

ATTACHMENT A

OPERATING CONTRACT BY AND BETWEEN

_____ AND THE CITY OF SAN ANTONIO, TEXAS

This contract is entered into by and between the City of San Antonio, Texas, a home-rule municipal corporation ("CITY"), and _____ ("TNC"), a _____ corporation.

I. TERM

- 1.1 This contract shall commence on December 31, 2016 or upon execution of this contract, whichever is later, and end at midnight, December 31, 2017.
- 1.2 At the City Manager's discretion, without further City Council action, this contract may be extended by three (3) one-year optional extensions, each extension to end at midnight, December 31st.
- 1.3 This contract may be terminated earlier by the City or TNC, pursuant to the provisions hereof.

II. DEFINITIONS

- 2.1 Transportation Network Company ("TNC") shall mean a person that uses an internet enabled application or digital platform to send or transmit an electronic, radio or telephonic communication through the use of a portable or handheld device, monitor, smartphone or other electronic device to connect passengers with transportation network drivers for transportation network operations.
- 2.2 Transportation Network Operation ("TNO") shall mean connecting passengers with TNC Operators for rides through a TNC.
- 2.3 TNC Operator shall mean a person who receives connections to potential passengers and related services from TNC in exchange for payment of a fee to TNC, and uses a TNC Vehicle to offer or provide a prearranged ride to passengers upon connection through the digital network controlled by TNC in return for compensation or payment of a fee. A person is acting as a TNC Operator anytime the person is a TNC Operator on a TNCs digital network, regardless of whether the person has a passenger in the vehicle.
- 2.4 TNC Vehicle shall mean a vehicle that is used by a TNC Operator and is owned, leased, or otherwise authorized for use by the TNC Operator.
- 2.5 San Antonio Airport System ("SAAS") shall mean the San Antonio International Airport ("SAT"), the Stinson Municipal Airport and any other property that is added to or associated with the Airport System.
- 2.6 Geo-Fence shall mean a polygon whose points are geographic coordinates which define a virtual boundary around a geographic area on SAT property designated by SAT. There may

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be multiple Geo-Fences that are nested or geographically separate from the main fence surrounding the entire Airport property.

- 2.7 Trips shall mean any passenger pick-up, including but not limited to on and within the airport property as defined by the Geo-Fence(s) established by SAT.

III. AUTHORITY TO OPERATE

- 3.1 Pursuant to this contract, the CITY agrees to permit TNC to operate in the City of San Antonio, subject to the conditions and restrictions set forth herein.
- 3.2 Pursuant to Ordinance No. 2016-_____, the CITY agrees that the provisions of the City Code of San Antonio, Texas, Chapter 33 applicable to TNCs, and Chapter 3, Article II, Division 4, and the rules and regulations developed pursuant to this chapter, will not be enforced against TNC, except as herein provided, or unless such enforcement stems solely and directly from a violation of any provisions in this contract.

IV. OPERATING FEE

- 4.1 Operating fee shall be as follows:
- i) TNC shall pay a fee of \$0.10 for every trip that originates or terminates in the City, with an annual minimum fee of \$10,000 and maximum fee of \$50,000. TNC shall self-report and remit payment accordingly and shall be subject to a third party audit, at the City's request and expense.
 - ii) For the purpose of verifying that a TNC is in compliance with the requirements of this subsection and no more than annually, CITY shall have the right to visually inspect a sample of records that the TNC is required to maintain. The sample shall be chosen randomly by the CITY in a manner agreeable to both parties. The audit shall take place at a mutually agreed upon location with at least ten days' notice. Any record furnished to the CITY may exclude information that would tend to identify specific drivers or riders.
- 4.2 The annual minimum fee of \$10,000 is due within 30 days following the execution of this operating contract; the remaining fee up to \$50,000 is to be paid based upon the number of trips taken within 180 days after this operating contract is executed, to be paid within thirty days thereafter. If TNC has not paid the maximum fee of \$50,000 at that time, any remaining payment is due 30 days from the end date of this annual operating contract. All payments shall be paid in lawful money of the United States of America, free from all claims, demands, setoffs, or counterclaims of any kind. Any payments not paid when due shall be subject to a service charge of one and one-half percent (1.5%) per month. The annual fee shall be refunded on a pro rata basis if the Agreement is invalidated by a court of competent jurisdiction or superseded by State or Federal law.

