

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Economic Development

AGENDA DATE: September 29, 2015

CONTACT PERSON NAME AND PHONE NUMBER: Memo Sotomayor 915-212-1572

DISTRICT(S) AFFECTED: 8

SUBJECT:

An Ordinance authorizing the City Manager to sign a lease and concession agreement with Ruben Holguin Cuellar, DBA Rent-A-Chef Catering for the lease of the facility located at San Jacinto Plaza known as The San Jacinto Plaza Café, consisting of 177 Square Feet for a one year term commencing on the date the City approves the lease and ending one year from the rent commencement date, at an annual rent of \$5,400.00 dollars and quarterly concession fee of \$150.00 dollars, and that there is one option to extend the term for one additional year by the City Manager under the same terms and conditions.

BACKGROUND / DISCUSSION:

The City is building a concession stand to serve park patrons at the San Jacinto Park. The City issued a Request for Letters of Interest to find the most capable and best suited concessionaire to provide a first class establishment. The City awarded the concession based on the highest overall grade as defined by performance in three categories: 1- Revenue to the City, 2- Experience and Qualifications, and 3- Response of References. The Lease and Concession agreement includes a requirement for at least 10% of all menu items to be healthy-food options, as dictated by Parks and Recreation Department standards.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

\$21,733.00 – Accounting String: 190-28280-4500-580080-PCP14HPRK03

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:


(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A LEASE AND CONCESSION AGREEMENT WITH RUBEN HOLGUIN CUELLAR, DBA RENT-A-CHEF CATERING FOR THE LEASE OF THE FACILITY LOCATED AT SAN JACINTO PLAZA KNOWN AS THE SAN JACINTO PLAZA CAFÉ, CONSISTING OF 177 SQUARE FEET FOR A ONE-YEAR TERM COMMENCING ON THE DATE THE CITY APPROVES THE LEASE AND ENDING ONE YEAR FROM THE RENT COMMENCEMENT DATE, AT AN ANNUAL RENT OF \$5,400.00 AND AN ANNUAL CONCESSION FEE OF \$600.00 TO BE PAID ON A QUARTERLY BASIS, AND THAT THERE IS ONE OPTION TO EXTEND THE TERM FOR ONE ADDITIONAL YEAR BY THE CITY MANAGER UNDER THE SAME TERMS AND CONDITIONS.

WHEREAS, the City owns the premises located at San Jacinto Plaza to be used and operated as a café that provides food and beverage services to the visitors of the San Jacinto Plaza (“San Jacinto Plaza Café”);

WHEREAS, Lessor has determined it to be in the best interest of the public to enter into a Lease and Concession Agreement with Concessionaire to provide food and beverage concession services at the San Jacinto Plaza Café pursuant and subject to the terms and conditions of the Lease and Concession Agreement;

WHEREAS, Concessionaire is engaged in operating a food catering business and desires to make said services available in the San Jacinto Plaza Café and is qualified, ready and able to perform said services, and agrees to operate and maintain first class concession facilities for use in connection therewith pursuant and subject to the terms and conditions of the Lease and Concession Agreement;

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Lease and Concession Agreement between the City of El Paso (Lessor) and Ruben Holguin Cuellar, dba Rent-A-Chef Catering (Concessionaire), for a facility located at the San Jacinto Plaza which is approximately 177 square feet, known as the San Jacinto Plaza Café to provide food and beverage concession services, for an Initial Term of one (1) year commencing on the date the City approves the Lease and Concession Agreement and ending on the date that one (1) year from the Rent Commencement date, at a base annual rental rate of \$5,400.00 and an annual concession fee of \$600.00 to be paid on a quarterly basis, and that there is an option to extend the Initial Term for one (1) additional one (1) year term that may be exercised by the City Manager pursuant to the same terms and conditions.

[Signatures on following page]

(Signature Page)

PASSED AND APPROVED on this the _____ day of _____, 2015.

CITY OF EL PASO


Tomás González
City Manager

ATTEST:


Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

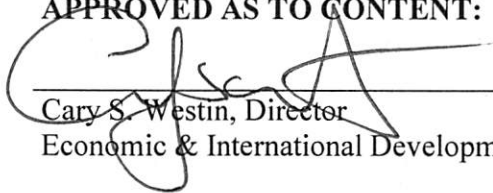
for 

Sol M. Cortez
Assistant City Attorney



Tracy Novak, Director
Parks and Recreation Department

APPROVED AS TO CONTENT:



Cary S. Westin, Director
Economic & International Development

STATE OF TEXAS)
)
COUNTY OF EL PASO)

**LEASE AND CONCESSION
AGREEMENT**

THIS Lease and Concession Agreement (hereinafter designated as the “Agreement”) is made and entered into this ____ day of _____, 2015, by and between the **CITY OF EL PASO** (hereinafter designated as the “Lessor”) and Ruben Holguin Cuellar, dba Rent-A-Chef Catering, a sole proprietorship (hereinafter designated as “Concessionaire”).

