreement without providing Concessionaire notice or opportunity to cure. Upon receipt of notice of termination by the City, Concessionaire shall cease its Airport Valet Service operations on Airport property, but Concessionaire shall remain liable for all damages or deficiencies under this Agreement. On such 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, including the Premises, 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 or any act or incident thereto. City shall have the right, at its election, to terminate Concessionaire's right of possession of the Premises at which time Concessionaire will then quit and surrender the Premises to City, but Concessionaire's obligations under the Agreement shall remain in full force and effect. City may enter upon and take possession of the Premises (or any part thereof in the name of the whole), without demand or notice, and repossess the same as of the City's former estate, expelling Concessionaire and those claiming under Concessionaire, forcibly if necessary, without prejudice to any remedy for arrears of amounts owed or preceding breach of covenant and without any liability to Concessionaire or those claiming under Concessionaire for such repossession. City's repossession of the Premises shall not be construed as an election to terminate this Agreement nor shall it cause a forfeiture of any and all charges remaining to be paid during the balance of the term hereof, unless a written notice of such intention be given to Concessionaire, or unless such termination is decreed by a court of competent jurisdiction.

17.4 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.

17.5 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 or subsequent default in the performance of any of said terms, covenants or conditions.

17.6 It is understood and agreed that the City must have the unfettered ability to continue providing consistent and continuous Airport Valet 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, remove 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, City may sell the same at public auction or private sale on such terms and conditions as to price, payment and otherwise, as City in its sole discretion may deem advisable. If, in City's judgment, the cost of removing and storing, or 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.

17.7 Concessionaire shall be responsible for all costs of removal, storage and sale of Concessionaire's 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 sums due to City hereunder and shall pay over to Concessionaire the remaining balance, if any, of such surplus sale proceeds.

17.8 In the event that this Agreement shall have been terminated in accordance with this **Article 17**, 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 Guarantee in full satisfaction of Concessionaire's 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.

17.9 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 remaining 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 Airport Valet Service required herein on an annual basis. Concessionaire shall 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 year of the Term.

17.10 It is understood and agreed that the statement of damages under the preceding **Section 17.9** of this Article 17 shall not affect or be construed to affect City's right to damages in the event of termination or cancellation of this Agreement where Concessionaire has not received any actual Gross Revenue 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.

17.11 Upon termination or cancellation of this Agreement pursuant to this Article 17, City 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 Agreement may be for the same or different period of time as the balance of the term hereunder remaining, and on terms and conditions the same as or different from those set forth in this Agreement.

17.12 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.

ARTICLE 18 DEFAULT BY CITY

18.1 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.

18.2 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 19 GENERAL PROVISIONS

19.1 Amendment

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 is in writing, dated subsequent to the date hereof and duly executed by the parties hereto. The Aviation Director is authorized to execute amendments which do not substantially alter the material terms of this Agreement.

19.2 Applicable Law; Venue; Waiver of Forum Non Conveniens

This Agreement is to be performed in Bexar County, Texas, and, the rights and obligations of the Parties hereto, shall be construed and enforced in accordance with the laws of the State of Texas. Venue for any action on or related to the terms of this Agreement shall be exclusively in Bexar County, Texas, and the Parties waive any right to assert a claim of inconvenient forum.

19.3 Approvals By City

Whenever this Agreement calls for approval by the City, such approval shall be evidenced by the written approval, as applicable, of the Aviation Director or the City Manager of the City of San Antonio or the City Manager's designee, and such approval shall not be unreasonably withheld.

19.4 Attorney's Fees

The Parties expressly agree that neither Party shall be responsible for payment of attorney's fees pursuant to Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code §271.153, common law or any other provision for payment of attorney's fees. Both Parties expressly waive any claim to attorney's fees should litigation result from any dispute in this Agreement.

19.5 Authority of Agreement

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

19.6 Captions and Article Numbers

The captions, Article and section numbers, and table of contents appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or Articles of this Agreement or in any way affect this Agreement.