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- 4.3 TNC and the CITY agree that at the expiration of the term of this operating contract, or any extensions approved by the City Manager, the TNC and the CITY may agree to increase any fee to be paid by TNC to the CITY or to SAAS as a condition of any extension, upon approval of the City Manager.

V. OPERATIONS

A. Rides

- 5A.1 TNC Operators shall only accept rides booked through TNC's digital platform and shall not solicit or accept street-hails.
- 5A.2 Upon a passenger being matched with a TNC Operator, the interface used by TNC to connect TNC Operators and passengers shall display for the passenger the first name and photograph of the TNC Operator and the make, model, and license plate number of the TNC vehicle.
- 5A.3 TNC shall provide a TNC Operator the option to identify whether the TNC Operator has voluntarily undergone and passed a criminal background check as approved by the CITY.
- 5A.4 TNC shall provide a means for all users of the TNC platform to report complaints to TNC. TNC shall investigate all complaints.

B. Fares

- 5B.1 TNC may offer service for compensation, no-charge, or suggested compensation. TNC shall disclose its rates used to determine any compensation or suggested compensation on its publicly accessible digital web portal.
- 5B.2 Upon completion of a trip, TNC shall transmit an electronic receipt to the passenger's e-mail address or mobile application, documenting the origination and destination of the trip and a description of the total amount paid, if any.
- 5B.3 TNC shall not charge a passenger for cancelling a trip if passenger cancels the ride within five minutes of the request or prior to TNC Operator's arrival at point of origination, whichever occurs first.

C. Operators

- 5C.1 TNC Operators: shall (1) possess a valid state-issued driver's license; (2) possess proof of registration for their TNC vehicle; and, (3) be at least twenty-one years of age.
- 5C.2 TNC Operators shall possess current automobile liability insurance, as provided for herein. TNC Operators shall possess proof of both the TNC Operator's personal insurance and TNC's liability insurance while serving as TNC Operators. In the event of a traffic accident, TNC Operators shall provide, on request to a peace officer or a person involved in an accident, evidence of financial responsibility by exhibiting the insurance policy. Such proof may be provided or displayed electronically.

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- 5C.3 Prior to permitting a person to act as a TNC Operator on its digital network, and each year thereafter, TNC shall obtain and review a criminal history research report for such person. The criminal background check shall be a national criminal background check, performed by a provider accredited by the National Association of Professional Background Screeners, which shall include a review of the national sex offender database. TNC must provide TNC Operators during initial orientation, as well as once every three months, with information on services that may be provided to TNC Operators by CITY. Any person who has been convicted, within the past seven years, of driving under the influence of drugs or alcohol, or who has been convicted at any time of homicide, kidnapping, any sexual offense, any assaultive offense, robbery, possession of a weapon in violation of Chapter 46 of the Texas Penal Code, violation of the Dangerous Drugs Act (Chapter 483 of the Texas Health and Safety Code), or the Controlled Substances Act (Chapter 481 of the Texas Health and Safety Code) that is punishable as a felony, or an offense under the laws of another state if the offense contains elements that are substantially similar to the elements of the specified Texas provisions, or use of a motor vehicle to commit a felony, shall not be permitted to be a TNC Operator. TNC will maintain electronic records that such criminal background checks have been conducted, for a period of two years.
- 5C.4 Prior to permitting a person to act as a TNC Operator on its digital network, and each year thereafter, TNC shall obtain and review a driving history research report for such person. Any person with more than three moving violations or a single major violation in the three-year period before the date of the driving history report shall not be permitted to be a TNC Operator. As used in this section, a "major violation" includes, but is not limited to, attempting to evade the police, reckless driving, or driving on a suspended or revoked license. TNC will maintain electronic records of such driving history research reports for a period of two years.
- 5C.5 TNC shall implement a policy prohibiting TNC Operators from refusing to provide service to an individual with a service animal unless the TNC Operator has a medically documented condition that prevents the TNC Operator from transporting animals.
- 5C.6 TNC shall establish a TNC Operator training program designed to ensure that each TNC Operator properly operates his vehicle. The prohibition on using taxi stands and prohibition against refusing to provide service to passengers with service animals shall be made available for TNC Operators to review on the TNC website or otherwise communicated to TNC Operators.
- 5C.7 TNC shall implement a zero-tolerance policy on the use of drugs or alcohol applicable to any TNC Operator on the TNC platform. TNC shall provide notice to the users: (1) of the zero-tolerance policy on its website; and, (2) of the procedures for reporting a complaint about a TNC Operator the passenger reasonably suspects was under the influence of drugs or alcohol during the course of a ride. TNC shall immediately suspend a TNC Operator upon receipt of a passenger complaint alleging a violation of the zero-tolerance policy. The suspension shall last the duration of the investigation.

