WHD
01/26/06
Item No. 6

AN ORDINANCE 2006 - 01 - 26 - 0118

SELECTING UNISON-MAXIMUS, INC. TO PROVIDE LEASING, MARKETING AND MANAGEMENT OF RETAIL, FOOD, BEVERAGE AND SERVICE AMENITY CONCESSIONS AT THE SAN ANTONIO INTERNATIONAL AIRPORT; AUTHORIZING THE NEGOTIATION AND EXECUTION OF A CONCESSION MANAGEMENT AGREEMENT FOR A PRIMARY TERM OF THREE YEARS COMMENCING ON MARCH 1, 2006, WITH TWO ONE-YEAR RENEWAL OPTIONS UPON MUTUAL AGREEMENT AND SUBJECT TO CITY COUNCIL APPROVAL, FOR AN ANNUAL SUM NOT TO EXCEED 13.25% OF ALL COLLECTED CONCESSION REVENUES, FOR A TOTAL ESTIMATED COST OF $1,863,102.00 FOR THE THREE YEAR PRIMARY TERM.

* * * * *

WHEREAS, the City of San Antonio is the owner and operator of the San Antonio International Airport, hereinafter referred to as "the Airport"; and

WHEREAS, the CITY has determined that the establishment and operation of retail, food and beverage concessions and service amenities at the Airport is in the best interests of the traveling public; and

WHEREAS, proposals were solicited by the City of San Antonio for a management firm to undertake continued management of concessions within the terminal buildings at San Antonio International Airport in conformance with the recommendations of the Concession Redevelopment Study performed for the City by Unison Consulting Group, Inc.; and

WHEREAS, three qualifying proposals were received in response to the City's Request for Proposals and each was rated by a eight (8) member selection committee established for that purpose, giving consideration to proposed plan, experience/background/qualifications, proposed fee schedule and, compliance with SEBDA requirements; and

WHEREAS, based on the ratings, the selection committee determined the proposal by Unison-Maximus to be the best qualified proposal; and

WHEREAS, it is now necessary to select Unison-Maximus to provide leasing, marketing and management of retail, food, beverage and service amenity concessions at the San Antonio International Airport ; and to authorize the negotiation and execution of a contract with said firm; **NOW THEREFORE:**

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

SECTION 1. The proposal of Unison-Maximus, Inc., submitted to the City of San Antonio on October 26, 2005 in response to its Request for Proposals for Airport Concessions Management is hereby accepted, except to the extent such terms shall be modified or conflict with the final Agreement between the parties; a copy of such proposal is on file in the Office of the Aviation Director and is incorporated herein by reference. All other proposals for Airport Concessions Management shall be rejected upon the execution of a contract by all parties.

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SECTION 2. The City Manager, or her designee, is hereby authorized to negotiate with said firm to reach an agreement and contract for payment by Unison-Maximus of a fair and reasonable share (but in no event less than 13.25 Percent) of the of its collected airport concession revenues as defined in Section 3 of the Concessions Management Contract, for said services.

SECTION 3. If, within the next sixty (60) days, a contract can be negotiated substantially in form and content to the contract attached hereto as Attachment 2 and incorporated herein by reference for all purposes, then the City Manager, or her designee, are hereby authorized to execute such a contract without further City Council action. Should a contract be negotiated which varies from the standard terms, the contract must be subsequently considered by the City Council which must approve its terms.

SECTION 4. If a contract in substantially the same form and content as Attachment 2 is not signed by both parties within sixty (60) days, it becomes null and void, and any further signed documents must be considered by the City Council.

SECTION 5. Revenues generated by this contract are authorized to be deposited in, Internal Order No. 3301010003, General Ledger Acct.5201040, Fund 51001000 entitled "Airport Operations & Maintenance Account".

SECTION 6. The financial allocations in this Ordinance are subject to approval by the Director of Finance for the City of San Antonio for the City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 7. This Ordinance shall be effective on and after the tenth (10th) day after passage.

PASSED AND APPROVED this 26th day of January, 2006.

M A Y O R
PHIL HARDBERGER

ATTEST: _____
City Clerk

APPROVED AS TO FORM: _____
for City Attorney

Agenda Voting Results

Name: 6.

Date: 01/26/06

Time: 11:11:30 AM

Vote Type: Multiple selection

Description: An Ordinance selecting Unison-Maximus, Inc. to provide leasing, marketing and management of retail, food, beverage and service concessions at the San Antonio International Airport; authorizing the negotiation and execution of a concession management contract agreement for a primary term of three years commencing on March 1, 2006, with two one-year renewal options upon mutual agreement and subject to City Council approval, for an annual sum not to exceed 13.25% of all collected concession revenues, for a total estimated cost of approximately $1,863,102.00 for the three year primary term. [Presented by Mark H. Webb, Interim Director, Aviation; Roland A. Lozano, Assistant to the City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3			x	
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7			x	
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

Exhibit 1

SAN ANTONIO INTERNATIONAL AIRPORT
CONCESSION MANAGEMENT CONTRACT

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Concession Management Contract ("Contract"), is entered into this the ____ day of _____, 2006, by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter called "City"), acting by and through its City Manager, pursuant to Ordinance No. _____ passed and approved by the City Council on _____, 2006, and _____ a _____, acting by and through its _____ (hereinafter called "Manager"). WITNESSETH:

WHEREAS, the City of San Antonio is the owner and operator of the San Antonio International Airport, hereinafter referred to as "Airport"; and

WHEREAS, the City of San Antonio as a service to the traveling public, desires to provide retail and food concessions at the Airport; and

WHEREAS, on _____, the Manager submitted a proposal to the City to provide leasing, marketing and management of the retail and food concessions facilities at the Airport and its proposal was recommended for negotiation and acceptance by the City; and

WHEREAS, the City wishes to grant to Manager the right to provide leasing, marketing and management of the retail and food concessions facilities at the Airport under an agreement containing mutually satisfactory terms and covenants; **NOW THEREFORE**:

In consideration of the mutual covenants, terms, conditions, privileges, obligations and agreements herein contained, the City and the Manager hereby mutually undertake, promise and agree, each for itself, and its successors and assigns, as follows:

Article I.
DEFINITIONS

1.1 "Airport" shall mean the San Antonio International Airport, owned and operated by the City of San Antonio.