19.7 Compliance with Laws

Concessionaire, at its expense, shall promptly comply with all present and future laws, ordinances, orders, rules, regulations, applicable business licenses and requirements of the City and all governmental authorities having jurisdiction affecting or applicable to the Premises or the cleanliness, safety, occupancy, operation and use of the same, whether or not any such law, ordinance, order, rule, regulation or requirement is foreseen or unforeseen, ordinary or extraordinary, shall necessitate changes or improvements (other than structural changes or structural improvements) and/or interfere with the use and enjoyment of the Premises. Concessionaire shall promptly correct any deficiencies reported by the City and all other governmental authorities having jurisdiction. Concessionaire shall not do or permit anything to be done in or about the Premises or Airport, nor bring anything therein, which will in any way conflict with any such law, ordinance, order, rule, regulation or requirement affecting the occupancy or use of the Premises, the Terminals, or the Airport which has been or may hereafter be enacted or promulgated by the City and all governmental authorities, or in any way obstruct or interfere with

the rights of others, nor shall Concessionaire use or allow the Premises to be used for any improper, immoral or objectionable purposes or do any act tending to injure the reputation of the Terminal and/or Airport.

19.9 Conflict of Interest

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.

19.10 Electronic Funds Transfer; Automatic Debit

The Concessionaire may remit any amounts to be remitted or otherwise payable under this Agreement by check or by electronic funds transfer to an account designated by the City from time to time. The City may further, at its sole option, upon not less than sixty (60) days prior notice to those Concessionaires choosing to use electronic funds transfer, require those Concessionaires to promptly execute and deliver to the City any documents, instruments, authorizations, or certificates required by the City to give effect to an automated debiting/electronic funds transfer system, whereby any or all payments by those participating Concessionaires of whatsoever nature required or contemplated by this Agreement shall be electronically debited and/or electronically fund transferred monthly or from time to time, as provided in this Agreement, from participating Concessionaire’s account in a bank or financial institution designated by Concessionaire and credited to the City’s bank account as the City shall designate from time to time. Participating Concessionaire’s failure to properly designate a bank or financial institution or to promptly provide appropriate information in accordance with this **Section 19.10** shall constitute a default of this Agreement.

19.11 Entire Agreement; Modification

This Agreement sets forth all covenants, promises, agreements, conditions and understandings between the City and Concessionaire concerning the concession privilege grant herein, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the City and Concessionaire other than as are herein set forth. No subsequent alteration, amendment, change or addition to the Agreement shall be binding upon the City or Concessionaire unless reduced to writing and signed by the City and Concessionaire.

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

19.13 Incorporation of Exhibits

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

19.14 Labor Disputes

Concessionaire agrees to use its best efforts to avoid disruption to the City, its tenants or members of the public, arising from labor disputes involving Concessionaire, and in the event of a strike, picketing, demonstration or other labor difficulty involving Concessionaire, including the utilization of available legal remedies, to minimize and/or eliminate any disruption to the City, its tenants or members of the public, arising from such strike, picketing, demonstration or other labor difficulty.

19.15 Wages

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.

19.16 Net Agreement

It is the intent and purpose of the City and Concessionaire that all Concession Fees payable by Concessionaire herein shall be absolutely net to the City so that this Agreement shall yield to City the entire amount of the Concession Fees described in **Article 4** hereof, in each year of this Agreement, free of any charges, assessments, impositions or deductions of any kind or character which may be charged, assessed, or imposed on or against Concessionaire, without abatement, deduction or set-off by Concessionaire.

19.17 Non-waiver of Rights

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

19.18 Method for Notice

All notices required under this Agreement shall be in writing and shall be delivered either: (i) personally, (ii) by certified or registered mail, (iii) by recognized overnight courier, or (iv) by facsimile. Notices shall be deemed delivered (i) when personally delivered; (ii) on the third day after mailing when sent by certified or registered mail and the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing; or (iii) on the first business day after deposit with a recognized overnight courier if deposited in time to permit overnight delivery by such courier as determined by its posted cutoff times for receipt of items for overnight delivery to the recipient,

19.19 Address for Notice

All notices required under this Agreement to the City shall be addressed as follows:

City of San Antonio
Aviation Director

Department of Aviation
9800 Airport Boulevard
San Antonio, Texas 78216

All notices required under this Agreement to the Concessionaire shall be addressed as follows:

Jacobsen Daniels Associates, LLC
121 Pearl Street
Ypsilanti, Michigan 48197
Attention: Darryl H. Daniels, Managing Member

With copy to:
3663 N. Sam Houston Pkwy.
Houston, Texas 77092
Attention: Kurt Schwager, Vice President

Notices may also be to such other respective addresses as either party hereto may hereafter from time to time designate in the manner for notice required under this Agreement.

