

**AMENDMENT NO. 3
TO
SAN ANTONIO INTERNATIONAL AIRPORT
CONCESSION AGREEMENT**

This Amendment No. 3 (herein called "Amendment No. 3") to the Agreement for Operation of The Downtown Hotel Shuttle Service Concession for San Antonio International Airport (hereinafter "Concession Agreement") is entered into by and between the CITY OF SAN ANTONIO (herein called the "City"), a Texas municipal corporation, acting by and through its City Manager, pursuant to Ordinance Number _____ passed and approved by City Council on _____, and CITY TOURS, INC., a Texas corporation (hereinafter called "Concessionaire"), both of which may be referred to herein collectively as the "Parties", as set out below. WITNESSETH:

WHEREAS, the Parties entered into the Concession Agreement dated March 3, 2011, which Concession Agreement was authorized pursuant to Ordinance 2011-03-03-0174, for operation of the downtown hotel shuttle service concession at San Antonio International Airport; and

WHEREAS, the Parties entered into that certain Administrative Amendment No. 1 effective October 4, 2014; and

WHEREAS, the Parties entered into that certain Administrative Amendment No. 2 effective January 19, 2016; and

WHEREAS, the Parties have agreed to extend the term of the Agreement on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the terms, covenants, agreements and demises herein contained, and in consideration of other good and valuable consideration, each to the other given, the sufficiency and receipt of which are hereby acknowledged, the Concession Agreement entered into by and between the City and the Concessionaire is amended as follows:

I. **Article II. Term**, Section 2.1, is deleted in its entirety, and the following substituted in its place:

The term of this Agreement shall commence on the later of June 1, 2011 or the first day of the month following City Council approval of an Ordinance approving this Agreement, ("Commencement Date") and shall continue for a period of five years unless sooner terminated as set forth herein. Provided Concessionaire has made a partial cure payment of amounts in default per the City's default letter dated May 6, 2016, by certified check, cashier's check, or authorized credit card only, which partial cure payment shall be remitted to the City by close of business on May 31, 2016 in the amount of \$20,000 (total partial cure after May 6, 2016 of \$70,000), the term is hereby extended for one additional year commencing June 1, 2016, and terminating May 31, 2017. During the extended one year term (June 1, 2016 through May 31, 2017), Concessionaire may terminate this Agreement at any time by providing thirty (30) days written notice to City, in which case Concessionaire's obligation to pay the Minimum Annual Guarantee and the Minimum Monthly Guarantee shall cease on the termination date; provided,

however, that Concessionaire shall remain obligated for any payments that have accrued, but are unpaid, on the termination date.

The remainder of **Article II. Term** shall remain unchanged.

II. **Article III. Privileges and Obligations of the Concessionaire** shall have a new subsection, **3.12 Trade Dress and Trade Name**, added, as follows:

No later than the Effective Date of this Amendment, Concessionaire shall remove any and all "GoShuttle" signage and advertising at its booths and on its vehicles. Consistent with the Assumed Name Certificate Concessionaire filed with the Bexar County Clerk on March 24, 2016, Concessionaire shall operate and advertise (including employee clothing/uniforms) solely under the trade name: "Super Shuttle San Antonio."

The remainder of **Article III. Privileges and Obligations of the Concessionaire** shall remain unchanged.

III. **Article VI. Privilege Fees, Charges and Accountability**, is amended as follows:

A. Subsection 6.1.1 Minimum Guaranteed Fee, Subsection 6.1.2 Percentage Payments, are deleted in its entirety, and the following substituted in their place:

6.1.1 Minimum Guaranteed Fee. From and after the Commencement Date, the Concessionaire agrees to pay to the City one-twelfth of the Minimum Annual Guarantee ("Minimum Monthly Guarantee"), in advance, on the tenth day of each and every month during the term hereof, without the requirement of a notice to the Concessionaire. For the first contract year, the Minimum Annual Guarantee shall be Two Hundred Forty Thousand Dollars (\$240,000.00). For subsequent contract years, the Minimum Annual Guarantee shall be eighty-five percent (85%) of the total fees payable by Concessionaire to City for the preceding contract year; provided, however, that the Minimum Guaranteed Fee shall never be less than that of the first contract year. Notwithstanding the foregoing, commencing June 1, 2016, the Minimum Annual Guarantee shall be One Hundred Eighty Thousand Dollars (\$180,000.00), and Concessionaire's Minimum Monthly Guarantee shall be \$15,000.00. If, during the extended term of this Agreement per Section 2.1 above, City enters into a written agreement allowing a ride-sharing or transportation network company (or companies) with online reservation systems to operate at San Antonio International Airport, which company's operations cause a quantifiable, demonstrable decline in Concessionaire's Gross Revenue during the previous calendar month, Concessionaire may submit a written request to the Aviation Director to re-negotiate the amounts of the Minimum Annual Guarantee and Percentage Fee for the remaining extended term of the Agreement. The preceding sentence excludes transportation network companies which have written agreements with the City as of the

Effective Date of this Amendment. Should Concessionaire submit such a written request, the parties shall negotiate in good faith to reach an agreement within thirty (30) days of Concessionaire's request, to be set forth in an amendment to this Agreement executed by the Aviation Director without the necessity of City Council action, as to the amounts of the Minimum Annual Guarantee and Percentage Fee only, which amounts shall remain in effect for the remainder of the extended term of the Agreement.

6.1.2 Percentage Payments. From and after the Commencement Date, Concessionaire shall furnish to the City by the 10th day of each month a statement disclosing its Gross Revenue for the preceding calendar month ("Monthly Revenue Statement"). Such Monthly Revenue Statements shall be in the form attached to the Agreement as Exhibit 8, and shall detail the following:

- a. The Cumulative Year to Date Gross Revenue up to and including \$1.5 million dollars, due to ticket sales, baggage, fees, and Advertising sales, multiplied by thirteen percent (13%);
- b. The Cumulative Year to Date Gross Revenue in excess of \$1.5 million dollars, due to ticket sales, baggage, fees, and Advertising sales, multiplied by fifteen percent (15%).

If the sum of (a) and (b) in this Section 6.1.2 is greater than the Year to Date Minimum Annual Guarantee and percentage payments made, then, the difference shall be remitted to the City with the Monthly Revenue Statement.

B. A new Subsection, 6.1.4, Cure of Default, is added to Article VI. Privilege Fees, Charges and Accountability, which subsection is as follows:

Subsection, 6.1.4, Cure of Default. To cure the remaining balance in default per the City's default letter to Concessionaire dated May 6, 2016 if the partial default payment is completed in accordance with Article II. Term, Section 2.1 above, which remaining balance as of June 1, 2016 is \$27,131.98, Concessionaire shall remit the following payments to the City by certified check, cashier's check, or authorized credit card only, which remittances shall be made separate and apart from the Minimum Monthly Guarantee and Percentage Fee payments required in Subsections 6.1.1 and 6.2.2 above. The schedule for such remaining partial cure payments is as follows:

<u>Date</u>	<u>Amount</u>
<u>June 24, 2016</u>	<u>\$6783.00</u>
<u>July 22, 2016</u>	<u>\$6783.00</u>
<u>August 19, 2016</u>	<u>\$6783.00</u>
<u>September 23, 2016</u>	<u>\$6,782.98 plus accrued late fees</u>

Should Concessionaire fail to make any of the remaining partial cure payments required in a timely manner as required under this Subsection 6.1.4, this Amendment shall automatically terminate, without notice and/or opportunity to cure, and City shall be allowed all rights and remedies permitted under Article XV. Default by Concessionaire. CONCESSIONAIRE HEREBY EXPRESSLY WAIVES THE RIGHT TO NOTICE AND/OR OPPORTUNITY TO CURE PROVIDED UNDER SUBSECTION 15.1 OF THE AGREEMENT AS TO ANY FAILURE TO REMIT THE REMAINING CURE PAYMENTS, NOTICE OF DEFAULT HAVING BEEN PROVIDED BY CITY AND RECEIVED BY CONCESSIONAIRE IN THE CITY'S DEFAULT LETTER DATED MAY 6, 2016. City expressly reserves all rights and remedies with respect to the default letter dated May 6, 2016, including its right to assert claims against the performance guarantee.

The remainder of **Article VI. Privilege Fees, Charges and Accountability**, shall remain unchanged.