1.2 "Airport Concession Revenue" shall include all rental and related fees paid by any concessionaire that is managed by the Manager under this Contract, including the Guaranteed Minimum Annual rent paid by such concessionaires and any Percentage Rent paid based on concessionaire's gross revenue, as well as, fees realized from Terminal and Garage advertising. Specifically excluded from this definition are, parking fee revenue; badging fee revenue; utilities/telephone revenue; shuttle, rental car and similar ground transportation operation revenue; telecommunications operations such as payphones and internet data services; facilities fee revenue; storage rental fees revenue; Marketing Fee Contribution revenue; CAM & Logistics Program revenue; Program Fees and similar fees as determined in the sole discretion of the Director.

1.3 "Airport Terminals" and "Terminals" shall mean the Terminal Buildings known as Terminal 1 and Terminal 2 and any new terminals or concourses constructed at San Antonio International Airport, including but not limited to planned Concourses B and C.

1.4 "Aviation Director" and "Director" shall mean the Director, or Interim Director of Aviation at the San Antonio International Airport from time to time appointed by the City Manager, and shall include such person or persons as may from time to time be authorized in writing by the City Manager or by the Director to act for him or her with respect to any or all matters pertaining to this Contract.

1.5 "CAM Program Operating Costs and Expenses" shall include, Food Court Operating Costs and Expenses, Waste Removal Operating Costs and Expenses and Logistical Support Operating Costs and Expenses, as defined herein.

1.6 "City Manager" shall mean the City Manager, and shall include such persons as may from time to time be authorized in writing by the City Council or the City Manager to act for him or her with respect to any and all matters pertaining to this Contract.

1.7 "City of San Antonio" and "City" shall include such public officials and public bodies as may, by operation of law, succeed to any or all of the rights, powers or duties which lawfully reside in the City of San Antonio.

1.8 "Contract Year" shall be a period of twelve consecutive months beginning on the Commencement Date of this Contract and every twelve months thereafter.

1.9 "Concession Management Services" shall mean leasing, marketing and management of the retail (including news, gift, and duty free), food and beverage concession facilities, and passenger services operations at the Airport, as well as coordination of associated advertising in accordance with the Scope of Work set forth in the body of this Contract;

1.10 "Department" shall mean the City of San Antonio's Department of Aviation, acting through its Director or his designee.

1.11 "Food Court Operating Costs and Expenses" shall include all costs and expenses of every kind and nature paid and incurred by either Manager or City in operating, equipping, cleaning, painting, providing sanitation and trash removal services, repairing, replacing and maintaining the public seating areas and plantscape materials within the Food Courts, including but not limited to, the actual cost and expense of (a) all labor costs, uniform costs, and identification badging costs, for both non-supervisory personnel and supervisors (including both on-site and third-party off-site supervisory personnel, if any) employed to clean the public seating areas within the food courts; (b) the cost of all supplies and equipment utilized to clean such public seating areas within the food courts; (d) the cost of all trash removal receptacles and equipment; (e) the cost to purchase, maintain, repair and/or replace all food court tables, chairs, trash removal receptacles and equipment; furniture and fixtures; (f) the cost to purchase, clean, retrieve and distribute, repair and/or replace the food trays used by customers and to operate, maintain, repair and/or replace the food court tray washing facilities and equipment; and (g) any and all other direct costs and expenses which either Manager or City deems reasonably necessary or desirable in order to maintain first-class food court facilities

1.12 "Logistical Support Operating Costs and Expenses" include all costs and expenses of every kind and nature paid and incurred by either Manager or City in providing logistical support services, including but not limited to, the full cost and expense of: (a) trash removal from the loading docks; (b) all labor costs, uniform costs, and identification badging costs, for both non-supervisory personnel and supervisors (including both on-site and third-party off-site supervisory personnel, if any) employed to monitor receipt of

the concessionaires' inventory, merchandise and supplies at the loading docks and to coordinate redistribution of such inventory, merchandise and supplies from the loading docks to the appropriate concession facilities within the terminal buildings at the Airport; (b) the cost to purchase, operate, maintain, repair and/or replace all equipment and other items necessary for the operation of the loading docks and the internal distribution system; and (d) any and all other direct costs and expenses which either Manager or City deems reasonably necessary or desirable in order to implement an efficient logistical support service program.

1.13 "Proposal" is the response of Manager to the Request for Proposals for the Airport Concessions Management Services at the San Antonio International Airport. A copy of said response is on file at the Office of the City Clerk of the City of San Antonio and, to the extent that said response does not conflict with any of the provisions herein, the commitments contained therein shall be binding on the Manager.

1.14 "Termination" of this Contract shall mean termination by expiration of the Contract term, as stated in Article II. TERM, or earlier termination with or without cause or by operation of law, as provided for herein.

1.15 "Waste Removal Operating Costs and Expenses" shall include all costs and expenses of every kind and nature paid and incurred by either Manager or City in providing trash, refuse and non-hazardous waste removal services, including, but not be limited to, the full cost and expense of, (a) all labor costs, uniform costs, and identification badging costs, for both non-supervisory personnel and supervisors (including both on-site and third-party off-site supervisory personnel, if any) employed to remove trash, refuse and non-hazardous waste from the concession facilities; (b) the cost of supplying, maintaining, repairing and replacing, receptacles, and other equipment utilized to remove trash, refuse and non-hazardous waste; and (c) any and all other direct costs and expenses which either Manager or City deems reasonably necessary or desirable in order to implement an efficient trash, refuse and non-hazardous waste removal program.

Article II.
TERM

2.1 The term of this Contract shall commence on the first day of February 2006 ("Commencement Date") and shall continue for a period of three (3) years unless sooner terminated as set forth herein. Upon the expiration of this initial three year term, provided that the Manager is not in default of any terms and/or conditions of the Contract, and subject to approval by the San Antonio City Council, the term of this Contract may be extended by mutual agreement of the Parties for two consecutive one year periods, each subject to all the terms and conditions herein contained. Should Manager desire that this Contract be extended as hereinbefore provided, Manager shall provide such request in writing to the Director at least one hundred and twenty (120) calendar days prior to the date that such requested period of extension is to commence.

2.2 It is agreed and understood that in the event of an interim need for provision of Concession Management Services by Manager, after expiration of the initial three (3) year term (if not extended) or the final agreed extension of this Contract, whichever is later, this Contract shall renew and extend on a month to month basis, until terminated at the discretion of the City. City agrees, in the event of such interim continuation of service, to pay the Manager in accordance with the terms in effect at the expiration of the immediately preceding term.

Article III.
SCOPE OF SERVICES

3.1 Manager agrees to provide the services described in this Article III. SCOPE OF SERVICES in exchange for the compensation described in Article IV. COMPENSATION TO MANAGER.

