

**SAN ANTONIO INTERNATIONAL AIRPORT  
CONCESSION AGREEMENT**

**STATE OF TEXAS**                   §  
  §  
**COUNTY OF BEXAR**               §

This San Antonio International Airport Concession Agreement (hereinafter, "Agreement" or "Concession Agreement") is entered into by and between the **City Of San Antonio** ("Lessor" or "City"), a Texas home-rule municipal corporation, acting by and through its City Manager pursuant to Ordinance No. \_\_\_\_\_, passed and approved by City Council on \_\_\_\_\_ and **Prepango, LLC** ("Concessionaire"), acting by and through its designated officers pursuant to its Manager.

**ARTICLE 1. DEFINITIONS**

As used herein, the following words and phrases shall have the meanings set forth below:

- 1.1. "Affiliate" means any corporation or other entity which directly or indirectly controls or is directly or indirectly controlled by or is under common control with Concessionaire; "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise.
- 1.2. "Airport" means San Antonio International Airport.
- 1.3. "Aviation Director" or "Director" means the Director of Airports of the City of San Antonio or Deputy Aviation Director.
- 1.4. "DOT" means the United States Department of Transportation, and any federal agency succeeding to its jurisdiction.
- 1.5. "FAA" means the Federal Aviation Administration of the United States government, and any federal agency succeeding to its jurisdiction.
- 1.6. "Sign" means any advertising sign, billboard, identification sign or symbol, or other similar device, regardless of content.
- 1.7. "Leased Premises" means those certain premises at Airport more particularly described in **Article 2**.
- 1.8. "Subsidiary" means any corporation or other entity not less than fifty percent (50%) of whose outstanding stock (or other form of equity ownership) shall, at the time, be owned directly or indirectly by Concessionaire or the entity owning directly or indirectly 50% or more of Concessionaire, as applicable.
- 1.9. "Trade Fixtures" means, but shall not be limited to, any signs (electrical or otherwise) used to identify Concessionaire's business; all shelves, bins, racking, machinery and

equipment used in connection with Concessionaire's required or permitted activities pursuant to this Lease Agreement, whether or not such machinery or equipment is bolted or otherwise attached to the Leased Premises; and all other miscellaneous office equipment, furnishings, and personal property.

- 1.10. "TSA" means the Transportation Security Administration, and any federal agency succeeding to its jurisdiction.

**ARTICLE 2. DESCRIPTION OF LEASED PREMISES**

Lessor, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by Concessionaire, does hereby lease unto Concessionaire, and Concessionaire does hereby accept from Lessor, the following property (hereinafter the "Leased Premises") located within San Antonio International Airport in San Antonio, Bexar County, Texas, and more specifically shown in **Exhibit 1** which is attached hereto and made a part of this Lease Agreement:

The leasehold is comprised of four pre-security locations, two in Terminal A and two in Terminal B for placement of a vending machine/kiosk in each location. One Personal Protection Equipment (PPE) machine and one Sound Equipment machine shall be located in each terminal. All of these locations may be re-located during the term of this Agreement, at the discretion of the Director, upon 30 days written notice.

**ARTICLE 3. RENTAL**

3.1 Concessionaire agrees to pay Lessor as rental the amount indicated in the tables below for use and occupancy of the Leased Premises, at the times and in the manner hereinafter provided. All rentals shall be calculated as a lump sum, upon conclusion of the rental period, and shall be paid by Concessionaire to Lessor in advance without invoicing, notice or demand. Rental payments are due by the first business day of each month.

Personal Protective Equipment (PPE) Machines:

Monthly Rental Terminal A	Monthly Rental Terminal B	Total Monthly Rental
15% of gross sales	15% of gross sales	15% of gross sales from both locations

Sound Machines:

Monthly Rental Terminal A	Monthly Rental Terminal B	Total Monthly Rental
20% of gross sales	20% of gross sales	20% of gross sales from both locations

Should any additional machines of the following types be added, the rental percentage(s) shall be as follows:

<u>Type of Machine</u>	<u>Percent of Gross Sales:</u>
KYLIE (cosmetics)	10%
LEGO (toys)	15%
Pharmacy	15%
Vendomobility	25%
PREMIUM SOUND	12%

Placement of any other product types in any of the specified locations shall require the express written consent of the Director.

Should any vending machine generate little, or no sales, for a period of ninety (90) days, as determined by the Director, City reserves the right to require Concessionaire to rebrand, remove or reposition said machine. Any such directive shall be made in mutual consultation with Concessionaire.

3.2 All rentals and payments that become due and payable by the Concessionaire shall be made to the City of San Antonio, Office of the Aviation Director, San Antonio International Airport, 9800 Airport Blvd., San Antonio, Bexar County, Texas, 78216 unless otherwise notified in writing. All rentals and payments unpaid for ten (10) days after the date due shall bear interest at the lesser rate of eighteen percent (18%) per annum or the maximum rate allowed under law, from the date the amount was first due.

3.3 All rentals, fees and charges payable by Concessionaire to Lessor under the terms hereof, whether or not expressly denominated as rent, shall constitute rent for all purposes, including, but not limited to, purposes of the United States Bankruptcy Code.

3.4 Monthly Sales Report. Concessionaire shall complete and submit to Lessor a monthly sales report, utilizing the form attached hereto as **Exhibit 3**. This form shall be submitted no later than the fifteenth (15<sup>th</sup>) day following the end of each calendar month, and should be sent to [ConcessionsSalesReports@sanantonio.gov](mailto:ConcessionsSalesReports@sanantonio.gov).

#### **ARTICLE 4. USE OF LEASED PREMISES**

Concessionaire shall use the leased premises solely for the installation and operation of automated retail vending stores under a “Clean & Safe Travels” concept and offering, for sale at retail, Personal Protection Equipment (PPE) products, sound equipment products, and other travel necessity items, including mobile phone accessories, pharmacy items, cosmetics, desserts and toys, in Terminal A and Terminal B pre-security. Any other use shall require the advance written approval of the Aviation Director.