19.20 Ongoing Improvements

It is understood and agreed that the City may from time to time elect to alter, improve or remodel portions of the Airports and 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. City shall endeavor to give Concessionaire as much notice as possible

of any planned capital improvements. Concessionaire agrees that any temporary inconvenience resulting from any such work by the City or its contractors and agents shall not be grounds for reduction of any sum or charge otherwise payable by Concessionaire if the same shall not unreasonably interfere with Concessionaire's Airport Valet Service.

19.21 Open Records Notice

City is subject to the Texas Public Information Act; and any records submitted by Concessionaire to City, including sales figures, may be subject to disclosure upon a request from the public. In the interest of assisting Concessionaire to timely assert any exemptions from disclosure that may be available to Concessionaire, City will notify Concessionaire as soon as practicable of any request for information in accordance with the Texas Public Information Act.

19.22 Parking Citations

Concessionaire shall pay any and all airport parking citations related to its Airport Valet Service operations.

19.23 Payment of Taxes and Fees

Concessionaire shall pay, on or before their respective due dates, to the appropriate collecting authority, all federal, state, and local taxes which are now or may hereafter be levied upon the premises, or upon Concessionaire, or upon the business conducted on the premises, or upon Concessionaire's property used in connection therewith, provided, however, that the Concessionaire may at its sole expense dispute and contest same and in such case such disputed item need not be paid until finally adjudged to be valid. Concessionaire shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by Concessionaire.

19.24 Responsibility for Payments

Concessionaire agrees that it shall remain responsible to the City for all payments and other charges pursuant to this Agreement, even if Concessionaire's bank account is incorrectly debited and/or electronically transferred in any given month. Such fees and other charges shall be immediately payable to the City upon written demand.

19.25 Relationship of Parties

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

19.26 FAA Required Modifications

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.

19.27 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.

19.28 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.

19.29 Service Fee Prompt Payment

Concessionaire shall promptly pay all service fees and other charges connected with its use of an automated debiting system and/or electronic funds transfer system, including, without limitation, any charges resulting from insufficient funds in Concessionaire's bank account or any charges imposed on the City.

19.30 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.

19.31 Early Termination/Survival of Indemnities

The Concessionaire may terminate the agreement with 180 days' notice. All indemnities provided in this Agreement shall survive the expiration or any earlier termination of the Term. In any litigation or proceeding within the scope of any indemnity provided in this Agreement, Concessionaire shall, at City's option, defend City at Concessionaire's expense by counsel satisfactory to City and Concessionaire, which consent shall not be unreasonably withheld or delayed.

19.32 Table of Contents and Headings

The table of contents, titles and headings of the Articles and sections of this Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof.

19.33 Time of Essence

Time is of the essence of this Agreement.

19.34 Update of Exhibits

The City shall, without the necessity of an amendment to this Agreement, have the right to periodically update those requirements set forth in **Exhibits 1 through 7** to reflect changes in practices for similar properties or operations either at the Airport or at other Airports nationwide.

19.35 Waiver of Claims

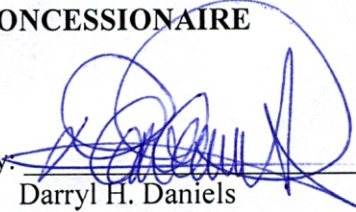
The Concessionaire hereby waives any claim against the City and the State of Texas and its officers, or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit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

19.36 Interpretations

All terms defined in this Agreement and all pronouns used in this Agreement shall, unless the context clearly requires otherwise, be deemed to apply equally to the singular and plural forms and to all genders. Except as otherwise expressly provided or unless the context otherwise requires, (a) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as of the time applicable to the City, (b) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular article, section or other subdivision, and (c) the word "including" shall mean "including without limitation". The table of contents, titles and headings of the articles and sections of this Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof. This Agreement and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein.

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

CONCESSIONAIRE

By: 
Darryl H. Daniels
Managing Member

CITY OF SAN ANTONIO

By: _____
Sheryl Sculley
City Manager

01-0556836
Federal Tax Identification Number

APPROVED AS TO FORM:

City Attorney

EXHIBIT 1

Airport Layout Plan For Terminal A and Terminal B

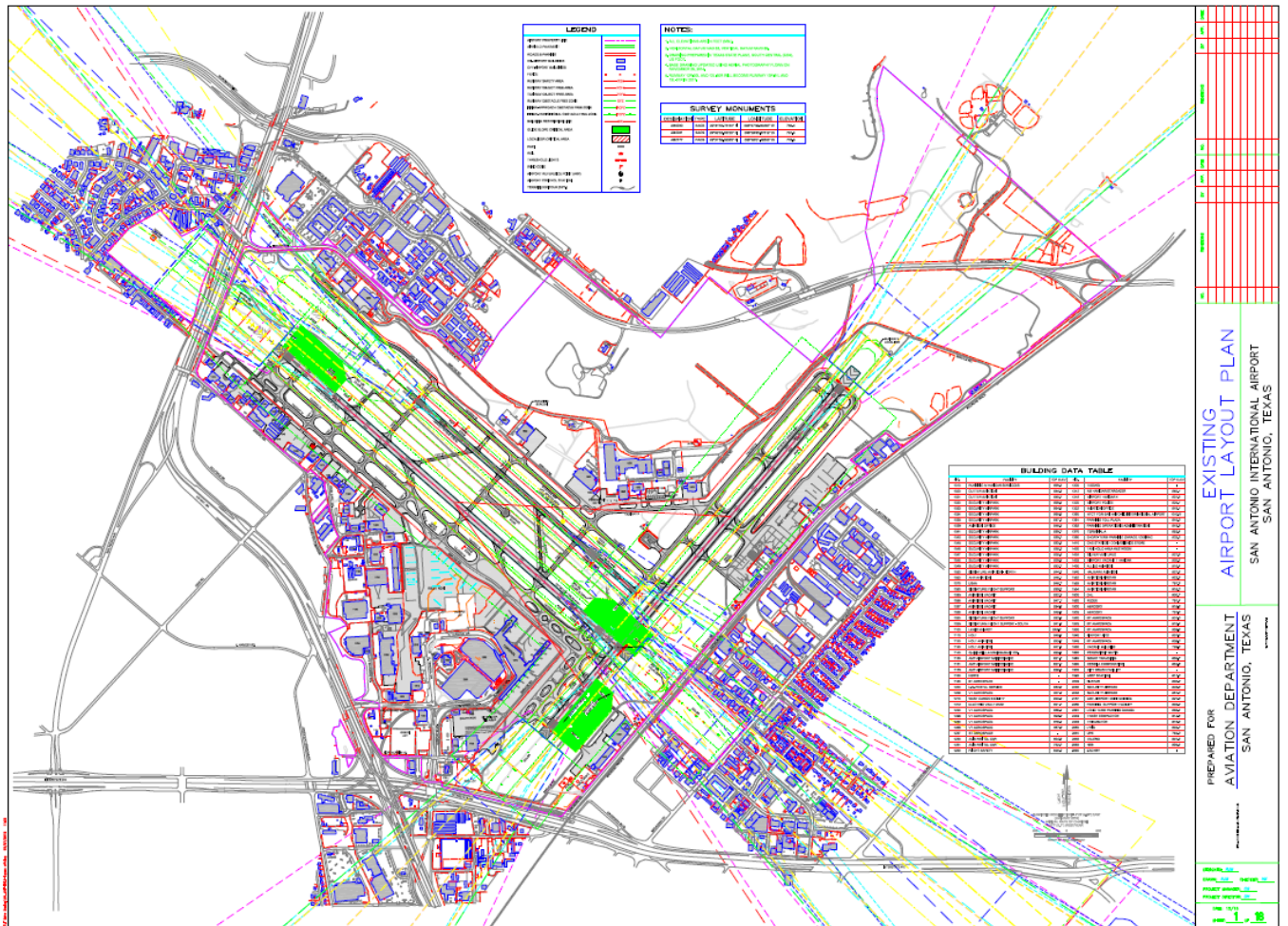


EXHIBIT 2