WITNESSETH:

WHEREAS, the City of El Paso owns the premises located at San Jacinto Plaza to be used and operated as a café that provides food and beverage services to the visitors of the San Jacinto Plaza (“San Jacinto Plaza Café”); and

WHEREAS, Concessionaire is engaged in operating a catering food business; and

WHEREAS, Lessor requested letters of interest to lease, develop and operate a food and beverage retail concession located at the San Jacinto Plaza Café; and

WHEREAS, Lessor has determined it to be in the best interest of the public to enter into a Lease and Concession Agreement with Concessionaire to provide food and beverage concession services at the San Jacinto Plaza Café on a non-exclusive basis pursuant and subject to the terms and conditions of this Agreement; and

WHEREAS, Concessionaire under this Agreement desires to make said services available in the San Jacinto Plaza Café and is qualified, ready and able to perform said services, and agrees to operate and maintain first class concession facilities for use in connection therewith.

NOW, THEREFORE, in consideration of the rents, covenants and agreements herein set forth, the parties enter into the following agreement:

**ARTICLE 1
DEFINITIONS**

The following words and phrases, wherever used in this Agreement, shall, for the purpose of this Agreement, have the following meanings:

“Concessionaire” means Ruben Holguin Cuellar, dba Rent-A-Chef Catering.

“Concessionaire Employees” means employees of Concessionaire that are employed at the San Jacinto Plaza Café not including any agents, invitees, contractors, representatives, or suppliers of Concessionaire.

“Effective Date” means the date agreed upon by the parties that this Agreement shall become effective following appropriate action by the City Council and execution of the Agreement by the City Manager.

“Facility” or **“Facilities”** means: (i) any permanent concession space intended for the sale of Concessionaire’s goods added to this Agreement by the City Manager or Designee pursuant to the terms of this Agreement, as may be modified from time to time throughout the Term.

“First Class” shall mean, as an adjective herein, a manner of operation of the concessions, a standard of quality of materials and construction, or a standard of quality of products, merchandise and services, as the context herein might be, comparable to those of similar high quality fast food service establishments.

“Hazardous Material or Materials” means any hazardous or toxic substances, materials, or wastes, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101 as amended) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302, as amended) and amendments thereto, or such substances, materials, and wastes that are or become regulated under any applicable local, state or federal law including, without limitation, any material, waste or substance which is petroleum or a petroleum distillate, asbestos, polychlorinated biphenyls, defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §690I, et seq, as amended or defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq, as amended.

“Lease Payment” means the sum of money due to Lessor as provided in Article 7 of this Agreement.

“Lease Year” means the twelve (12) month period commencing upon the Lease Payment Commencement Date and terminating on each one year anniversary thereof.

“Leased Premises” or **“San Jacinto Plaza Café”** mean the areas of the San Jacinto Plaza Café located at 111 Mills St, El Paso, Texas, leased by Lessor to Concessionaire, whether on a temporary or permanent basis, as depicted in **Exhibit A** attached hereto and by this reference made a part of this Agreement, as may be modified from time to time throughout the Term.

“Leasehold Improvements” means all improvements and equipment which are affixed to the Leased Premises and which cannot be removed without material damage to the Leased Premises, whether purchased, installed or altered by Lessor or Concessionaire during the Term or any previous agreements, including but not limited to: walls and wall coverings; floors and flooring; ceiling and ceiling treatments; window treatments, counters, and cabinetry; plumbing, ventilating, heating and electrical piping, ductwork, wiring, devices and equipment; doors, locks, and security grill and systems; walk-in coolers and refrigeration improvements and equipment; fire retarding systems; stoves, cooking grills and hoods and all other hard plumbed equipment such as dishwashers.

“**Lessor**” means the City of El Paso, Texas, its duly elected Council, or any duly constituted agent/committee appointed through said Council to fulfill the obligations herein required.

“**Personal Property**” means all movable property of Concessionaire not directly related to the concession operations or the privileges granted hereunder, including but not limited to office furniture, office equipment, and office supplies.

“**Structural Elements**” means the foundation, subfloor, support beams and girders, roof and exterior walls of the San Jacinto Plaza Café.