## ARTICLE 5. LEASE TERM

5.1 The term of this Lease Agreement shall be five (5) years, commencing upon execution by both parties (“Commencement Date”) and shall terminate five years from that date, unless earlier terminated in accordance with this Lease Agreement.

5.2 The Lease term will at all times be subject to the provisions for recapture and/or early termination herein contained.

5.3 Hours of operation.

Terminal A location: Sunday through Friday, from 12:00 AM to 11:59 PM.

Terminal B location: Sunday through Friday, from 12:00 AM to 11:59 PM.

Any request for adjustment or deviation from this schedule must be submitted in writing for the Director’s approval.

5.4 Penalties for non-operation.

If airport personnel shall observe either location being in a state of non-operation for a minimum of four consecutive hours during any of the hours of operation listed in Article 5.3, above, Concessionaire shall be assessed a non-operation penalty of \$200.00 per violation. Failure to pay this penalty shall be considered an event of default, pursuant to Article 23 of this Agreement.

## ARTICLE 6. INDEMNIFICATION

6.1 **CONCESSIONAIRE** 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, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **CONCESSIONAIRE**’s activities under this **LEASE**, 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 **LEASE**, all without however, the City waiving any governmental immunity available to the **CITY** under Texas Law and without waiving any defenses of the parties under Texas Law. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS LEASE.** 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. **CONCESSIONAIRE** shall promptly advise the **CITY** in writing of any claim or demand

against the **CITY** or **CONCESSIONAIRE** known to **CONCESSIONAIRE** related to or arising out of **CONCESSIONAIRE**'s activities under this **LEASE** and shall see to the investigation and defense of such claim or demand at **CONCESSIONAIRE**'s cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **CONCESSIONAIRE** of any of its obligations under this paragraph.

6.2 It is the **EXPRESS INTENT** of the parties to this **LEASE**, that the **INDEMNITY** provided for in this Article 6, is an **INDEMNITY** extended by **CONCESSIONAIRE** to **INDEMNIFY, PROTECT** and **HOLD HARMLESS**, the **CITY** from the consequences of the **CITY's OWN NEGLIGENCE**, provided however, that the **INDEMNITY** provided for in this Article **SHALL APPLY** only when the **NEGLIGENT ACT** of the **CITY** is a **CONTRIBUTORY CAUSE** of the resultant injury, death, or damage, and shall have no application when the negligent act of the **CITY** is the sole cause of the resultant injury, death, or damage. **CONCESSIONAIRE** further **AGREES TO DEFEND, AT ITS OWN EXPENSE** and **ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY**, any claim or litigation brought against the **CITY** and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this **INDEMNITY** shall apply, as set forth above.

## **ARTICLE 7. INSURANCE**

7.1 Prior to occupancy of the Leased Premises and the conduct of any business thereupon, 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 "San Antonio International Airport 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 to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

7.2 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 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 whereupon City may incur increased risk.

7.3 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 the 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, by companies authorized and admitted 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:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. damage to property rented by you e. damage to rented premise	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
4. 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 (\$5,000,000 if AOA access required)
5. *Property Insurance: For physical damage to the property of CONCESSIONAIRE, including improvements and betterment to the Leased Premises	Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of Concessionaire’s property

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

7.5 [Reserved]

7.6 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Concessionaire shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Concessionaire shall pay any costs incurred resulting from said changes.

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

7.7 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.

7.8 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.

7.9 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.

7.10 Nothing herein contained shall be construed as limiting in any way the extent to which Concessionaire may be held responsible for payments of damages to persons or property resulting from Concessionaire's or its subcontractors' performance of the work covered under this Agreement.

7.11 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.

7.12 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.

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

7.14 The City of San Antonio Aviation Department, Properties and Concessions Division, utilizes an insurance certificate tracking firm to verify all insurance forms required from concessionaires, contractors and subcontractors associated with any lease or contract. The Division's current provider is **myCOI**. Upon concessionaire's or contractor's receipt of this executed lease or contract, an email will be sent to you asking you to register online with myCOI. Please make sure the following address is added to your "safe sender" list to ensure you receive this email communication ([registration@mycoitracking.com](mailto:registration@mycoitracking.com)). It is critical that you provide the Division with your accurate email address. Part of the registration process includes providing contact information for your insurance agent(s). You will also need this information available to you at the time of registration. Once you have registered and entered the email address for your insurance agent(s), an email will be sent to the insurance agent(s) requesting them to upload your Certificate of Insurance (COI) directly into the myCOI website. Certificates of Insurance cannot be mailed, emailed or faxed to the Aviation Department, Properties and Concessions Division. Your agreement will not be in compliance, nor will you be allowed to occupy, operate nor begin construction until registration is completed and a compliant COI and all required endorsements are received from your agent(s).

## **ARTICLE 8. LANDLORD'S LIEN**

8.1 Concessionaire hereby gives to Lessor a lien upon all of its property now, or at any time hereafter, in or upon the Leased Premises, to secure the prompt payment of charges herein stipulated to be paid for the use of said Premises; all exemptions of such property, or any of it, being hereby waived.

## **ARTICLE 9. ADDITIONAL FEES AND CHARGES**

9.1 Fees and charges for miscellaneous items and services, including, but not limited to, employee badges, shall be assessed, by City ordinance, in connection with the ordinary usage of Airport facilities.

9.2 All rentals, fees and charges payable by Concessionaire to Lessor under the terms hereof, whether or not expressly denominated as rent, shall constitute rent for all purposes, including, but not limited to, purposes of the United States Bankruptcy Code.

## **ARTICLE 10. PRIVILEGES AND CONDITIONS**

10.1 Lessor hereby grants to Concessionaire the following general, non-exclusive privileges, uses and rights, subject to the terms, conditions and covenants herein set forth:

10.1.1 The general use by Concessionaire of all common Airport facilities and improvements, which are now, or may hereafter be, connected with or appurtenant to said Airport, except as hereinafter provided. "Common Airport facilities" shall include all necessary roadways, sidewalks, terminal facilities, restrooms and other common or public facilities appurtenant to said Airport.