Premises Locations

EXHIBIT 2 - Valet Premises

San Antonio airport System
Terminal A - Inner Curb

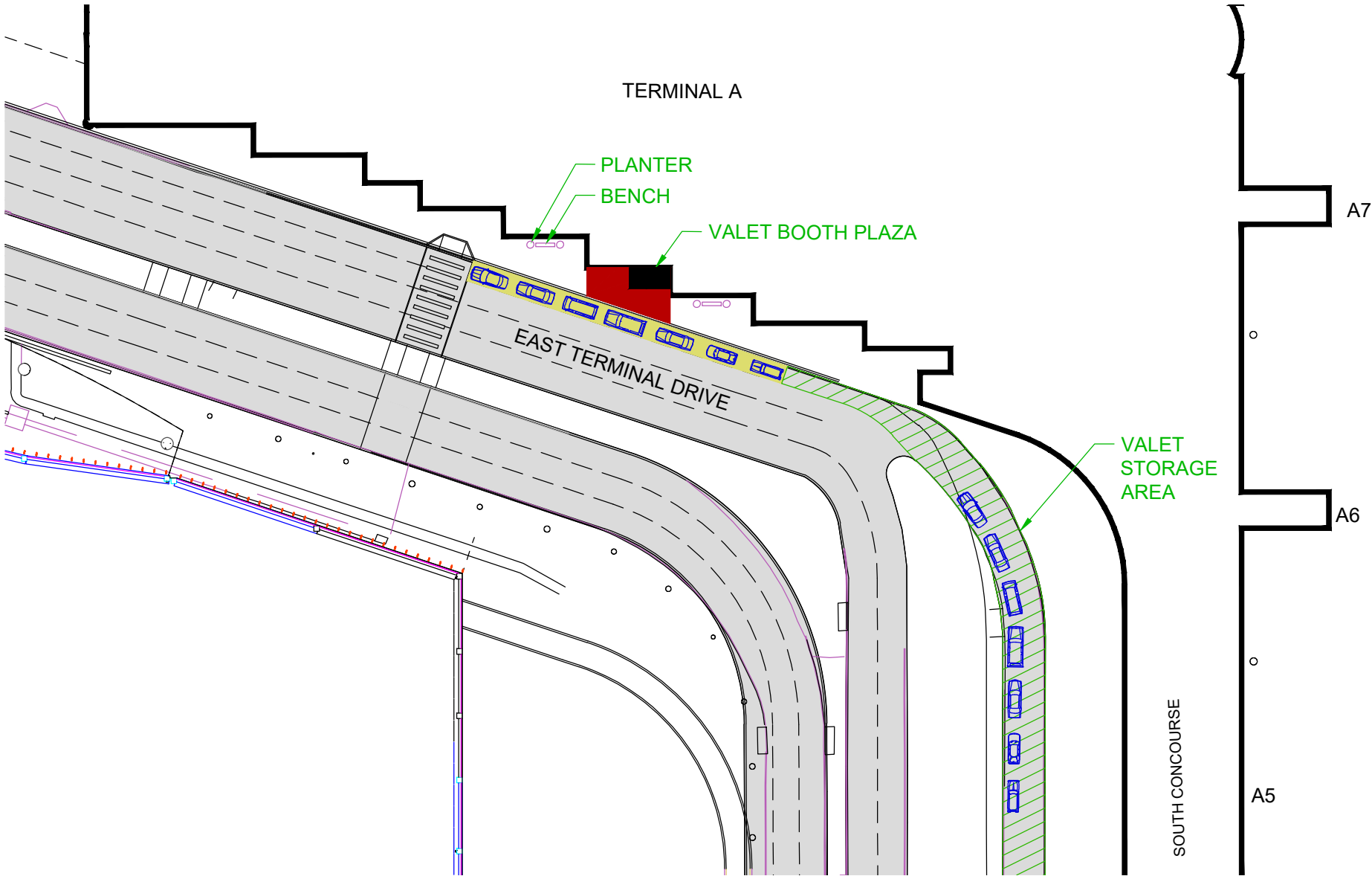