3.2 All work performed by Manager hereunder shall be performed to the satisfaction of the Aviation Director. The determination made by the Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Manager, which is not satisfactory to the Director. City shall have the right to terminate this Contract, in accordance with Article VII. TERMINATION, in whole or in part, should Manager's work not be satisfactory to the Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, in accordance with this contract, should City elect not to terminate.

3.3 The Manager will be responsible for implementing, leasing and managing the following concession areas at the Airport and such areas as the City may identify as it adds additional space.

3.4 Specifically excluded from this Contract are all shuttle, rental car and similar ground transportation operations, as well as telecommunications operations such as internet data services and payphones.

3.5 The scope of services required of the Manager includes three major elements—*Concessions Development Program Services*, *Leasing Services*, and *Property Management Services.*

3.5.1 Concessions Development Program Services. The Concessions Manager will be responsible for continuing and enhancing the Concessions Program ("Program") in the Terminals as outlined in the SAT Concession Redevelopment Study, including coordination of the planning and design of the space identified for concession use. A copy of the study is on file with the Department of Aviation and is incorporated herein by reference as if fully set forth herein. Concessions Development Program Services shall include, but not be limited to, the following:

a. Continuing and enhancing the Concessions Program put in place over the past several years in the Terminal 1 and Terminal 2, refining the Concessions Program as may be required to respond to changes in the retail economy or marketplace. Refinements to the merchandising plan, sales and revenue projections, pro formas, and market data may be required.

b. Planning and implementing a Concessions Program, similar to that utilized to develop the current Concessions Program in Terminals 1 and 2, for planned Concourse B and Concourse C, and working with the Department to create a strong interim concessions program, providing appropriate levels of food and beverage and retail concession services, during the planned construction.

c. Developing a phasing plan for construction and opening of retail space in Concourse B and Concourse C, as requested by the Director.

d. Updating passenger circulation and retail zone analyses on an ongoing basis, based upon changes in gate assignments or enplanement levels.

e. Updating retail space requirement analyses on an ongoing basis, based on changes to enplanement and passenger circulation analyses.

f. Identifying key schedule milestones and constraints related to the Program.

g. Reviewing and overseeing tenant construction and coordination of same, including, design review, phasing and construction, reviewing operation, service and utility requirements of the Program and interfacing with the Terminal/Concourse construction contractors;

h. Developing and coordinating a design review process, including meeting with concessionaires and their architects to review procedures, scheduling site surveys, developing design schedules and processing and reviewing design submittals. This task will be conducted in conjunction and coordination with the Department's architects.

i. Scheduling pre-construction meetings, coordinating construction with concessionaires and their contractors. Scheduling and coordinating regular progress meetings with concessionaires.

j. Providing concessionaires with required information such as terminal drawings, layout plans and rules & regulations. Providing access to Concessionaire space as necessary.

k. Monitoring punch list completion and review testing and inspection reports for all Concessionaires. This task will be conducted in conjunction with the Department's architects.

l. Monitoring and enforcing Concessionaire compliance with all construction rules, regulations and requirements, as stipulated in the Concession Agreement, design criteria and related documents.

m. Providing the Department with regular progress reports regarding Concessionaire construction schedules and status.

n. Developing financial and other analyses as requested by the Department;

o. Establishing project objectives, scope, organization documentation and reporting guidelines and procedures for effective implementation and continuation of the Concessions Program including quality, schedule and cost control.

p. Organizing and maintaining completed project files and supporting the City in handling contractor claims, if they occur.

3.5.2 Leasing Services. The Concessions Manager will assist the City in securing Concession Agreements for all available space for food & beverage, retail, duty free, service/amenity, and advertising concessions. Leasing Services include, but are not limited to, the following:

a. Providing an annual written Leasing Plan to include pro forma financial terms for each potential concession space and a proposed leasing strategy for fulfilling the City's Program goals, including its commitment to the Individual Concessionaire model rather than a Master Concessionaire model.

b. Developing and implementing a strategy for soliciting potential concessionaires. This strategy will utilize a public procurement process, including issuance, review, analysis and management of information received in response to Requests for Proposals, to fill Concessionaire vacancies and new concession space as it becomes available. This also includes the development of marketing, outreach and leasing materials to assist with leasing efforts.

c. Coordinating with Airport Concessions Disadvantaged Business Enterprise ("ACDBE") coordinator, and local community outreach programs to assure that the Concession Program is in full compliance with the spirit and letter of ACDBE Regulations, (49 C.F.R. Part 23) and the goals of the City.

d. Maintaining a potential concessionaire database. At a minimum, this database should included the contact person, firm, address qualifications, small business certifications, and interest of each potential Concessionaire.

e. Responding to all inquiries regarding concession space at the Airport.

f. Refining the standard Concessionaire Agreement utilized in connection with the Concessions Program, as necessary.

g. Assisting the City during negotiations with prospective Concessionaires. This includes (1) being the primary and day-to-day contact for discussions with potential concessionaires; (2) performing background checks, providing credit reports, and all due diligence in connection with prospective Concessionaires; (3) preparing an abstract of each proposed Concessionaire Agreement outlining all key business terms and information requested by the City, which may include concept summaries, proposed locations, build-out costs, recommended rental rates, projected sales and revenues, concessionaire investment summaries, amortization schedules comparative airport data, pro forma leasing schedule with explanations for variances, and a report on ACDBE participation, for the City's review and approval; and (4) coordinating the preparation and modifications of the Standard Concessionaire Agreement with the City's legal staff, including Exhibit preparation.

h. Working with the Department to coordinate leasing activities with terminal planning, design and construction activities.

i. Preparing documentation, reports or other presentation materials for meetings with the airlines, community organizations and the San Antonio City Council, as requested by the Department.

j. At the request of the Department, locate replacement Concessionaires.