10.1.2 The right of ingress to and egress from the Leased Premises, over and across common or public roadways serving the Airport for Concessionaire, its agents, servants, patrons, invitees, suppliers of service and furnishers of material. Said right shall be subject to such ordinances, rules and regulations as now, or may hereafter, apply at the Airport.

10.2 The granting and acceptance of this Lease Agreement is conditioned upon compliance with the covenant that the right to use said common Airport facilities, in common with others so authorized, shall be exercised subject to and in accordance with the laws of the United States, State of Texas and City of San Antonio, the rules and regulations promulgated by their authority with reference to aviation and navigation, and all reasonable and applicable rules, regulations and ordinances of Lessor, now in force or hereafter prescribed or promulgated by charter authority or by law.

10.3 Lessor reserves the right to enter the Leased Premises at any reasonable time for the purpose of inspecting same or verifying that fire, safety, sanitation regulations and other provisions contained in this Lease Agreement are being adhered to by Concessionaire.

## ARTICLE 11. AS IS ACCEPTANCE AND CONDITION OF PREMISES

11.1 Concessionaire has had full opportunity to examine the Leased Premises. Except for environmental matters not caused by or reasonably discoverable by Concessionaire prior to the commencement of this Lease Agreement, Concessionaire's taking possession of the Leased Premises shall be conclusive evidence of Concessionaire's acceptance thereof in an "AS IS" condition, and Concessionaire hereby accepts same in its present condition as suitable for the purpose for which leased.

11.2 Concessionaire agrees that no representations respecting the condition of the Leased Premises and no promises to improve same, either before or after the execution hereof, have been made by Lessor or its agents to Concessionaire, unless contained herein or made a part hereof by specific reference.

## ARTICLE 12. PERFORMANCE GUARANTEE

Concessionaire shall deliver to the Aviation Director, on or before the execution of this Lease, and shall keep in force throughout the term hereof, a cash bond, a performance bond or an irrevocable standby letter of credit in favor of Lessor, drawn upon a bank satisfactory to Lessor and payable to City of San Antonio, Aviation Department. The foregoing shall be in a form and content satisfactory to Lessor, shall be conditioned upon satisfactory performance of all terms, conditions and covenants contained herein during the term hereof and shall stand as security for payment by Concessionaire of all valid claims by Lessor hereunder. **The initial amount of the performance bond or irrevocable standby letter of credit shall be at least ONE THOUSAND AND 00/100 U.S. DOLLARS (\$1,000.00).** Said amount shall be adjusted, as necessary, so that it shall at all times equal at least one-half of the annual rental payable by Concessionaire to Lessor hereunder, but never less than \$1,000.00. Notwithstanding the forgoing, Concessionaire may tender to the Director a cashier's check in lieu of the letter of credit or surety bond in the amount of the required performance guarantee.

## ARTICLE 13. LIENS PROHIBITED

13.1 Concessionaire shall not suffer or permit any mechanics' or other liens to be filed against the fee of the Leased Premises, or against Concessionaire's leasehold interest in the land, buildings or improvements thereon, by reason of any work, labor, services or materials supplied, or claimed to have been supplied, to Concessionaire or to anyone holding the Leased Premises, or any part thereof, through or under Concessionaire.

13.2 If any such mechanics' lien or materialmen's lien described in **Section 13.1** above shall be recorded against the Leased Premises, or any improvements thereon, Concessionaire shall cause the same to be removed or, bonded around pursuant to the terms of the Texas Property Code. In the alternative, if Concessionaire, in good faith, desires to contest the same, it shall be privileged to do so; however, in such case, Concessionaire hereby agrees to indemnify and save Lessor harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of

foreclosure on said mechanics' lien, cause the same to be discharged and removed prior to sale of the property or execution of such judgment.

#### **ARTICLE 14. MAINTENANCE AND REPAIR**

14.1 If applicable, Lessor shall pay or cause to be paid, any and all charges for water, heat, gas, electricity, sewer and any and all other utilities used on the Leased Premises (excluding telecommunication services, cable and satellite services), throughout the term of, or any extension of, this Lease Agreement, including, but not limited to, any connection fees and any and all additional costs related to utility connection, metering, maintenance, repair and usage.

14.2 Except as may be otherwise provided herein, Concessionaire shall, throughout the term of this Lease Agreement and any extension hereof, assume the entire responsibility, cost and expense, for all repair and maintenance of the Leased Premises and all buildings and improvements thereon. Additionally, without limiting the foregoing, Concessionaire shall:

14.2.1 at all times maintain the buildings and improvements in a good state of repair and preservation, excepting ordinary wear and tear and obsolescence in spite of repair; and

14.2.2 replace or substitute any fixtures and equipment which have become inadequate, obsolete, worn out, unsuitable or undesirable, with replacement or substitute fixtures and equipment, free of all liens and encumbrances, which shall automatically become a part of the buildings and improvements; and

14.2.3 at all times keep the Leased Premises, its buildings, improvements, fixtures, equipment and personal property, in a clean and orderly condition and appearance; and

14.2.4 provide, and maintain in good working order, all obstruction lights and similar devices, fire protection and safety equipment, and all other equipment of every kind and nature required by laws, rules, orders, ordinances, resolutions or regulations of any competent authority, including Lessor and Aviation Director; and

14.2.5 observe all insurance regulations and requirements concerning the use and condition of the Leased Premises, for the purpose of reducing fire hazards and insurance rates on the Airport; and

14.2.6 repair any damage, caused by Concessionaire, to paving or other surfaces of the Leased Premises or the Airport, in connection with the scope of the Lease Agreement, caused by any oil, gasoline, grease, lubricants, flammable liquids and/or substances having a corrosive or detrimental effect thereon, or by any other reason whatsoever; and

14.2.7 take measures to prevent erosion, including, but not limited to, the planting and replanting of grass on all unpaved or undeveloped portions of the Leased Premises; the planting, maintaining and replanting of any landscaped areas; the designing and

constructing of improvements on the Leased Premises; and the preservation of as many trees as possible, consistent with Concessionaire's construction and operations; and

14.2.8 be responsible for the maintenance and repair of all utility services lines upon the Leased Premises, including, but not limited to, water and gas lines, electric power and telephone conduits and lines, sanitary sewers and storm sewers; and

14.2.9 keep and maintain all vehicles and equipment operated by Concessionaire on the Airport in safe condition, good repair and insured, as required by this Lease Agreement; and

14.2.10 replace broken or cracked plate glass, paint/repaint structures upon the Leased Premises and, where applicable, mow the grass; and

14.2.11 provide and use suitable covered metal receptacles for all garbage, trash and other refuse; assure that boxes, cartons, barrels or similar items are not piled in an unsightly, unsafe manner, on or about the Leased Premises; provide a complete and proper arrangement, satisfactory to the Aviation Director, for the adequate sanitary handling and disposal away from the Airport, of all trash, garbage and refuse caused as a result of the operation of its business.