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- 5C.8 TNC shall implement a zero-tolerance policy prohibiting discrimination (on the basis of race, color, religion, national origin, and sexual orientation, gender identity, veteran status, age, or disability), harassment, or sexual harassment by any TNC Operator on the TNC platform. TNC shall provide notice to the users (1) of the said zero-tolerance policy on its website and (2) of the procedures for reporting a complaint about a TNC Operator the passenger reasonably believes has engaged in discrimination, harassment, or sexual harassment in conducting business as a TNC Operator. TNC shall immediately suspend a TNC Operator upon receipt of a passenger complaint alleging a violation of the zero-tolerance policy. The suspension shall last the duration of the investigation.

D. Insurance

- 5D.1 TNC agrees that it will comply with the requirements of the Texas Insurance Code, including Chapter 1954, during the term of this contract.
- 5D.2 Within thirty (30) days from the date of operating contract execution, TNC shall provide to the CITY a certificate of insurance for the required policy, naming TNC as the insured, with an endorsement naming the CITY as an additional insured. The policy shall be accompanied by a commitment from the insurer that any provision of the policy that relates to the CITY will not be canceled, modified, or reduced in coverage without at least thirty days' prior notice to the CITY.

E. Vehicles

- 5E.1 TNC vehicles may be coupes, sedans, or light-duty vehicles, including, without limitation, vans, minivans, sport utility vehicles, hatchbacks, convertibles, and pickup trucks, that are legally permitted to operate on streets within the CITY.
- 5E.2 All TNC vehicles shall have a valid Texas state safety inspection conducted prior to their operation pursuant to the Texas Transportation Code.
- 5E.3 TNC and TNC Operators shall not use any marked taxi stands or commercial loading zones.

F. Records

- 5F.1 TNC shall maintain accurate and current records of all TNC Operators providing TNO services through TNC.
- 5F.2 TNC shall maintain trip data by zip code for all trips originating within the CITY. Said data shall include both the trip origination zip code and the trip termination zip code. TNC shall provide data on the percentage of trips originating and terminating in each CITY zip code to the CITY within ten business days following the end of the months of March, June, September and December during the term of this contract, and within ten business days of the effective date of the termination of this contract. Said data shall be treated as confidential by the CITY.

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- 5F.3 The release by the CITY of records or information disclosed to the CITY by TNC in response to an open records request is governed by Chapter 552 of the Texas Government Code. The release by the CITY of records or information disclosed to the CITY by TNC in response to a subpoena or court order is governed by state or federal law. In the event that information provided by TNC to the CITY pursuant to this contract is sought through an open records request, a subpoena, or a court order, the CITY shall promptly notify TNC of such open records request, subpoena, or court order, so as to afford TNC the opportunity to take actions to prevent disclosure.

G. Airport Operations

- 5G.1 Within fifteen (15) days after the close of each calendar month, TNC provider shall submit its operations report to SAAS for the previous calendar month (the "Monthly Report"). The fees due to SAAS are in addition to the operating fees due under Paragraph IV of this operating contract.
- i) The Monthly Report shall be provided to SAAS in a PDF electronic format and shall contain the total number of originating trips for each day within the reporting period and a total number of trips for the month for each Airport separately.
 - ii) All such information shall be accurate at all times.
- 5G.2 TNC agrees to pay a monthly fee to SAAS ("Monthly Fee"), which shall be calculated by multiplying total trips in the relevant month multiplied by the per trip fee of \$1.50 each only for those trips originating from San Antonio International Airport. There shall be no charge for trips originating from Stinson Municipal Airport. The Monthly Fee is due, in full, and shall be received by SAAS, within thirty (30) days after the close of each calendar month.
- 5G.3 All payments hereunder, including Monthly Fees, shall be paid in lawful money of the United States of America, free from all claims, demands, setoffs, or counterclaims of any kind. Any payments hereunder, including Monthly Fees, not paid when due shall be subject to a service charge of one and one-half percent (1.5%) per month, or if lower, the maximum amount allowed by law.
- 5G.4 Prior to engaging in operations on SAAS property, TNC shall demonstrate a working Geo-Fence application. The Geo-Fence can be proprietary to the TNC.
- 5G.5 TNC shall maintain SAAS originating trip data based on trips booked through the TNC application, which shall include but may not be limited to trip originations in four-hour intervals.
- 5G.6 TNC shall provide SAAS with the data described in section 5G.5 when a passenger is picked up on SAAS property as part of a ride booked through the TNC application. Such data shall be provided in accordance with the procedures outlined in subsection 5G.7 (i) or (ii). Additional data regarding TNC vehicle movements may be shared if desired.