3.5.3 Property Management Services. The Manager will perform day-to-day management of the concession operations at the Airport. Property Management Services include, but are not limited to, the following:

a. Analyzing billing, compliance, reporting mechanisms used by Concessionaires, and collection procedures and recommending revisions to these procedures as necessary, to ensure that the City receives useful and necessary information in a comprehensive format.

b. Providing the Director with monthly, quarterly, and annual sales reports which analyze concessionaire performance, based on gross sales/square foot and sales/emplaned passenger, against prior year, sales projections and those of comparable airports (if comparable airport information is available and provided to Manager by the City).

c. Calculating monthly Concession rents and related charges. Preparing monthly billings, verifying collection of fees, and following up on the collection of outstanding Concessionaire receivables.

d. Establishing and maintaining the CAM & Logistics Fund and Concessions Marketing Fund in accordance with Article V. MARKETING AND PROMOTIONAL PROGRAM and Article VI. COMMON AREA MAINTENANCE & LOGISTICS below.

e. Administering the Concessions Marketing program in accordance with the guidelines set forth below in Article V. MARKETING AND PROMOTIONAL PROGRAM.

f. Contracting for and administering CAM & Logistics services in accordance with the guidelines set forth below in Article VI. COMMON AREA MAINTENANCE & LOGISTICS .

g. Diligently monitoring and enforcing, in a commercially reasonable manner, and in coordination with the Director, Concessionaire compliance with the terms of their respective Concessions Agreements; including but not limited to, use-clauses, expiration of insurance, continued effectiveness of performance guarantees, pricing policies, product quality and variety, capital expenditures, operating hours, signage, visual merchandising, employee appearance, customer service, cleaning and maintenance.

h. Assisting the City to monitor and enforce concessionaire compliance with federal and local ACDBE policies, including the submittal of required good-faith efforts and similar reports.

i. Generating monthly, quarterly, and annual financial and management reports as are usual and customary in the management of retail and food and beverage Concessions facilities for presentation to the City, as well as, all other reports necessary to satisfy FAA requirements. This also includes developing annual sales and revenue projections by Concessionaire and location.

j. Developing and maintaining Concessionaire files, including copies of Concessions Agreements and amendments, correspondence, insurance certificates, letters of credit, etc.

k. Developing and implementing a concessionaire relations program, including the development of orientation and information manuals, marketing opportunities, and regular concessionaire meetings.

l. Responding to customer/passenger concerns regarding concessions or service issues.

m. Monitoring the public areas used in connection with the Concessions Program, such as food court seating areas, and report all maintenance, cleaning or similar issues to the City and/or the affected Concessionaire.

n. Conducting surveys of passengers, employees and Airport visitors to assess customer satisfaction with the Concessions Program and to identify potential areas where improvement could be made.

Article IV.
COMPENSATION TO MANAGER and PROCEDURES

4.1 In consideration of Manager's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Contract, City agrees to pay Manager the following fees and expenses:

4.1.1 Management Fee. This fee shall be based on the following percentages of Airport Concession Revenue actually collected by Manager, ("Collected Airport Concession Revenue") paid in monthly installments:

Year 1 ___% of Collected Airport Concession Revenue
Year 2 ___% of Collected Airport Concession Revenue
Year 3 ___% of Collected Airport Concession Revenue
Year 4 ___% of Collected Airport Concession Revenue (if extended)
Year 5 ___% of Collected Airport Concession Revenue (if extended)

4.1.2 Additional Fees. No additional fees or expenses of Manager shall be charged by Manager nor be payable by City. The parties hereby agree that all compensable expenses of Manager have been provided for in the total payment to Manager as specified in Section 4.1.1. Total payments to Manager cannot exceed that amount set forth in Section 4.1.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore. Services specifically included in the Management Fee, are as follows:

a. Payment for subcontractors or others required or employed by the Manager to perform the services outlined in this Contract. This includes, but is not limited to, leasing agents, delivery, storage consultants, restaurant consultants, legal aid, public relations and other consultants or subcontractors. Notwithstanding the foregoing, if the City requires Manager to retain a specific type of consultant and/or subcontractor (for example, transportation consultants or an engineering firm for concessionaire plan review), City shall be responsible for all payments to such consultant and/or subcontractor.

b. Manager's internal time and costs incurred for the production of marketing or similar promotional materials. Notwithstanding the foregoing, all costs and expenses payable to third-party providers (such as advertising agencies, public relation firms, etc.) may be funded through contributions to the Concession Marketing Fund.

c. Travel or similar out of pocket expenses.

4.1.3 Office Space. The City will provide the Manager with appropriate office space located in one of the Terminal Buildings, free of charge, for the duration of the Contract and any extensions thereof.

4.2 Procedures.

4.2.1 "Lock-Box" and Billing Procedure. City shall establish, under City's sole and exclusive control, a separate "lockbox" banking account at a sound financial institution (preferably a national banking association that has offices in San Antonio) to collect payments from the Concessionaires during the term of this Contract for distribution to City and Manager, such distributions to be required by City to be made on a monthly basis. All fees incurred for such banking services shall be paid for by City. City shall provide MANAGER with authorization to obtain direct access to all daily deposit activity, including but not limited to, internet access and/or copies of all checks deposited on a daily basis to be faxed to Manager, daily withdrawal activity, monthly activity statements, and such other documents, information and/or statements reasonably requested by Manager regarding activity within this "lockbox" account.

4.2.2 Monthly Reporting and Invoicing. From and after the Commencement Date, Manager shall furnish to the City by the 10th day of each month a report, in a form reasonably acceptable to the Director ("Monthly Revenue Statement"). Such Monthly Revenue Statement shall at a minimum, provide a detailed reconciliation of the Lock Box receipts, Airport Concession Revenue, (both from lock box receipts and other sources) and sums collected but not defined as Airport Concession Revenue, (e.g. CAM and Marketing Fees) and a list of aged Accounts Receivable for the preceding calendar month. In addition, such monthly Revenue Statement shall show how payments made by Concessionaires were credited to the Concessionaire's account. Accompanying this Monthly Revenue Statement Manager shall issue an invoice showing the Collected Airport Concession Revenue multiplied by the applicable percentage set out above. City shall review the fee statement and distribute the Manager's Fee, contributions to the Concession Marketing Fund, CAM & Logistics Program Fees, to Manager by the twentieth (20th) of each month. The Manager's Fee shall be paid in arrears in monthly installments and shall commence on March 20, 2006, which shall be based on Collected Airport Concession Revenue for the period commencing from and after February 1, 2006.

4.2.3 Auditing. City reserves the right to conduct examinations of the books and records maintained for City by Manager, including, but not limited to, CAM & Logistics records, Marketing & Promotion records, rental receipt reports, sales reports and other similar reports or information related to the performance of Mangers services hereunder) no matter where the books and records are located, during regular business hours and following reasonable written notice, of at least twenty (20) business days, to Manager. Should City discover errors in internal controls or in record keeping, Manager shall correct such discrepancies either upon discovery, or within a reasonable period of time, not to exceed sixty (60) calendar days after notification in writing by City of such discrepancies. Manager shall inform City in writing of the action taken to correct such audit discrepancies. Any and all such audits conducted by City will be at the sole expense of City.