14.3 The adequacy of the performance of the foregoing maintenance and repair by Concessionaire shall be determined by the Aviation Director, whose reasonably exercised judgment shall be conclusive. Should Concessionaire refuse or neglect to undertake any such maintenance or repair, or if Lessor is required to perform any maintenance or repair necessitated by the negligent acts or omissions of Concessionaire, its employees, agents, assignees, subtenants or licensees, then Lessor shall have the right, but not the obligation, to perform such maintenance or repair on behalf of and for Concessionaire. The costs of such maintenance or repair, plus a fifteen percent (15%) overhead charge, shall be reimbursed by Concessionaire to Lessor no later than ten (10) days following receipt by Concessionaire of written demand from Lessor for same. In cases not involving maintenance or repair requiring exigent action, Lessor shall provide Concessionaire a written request that Concessionaire perform such maintenance or repair, at least thirty (30) days before Lessor effects such maintenance or repair on behalf of Concessionaire.

## **ARTICLE 15. TITLE**

15.1 It is expressly understood and agreed that any and all items of personal property owned, placed or maintained by Concessionaire on the Leased Premises during the term hereof shall be and remain Concessionaire's property. Provided that Concessionaire is not in default under this Lease Agreement, it may remove or cause to be removed all such items from the Leased Premises. At Lessor's sole election, any such items remaining on the Leased Premises more than thirty (30) days after the expiration of the term hereof, shall then belong to Lessor without payment or consideration therefor.

15.2 At Lessor's sole option, title to Improvements made upon the Leased Premises by Concessionaire, and fixtures annexed thereto, shall vest in and become the property of Lessor, at

no cost to Lessor and without any instrument of conveyance, upon the expiration of this Lease Agreement or upon earlier termination thereof. Notwithstanding the foregoing, Concessionaire covenants and agrees, upon Lessor's demand, on or after termination of the Lease Agreement, to execute any instruments requested by Lessor in connection with the conveyance of such Improvements. Lessor shall notify Concessionaire of its intention to take title to Improvements, or any portion thereof, as herein provided, within sixty (60) days of the expiration of this Lease Agreement or earlier termination thereof. Lessor's failure to provide such notice, however, shall not act as a waiver of its rights hereunder; provided that Lessor, within a reasonable time.

15.3 Should Lessor elect not to take title to Improvements, or any portion thereof, as provided in **Section 15.2** above, same shall be removed by Concessionaire, at its sole cost and risk, in compliance with all applicable laws and regulations and, to the degree reasonably possible, the Leased Premises shall be restored to the condition that existed prior to the construction of same. Should Concessionaire fail to undertake such removal within ninety (90) days following the expiration or termination of this Lease Agreement, Lessor may undertake such removal at Concessionaire's expense.

#### **ARTICLE 17. SIGNS**

Concessionaire shall neither erect signs nor distribute advertising matter upon Airport Premises, without the prior written consent of the Aviation Director.

#### **ARTICLE 18. REGULATIONS**

Concessionaire's officers, agents, employees and servants shall obey all rules and regulations promulgated by Lessor, its authorized agents in charge of the Airport, or other lawful authority, to insure the safe and orderly conduct of operations and traffic thereon.

#### **ARTICLE 19. QUALITY OF SERVICES**

Concessionaire shall, at all times, furnish good, prompt and efficient services, adequate to meet demand for same at the Airport, furnish said services on a non-discriminatory basis to all users thereof, and charge non-discriminatory prices for each unit of sale or service; provided, however, that Concessionaire will be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

#### **ARTICLE 20. TIME OF EMERGENCY**

During time of war or national emergency, Lessor shall have the right to lease the landing area or any part thereof to the United States for government use, and, if such lease is executed, the provisions of this Lease Agreement, insofar as they are inconsistent with those of the Government lease, shall be suspended.

## **ARTICLE 21. SUBORDINATION OF LEASE & RIGHT OF RECAPTURE**

21.1 This Lease Agreement shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States of America, to include any federal agencies, regarding operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States be to take any of the property under lease, or substantially alter or destroy the commercial value of the leasehold interest granted herein, Lessor shall not be held liable therefore, but, in such event, Concessionaire may cancel this Lease Agreement upon ten (10) days' written notice to Lessor. Notwithstanding the foregoing, Lessor agrees that, in the event it becomes aware of any such proposed or pending agreement or taking, Lessor shall utilize its best efforts to give the maximum possible notice thereof to Concessionaire. Any portion of the Leased Premises recaptured from Concessionaire under this provision shall result in a proportionate abatement of rent as of the date the recapture is effectuated.

21.2 Lessor shall have the right to recapture any or all of the Leased Premises to the extent that such are necessary for the City's development, improvement, and or maintenance of the Airport's runways and taxiways; for protection or enhancement of flight operations; or for other development in compliance with any current or future Airport Master Plan. In the event of any such recapture, Concessionaire and Lessor shall execute a writing reflecting a corresponding adjustment to the Leased premises and rent. If Concessionaire is required to relocate to other Airport premises pursuant to this Article 21, Lessor shall assist Concessionaire to identify other substitute premises on the Airport, if available. Lessor shall assist Concessionaire with relocation costs without impact to the rental terms of this Lease Agreement.