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5G.7 Data Sharing shall be accomplished in one of two ways.

- i) Option 1: TNC may provide the data in real time to a third party application using an HTTP/HTTPS POST message which contains a JSON data packet. Specific URL addresses, request and response formats, TNC identification designations, usernames and passwords, Geo-Fence definitions and boundaries, and message fields and associated formats shall be provided to the TNC prior to implementation by SAAS.
- ii) Option 2: TNC may elect to provide SAAS with a monthly report that is in an Excel format, which contains the data requested, or, if deemed possible, without undue burden, in a format that may be uploaded to the third party software described above. The data is to be bundled by day and segmented by four-hour intervals.
 - a. For the purpose of verifying that a TNC is in compliance with the requirements of this subsection and no more than annually, CITY shall have the right to visually inspect a sample of records that the TNC is required to maintain. The sample shall be chosen randomly by the CITY in a manner agreeable to both parties. The audit shall take place at a mutually agreed upon location. Any record furnished to the CITY may exclude information that would tend to identify specific drivers or riders.
 - b. If such audit discloses that TNC's monthly reports as previously reported for the period audited were understated, TNC shall pay to the City within thirty (30) days of receiving notice, the additional originating trip fees due for the days audited together with interest at the lesser of eighteen percent (18%) per annum or the maximum allowed by law, from the date(s) such amount was originally due.

5G.8 Driver Staging and Pick Up Area(s)

- i) SAAS shall provide TNC Operators with designated staging and pick-up locations on Airport property.
- ii) TNC shall prevent TNC Operators from accepting rides within the Geo-Fence unless such TNC Operator is staged in the proper area(s) of SAT.
- iii) The TNC application must provide customers with specific pick-up locations at SAT as designated by SAT.
- iv) TNC Operators shall not operate on SAT property without the proper use of TNC's application. TNC Operators may not pick-up passengers who are paying for services using any other method than TNC's application. No personal pick-ups or pre-arranged pick-ups for which the TNC Operator receives compensation other than through TNC's application are allowed within the SAAS.

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5G.9 TNC acknowledges and agrees that:

- i) SAAS shall have the right, at any time, to change, alter and expand the Airport property, including the terminals, roadways and designated pick-up, drop-off and/or staging areas. SAAS shall provide TNC with sufficient notice, no less than 30 days prior, of any such change, alteration or expansion affecting the terminals, roadways, or designated pick-up, drop-off and/or staging areas.
- ii) SAAS has made no representations, warranties and/or covenants to TNC regarding the design or construction of the Airport or any designated areas, or the passenger or automobile traffic on the Airport.
- iii) Without limiting the generality of the foregoing, TNC acknowledges and agrees that SAAS may from time to time adopt rules and regulations relating to security or other operational matters that may affect TNC's business. Any such rules or regulations that could have the effect of impeding TNC operations or contradicting the terms set forth in this contract must be previously agreed upon by the City and TNC.

H. Inspections

5H.1 The CITY shall provide TNC with the names of CITY inspectors. The CITY inspectors shall conduct no more than 10 inspections per month during the term of this contract. TNC agrees to ensure that the passenger accounts of any CITY inspectors remain open, unless the inspectors engage in misconduct that goes beyond the lawful exercise of the inspector's duties and responsibilities. Such inspector accounts shall remain open during the term of this contract with no notice to drivers that the account belongs to a CITY inspector. TNC shall provide the CITY with a coupon code, or similar medium that permits CITY inspectors to take a secret-shopper ride without charge for the purpose of conducting inspections during the term of this contract, with such coupon code or similar medium to provide no notice to drivers that the passenger is a city inspector.

I. Agent

- 5I.1 TNC shall designate an agent and office whose place of work is located within the city of San Antonio, Texas.
- 5I.2 Upon execution of this contract, TNC shall provide to the CITY the name, telephone number, facsimile number (if any), e-mail address, physical address, and office hours of its agent.