4.2.4 Currency. All sums payable hereunder shall be paid in U.S. currency or other customary commercial manner at the address set forth herein, or such other place as the Director may designate in writing, without any deductions or offsets whatsoever.

Article V.
MARKETING AND PROMOTIONAL PROGRAM

5.1 Manager shall establish and administer a comprehensive Concession Marketing and Promotional Program ("Marketing Program"), aimed at assisting in the marketing and promoting the products and services of the Concessionaires, promoting the overall concessions operations at the Airport and communicating the concession program's overall message.

5.1.1 Annual Proposal and Plan. On September 1 of each year, or the first business day thereafter, Manager shall present to the Director a proposal setting out its plans for marketing, advertising and promotions activities and budget estimate for the coming year. ("Annual Marketing Plan"). Implementation of the Annual Marketing Plan and any subsequent material revisions shall be subject to Director's prior written approval. The Manager agrees to work with City to effectively implement the approved Annual Marketing Plan.

5.1.2 Concessions Marketing Fund. The Airport Concessions Marketing and Promotional Program shall be funded by Concessionaire contributions to a dedicated fund. ("Concession Marketing Fund"). Concessionaire contributions shall be provided for in the individual Concessionaire Agreements. The amounts of such Concessionaire contribution shall be established and may be adjusted at any time, at the sole discretion of the Director.

5.1.3 Establishment and Use of Marketing Account. The Manager shall establish and maintain a separate bank account for the handling of deposits into, and expenditures from, the Concession Marketing Fund, ("Marketing Account"). The Marketing Account shall be used only for the deposit and payment of authorized expenses incurred for the implementation of the approved Annual Marketing Plan.

5.1.4 Ownership of Marketing Fund. The Concessions Marketing Fund Account shall at all times be the property of the City of San Antonio, to be used for the benefit of the Airport Concessions Marketing and Promotional Program. Any funds remaining in this account at the end of each year shall be carried over to the next year or at the option of the Director, reimbursed to the Concessionaires, and any funds remaining at the expiration or earlier termination of this Contract, shall be immediately returned to City on date of expiration or termination.

5.1.5 Reporting Requirements. On the last day of January and June of each year during the contact term Manager agrees to provide the Director, a written report of activity during the preceding six month period, including, but not limited to, the following:

a. An itemization of contributions to the Marketing Fund broken down by individual Concessionaire
b. An itemization of any outstanding arrearages of Concessionaires in their contributions to the Marketing Fund.
c. An itemization of all expenditures associated with the Marketing Program

Each report will also be accompanied by copies of the monthly bank statements which Manager receives from the financial institution holding the Marketing Account, as well as, Manager's monthly reconciliation reports for the Marketing Account.

5.1.6 Marketing Program Advisory Committee. The Manager and the Director shall appoint an advisory committee comprised of representatives of the City, the Manager, and the current Concessionaires, which shall meet on a quarterly basis to discuss all aspects of the Concession Marketing Program; provided however, the City and the Manager shall be the only entities with decision-making authority with respect to changes in the Annual Marketing Plan and expenditures of the Concession Marketing Fund.

Article VI.
COMMON AREA MAINTINENCE AND LOGISTICS

6.1 CAM & Logistics Program. Manager shall assist and work with City, acting by and through the Director, to establish a program for assuring proper common area maintenance and related logistical support ("CAM & Logistics Program") with respect to the (1) public areas within the existing food courts, and other public food court areas to be developed and constructed by City; (2) Concessionaire waste, refuse and trash removal; and (3) logistical support services involving delivery of Concessionaires' inventory, merchandise and supplies to the Airport loading docks and distribution thereof from the Airport's loading docks to the concession facilities. These responsibilities include the following:

6.1.1. Food Court and Public Areas. Manager, in cooperation and consultation with the City, shall provide sanitation and trash removal services for the public areas within the food courts. Such responsibilities shall include cleaning public seating areas within the food courts, sweeping and mopping floors as needed, emptying trash receptacles and trash removal from the area, operating appropriate food court tray washing equipment, as well as, retrieval and distribution of food court trays to the food court concession operators, consistent bussing and cleaning food court tables and chairs, and other food court furniture and fixtures, and routine maintenance of plantscape materials. Manager shall not be responsible for the maintenance, repair, or replacement of permanent building improvements made by City to the food courts, including the maintenance, painting, repair or replacement of the floors, ceilings and walls, or ceiling and wall coverings, all of which shall be City's responsibility to maintain.

6.1.2 Trash, Refuse and Waste Removal. Manager, in cooperation and consultation with the City, shall provide trash, refuse and non-hazardous waste removal services for all of City's Concessionaires. Such responsibilities shall include removing all trash, refuse and non-hazardous waste from each of the concession facilities and depositing the same into a central trash dumpster area to be provided by City within each terminal building at the Airport.

6.1.3 Logistical Support Services. Manager, , in cooperation and consultation with the City, shall provide logistical support services for City's Concessionaires. Such responsibilities shall include coordination of the receipt of inventory, merchandise and supplies for City's Concessionaires at the loading dock facilities to be provided by City within each terminal building at the Airport, and the efficient distribution thereof, from such loading docks to the appropriate concession facilities.

6.2 Annual Proposal and Budget. On September 1 of each year or the first business day thereafter, Manager shall present to the Director a proposed CAM and Logistics Program budget setting out estimated costs for each component of the CAM and Logistics Program, planned changes to the program if any, and proposed amount of Concessionaire contribution. ("Annual Plan and Budget") Any subsequent material revisions to the Annual Plan and Budget shall be subject to Director's prior written approval. Upon the Director's approval of the Plan and Budget, Manager shall provide written notification to Concessionaires regarding any

changes to the CAM and Logistics Program for the following year, and a statement of the estimated monthly cost to the Concessionaire of the CAM and Logistics Program.

6.3 CAM & Logistics Program Fund. CAM and Logistics Program shall be funded by Concessionaire contributions of a share of the cost as required, in the discretion of the Director, and provided for in the Concessionaires' individual Concession Agreements with the City. ("CAM/Logistics Contribution")

6.4 Establishment and Use of CAM & Logistics Account. The Manager shall establish and maintain a separate bank account for the deposits of Concessionaires' CAM & Logistics Contributions, and for expenditures in connection with the CAM & Logistics Program. ("CAM & Logistics Account"). The CAM & Logistics Account shall be used only for deposit of CAM/ Logistics Contributions and the payment Operating Costs and Expenses incurred in connection with, or reimbursed to Manager in connection with implementation of the CAM & Logistics Program. Concessionaires' CAM/Logistics Contributions, shall be used by the Manager only for the payment of CAM & Logistics Program Operating Costs and Expenses incurred for the implementation of the CAM Program. For purposes of this Contract, CAM & Logistics Program Operating Costs and Expenses shall include any or all of the following, as applicable: Food Court Operating Costs and Expenses, Waste Removal Operating Costs and Expenses and Logistical Support Operating Costs and Expenses as such terms are defined in ARTICLE I. DEFINITIONS. Manager shall use commercially reasonable efforts to control the costs with respect to the procurement of any new items of furniture, equipment or other items of personal property.

