

AN ORDINANCE 2006 - 0 1 - 1 9 - 0 0 8 7

**AUTHORIZING EXECUTION OF AN AGREEMENT TERMINATING
SAN ANTONIO INTERNATIONAL AIRPORT CONCESSION
AGREEMENT NO.133008, BETWEEN THE CITY OF SAN ANTONIO
AND FRESQUEZ CONCESSIONS TEXAS, INC. FOR SPACE 242 IN
TERMINAL 2 AT THE SAN ANTONIO INTERNATIONAL AIRPORT,
EFFECTIVE OCTOBER 31, 2005.**

* * * * *

WHEREAS, on March 13, 2002, as authorized by Ordinance No. 95351, a San Antonio International Airport Concession Agreement - No. 133008 ("Agreement"), was entered into by Fresquez Concessions Texas, Inc. ("Fresquez") and the City; and

WHEREAS, Fresquez currently has two additional Concessions Agreements with the City, including: Concession Agreement No. 133021, authorized on February 21, 2002 by Ordinance No. 95351, and Concession Agreement No. 133020, authorized on June 28, 2001 by Ordinance No. 94214; and

WHEREAS, on October 31, 2005, Fresquez ceased operations of its business which was, at the time known as "AJ's" in Space 242 in Terminal II at the San Antonio International Airport; and

WHEREAS, Fresquez has indicated its desire to terminate the AJ's Agreement and settle its future obligations under the AJ's Agreement and City staff recommends such termination under specified terms; **NOW THEREFORE:**

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

SECTION 1. The City Manager, or her designee, is authorized to execute a Termination Agreement and Settlement Agreement with Fresquez Concessions Texas, Inc., in a form substantially similar to that attached hereto as Attachment 1.

SECTION 2. Monthly installments of \$500 are to be deposited into Internal Order 233000000077, General Ledger 4409034 when received from Fresquez Concessions Texas, Inc.

SECTION 3. A like kind transaction will record the \$4,500 value of the freezer received as part of the Termination Agreement.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance

SECTION 5. This Ordinance shall be effective on and after the tenth (10th) day after passage.

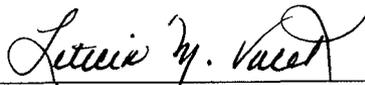
PASSED AND APPROVED this 19th day of January, 2006.



M A Y O R

PHIL HARDBERGER

ATTEST:



City Clerk

APPROVED AS TO FORM:


City Attorney

ATTACHMENT 1

DRAFT

TERMINATION AND SETTLEMENT AGREEMENT

This Termination Agreement is made in multiple originals and entered into by and between the **City of San Antonio**, A Texas Municipal Corporation ("City") acting by and through its City Manager pursuant to Ordinance No. _____ passed and approved by City Council on _____, 2005 and **Fresquez Concessions Texas, Inc.** a Texas Corporation, with its principal place of business in Bexar County, Texas ("Fresquez"), acting by and through its duly authorized representative.

WITNESSETH:

WHEREAS, on March 13, 2002, as authorized by Ordinance No. 95351, a San Antonio International Airport Concession Agreement - No. 133008 ("AJ's Agreement"), was entered into by Fresquez and the City; and

WHEREAS, Fresquez currently has two additional Concessions Agreements with the City, including: Concession Agreement No. 133021, authorized on February 21, 2002 by Ordinance No. 95351 ("Quiznos Agreement"), and Concession Agreement No. 133020, authorized on June 28, 2001 by Ordinance No. 94214 ("Alamo City Agreement")

WHEREAS, on October 31, 2005, Fresquez ceased operations of its business known as "AJ's" in Space 242 in Terminal II at the San Antonio International Airport ("SAT"); and

WHEREAS, Fresquez has indicated its desire to terminate the AJ's Agreement and a City has agreed to such termination without further liability under specified terms; NOW, THEREFORE,

In consideration of the terms, covenants and promises and agreements herein contained, and for other good and valuable consideration, each to the other given, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree as follows:

1.0 Fresquez by and through its duly authorized representative, hereby agrees as follows:

A. As agreed liquidated damages and not as a penalty, to pay to the order of the City of San Antonio the sum of Eleven Thousand and 00/100 Dollars (\$11,000.00). Such sum shall be paid in monthly installments of **Five Hundred and 00/100 Dollars (\$500.00)**, beginning February 1, 2006, with a like installment being due and payable on the same day of each succeeding month thereafter for a period of twenty-two months.

B. Concurrent with, or before the execution of this Agreement, Fresquez shall bring all accrued outstanding balances that remain due under the AJ's Agreement, for the period up to and including October 31, 2005, including all Guaranteed Rent, Percentage Rent, Storage Premises Rent (as defined by the respective agreements), and all additional rent attributed to Common Area Maintenance and Logistics charges and contributions to the Marketing Program.

C. Concurrent with, or before the execution of this Agreement, Fresquez shall bring all accrued outstanding balances that remain due under the under the Quizno's Agreement and Alamo City Agreement, for the period up to and including the date of this Agreement, including all Guaranteed Rent, Percentage Rent, Storage Premises Rent (as defined by the respective agreements), and all additional rent attributed to Common Area Maintenance and Logistics charges and contributions to the Marketing Program.

DRAFT

D. Concurrent with, or before, the execution of this Termination Agreement, Fresquez shall deliver to the City, in a form acceptable to the Director, and maintain throughout the remaining term of the Alamo City Agreement and Quiznos' Agreement either an irrevocable Letter of Credit or a Performance Bond in the following amounts: for Alamo City Microbrewery in the amount of \$47,500.00; and for Quzino's Subs, in the amount of \$38,100.00, or a single Bond/Letter of Credit specifically covering both operations in the amount of \$85,600.00. Such instrument(s) shall insure the full and faithful performance by Fresquez of all terms and conditions of the Alamo City and Quiznos' Agreement and shall stand as security for payment by Fresquez of all valid claims by the City under the applicable Concessions Agreements.

E. Concurrent with the execution of this agreement, Fresquez agrees to turn over and relinquish ownership of the Norlake, Inc. Walk-In Freezer, Model No. W16340 to the City as additional consideration for this Agreement.

2.0 Upon the completion of performance of all of the aforementioned conditions precedent, the City releases Fresquez, its successors and assigns, and all of its officers, directors and employees from all actions, claims, demands, damages, obligations, liabilities and controversies, of any kind or nature whatsoever, which have arisen, or may have arisen, or shall arise from the AJ's Agreement, and any and all future liability which would have accrued under the AJ's Agreement, and does specifically waive any claim or right to assert any cause of action or alleged cause of action or claim or demand which it has, through oversight or error intentionally or unintentionally or through a mutual mistake, been omitted from this Termination Agreement.

3.0 In consideration for such release, Fresquez hereby releases the City, its successors or assigns, and all of its officers, directors and employees from all actions, claims, demands, damages, obligations, liabilities, controversies and executions, of any kind or nature whatsoever, which have arisen, or may have arisen, or shall arise by reason of the AJ's Agreement, and does specifically waive any claim or right to assert any cause of action or alleged case of action or claim or demand which it has, through oversight or error intentionally or unintentionally or through a mutual mistake, been omitted from this Termination Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Termination Agreement as of the date set forth below.

EXECUTED this the _____ day of _____, 2005.

ATTEST: _____ City Clerk	CITY OF SAN ANTONIO, TEXAS a Texas Municipal Corporation By: _____ Sheryl Sculley, City Manager
APPROVED AS TO FORM: By: _____ City Attorney	Fresquez Concessions Texas, Inc. By: _____ Its: _____ Federal Tax Identification #: _____