## **ARTICLE 22. SECURITY**

22.1 Concessionaire shall comply with all rules, regulations, statutes, orders, directives or other mandates of the United States or State of Texas, regarding Airport security requirements or measures.

22.2 Concessionaire shall comply with all current and future mandates of the Transportation Security Agency for background investigations of its personnel.

22.3 Concessionaire shall indemnify and hold harmless Lessor, its officers and employees from any charges, fines or penalties that may be assessed or levied by any department or agency of the United States or State of Texas, by reason of Concessionaire's failure to comply with any applicable security provision and/or requirement for compliance set forth herein.

## **ARTICLE 23. DEFAULT AND REMEDIES**

23.1 Each of the following shall constitute an event of default by Concessionaire:

- 23.1.1 Concessionaire shall fail to pay any rent, fees or penalties as provided for in this Lease Agreement and such failure shall continue for a period of ten (10) days after receipt by Concessionaire of written notice thereof.
- 23.1.2 Concessionaire shall fail to provide or maintain insurance as provided for in this Lease Agreement and such failure shall continue for a period of five (5) days after receipt by Concessionaire of written notice hereof provided, however, that Concessionaire shall not be entitled to any notice from Lessor under this provision when failure to maintain insurance is due to a cancellation or expiration of policy or coverage.
- 23.1.3 Concessionaire shall neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained, and if such neglect or failure should continue for a period of thirty (30) days after receipt by Concessionaire of written notice of same, or if more than thirty (30) days shall be required because of the nature of the default, if Concessionaire shall fail within said thirty (30) day period to commence and thereafter diligently proceed to cure such default.
- 23.1.4 Concessionaire shall become insolvent; take the benefit of any present or future insolvency statute; make a general assignment for the benefit of creditors; file a voluntary petition in bankruptcy or a petition or answer seeking a reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or of any state thereof; or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property.
- 23.1.5 An Order of Relief shall be entered, at the request of Concessionaire or any of its creditors, under federal bankruptcy, reorganization laws or any law or statute of the United States or any state thereof.
- 23.1.6 A 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) days after the filing thereof.
- 23.1.7 Pursuant to, or under the authority of, any legislative act, resolution, rule, or any court, governmental, agency or board order or decree or officer, a receiver, trustee, or liquidator shall take 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) days.
- 23.1.8 Concessionaire shall become a corporation in dissolution or voluntarily or involuntarily forfeit its corporate charter.
- 23.1.9 The rights of Concessionaire hereunder shall be transferred to, pass to or devolve upon, by operations of law or otherwise, any other person, firm, corporation or other entity, in connection with or as a result of any bankruptcy, insolvency, trusteeship,

liquidation or other proceeding or occurrence described in **Subsections 23.1.4 through 23.1.8** of this Section 23.1.

23.1.10 Concessionaire shall voluntarily discontinue its operations at the Airport for a period of sixty (60) consecutive days.

23.2 In the event any default shall occur, Lessor then, or at any time thereafter, but prior to the removal of such condition of default, shall have the right, at its election, either to terminate this Lease Agreement, by giving at least five (5) days written notice to Concessionaire, at which time Concessionaire will then quit and surrender the Leased Premises to Lessor, but Concessionaire shall remain liable as hereinafter provided, or enter upon and take possession of the Leased Premises (or any part thereof in the name of the whole), without demand or notice, and repossess the same as of the Lessor's former estate, expelling Concessionaire and those claiming under Concessionaire, without prejudice to any remedy for arrears of rent or preceding breach of covenant and without any liability to Concessionaire or those claiming under Concessionaire for such repossession. In addition to any other remedies herein, the parties shall be entitled to an injunction restraining the violation, or attempted violation, of any of the covenants, conditions or provisions hereof, or to a decree compelling performance of same; subject, however, to other provisions herein.

23.3 Lessor's repossession of the Leased Premises shall not be construed as an election to terminate this Lease Agreement nor shall it cause a forfeiture of rents or other 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.

23.4 Upon repossession, Lessor shall have the right, at its election and whether or not this Concession Agreement shall be terminated, to relet the Leased Premises or any part thereof for such period(s), which may extend beyond the term hereof, at such rent and upon such other terms and conditions as Lessor may, in good faith, deem advisable. Notwithstanding any law or anything contained herein to the contrary, to the full extent permitted under applicable law, Concessionaire and Lessor agree that Lessor's duty to relet the premises or otherwise to mitigate damages hereunder shall be limited to those requirements set forth in the Texas Property Code, as amended. Lessor shall in no event be liable, and Concessionaire's liability shall not be affected or diminished whatsoever, for failure to relet the Leased Premises, or in the event the Leased Premises are relet, for failure to collect any rental under such reletting, so long as the Lessor uses objectively reasonable efforts to comply with said Property Code. Lessor and Concessionaire agree that any such duty shall be satisfied and Lessor shall be deemed to have used objective reasonable efforts to relet the Premises and mitigate Lessor's damages by: (1) posting a "For Lease" sign on the Premises; (2) advising Lessor's lease agent, if any, of the availability of the Premises; and (3) advising at least one outside commercial brokerage entity of the availability of the Premises.

23.5 In the event that Lessor elects to relet, rentals received by same from such reletting shall be applied: first, to the payment of any indebtedness, other than rent due hereunder from Concessionaire under this Lease Agreement; second, to the payment of any cost of such reletting; third, to the payment of rent due and unpaid hereunder; and finally, the residue, if any, shall be held by Lessor and applied hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent

payable during that month by Concessionaire hereunder, then Concessionaire shall pay such deficiency to Lessor. Such deficiency shall be calculated and paid monthly. Concessionaire shall also pay to Lessor, as soon as ascertained, any costs and expenses incurred by Lessor in such reletting not covered by the rentals received from such reletting of the Leased Premises.