6.5 Ownership of CAM & Logistics Account. The CAM & Logistics Account shall at all times be the property of the City of San Antonio, to be used for the benefit of the CAM and Logistics Program. Any funds remaining in this account at the end of each year shall be carried over to the next year or, at the option of the Director, reimbursed to the Concessionaires, and any funds remaining at the expiration or earlier termination of this Contract, shall be immediately returned to City on date of expiration or termination.

6.6 Reporting Requirements. On the last day of January and June of each year during the contact term Manager agrees to provide the Director, a written report of activity during the previous six month period, including, but not limited to, the following:

A. An itemization of Concessionaire contributions to the CAM and Logistics Account broken down by individual Concessionaire
B. An itemization of any outstanding arrearages of Concessionaires in their contributions to the CAM and Logistics Account.
C. An itemization of all expenditures associated with the CAM and Logistics Account.

Each report will also be accompanied by copies of the monthly bank statements which Manager receives from the financial institution holding the CAM & Logistics Account, as well as, Manager's monthly reconciliation reports for the CAM & Logistics Account, for the previous six month period.

6.7 Funds remaining in this CAM & Logistics Program account at the end of each year, if any, shall be carried over to the next year, and any funds remaining at the expiration or earlier termination of this Contract, shall be returned to City for continued use in connection with the following year's Airport CAM & Logistics Program. Any funds remaining in the CAM & Logistics Fund at the expiration or earlier termination of this Contract shall be returned to City) for continued use for the CAM Program.

Article VII.

STAFFING REQUIREMENTS

7.1 During the Term of the Contract, the Manager will have a minimum of _____ on-site staff members whose time will be 100% dedicated to the Concessions Program. The Manager's on-site staff will include the following positions:

[RESERVED]

Article VIII.
OWNERSHIP, CONFIDENTIALITY, AND RETENTION OF DOCUMENTS

8.1 Ownership.

8.1.1. Any and all writings, documents or information in whatsoever form and character, including, but not limited to, all lease agreements, rental contracts, and similar agreements, reports, information, records, data, unfinished leases, charts, schedules, and other data given to, prepared or assembled by the Manager in connection with this Contract, and any other related documents, ("Work Product") are the exclusive property of City; and no such Work Product shall be the subject of any copyright or proprietary claim by Manager.

8.1.2 Manager understands and acknowledges that as the exclusive owner of any and all Work Product, City has the right to use all such writings, documents and information as City desires, without restriction. Notwithstanding the foregoing, subject to the confidentiality provisions below, Manager may retain for its files copies of any Work Product documents it chooses to retain.

8.1.3 Manager shall notify City, immediately, in the event Manager receives any requests for information from a third-party, which pertain to the documentation and records referenced herein. Manager understands and agrees that City will process and handle all such requests.

8.2. Retention of Documents.

8.2.1 During the entire term of this a Contract, including any extensions or renewal hereof, and the record retention period established below, Manager shall properly, accurately and completely maintain, at their San Antonio office, all documents, papers, and records, and other evidence pertaining to the services rendered hereunder, including but not limited to, all lease agreements, rental contracts, and similar agreements, reports, information, and other data given to, prepared or assembled by the Manager in connection with this Contract, and any other related documents, ("Work Product") , and shall make such Work Product available to the City at their respective offices, at all reasonable times and as often as City may deem necessary, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives. Any materially significant Work Product lost or destroyed by the Manager shall be replaced or reproduced at the Manager's sole cost.
8.2.2. Manager shall retain any and all Work Product documents for a period of four (4) years (hereafter referred to as "Retention Period") from the date of termination of the Contract. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Manager shall retain the records until the resolution of such litigation or other such questions. Manager acknowledges and agrees that City shall have access to any and

all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Manager to return said documents to City prior to or at the conclusion of said retention.

8.3 Confidentiality and Non-Circumvention.

8.3.1 Manager shall comply with the confidentiality procedures pertaining to records and other information in accordance with the applicable Federal Laws, State laws, the San Antonio City Charter, ordinances, rules and regulations.

8.3.2 Manager shall comply with and abide by rules of non-circumvention and nondisclosure with regard to any Work Product, information, discussion and/or advice provided to City until the later of the expiration or termination of the Contract.

Article IX.
TERMINATION

9.1 Termination Without Cause. This Contract may be terminated by City at any time upon thirty (30) calendar days written notice and may be terminated by the Manager upon ninety (90) calendar days written notice. Notices pursuant to this Paragraph 7.1, shall be provided in accordance with Article XV. NOTICE.

9.2 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article XV. NOTICE., City may, immediately or as specified in the notice, terminate this Contract, in whole or in part, "for cause", upon the occurrence of one (1) or more of the following events:

9.2.1 Manager makes, directly or indirectly through its employees or representatives, any material misrepresentation or provides any materially misleading information to City in connection with this Contract or its performance hereunder, or materially breaches any covenant, obligation, term or condition contained in this Contract; or

9.2.2 Manager violates or materially fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this Contract, except those events of default for which an opportunity to cure is provided herein; or

9.2.3 Manager fails to cure, or initiate steps reasonably calculated to cure, a default listed in Section 9.3 below, within the time period required for cure; or

9.2.4 Manager violates any rule, regulation or law to which Manager is bound or shall be bound under the terms of this Contract;

9.2.5 Manager attempts the sale, transfer, pledge, conveyance or assignment of this Contract contrary to the terms of the Contract; or

9.2.6 Manager ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue) and such petition is not dismissed within forty-five (45) days of filing; or if a receiver, trustee or liquidator is appointed for it, or its joint venture entity, or any substantial part of Manager's assets or properties; or

9.3 Defaults With Opportunity for Cure. Should Manager fail, as determined by the Director, to satisfactorily perform the duties set out in Article III. SCOPE OF SERVICES; or comply with any covenant herein required such failure shall be considered an Event of Default. City shall deliver

written notice of said default, specifying the specific Events of Default and the action necessary to cure such defaults. Manager shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article XV. NOTICE., to cure such default. If Manager fails to cure the default within such fifteen (15) day cure period, City shall have the right, without further notice, to terminate this Contract in whole or in part as City deems appropriate, and to contract with another manager to complete the work required by this Contract. City shall also have the right to offset the cost of said new agreement with a new manager against Manager's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

9.4 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Contract shall automatically terminate as of the effective date of such prohibition.