“**Term**” means the initial term of this Agreement as defined in Article 4 hereof.

“**Trade Fixtures**” means all furniture, fixtures, equipment and decorations located at the San Jacinto Plaza Café not affixed to the Leased Premises, except Personal Property, related to operation of the concession awarded herein, which can be removed without damage to the Leased Premises, including, but not limited to: all items connected to utility systems using quick disconnects, point of sale equipment, cash registers, safes, patron tables and chairs, display fixtures, movable commissary equipment and furniture, shelving, signage, and all carts and kiosks. Concessionaire owned trade fixtures are identified in **Exhibit B** attached hereto and by this reference made a part of this Agreement. Lessor owned trade fixtures provided for the benefit of and use by Concessionaire are identified in **Exhibit C** attached hereto and by this reference made a part of this Agreement.

**ARTICLE 2
SCOPE**

Section 2.1 Scope of Services

For and in consideration of the mutual covenants hereof, Lessor hereby leases to Concessionaire and Concessionaire hereby agrees to lease space in the San Jacinto Plaza for the purpose of providing First Class food and beverage service for the public and visitors of the San Jacinto Plaza. The food selections are enumerated in **Exhibit D** attached hereto and by this reference made a part of this Agreement, ten percent (10%) of all snacks, beverages, and meals offered by Concessionaire shall be healthy food options, which for the purposes of this Agreement shall mean a snack, beverage, or meal that contributes to a balanced diet and is low calorie, low fat, low sodium, and low in sugars as those terms are defined by the Food And Drug Administration pursuant to 21 CFR 101, and incorporated herein by reference.

**ARTICLE 3
LEASED PREMISES**

Section 3.1 Description of Leased Premises

Lessor hereby leases to Concessionaire and Concessionaire hereby agrees to lease from Lessor approximately **177 square feet**, more or less, of concession space comprising the Facilities

located at the San Jacinto Plaza, the location being specifically described in **Exhibit A** attached hereto and by this reference made a part of this Agreement.

Section 3.2 Leasehold Improvements and Trade Fixtures provided by Lessor

The Leasehold Improvements and Lessor owned Trade Fixtures described in **Exhibit C** attached hereto and by this reference made a part of this Agreement, are provided by Lessor for the benefit of and use by Concessionaire during the Term of this Agreement. These Leasehold Improvements and Lessor owned Trade Fixtures are and shall remain the property of Lessor during the Term of this Agreement. Upon the termination of this Agreement, whether by expiration, cancellation, forfeiture or otherwise, title to such Leasehold Improvements and Lessor owned Trade Fixtures shall remain with Lessor, pursuant to section 13.4.

Section 3.3 Condition of Premises

Concessionaire accepts the Premises in their present condition and agrees that the Premises are suitable for Concessionaire's business, activities, and operations proposed to be conducted thereon relying on its own inspection and judgment. Lessor has not made any warranties expressed or implied with regard to the condition of the Premises or improvements or their suitability for a particular use. Concessionaire accepts the Premises "AS IS", "WHERE AS", "WITH ALL FAULTS", relying on Concessionaire's own inspection and judgment and not in reliance on any representations of Lessor. Lessor shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

Section 3.4 Services and Physical Aspects of the Leased Premises

Concessionaire acknowledges that Lessor has fulfilled its responsibility with respect to the Leased Premises and accepts them "as is." Lessor has no further responsibility to cause additional work to be performed to the location.

Lessor disclaims any warranty of suitability that may otherwise have arisen by operation of law. Lessor does not warrant that there are no latent defects in the facilities that are vital to Concessionaire's using the Leased Premises for their intended commercial purpose and that these essential facilities will remain in a suitable condition. Concessionaire leases the Leased Premises "as is", whether suitable or not, and waives the implied warranty of suitability

Section 3.5 Requirements to Remain in Confines of Leased Premises

Concessionaire shall at all times occupy and use only that space within the confines of the Leased Premises as designated by this Agreement or permitted by the City Manager or Designee. In the event that Concessionaire shall exceed such confines, the City Manager or Designee shall notify Concessionaire in writing of any such infraction and Concessionaire shall vacate said area immediately. Failure of Concessionaire to vacate such area immediately may be deemed a material breach of this Agreement.

Section 3.6 Access by Lessor

Lessor, by its officers, employees, agents and representatives, shall have the right, at all reasonable times, to enter upon the Leased Premises for the purpose of inspecting same, for observing the performance by Concessionaire of its obligations hereunder, and for the performance of any act which Lessor may be obligated to perform, or have the right to do, under this Agreement.