23.6 If Lessor shall terminate this Lease Agreement or take possession of the Leased Premises by reason of a condition of default, Concessionaire and those holding under Concessionaire, shall forthwith remove their goods and effects from the Leased Premises. If Concessionaire or any such claimant shall fail to effect such removal forthwith, Lessor may, without liability to Concessionaire or those claiming under Concessionaire, remove such goods and effects and store same for the account of Concessionaire or of the owner thereof at any place selected by Lessor, or, at Lessor's election, and upon giving fifteen (15) days' written notice to Concessionaire of date, time and location of sale, Lessor may sell the same at public auction or private sale on such terms and conditions as to price, payment and otherwise, as Lessor in its sole discretion may deem advisable. If, in Lessor'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, Lessor shall have the right to dispose of such goods in any manner Lessor may deem advisable.

23.7 Concessionaire shall be responsible for all costs of removal, storage and sale, and Lessor shall have the right to reimburse the Airport Revenue Fund from the proceeds of any sale for all such costs paid or incurred by Lessor. If any surplus sale proceeds remain after such reimbursement, Lessor may deduct from such surplus any other sum due to Lessor hereunder and shall pay over to Concessionaire any remaining balance of such surplus sale proceeds.

23.8 If Lessor shall enter into and repossess the Leased Premises as a result of Concessionaire's default in the performance of any of the terms, covenants or conditions herein contained, then Concessionaire hereby covenants and agrees that it will not claim the right to redeem or re-enter the said Premises to restore the operation of this Lease Agreement, and Concessionaire hereby waives the right to such redemption and re-entrance under any present or future law, and does hereby further, for any party claiming through or under Concessionaire, expressly waive its right, if any, to make payment of any sum or sums of rent, or otherwise, of which Concessionaire shall have made default under any of the covenants of the Lease Agreement and to claim any subrogation of the rights of Concessionaire under these presents, or any of the covenants thereof, by reason of such payment.

23.9 All rights and remedies of Lessor 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.

23.10 If proceedings shall, at any time, be commenced for recovery of possession, as aforesaid, and compromise or settlement shall be effected either before or after judgment whereby Concessionaire shall be permitted to retain possession of said Premises, then such proceeding shall not constitute a waiver of any condition or agreement contained herein or of any subsequent breach thereof or to this Lease Agreement.

23.11 Any amount paid or expense or liability incurred by Lessor for the account of Concessionaire may be deemed to be additional rental and the same may, at the option of Lessor, be added to any rent then due or thereafter falling due hereunder.

## **ARTICLE 24. ASSIGNMENT AND SUBLET**

24.1 Concessionaire shall not transfer or assign this Lease Agreement or Concessionaire's interest in or to the Leased Premises, or any part thereof, without having first obtained Lessor's prior written consent, which may be given only by or pursuant to an ordinance enacted by the City Council of the City of San Antonio, Texas; provided, however, that the foregoing shall not apply to and prevent the assignment of this Lease Agreement to any corporation with which Concessionaire may merge or consolidate or which may succeed to a controlling interest in the business of Concessionaire. Notwithstanding the foregoing and for so long as any pledge or collateral assignment of Concessionaire's interest in the Lease Agreement shall be by instrument substantially in such form as shall have previously been approved by the City Council, the consent of Lessor to such pledge or collateral assignment may be given by Lessor acting by and through the Aviation Director.

24.2 Concessionaire shall not sublet the Leased Premises or any part thereof without having first obtained the Aviation Director's written consent. In the event Concessionaire requests permission to sublease, the request shall be submitted to the said Director, prior to the effective date of the sublease requested, and shall be accompanied by a copy of the proposed sublease agreements and of all agreements collateral thereto. The identity of the subconcessionaire, the area or space to be subleased, the rental to be charged, the type of business to be conducted, reasonable financial history and all other information requested by said Director shall be specified. Concessionaire shall not sublease a total of more than fifty percent (50%) of the Leased Premises. If such limit is exceeded, Lessor shall have the right, upon thirty (30) days' written notice, to recapture the space described in the sublease, and terminate the entire Lease Agreement on the expiration of such thirty (30) day period. In the event of any recapture, Concessionaire's rental payments shall be adjusted on a pro-rata basis; provided, however, that all options of Lessor contained in **Article 23 – Default and Remedies** remain available to Lessor.

24.3 In the event of a sublease where the rental per square foot established in the sublease exceeds the rental for same established in the Lease Agreement, Concessionaire shall pay to Lessor, as additional rent, the excess of the rental received from the subconcessionaire over that specified to be paid by Concessionaire herein per square foot, provided that Concessionaire may charge a reasonable fee for administrative costs in addition to the sublease rental, not to exceed fifteen percent (15%) of the specified sublease rental. Such fifteen percent (15%) shall not be considered as excess rental. Nothing herein shall prevent Concessionaire from charging a reasonable fee to others for the use of capital equipment and facilities on the subleased premises and charging for use of utilities and other services being paid for by Concessionaire. Should any method of computation of rental to be paid by a subconcessionaire, other than computation based upon a rental rate per square foot be employed, the provisions of this paragraph will apply if the rental received for the proportionate area of the Leased Premises by Concessionaire exceeds the rental paid to Lessor for said proportionate area of the Leased Premises.

24.4 Each transfer, assignment or subletting to which there has been consent shall be by written instrument, in a form satisfactory to Lessor, and shall be executed by the transferee, assignee or subconcessionaire who shall agree, in writing, for the benefit of Lessor to be bound by and to perform the terms, covenants and conditions of this Lease Agreement. Four (4) executed copies of such written instrument shall be delivered to Lessor. Failure either to obtain Lessor's prior written consent or to comply with the provisions herein contained, shall operate to prevent any such transfer, assignment or subletting from becoming effective.

24.5 Should the assignment of this Lease Agreement be approved by Lessor and to the extent that such assignee assumes Concessionaire's obligation hereunder, Concessionaire shall, by virtue of such assignment, be released from such obligation. Should the subletting of the Leased Premises be approved by Lessor, however, Concessionaire agrees and acknowledges that it shall remain fully and primarily liable under this Lease Agreement, notwithstanding any such sublease and that any such subconcessionaire shall be required to attorn to Lessor hereunder.