9.5 Orderly Transfer Following Termination. Regardless of how this Contract is terminated, Manager shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Manager, or provided to Manager, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Manager in accordance with Article VI. OWNERSHIP, CONFIDENTIALITY, AND RETENTION OF DOCUMENTS. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Manager's sole cost and expense. Payment of compensation due or to become due to Manager is conditioned upon delivery of all such documents, if requested.

9.6 Claims for Outstanding Fees. Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Contract, Manager shall submit to City its claims, in detail, for the monies owed by City for services performed under this Contract through the effective date of termination. **Failure by Manager to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a waiver by Manager of any and all right or claims to collect moneys that Manager may rightfully be otherwise entitled to for services performed pursuant to this Contract.**

9.7 Operations Cease Upon Termination. Upon the effective date of expiration or termination of this Contract, Manager shall cease all operations of work being performed by Manager or any of its subcontractors pursuant to this Contract.

9.8 Termination not sole remedy. In no event shall City's action of terminating this Contract, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Manager for any default hereunder or other action.

9.9 Right of City to Suspend. City may suspend this Contract for any reason, with or without cause upon the issuance of written Notice of Suspension in accordance with the Notice provisions contained in this contract. Such suspension shall take effect upon the date specified in such notice; provided, however, such date shall not be earlier than the tenth (10th) day following receipt by Manager of said notice. The suspension notice will outline the reasons for the suspension and the anticipated duration of the suspension, but will in no way guarantee the total number of days of suspension.

9.9.1 Manager's Right to Terminate In Event of Suspension of Contract. At any time after the effective date of Suspension, Manager shall have the right to terminate this Contract. Manager may exercise its right to terminate by issuing a written Notice of

Termination to the City, delivered in accordance with the Notice provisions contained in this contract. This termination shall be effective immediately upon receipt of said notice by the City. In the event Manager exercises the right to terminate this Contract after the effective Suspension date, Manager shall submit, within thirty (30) days after City's receipt of Manager Notice of Termination the above referenced Final Statement showing, in detail, services performed and expenses accrued under this Contract prior to the effective date of suspension; as well as the copies of documents referenced above in Paragraph 7.10(3) and any other documents prepared in association with this Contract. Such deliveries shall be a precondition to final payment. Failure by Manager to comply with the submission of the Final Statement and documents as required above in Paragraph 7.10(3) and any other documents prepared in association with this Contract, shall constitute a waiver by Manager of any and all right to collect monies that Manager may rightfully be entitled to for services performed under this Contract. Upon the above conditions being met, City shall pay Manager that portion of the prescribed fee earned to date of suspension. Such fees will be paid in the proportion that the fees for services actually rendered bear to the total services called for in Article. III. SCOPE OF SERVICES, less any previous payments made by the City.

9.9.2 Manager's Option to Terminate Not Exercised. Upon receipt of a notice of suspension, and prior to the effective date of the suspension, Manager shall, unless otherwise directed:

a. Immediately begin to phase-out and discontinue all services in connection with the performance of this Contract;

b. Prepare a Final Statement and Report showing in detail the services performed and expenses accrued under this Contract prior to the effective date of suspension;

c. Prepare and retain for possible delivery on termination or request of the City, copies of all completed or partially completed studies, plans and other documents prepared under this Contract prior to the effective date of suspension.

Article X.
INDEPENDENT CONTRACTOR

10.1 Manager covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that Manager shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Manager, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Manager. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Manager under this Contract and that the Manager has no authority to bind the City.

10.2 The Manager shall perform its tasks and duties consistent with such status, and will make no claim or demand for any right or privilege applicable to an officer or employee of the City, including, but not limited to, worker's compensation, disability benefits, tax withholding, accident or health insurance, unemployment insurance, social security or retirement

membership.

Article XI.
SUBCONTRACTING AND ASSIGNMENT

11.1 Subcontracting.

11.1.1 Any other clause of this Contract to the contrary notwithstanding, none of the work or services covered by this Contract shall be subcontracted without the prior written approval of City. Any work or services approved for subcontracting herein, however, shall be subcontracted only by written contract or agreement and, unless City grants specific waiver in writing, shall be subject by its terms to each and every provision of this Contract. Compliance by subcontractors with this Contract shall be the responsibility of Manager.

11.1.2 Despite City's approval of a subcontract, City shall in no event be obligated to any third party, including any lessee of Manager, for performance of work or services, nor shall City funds ever be used for payment of work or services performed prior to the date of Contract execution or extending beyond the expiration date of this Contract.

11.2 Assignment.

11.2.1 Except as otherwise stated herein, Manager may not sell, assign, pledge, transfer or convey any interest in this Contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Manager shall remain liable for completion of the services outlined in this Contract in the event of default by the successor Manager, assignee, transferee or subcontractor.

11.2.2 Any attempt to transfer, pledge or otherwise assign this Contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Manager assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Contract, City may, at its option, cancel this Contract and all rights, titles and interest of Manager shall thereupon cease and terminate, in accordance with Article VII. TERMINATION, notwithstanding any other remedy available to City under this Contract. The violation of this provision by Manager shall in no event release Manager from any obligation under the terms of this Contract, nor shall it relieve or release Manager from the payment of any damages to City, which City sustains as a result of such violation.

Article XII.
CONFLICT OF INTEREST

12.1 Manager acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

12.2 Pursuant to the subsection above, Manager warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Manager further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

Article XIII.
SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM

13.1 Manager hereby acknowledges that it is the policy of the City of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), African American ("AABE"), and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by the City. This policy and its implementation are known as the Small, Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

13.2 Upon approval of the SBEDA Program as required by 49 C.F.R. Part 23, Manager shall implement the SBEDA Good Faith Efforts Plan submitted with its proposal under the SBEDA Program, for Small, African American, Minority and Women-owned Business Participation in this Contract, thereby meeting the percentages for participation of those groups as submitted in its proposal. Manager's SBEDA plan, as submitted with Manager's proposal, is attached hereto and incorporated herein by reference as Exhibit ___. Manager shall be in full compliance with this article by meeting the percentages listed in its proposal no later than 60 days from the date of execution of this Contract, and shall remain in compliance throughout the term of this Contract. Manager further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this Contract, as may be approved pursuant to this Contract, which will meet the percentages submitted in its proposal.