IV. **Article XII. Insurance, Section 12.15 Performance Bond** is deleted in its entirety, and the following **Subsection 12.15** entitled **Performance Guarantee** is substituted in its place:

Section 12.15 Performance Guarantee. Unless such period is specifically extended, in writing, by the Director, Concessionaire agrees, no later than fourteen (14) calendar days following execution of this Agreement, to post and maintain throughout the term of this Agreement, either an irrevocable letter of credit or a surety bond in the amount of fifty percent (50%) of the Minimum Annual Guarantee, plus six thousand dollars (\$6,000). The surety bond or irrevocable letter of credit shall secure the full and faithful performance by Concessionaire of all the covenants, terms, and conditions of this Agreement, shall stand as security for payment by Concessionaire of all valid claims by the City under this Agreement, and shall be in a form and content acceptable to the Director. The performance guarantee for the first contract year shall be one hundred twenty-six thousand dollars (\$126,000.00) and shall at all times, for subsequent contract years, be no less than fifty percent (50%) of the minimum annual guarantee plus half the annual rent for the ticketing booth(s). Commencing June 1, 2016, the performance guarantee shall be in the amount of (a) Ninety-Six Thousand Dollars (\$96,000.00), representing six months' minimum annual guarantee and six months' rent for the ticketing booth(s); and (b) the amount of \$27,131.98 remaining in default as of June 1, 2016 per Subsection 6.1.4 above, for a total performance guarantee amount of \$123,131.98. The performance guarantee in the new amount, or a continuation certificate for the performance guarantee under the current Agreement, must be tendered in final form to Aviation staff no later than close of business Friday, May 27, 2016.

V. **Exhibit 9** attached hereto, **Required Federal Contract Provisions/City Non-Discrimination Provision**, is hereby incorporated into and made part of the Agreement.

This Amendment No. 3 sets forth the entire agreement of the parties as to the subject matter contained herein. Except as amended hereby, all other provisions of the Concession Agreement as amended by Administrative Amendment No. 1, Administrative Amendment No. 2, and this Amendment No. 3 are hereby retained in their entirety and remain unchanged.

This Amendment No. 3 shall be effective retroactive to and including June 1, 2016 ("Effective Date"). Notwithstanding the foregoing, if Concessionaire has not (1) remitted the partial cure payment in accordance with the schedule and amount set forth in Article II. Term, Section 2.1 above, and (2) tendered the Performance Guarantee in accordance with Section 12.15 above, this Amendment No. 3 is **NULL AND VOID and of no effect whatsoever.**

CITY TOURS, INC.
d/b/a Super Shuttle

By: _____

Edward Torres
President

Date: _____

5/27/16

CITY OF SAN ANTONIO

By: _____

Noel T. Jones
Aviation Director

Date: _____

APPROVED:

By: _____

City Attorney

EXHIBIT 9
**REQUIRED FEDERAL CONTRACT PROVISIONS/
CITY NON-DISCRIMINATION PROVISION**

As used in this Exhibit, the terms “contractor” or “Contractor” shall refer to “Concessionaire”.

I. GENERAL CIVIL RIGHTS PROVISIONS

The contractor 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 binds the contractor and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

**II. TITLE VI CLAUSES COMPLIANCE WITH NONDISCRIMINATION
REQUIREMENTS**

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

1. **Compliance with Regulations:** The contractor (hereinafter includes Concessionaires) 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 contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, 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. The contractor 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 the contractor 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 the contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor 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 sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities

and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor 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 a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor 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 contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor 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. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

III. 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 C.F.R. 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 C.F.R. 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 C.F.R. 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).

IV. FEDERAL FAIR LABOR STANDARDS ACT

All contracts and subcontracts that result from this solicitation 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.

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

V. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 C.F.R. Part 1910 with the same force and effect as if given in full text.

Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The contractor 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). Contractor 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.

VI. CITY OF SAN ANTONIO NON-DISCRIMINATION ORDINANCE

Concessionaire, as a party to a contract with the City, understands and agrees to comply with the Non-Discrimination Policy of the City 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. As part of said compliance, Concessionaire shall adhere to City's Non-Discrimination Policy in the solicitation, selection, hiring or commercial treatment of vendors, suppliers or commercial customers, further, Concessionaire shall not retaliate against any person for reporting instances of such discrimination.