EXHIBIT 3a Valet Assigned Parking Spaces

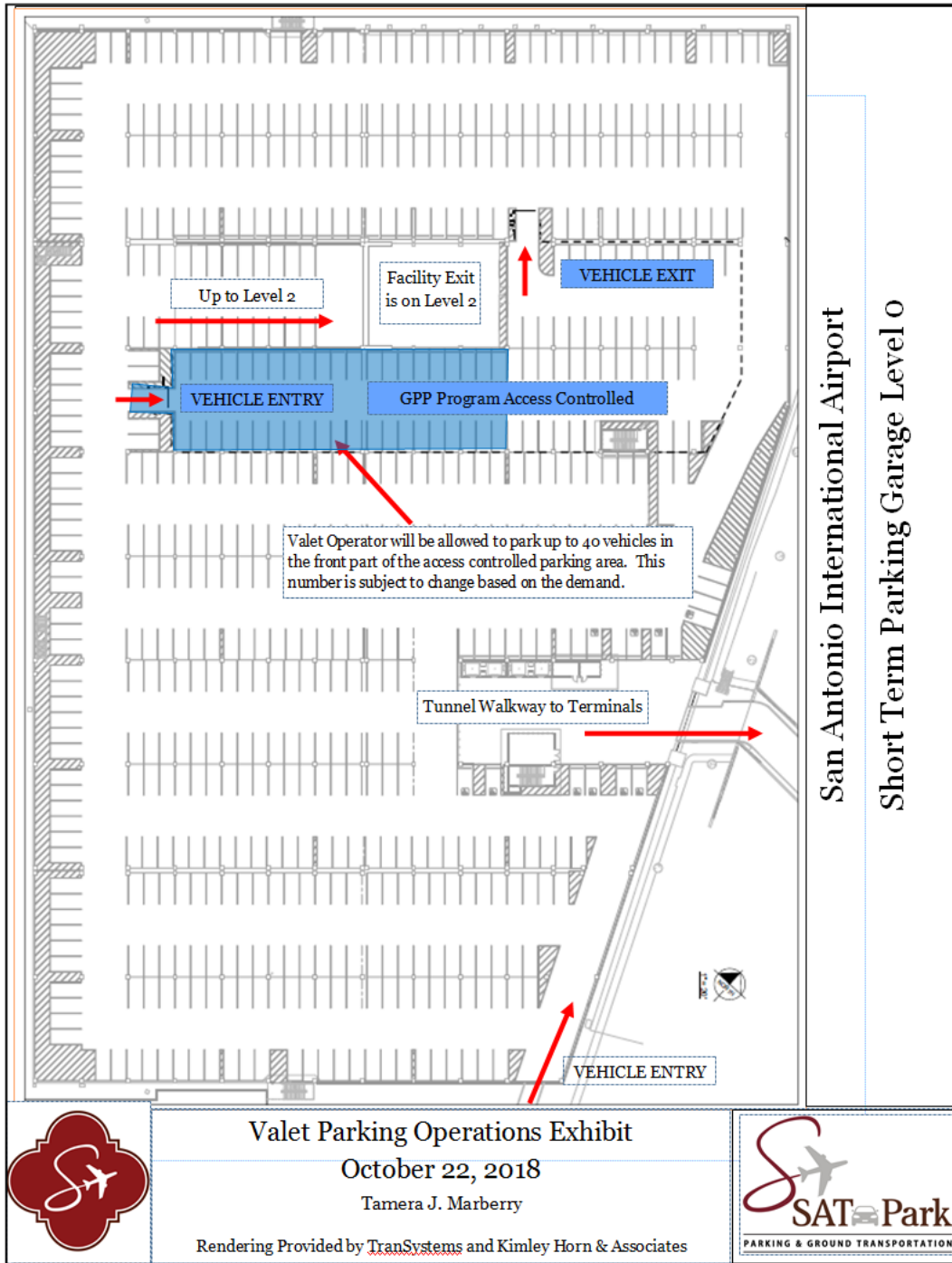
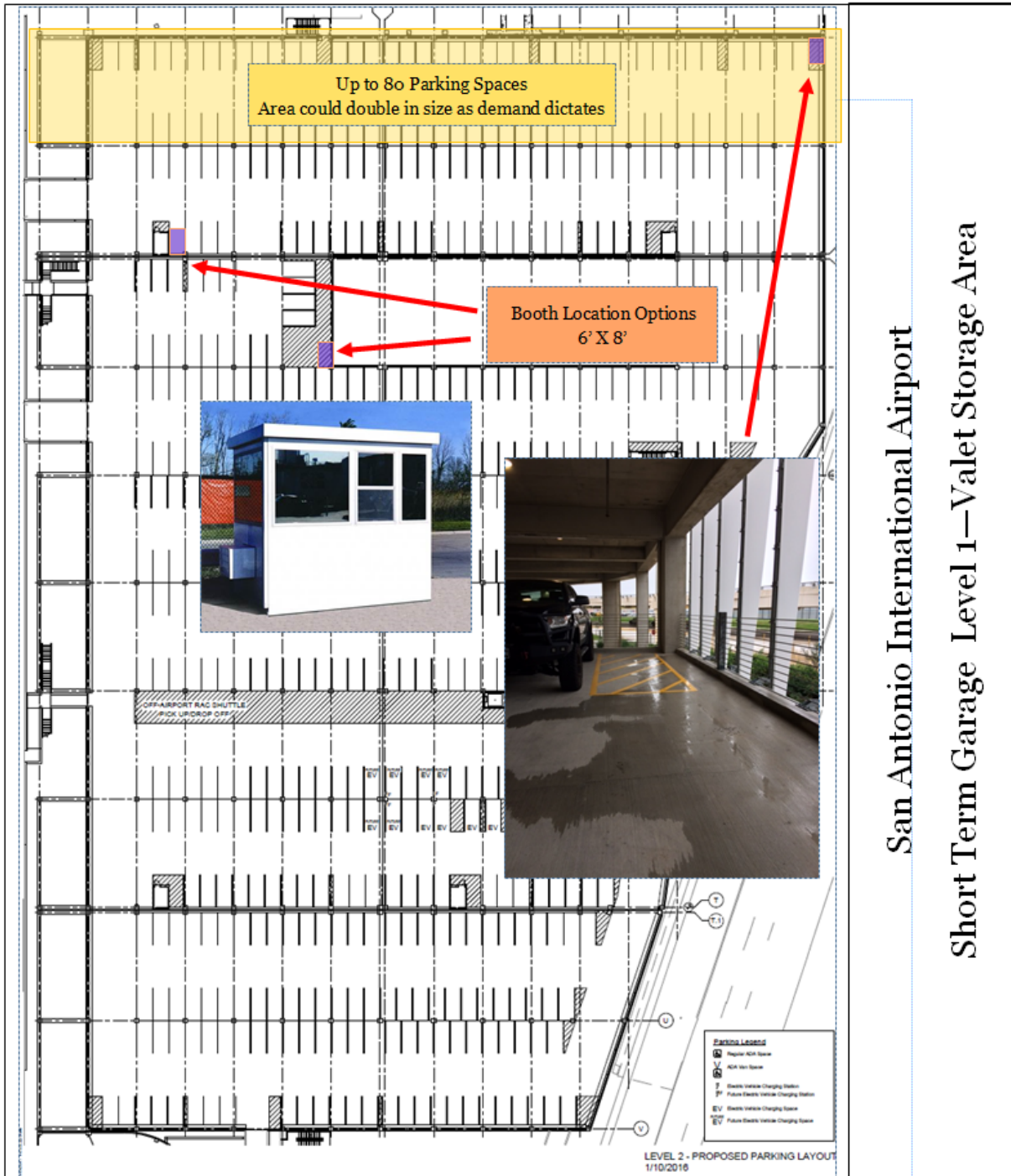