Lessor, its officers, employees, agents and representatives, shall also have unlimited access through the Leased Premises for the completion of any inspections, repairs, renovations and construction in areas within or adjoining to the Leased Premises. Lessor shall not be responsible for damage to any property which may result from Lessor's access to the Leased Premises pursuant to this section.

Section 3.7 Redelivery of Leased Premises

Concessionaire shall, upon termination or expiration of this Agreement, quit and deliver the Leased Premises to Lessor peaceably, quietly and in as good order and condition as the same now are or may hereafter be improved by Concessionaire or Lessor, reasonable use and wear excepted.

Upon the termination or expiration of this Agreement, Concessionaire will cooperate fully with Lessor and any successor concessionaire, without Lessor or successor concessionaire having to incur any material expense not otherwise required in this Agreement, to ensure an effective and efficient transition of Concessionaire's duties to any successor concessionaire. Such efforts and cooperation shall include, to the extent practicable and permissible, the transfer of all licenses and permits at no cost to the successor concessionaire. Concessionaire acknowledges its responsibility to help to assure continued First Class concession services at the Leased Premises during any transition to a successor concessionaire.

ARTICLE 4 TERM

Section 4.1 Initial Term

The Initial Term of this Agreement shall be for a period of one (1) year commencing on the date that the Lessor's governing body approves this Agreement (the "Effective Date") and ending on the date that is one year from the Rent Commencement Date, as further defined in this Agreement. The parties shall have vested rights immediately upon the Effective Date, and this Agreement shall be binding and in full force and effect in accordance with its terms upon such execution.

Section 4.2 Temporary Use Period

It is understood by the parties that the Lessor will undertake certain leasehold improvements to the Premises to make the Premises suitable for its specific purpose. The Lessor shall complete the leasehold improvements within 120 days from the effective date of this Agreement ("Temporary Use Period"); however, the Temporary Use Period may be amended or

extended by the City Manager or Designee.

Lessee shall take possession of the Lease Premises during the Temporary Use Period. Concessionaire shall offer prepared food and beverages for the consumption of the public and visitors of the San Jacinto Plaza during the Temporary Use Period via a Food Catering license.

Section 4.3 Lease Payment Commencement Date

Concessionaire's obligation to pay the Lease Payment, as established in Article 7, shall commence when the end of the Temporary Use Period or when the Lessor gives notice that the initial improvements have been completed. The monthly Lease Payment for such month shall be prorated proportionate to the number of days that the base Monthly Rent is due and payable at the start of the Lease Payment Commencement Date.

Section 4.4 Option to Extend

Lessor shall have the option to extend this Agreement for one (1) additional one (1) year term. The option to extend the term of this Agreement may be exercised administratively by the City Manager or Designee.

Section 4.5 Holding Over

In the event that Concessionaire shall hold over and remain in possession of the Leased Premises after the termination of this Agreement in any manner, without any renewal thereof, such holding over shall not be deemed to operate as a renewal or extension of this Agreement, but shall create a tenancy from month to month subject to the same terms and conditions of this Agreement. During any holdover period, Concessionaire shall pay monthly to Lessor one and one half times (1 ½) the lease payments required under the terms of this Agreement. The provisions of this section shall survive the expiration of this Agreement.

**ARTICLE 5
USES AND PRIVILEGES**

Section 5.1 Exclusive Uses

Concessionaire shall enjoy the following privileges in connection with its use of the Leased Premises:

- A. Use of Leased Premises. The Leased Premises shall be used by Concessionaire only for Required Concession Services, as hereinafter defined, and for such other uses as Lessor may agree to in writing.

- B. Required Concession Services. Those services required of Concessionaire as more fully enumerated in **Exhibit D** attached hereto and by this reference made a part of this Agreement.

C. Concessionaire may from time to time, with City Manager's or Designee's written approval, add or delete items to its merchandise offerings provided that such additions or deletions shall be consistent with those authorized in this Agreement.

D. The City may terminate this Lease Agreement if Concessionaire fails to comply with the requirements of this Lease Agreement.

Section 5.2 Non-Exclusive Uses

Concessionaire shall enjoy the following non-exclusive privileges in connection with its use of the Leased Premises:

A. The right and obligation to provide for the sale of any items related to Concessionaire's privileges herein that Lessor, in its sole discretion, determines necessary for the convenience and comfort of the public and visitors of the San Jacinto Plaza.

B. The right of free ingress to and egress from the Leased Premises, expressly subject to such rules and regulations as may be established by Lessor as respecting such use, all applicable laws, and the needs of Lessor during any construction or renovation projects.