VI. TERMINATION

- 6.1 For purposes of this contract, "termination" of this contract shall mean termination by expiration of the contract term, as set out in Article I, or earlier termination pursuant to any of the provisions of this contract.
- 6.2 TNC or the CITY may terminate this contract upon thirty days' written notice to TNC or the CITY for any reason, in its sole discretion.

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VII. LICENSES AND CERTIFICATIONS

- 7.1 All licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials and all applicable state and federal laws and local ordinances, except as otherwise provided for in this contract, must be complied with by TNC. Failure to comply with this requirement may result in termination of this contract.

VIII. NON-EXCLUSIVE CONTRACT

- 8.1 TNC acknowledges that this contract does not invest in TNC the exclusive right to provide TNO services in the City of San Antonio during the term of this contract.

IX. NON-WAIVER

- 9.1 Unless otherwise specifically provided for in this contract, a waiver by either party of a breach of any of the terms, conditions, covenants, or guarantees of this contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant, or guarantee herein contained. Further, any failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification, or discharge by either party hereto of any provision of this contract shall be deemed to have been made or shall be effective, unless expressed in writing and signed by the party to be charged. No act or omission by a party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

X. INDEMNIFICATION

- 10.1 TNC covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage (collectively "CLAIMS"), made upon the CITY directly or indirectly arising out of, resulting from or related to TNC'S violation of this Contract, including any violation attributable to any agent, officer, director, representative, employee, consultant or subcontractor of TNC, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence or intentional misconduct of CITY, its officers or employees. IN THE EVENT TNC 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.

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- 10.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. The parties shall advise each other in writing within 24 hours of any claim or demand against either party that it reasonably believes are covered by TNC's INDEMNITY obligations hereunder. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving TNC of any of its obligations under this paragraph.
- 10.3 Defense Counsel - TNC shall retain the right to select defense counsel in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by TNC in writing. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense.
- 10.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of TNC, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for TNC or any subcontractor under worker's compensation or other employee benefit acts.
- 10.5 It is expressly understood and agreed that TNC is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions and that CITY shall in no way be responsible therefor.

XI. CHANGES AND AMENDMENTS

- 11.1 Except when the terms of this contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both the CITY and TNC.
- 11.2 It is understood and agreed by the parties hereto that changes in local, state, and federal rules, regulations, or laws applicable hereto may occur during the term of this contract and that any such changes shall be automatically incorporated into this contract without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation, or law.

XII. ENTIRE CONTRACT

- 12.1 This contract and its exhibits constitute the final and entire contract between the parties hereto and contain all of the terms and conditions agreed upon. No other contracts, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof and only executed by the parties.

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XIII. SEVERABILITY

- 13.1 If any clause or provision of this contract is held invalid, illegal, or unenforceable under present or future federal, state, or local laws, including, but not limited to, the CITY charter, CITY CODE, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality, or unenforceability shall not affect any other clause or provision hereof and that the remainder of this contract shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this contract that is invalid, illegal, or unenforceable, there be added as a part of the contract a clause or provision as similar in terms to such invalid, illegal, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

XIV. NOTICES

- 14.1 For purposes of this contract, all official communications and notices between the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY

TNC

Assistant Police Director
San Antonio Police Department
315 S. Santa Rosa
San Antonio, Texas 78207

XV. LAW APPLICABLE

- 15.1 THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.
- 15.2 VENUE AND JURISDICTION FOR ANY LEGAL ACTION OR PROCEEDING BROUGHT OR MAINTAINED, DIRECTLY OR INDIRECTLY, UNDER OR IN CONNECTION WITH THIS CONTRACT SHALL LIE EXCLUSIVELY IN BEXAR COUNTY, TEXAS.

XVI. LEGAL AUTHORITY

- 16.1 The signer of this contract for TNC represents, warrants, assures, and guarantees that he has full legal authority to execute this contract on behalf of TNC and to bind TNC to all of the terms, conditions, provisions, and obligations herein contained.

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XVII. PARTIES BOUND

- 17.1 This contract shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns, except as otherwise expressly provided for herein.

XVIII. CAPTIONS

- 18.1 The captions contained in this contract are for convenience of reference only and in no way limit or enlarge the terms and/or conditions of this contract.

EXECUTED IN DUPLICATE ORIGINALS on _____, 2016

CITY OF SAN ANTONIO

TNC

Sheryl Sculley
City Manager

APPROVED AS TO FORM:

City Attorney