13.3 Manager shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/AABE/WBE's. Further, such records shall be open to inspection by City or its authorized agent at all reasonable times. Should City find that Manager is not in compliance with this article, City shall give notice of non-compliance to Manager. Manager shall have 15 calendar days after notice of non-compliance to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this Contract, for which this Contract may be terminated in accordance with Article VII. Termination.

13.4 In all events, Manager shall comply with the City's Small Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 96754, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

Article XIV.
INSURANCE

14.1 Prior to the commencement of any work under Contract, Manager shall furnish a completed Certificate of Insurance to the City's Aviation Director and City Clerk's Office, which

shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The City shall have no duty to pay under this Contract until such certificate shall have been delivered to the City's Aviation Director and the City Clerk's Office, and no officer or employee shall have authority to waive this requirement.

14.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance will the City allow modification whereupon the City may incur increased risk.

14.3 Manager's financial integrity is of interest to the City, therefore, subject to Manager's right to maintain reasonable deductibles in such amounts as are approved by the City, Manager shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Manager's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

Workers' Compensation & Employers' Liability		Statutory $500,000/$500,000/$500,000
Professional Liability		$5,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
Commercial General Liability Policy to include coverage for the following: (A) Premise/Operations (B) Independent Contractors (C) Personal Injury (D) Contractual Liability to include Fire and Legal Liability		Damage of $1,000,000.00 per occurrence or its equivalent with an aggregate of not Less than $2,000,000.00
Property Insurance for physical damage to the Manager's improvements and betterments to the Leased Premises		Eighty percent (80%) of Actual Cash Value Coverage with a coinsurance factor of not less than eighty percent (80%)
Business Automobile Liability (any auto)		Combined Single Limit for Bodily Injury and Property Damage of $1,000,000.00 per occurrence or its equivalent
Umbrella or Excess Liability		Limit of Liability of $10,000,000.00 which will follow coverage from and extend to CGL, Auto and E&O (Professional Liability)

14.4 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may make a reasonable request for 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). Upon such request by the City, the Manager shall exercise reasonable efforts to accomplish

such changes in policy coverage, and shall pay the cost thereof.

14.5 MANAGER agrees that with respect to the above-required insurance, all insurance Contracts and Certificate(s) of Insurance will contain the following required provisions.

- Name the City and its officers, employees, and elected representatives as additional insureds 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 polices;

- 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 and employers' liability policy will provide a waiver of subrogation in favor of the City.

14.6 Manager shall notify the City in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following addresses:

CITY OF SAN ANTONIO Aviation Department 9800 Airport Boulevard San Antonio, Texas 78216	CITY OF SAN ANTONIO City Clerk's Office P.O. Box 839966 San Antonio, Texas 78283-3966

14.7 If Manager fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of Manager to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon Manager'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 Manager to stop work hereunder, and/or withhold any payment(s) which become due, to Manager hereunder until Manager demonstrates compliance with the requirements hereof. Nothing herein contained shall be construed as limiting in any way the extent to which Manager may be held responsible for payments of damages to persons or property resulting from Manager's or its lessees' performance of the work covered under this Contract.

Article XV.
INDEMNIFICATION

15.1 Manager covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, and representatives of the City, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon the City, directly or indirectly arising out of, resulting from or related to Manager's activities under this Contract, including any acts or omissions of Manager, any agent, officer, director, representative, employee of Manager or lessees of Manager, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this Contract, all without, however, waiving any

governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this INDEMNIFICATION 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. Manager shall promptly advise the City in writing of any claim or demand against the City or Manager known to Manager related to or arising out of Manager's activities under this Contract and shall see to the investigation and defense of such claim or demand at Manager's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Manager of any of its obligations under this Article XIII.

It is the EXPRESS INTENT of the parties to this Contract, that the INDEMNITY provided for in this Article XIII, is an INDEMNITY extended by Manager 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. Manager 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 and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

Article XVI.
AMENDMENTS

16.1 Except where the terms of this Contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Manager, and subject to approval by the City Council, as evidenced by passage of an ordinance.

Article XVII.
NOTICE

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

City Clerk - City of San Antonio
2nd Floor - CITY Hall
P. O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
ATTN: Aviation Director
9800 Airport Blvd.
San Antonio, Texas 78216

MANAGER

ATTN: _____

All notices properly addressed and posted and mailed Certified Mail Return Receipt Requested to the address specified by the parties in this Article shall be deemed received not later than three (3) days after their deposit in the United States Mail. A postmark affixed by the U.S. Postal Service shall be adequate proof of the date mailed.

Article XVIII.
SEVERABILITY

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

Article XIX.
LICENSES/CERTIFICATIONS

19.1 Manager warrants and certifies that Manager and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

Article XX.
COMPLIANCE

20.1 Manager shall provide and perform all services required under this Contract in compliance with all applicable federal, state and local laws, rules and regulations.

Article XXI.
NONWAIVER OF PERFORMANCE

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

Article XXII.
LAW APPLICABLE /LITIGATION EXPENSES

22.1 THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

22.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Contract shall be heard and determined in the City of San Antonio, Bexar County, Texas.

22.3 Under no circumstances will the funds received under this Contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity.

22.4 During the term of this Contract, if Manager files and/or pursues an adversarial proceeding against the City then, at the City's option, this Contract and all access to the funding provided for hereunder shall terminate immediately.

22.5 Manager shall not be eligible for consideration to receive any future funding while any adversarial proceedings against the City remains unresolved.

22.6 For purposes of this Article, "adversarial proceedings" include any cause of action filed by the Manager in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

Article XXIII.
LEGAL AUTHORITY

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

Article XXIV.
PARTIES BOUND

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

Article XXV.
CAPTIONS

25.1 The captions contained in this Contract are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Contract.

Article XXVI.
INCORPORATION OF EXHIBITS

26.1 Each of the Exhibits listed below is an essential part of the Contract, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

[RESERVED]

Article XXVII.
ENTIRE AGREEMENT

27.1 This Contract, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. AMENDMENTS.

EXECUTED and **AGREED** to this the _____ day of February 2006.

ATTEST:

_____

_____
City Clerk

CITY OF SAN ANTONIO, TEXAS

By: _____
Sheryl Sculley, City Manager

APPROVED AS TO FORM:

By:_____
City Attorney

CONCESSIONS MANAGER

_____

By:_____
Its:_____
Federal Tax Identification #:_____