C. The right for Concessionaire's employees, to use reasonably convenient and adequate vehicular parking spaces provided by Lessor, subject to the payment of appropriate charges therefor as may be established from time to time by Lessor.

ARTICLE 6 RESTRICTIONS ON USES AND PRIVILEGES

Section 6.1 Requirement for Healthy Food Options

In addition to the food selections enumerated in Concessionaire's Proposal found in **Exhibit D** attached hereto and by this reference made a part of this Agreement, ten percent (10%) of all snacks, beverages, and meals offered by Concessionaire shall be healthy food options, which for the purposes of this Agreement shall mean a snack, beverage, or meal that contributes to a balanced diet and is low calorie, low fat, low sodium, and low in sugars as those terms are defined by the Food And Drug Administration pursuant to 21 CFR 101, and incorporated herein by reference. The sale of chewing gum by the Concessionaire is prohibited.

Section 6.2 Use of Premises

Concessionaire shall not use or permit the Leased Premises to be used in whole or in part during the Term, for any purpose other than as hereinabove set forth, nor for any use in violation of any present or future laws, ordinances, rules and regulations at any time applicable to the Leased Premises; including, but not limited to, such laws, rules and regulations, relating to sanitation or the public health, safety or welfare, or operation and use of the San Jacinto Plaza Café.

Concessionaire hereby expressly agrees, at all times during the Term, at its own cost, to maintain, use and operate the Leased Premises and all improvements, furnishings, fixtures, and

equipment thereon in a clean, wholesome, and sanitary condition, and in compliance with any and all present and future laws, ordinances and valid rules and regulations relating to public health, safety or welfare.

Concessionaire shall at all times faithfully obey and comply with all applicable laws, rules and regulations adopted by federal, state, local or other governmental bodies, or agencies, departments or officers thereof; provided, however, Lessor expressly agrees to use its best efforts to prevent any unreasonable inhibition or restriction of Concessionaire's rights hereunder. Concessionaire shall not at any time during the Term hereof abandon all or any portion of the Leased Premises without the prior written consent of Lessor.

Section 6.3 Obligation for Continuous Operation

The Leased Premises shall be used only for the purposes specified in this Agreement. Concessionaire shall not at any time during the term hereof leave the Leased Premises, or any part thereof, vacant without the prior written consent of Lessor.

Section 6.4 Special Events

Concessionaire acknowledges that the City will permit third parties to operate special events at the San Jacinto Plaza. During the special event the Concessionaire may elect to do the following:

1. Provide the Concessionaire services described in this Agreement during the special event;
or
2. Close the operation of the Facility for the duration of the special event.

The Concessionaire shall notify the City Manager or Designee in writing regarding the Concessionaire's decision prior to the date of the special event. The concessionaire shall be responsible for the condition of the Facility at all times

The City reserves the right to allow a third party concessionaire to operate in other locations of the San Jacinto Plaza, in addition to the alternatives listed above, during the special event. The third party concessionaire will be self-contained and operate independent of this agreement and related services.

Section 6.5 Prohibited Uses

Concessionaire shall not conduct operations in or on the Leased Premises in a manner that in the judgment of the City Manager or Designee:

- A. Adversely or materially interferes with the Lessor's exercise of satisfactory continuing control over the use of the San Jacinto Plaza.
- B. Adversely or materially interferes or would be likely to interfere with the reasonable use by others of common facilities at the San Jacinto Plaza;

- C. Hinders or would be likely to hinder police, firefighting or other emergency personnel in the discharge of their duties;
- E. Would or would be likely to constitute a hazardous condition at the San Jacinto Plaza;
- F. Would involve any illegal purposes.

**ARTICLE 7
RENTALS AND ACCOUNTING RECORDS**

Section 7.1 Lease Payment

For the Facilities privileges granted herein, Concessionaire shall pay to Lessor rent in the amount of \$5, 400.00 per year, payable in 12 equal monthly payments.

Section 7.2 Concession Fee

Concessionaire shall pay a quarterly Concession Fee of \$150.00 due on or before the 5th day of the first month of each quarter. The following defines the Quarters:

- Quarter 1** September through November of every year of the term of this Lease.
- Quarter 2** December through February of every year of the term of this Lease.
- Quarter 3** March through May of every year of the term of this Lease.
- Quarter 4** June through August of every year of the term of this Lease.

Concessionaire's obligation to pay the quarterly Concession Fee shall commence at the beginning of the Temporary Use period. The Concession fee for that quarter shall be prorated proportionate to the number of days that the Concession Fee is due and payable at the start of the Temporary Use Period. The Concession Fee will be adjusted in accordance to the Concessions fee established for a small park in Schedule C of the City's annual budget.