EXHIBIT 3b
Valet Assigned Parking Spaces



San Antonio International Airport
 Short Term Garage Level 1—Valet Storage Area



	<p>Valet Parking Operations Proposed Area October 22, 2018 Tamera J. Marberry</p>	
Rendering Provided by <u>TranSystems</u> and <u>Kimley Horn & Associates</u>		

EXHIBIT 4

Concessionaire's DBE Good Faith Effort Plan

Jacobsen|Daniels dba Fly Away Valet is certified Airport Concession Disadvantage Business Enterprise (ACDBE). Fly Away Valet will perform 100% of the contracted services, therefore exceeding the Airport's Concessionaire ACDBE goal of 13% of the total annual gross revenue.

EXHIBIT 5
Fees and Value-Added Services

Proposed Valet Rates:

0 – 1 hour	\$10
1 – 2 hours	\$15
2 – 3 hours	\$25
Daily Max	\$33

Assumptions:

- Throughout the term of the agreement, Fly Away Valet will generally maintain an \$8 premium over the daily max for short term garage parking
- All valet rate changes must be approved by the Airport, including but not limited to an introductory rate, discounts and promotions

Value Added Services – Fly Away Valet agrees to pay the Airport a 10% commission on the cost for all value added services and customer amenities. The following represents the base offering of services; with the Airport’s approval, more options and services may be added over the term of the agreement.

4. Vehicle Steam Cleaning

Exterior wash and wax	\$40
Interior steam detail	\$150
Exterior steam detail	\$150
Steam value combo	\$160