24.6 The receipt by the Lessor of rent from an assignee, subtenant or occupant of the Leased Premises shall not be deemed a waiver of the covenant in this Lease Agreement against assignment and subletting or an acceptance of the assignee, subtenant or occupant as a tenant or a release of the Concessionaire from further observance or performance by Concessionaire of the covenants contained in this Lease Agreement. No provision of this Lease Agreement shall be deemed to have been waived by the Lessor, unless such waiver be in writing, signed by the Aviation Director.

## **ARTICLE 25. DAMAGE OR DESTRUCTION OF LEASED PREMISES**

25.1 In the event any structure, Improvements, and/or betterments on the Leased Premises are destroyed or damaged to the extent that they are unusable, Concessionaire shall have the election of repairing or reconstructing structure, Improvements, and/or betterments substantially as they were immediately prior to such casualty, or in a new or modified design, or not to construct the Improvements. Concessionaire shall give the Director written notice of its election within sixty (60) days after the occurrence of such casualty. If the entirety or substantially all of the structure, Improvements, and/or betterments are damaged or destroyed and Concessionaire elects not to repair or reconstruct the damaged or destroyed structure, Improvements, and/or betterments within the sixty (60) day election period, the Director may terminate this Lease Agreement by written notice to Concessionaire given within sixty (60) days following expiration of Concessionaire's election period, whereupon (i) this Lease Agreement shall terminate and Concessionaire shall abandon the Leased Premises and (ii) the insurance proceeds covering the Improvements shall be paid to the owner of the structure, Improvements, and/or betterments as of the date of such damage or destruction (provided, however, Concessionaire shall have the right to retain there from its actual costs paid in making improvements to the damaged or destroyed Improvement). If such damage or destruction is to less than substantially all of the structure, Improvements, and/or betterments and Concessionaire elects not to repair or reconstruct the damaged or destroyed structure, Improvements, and/or betterments within the said 60-day period following such damage or destruction, then (i) this Lease Agreement shall be deemed modified (and the rentals hereunder adjusted) so as to terminate the Lease Agreement as to such structure, Improvements, and/or betterments, and (ii) the insurance proceeds covering the structure, Improvements, and/or betterments shall be paid to the owner of the structure, Improvements, and/or betterments as of the

date of such damage or destruction (provided, however, Concessionaire shall have the right to retain there from its actual costs paid in making improvements to the damaged or destroyed structure, Improvements, and/or betterments). In the event of damage or destruction to any of the structure, Improvements, and/or betterments upon the Leased Premises, the City shall have no obligation to repair or rebuild the structure, Improvements, and/or betterments or any fixtures, equipment or other personal property installed by Concessionaire on the Leased Premises.

**25.2 If Concessionaire elects to repair or reconstruct the structure, Improvements, and/or betterments, Concessionaire shall use its insurance proceeds from the policy covering the destroyed structure, Improvements, and/or betterments. If the insurance proceeds are not sufficient, Concessionaire agrees to pay the deficiency. If Concessionaire elects to repair or reconstruct, Concessionaire shall, at its expense, replace and repair any and all fixtures, equipment and other personal property necessary to properly and adequately continue its authorized activities on the Leased Premises. In no event shall Concessionaire be obligated to provide equipment and fixtures in excess of those existing prior to the damage or destruction. Concessionaire agrees that such work will be commenced and completed with due diligence.**

25.3 Prior to any repair or reconstruction described above, Concessionaire shall submit plans and specifications to the Director for his written approval. Such repair or reconstruction shall be in accordance therewith. Any changes must be approved in writing by the Director.

## **ARTICLE 26. LAWS AND ORDINANCES**

Concessionaire agrees to comply promptly with all laws, ordinances, orders and regulations affecting the Leased Premises, including, but not limited to, those related to its cleanliness, safety, operation, use, and business operations. Concessionaire shall comply with all Federal and State regulations concerning its operation on the Airport and shall indemnify and hold harmless Lessor, its officers and employees, from any charges, fines or penalties that may be assessed or levied by any department or agency of the United States or the State of Texas, by reason of Concessionaire's failure to comply with the terms of this Article or with any other terms set forth in this Lease Agreement.

## **ARTICLE 27. REGULATIONS**

Concessionaire's officers, agents, employees and servants shall obey all rules and regulations promulgated by Lessor, its authorized agents in charge of the Airport, or other lawful authority, to insure the safe and orderly conduct of operations and traffic thereon.

## **ARTICLE 28. TAXES AND LICENSES**

Concessionaire shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State and local taxes and fees, which are now or may hereafter be levied upon the Concessionaire, Leased Premises (including leasehold taxes), the business conducted thereon or upon any of Concessionaire's property used in connection therewith. Concessionaire

shall also maintain, in current status, all Federal, State and local licenses and permits required for the operation of its business.

**ARTICLE 29.**  
**NONDISCRIMINATION & AFFIRMATIVE ACTION REGULATIONS**

29.1 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 Lessor'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.

29.2 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.

29.3 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 **Exhibit 2** (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.

29.4 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 2**.

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

### **ARTICLE 30. FORCE MAJEURE**

Each party shall be excused from performing any obligation provided for in this Lease Agreement (except Concessionaire's obligation to pay rent) so long as performance of the obligation is prevented, delayed, retarded or hindered by Act of God, fire, earthquake, flood, explosion, war, riot, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies, or any other cause not within the reasonable control of the hindered party, but excluding failure caused by a party's financial condition or negligence.

### **ARTICLE 31. NOTICES**

Notices required by this Lease Agreement to be given by one party to the other shall be in writing and sent by (i) United States certified, or express mail, postage prepaid, (ii) recognized national courier (such as FedEx, UPS, DHL), (iii) personal delivery, (iv) facsimile transmission, to the addresses listed hereunder, or such other addresses as the parties may designate in writing. Service of process must be made in accordance with state law.