Section 7.3 Time of Payment

Concessionaire's obligation to pay the Lease Payment shall commence at the end of the Temporary Use period or when the City gives notice that the initial improvements have been completed, and shall be paid for such month as stated in Section 4.3 of this Agreement. Thereafter, the rent payment obligation shall continue to be paid monthly on or before the 5th day of each month throughout the end of the term of this Agreement, including any renewal terms. All rental payments provided for herein shall be paid to Lessor at the following address:

City of El Paso
Attn: Administrative Services Manager
801 Texas Ave.
El Paso, TX 79901

Section 7.4 Unpaid Lease Payments, Fees and Charges

Without waiving any other right of action available to Lessor, in the event of default in payment of any installment of lease payment, any fees, or other charges or moneys accruing under any provision of this Agreement that is not received by the 15th day of the month in which payment is due, shall bear interest at the highest rate permitted by law per annum from the date when the same was due according to the terms of this Agreement until paid by Concessionaire.

Section 7.5 Landlord's Lien

It is expressly agreed that in the event of default in the payment of rent or any other sum due from Concessionaire to Lessor under the terms of this Agreement, Lessor shall have a lien upon all Leasehold Improvements, Trade Fixtures, goods, chattels, Personal Property or equipment, save and except delivery vehicles or rolling stock belonging to Concessionaire which are placed in or become a part of the Leased Premises, as security for rent due and to become due for the remainder of the Term. Such lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Concessionaire grants to Lessor a security interest in all of Concessionaire's personal property placed in or on the Leased Premises for purposes of this contractual lien; provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Concessionaire. In the event Lessor exercises the option to terminate the leasehold as provided herein, Lessor, after providing reasonable notice to Concessionaire of its intent to take possession and giving an opportunity to cure the defaults may take possession of all of Concessionaire's property on the Premises and sell it at public or private sale after giving Concessionaire reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit and for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first to the necessary and proper expense of removing, storing and selling such property, then to the payment of any rent due or to become due under this Agreement, with the balance, if any, to be paid to Concessionaire.

Section 7.6 Cash and Record Handling Requirements

Concessionaire's cash and record handling systems shall be incorporated in its written policy, rules and regulations covering accounting and handling of all transactions of merchandise and services, which policy, rules and regulations shall be available for review by Lessor.

Section 7.7 Utility Charges

Lessor shall provide, maintain, all utilities used in the Leased Premises, including deposits, installation costs, meters, and service charges. The master meter of the San Jacinto Plaza will capture the utility usage by the Concessionaire.

Section 7.8 No Abatement or Set-Off

Except as expressly provided herein, Concessionaire shall timely pay all fees, rents and other sums due hereunder without any abatement, suspension, set-offs, reduction or deductions.

**ARTICLE 8
IMPROVEMENTS**

Section 8.1 Improvements to Leased Premises.

Concessionaire shall obtain written approval from the City Manager or Designee prior to making any improvement to the Leased Premises. Full and complete plans and specifications for all work, facilities, improvements, and finishes, and the budget and time required to complete same, shall be submitted to and receive the written approval of the City Manager or Designee before any work or construction may commence. First-Class standards of design and construction shall be complied with in connection with all such work, facilities, and improvements.

Approval of any and all improvements plans or documents by the City Manager or Designee does not constitute approval by any other local, state, or federal agency.

Concessionaire, at its sole expense, must obtain appropriate approval from all local, state, and federal agencies, as required, for the completion of any and all improvements. All improvements shall be planned and constructed in accordance with the laws and ordinances of the City of El Paso with applicable building codes and all applicable state and federal laws. All improvements, furniture, fixtures, and equipment used in the Leased Premises shall be of high quality, safe, fire-resistant, state of the art, and attractive in appearance.

Section 8.2 Construction Without Approval

If any Leased Premises, Leasehold Improvements, or Trade Fixtures are altered, erected, placed or maintained upon any portion of the Leased Premises other than in accordance with plans and specifications approved by the City Manager or Designee, such alterations, erection and maintenance shall be deemed to have been undertaken without approval required herein. This restriction shall be applicable to architectural aesthetic matters as well as architectural plans.

In the event of such alteration, erection, placement, or maintenance without approval, Concessionaire will be considered in default of this Agreement and Lessor may terminate this Agreement in accordance with the provisions set forth in Article 12.