5. Vehicle Maintenance

Oil change (conventional)	\$50
Oil change (full synthetic)	\$100

6. Food Delivery Service \$40 (ave)

EXHIBIT 6
Sample Monthly and Annual Revenue Report Forms


 CITY OF SAN ANTONIO AVIATION DEPARTMENT	EXHIBIT 6 Page 1 of 2																										
City of San Antonio Aviation Department Monthly Revenue and Commission Report																											
Month: _____ Year: _____																											
Concession Name: _____																											
D/B/A or Trade Name: _____																											
Concession Type: _____																											
Lease Number: _____	Space Number: _____																										
Lease Date: _____																											
<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:35%;">Location Description</th> <th style="width:15%;">Sales</th> <th style="width:20%;">Less Exclusions (Sales Tax, Gratuities, Uniform)</th> <th style="width:30%;">Total Gross Receipts</th> </tr> </thead> <tbody> <tr> <td>Valet Parking</td> <td></td> <td></td> <td align="right">\$0.00</td> </tr> <tr> <td>Car Wash</td> <td></td> <td></td> <td align="right">\$0.00</td> </tr> <tr> <td>Oil Change</td> <td></td> <td></td> <td align="right">\$0.00</td> </tr> <tr> <td>Food Delivery</td> <td></td> <td></td> <td align="right">\$0.00</td> </tr> <tr> <td align="right">Total:</td> <td align="right">0.00</td> <td align="right">0.00</td> <td align="right">0.00</td> </tr> </tbody> </table>				Location Description	Sales	Less Exclusions (Sales Tax, Gratuities, Uniform)	Total Gross Receipts	Valet Parking			\$0.00	Car Wash			\$0.00	Oil Change			\$0.00	Food Delivery			\$0.00	Total:	0.00	0.00	0.00
Location Description	Sales	Less Exclusions (Sales Tax, Gratuities, Uniform)	Total Gross Receipts																								
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Previous Gross Receipts LY to Date Total: _____																											
Total Gross Receipts Received YTD Total: _____																											
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MONTHLY PAYMENTS																											
(A)	Total Gross Receipts Lease Year to Date																										
(B)	Total Percent Rent Lease Year to Date																										
(C)	Total MAG thru Current Month																										
(D)	Total % Rent Billed Lease Year to Date																										
(E) = B - C - D	Total Monthly Percentage Rent Due (if any):		\$0.00																								
I hereby certify to the City of San Antonio that this is true and accurate statement of Gross Receipts and all payments shown above and that each of the foregoing is in accordance with the provisions of the Concession Agreement.																											
_____ Signature	_____ Title	_____ Date																									
THIS MONTHLY STATEMENT IS DUE NO LATER THAN THE 15TH DAY OF EACH MONTH. SUBMIT TO: ConcessionsSalesReports@sanantonio.gov																											

Exhibit 7
FAA REQUIRED CONTRACT PROVISIONS
Compliance with Nondiscrimination Requirements

During the performance of this Concession Agreement, Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the “Concessionaire”) agrees as follows:

1. **Compliance with Regulations:** Concessionaire (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Concession Agreement.
2. **Non-discrimination:** Concessionaire, with regard to the work performed by it during the Concession Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Concessionaire will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by Concessionaire for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Concessionaire of Concessionaire’s obligations under this Concession Agreement and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** Concessionaire will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, Concessionaire will so certify to the City or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of Concessionaire’s noncompliance with the Non-discrimination provisions of this Concession Agreement, City will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Concessionaire under the Concession Agreement until Concessionaire complies; and/or
 - b. Cancelling, terminating, or suspending the Concession Agreement, in whole or in part.
6. **Incorporation of Provisions:** Concessionaire will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Concessionaire will take action with respect to any subcontract or procurement as the City or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Concessionaire may request the City to enter into any litigation to protect the interests of the City. In addition, Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

Federal Fair Labor Standard Act (Federal Minimum Wage)

All contracts and subcontracts that result from this solicitation shall incorporate by reference the provisions of 29 C.F.R. Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

Concessionaire has full responsibility to monitor compliance to the referenced statute or regulation. Concessionaire must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

Occupational Safety and Health Act of 1970

All contracts and subcontracts that result from this solicitation shall incorporate by reference the requirements of 29 C.F.R. Part 1910 with the same force and effect as if given in full text. Concessionaire must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Concessionaire retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 C.F.R. Part 1910). Concessionaire must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with

Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

VI. DRUG-FREE WORKPLACE

(a) Definitions. As used in this clause—

“Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act ([21 U.S.C. 812](#)) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

“Conviction” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

“Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

“Drug-free workplace” means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Employee” means an employee of a Contractor directly engaged in the performance of work under a Government contract. “Directly engaged” is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

“Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall—within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration—

- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor’s workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- (2) Establish an ongoing drug-free awareness program to inform such employees about—
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Contractor’s policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;

- (4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—
- (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;
- (5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
- (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.
- (c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
- (d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR [23.506](#), render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.