Notice to Lessor:  
City of San Antonio  
Attn: Aviation Director  
9800 Airport Blvd.  
San Antonio, TX 78216

Notice to Concessionaire:  
Prepango, LLC  
Attn: Marcos J. Modiano  
806 Starboard Street  
Chula Vista, CA 91914

### **ARTICLE 32. CONFLICT OF INTEREST**

32.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. 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 or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
- an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
- an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

32.2 Pursuant to the subsection above, Vendor warrants and certifies, and this Agreement is made in reliance thereon, that by contracting with the City, Vendor does not cause a City employee or officer to have a prohibited financial interest in the Contract. Vendor further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City’s Ethics Code.

### **ARTICLE 33. TEXAS LAW TO APPLY**

All obligations under this Lease Agreement are performable in Bexar County, Texas, and shall be construed pursuant to the laws of the State of Texas, except where state law shall be preempted by any rules, laws or regulations of the United States.

### **ARTICLE 34. GENERAL PROVISIONS**

34.1 Gender. Words of either gender used in this Lease Agreement shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

34.2 Captions. The captions of the provisions contained herein are for convenience in reference and are not intended to define, extend or limit the scope of any provision of this Lease Agreement.

34.3 Incorporation Of Exhibits. All exhibits referred to in this Lease Agreement are intended to be and hereby are specifically made a part of this Lease Agreement.

34.4 Incorporation Of Required Provisions. Lessor and Concessionaire incorporate herein by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

34.5 Severability. If any clause or provision of this Lease Agreement is illegal, invalid or unenforceable under present or future laws, it is the parties’ intention that the remainder hereof not be affected. In lieu of each clause or provision that is illegal, invalid or unenforceable, the parties intend that there be added, as a part of this Lease Agreement, a clause or provision, as similar in terms to such illegal, invalid or unenforceable clause or provision, as may be possible, yet be legal, valid and enforceable.

34.6 Wages. Concessionaire shall pay at least the minimum wage, as required by Federal and State statutes and City ordinances, to employees of its operations hereunder.

34.7 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 similar such 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 one of Lessor and Concessionaire.

34.8 Nonexclusive Rights. It is understood and agreed that nothing herein contained shall be construed to grant to Concessionaire any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Concessionaire shall have the right to exclusive possession of the Leased Premises.

34.9 Inspection Of Books And Records. Each party hereto, at its expense and on reasonable notice, shall have the right from time to time to inspect and copy the books, records, and other data of the other party relating to the provisions and requirements hereof, provided such inspection is made during regular business hours and such is not prohibited by the United States Government.

34.10 Noise Control. Concessionaire, for itself and each of its officers, representatives, agents, employees, guests, patrons, contractors, subcontractors, licensees, subtenants, invitees, or suppliers shall not conduct any operation or activity on the Leased Premises, or elsewhere at Airport, in which the sound emitting therefrom is of such volume, frequency or intensity at such time as to constitute a nuisance. The Aviation Director shall have the sole and exclusive authority to determine what constitutes a nuisance under the provisions of this Lease Agreement except that operations and activities having noise levels not in violation of federal, State, or local governmental standards shall not be deemed a nuisance.

34.11 Time Is Of The Essence. Time shall be of the essence in complying with the terms, conditions and provisions of this Lease Agreement.

34.12 Vehicular And Equipment Parking. Vehicular and equipment parking in areas other than the Leased Premises by Concessionaire, its officers, representatives, agents, employees, guests, patrons, volunteers, contractors, subcontractors, licensees, suppliers or other invitees shall be restricted to such areas at Airport as are designated by the Airport Director.

34.13 Approvals By Lessor/ Authority Of Aviation Director. Whenever this Lease Agreement calls for approval by Lessor, such approval shall be evidenced, in writing, by either the Aviation Director or the City Manager of the City of San Antonio or designee. The Aviation Director shall administer this Lease Agreement on behalf of Lessor. Unless otherwise provided herein or required by applicable law, the Aviation Director shall be vested with all rights, powers, and duties of Lessor herein, and may execute any amendments thereto without City Council approval.

### **ARTICLE 35. CUMULATIVE REMEDIES - NO WAIVER - NO ORAL CHANGE**

Specific remedies of the parties under this Lease Agreement are cumulative and do not exclude any other remedies to which they may be lawfully entitled, in the event of a breach or threatened

breach hereof. The failure of either party ever to insist upon the strict performance of any covenant of this Lease Agreement, or to exercise any option herein contained, shall not be construed as its future waiver or relinquishment thereof. Lessor's receipt of a rent payment, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach.

**ARTICLE 36. PARTIES BOUND**

This Lease Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as permitted hereby.

**ARTICLE 37. ENTIRE AGREEMENT**

This Lease Agreement comprises the final and entire agreement, including all terms and conditions thereof, between the parties hereto, and supersedes all other agreements, oral or otherwise, regarding the subject matter hereof, none of which shall hereafter be deemed to exist or to bind the parties hereto. The parties intend that neither shall be bound by any term, condition or representation not herein written. Further, no change, modification or discharge, or deletion by either party of any provision of this Lease Agreement shall be deemed to have been made or be effective, unless in writing and signed by both parties.

**ARTICLE 38. AUTHORITY TO ENTER INTO AGREEMENT**

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

-----*Signature page to follow*-----

EXECUTED by the parties as of the dates indicated below.

**PREPANGO, LLC**

**CITY OF SAN ANTONIO**

By: Marcos MODIANO  
Signature

By: \_\_\_\_\_  
Erik J. Walsh  
City Manager

MARCOS MODIANO  
Printed Name/Title

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

Date: FEBRUARY 1, 2021

APPROVED AS TO FORM:

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

**EXHIBIT 1  
LEASED PREMISES**

**EXHIBIT 2**  
**FAA REQUIRED CONTRACT PROVISIONS**  
**Compliance with Nondiscrimination Requirements**

During the performance of this Lease, 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 Lease.
2. **Non-discrimination:** Concessionaire, with regard to the work performed by it during the Lease, 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 Lease 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 Lease, 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 Lease until Concessionaire complies; and/or
  - b. Cancelling, terminating, or suspending the Lease, 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.*).

## 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.

**EXHIBIT 3**  
**MONTHLY SALES REPORT**