Section 8.3 Title to Improvements

All Leasehold Improvements made to the Leased Premises by Concessionaire, and additions and alterations thereto made upon said Leased Premises by Concessionaire, shall be and remain the property of Concessionaire until the termination of this Agreement whether by expiration of the Term, cancellation, forfeiture or otherwise. Upon the termination of this Agreement, whether by expiration, cancellation, forfeiture or otherwise, title to such Leasehold

Improvements shall vest in Lessor, pursuant to 12.4.

Section 8.4 Removal and Demolition

Concessionaire shall not remove or demolish, in whole or in part, any Leasehold Improvements upon the Leased Premises without the prior written consent of the City Manager or Designee who may, at the City Manager's or Designee's discretion, condition such consent upon the obligation of Concessionaire to replace the same by another Leasehold Improvement specified in such consent.

**ARTICLE 9
MAINTENANCE AND OPERATION OF SAN JACINTO CAFÉ**

Section 9.1 City's Responsibilities

A. Utilities

i) Lessor shall provide the Leased Premises with a source of heat and air conditioning. However, Concessionaire shall be responsible for extending this service to and throughout the Leased Premises, as necessary, in accordance with all applicable building codes.

ii) Lessor shall provide the Leased Premises with a source of electricity. However, Concessionaire shall be responsible for extending this service to and throughout the Leased Premises, as necessary, in accordance with all applicable electrical codes.

iii) Lessor shall provide the Leased Premises with points of connection to the potable water system and sanitary sewer system. However, Concessionaire shall be responsible for extending these services to and throughout the Leased Premises, as necessary, in accordance with all applicable codes.

iv) Concessionaire agrees to pay the assessed charge(s) for all utilities used in the Leased Premises. Concessionaire additionally agrees to pay all deposits, installation costs, meters, deposits or other charges individually assessed to Concessionaire. No such payment of utilities shall constitute a payment of rent or credit against any other provision of this Agreement.

v) Lessor shall not be liable to Concessionaire in damages or otherwise for delay or failure to supply or furnish, or for any delay in the supplying or furnishing of any utility service which Lessor is obligated to supply or furnish, when such failure or delay is caused by necessary repairs or improvements, by any labor controversy, by an inability to secure water, gas or electricity or other utilities at a Facility, by any accident or casualty, by any act or omission of Concessionaire, or by any other cause or causes beyond the control of Lessor.

Section 9.2 Concessionaire's Responsibilities

A. Except for Structural Elements of the Leased Premises for which Lessor is responsible under Section 9.1 above, Concessionaire shall, without cost to Lessor, maintain the Leased Premises in good appearance, repair and safe condition, including any Leasehold Improvements, Trade Fixtures, and Personal Property utilized, constructed, or installed by Concessionaire. Custodial services shall be provided by Concessionaire for the Leased Premises in a prompt and timely manner as required to keep all portions of the Leased Premises clean, neat, wholesome and attractive. Concessionaire shall maintain and repair all Leasehold Improvements and Trade Fixtures within the Leased Premises or utilized in Concessionaire's operations, whether installed by Concessionaire or by Lessor. Concessionaire shall repair all damages caused by itself or its agents, contractors, employees, or customers. All maintenance, repairs, replacement, renovation and remodeling shall be of equal quality to the original in materials and workmanship, and all paint colors shall be subject to the prior written approval of the City Manager or Designee.

B. On or about the commencement of each Lease Year, representatives of Lessor and Concessionaire shall tour the Leased Premises and jointly agree upon what, if any, routine refurbishment is required to maintain the Leased Premise in First Class condition, and Concessionaire shall promptly undertake such refurbishment at its sole cost and expense.

C. Concessionaire agrees to employ sufficient personnel, and provide necessary equipment to keep the Leased Premises and all furniture, furnishings, fixtures and equipment clean, neat, safe, sanitary and in good working order and condition at all times pursuant to the maintenance requirements herein.

Section 9.3 Lessor's Right to Inspect and Make Repairs

Authorized agents of Lessor may at any reasonable time, without notice, enter upon the Leased Premises to determine if such satisfactory maintenance is being performed. If it is determined that said maintenance is not satisfactory, the City Manager or Designee shall so notify Concessionaire in writing and, if satisfactory maintenance is not performed or ongoing with due diligence by Concessionaire within fifteen (15) days after receipt of written notice, Lessor or its agents shall have the right to enter upon the Leased Premises and perform the maintenance therefor and Concessionaire agrees to promptly reimburse Lessor for the cost thereof, plus ten percent (10%) for administrative overhead. Lessor shall be the sole judge of the quality of maintenance performed.

Section 9.4 Trash and Garbage

A. Concessionaire shall provide and pay all costs for a complete and proper arrangement for the adequate sanitary handling of all trash, garbage and other refuse caused as a result of its operations pursuant hereto and shall provide for its timely removal from the San Jacinto Plaza. Concessionaire shall not use City receptacles for the disposal of trash and garbage.

Concessionaire shall provide and use suitable covered receptacles for all garbage, trash and other refuse on or in connection with the Leased Premises. Piling of boxes, cartons, barrels or other similar items in or in view of a public area shall not be permitted. Concessionaire shall keep any areas used for trash and garbage storage prior to removal from the Leased Premises in a clean and orderly condition so as to not attract rodents, pests and birds or create an offensive odor.

B. In transporting trash and refuse from the Leased Premises, Concessionaire shall use only carts, vehicles or conveyances that are covered, leak proof. Such disposal shall take place during hours as may be approved by the City Manager or Designee.

C. Concessionaire shall be responsible for the proper disposal. All such disposal methods shall be in full accord with applicable regulations governing local, state, and federal laws, rules, and regulations. Concessionaire shall, at its own expense, check and clean all grease traps and grease receptors at least monthly. The expense of any breakage, stoppage, or damage resulting from a violation of this provision, wherever such occurs, shall be borne by Concessionaire who may, or whose employees, agents, or invitees may, have caused it.

Section 9.5 Environmental Regulations

Concessionaire shall comply with any and all environmental regulations, including but not limited to, the following:

A. Concessionaire shall not cause or permit any Hazardous Materials to be stored or used on or about the Leased Premises by Concessionaire, its agents, or employees, except in compliance with Environmental Laws as described below and as permitted by Lessor.

B. Concessionaire shall, at all times and in all respects, comply with all present and hereinafter enacted local, state, and federal laws, ordinances, regulations, orders, and any amendments thereto relating to industrial hygiene, environmental protection, or the use, generation, manufacture, storage, disposal, or transportation of Hazardous Materials on, about, or from the San Jacinto Plaza (collectively, "Environmental Laws").

C. Concessionaire shall, at its sole expense, procure, maintain in effect, and comply with all conditions of any permits, licenses, and other governmental and regulatory approvals required for Concessionaire's use of the San Jacinto Plaza Café including, without limitation, discharge of materials or wastes into or through any storm or sanitary sewer serving the San Jacinto Plaza Café. Concessionaire shall cause any and all Hazardous Materials removed from the San Jacinto Plaza Café to be removed and transported solely by duly licensed haulers to duly licensed facilities for disposal. Concessionaire shall in all respects handle, treat and manage any and all Hazardous Materials on or about the San Jacinto Plaza Café in conformity with all applicable Environmental Laws or any successor laws thereto and prudent industry practices regarding the management of such Hazardous Materials. Upon the expiration or earlier termination of the Term, Concessionaire shall cause any Hazardous Materials it has brought into the San Jacinto Plaza Café to be removed

from the premises and to be transported for use, storage, or disposal in accordance and compliance with all applicable Environmental Laws; provided, however, that Concessionaire shall not take any remedial action in response to the presence of any Hazardous Materials on or about the San Jacinto Plaza Café, nor enter into any settlement agreement, consent decree, or other compromise with respect to any claims relating to any Hazardous Materials in any way connected with the San Jacinto Plaza Café without first notifying Lessor in writing of Concessionaire's intention to do so and affording Lessor ample opportunity to appear, intervene, or otherwise appropriately assert and protect Lessor's interest with respect thereto.

D. If, at any time, Concessionaire shall become aware, or have reasonable cause to believe, that any Hazardous Material has come to be located on or about the San Jacinto Plaza Café in violation or potential violation of Environmental Laws, Concessionaire shall, immediately upon discovering such presence or suspected presence of the Hazardous Material, provide Lessor with written notice of that condition. In addition, Concessionaire shall immediately notify Lessor in writing of: (1) any enforcement, cleanup, removal, or other governmental or regulatory action instituted or threatened pursuant to any Environmental Laws; (2) any claim made or threatened by any person against Concessionaire or Lessor relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from or claimed to result from any such Hazardous Materials; and (3) any reports made to any local, state, or federal environmental agency arising out of or in connection with any such Hazardous Materials on or removed from the San Jacinto Plaza Café, including any complaints, notices, warnings, or asserted violations in connection therewith.

Concessionaire shall also supply to Lessor as promptly as possible, and in any event within five (5) business days after Concessionaire first receives or sends the same, copies of all claims, reports, complaints, notices, warnings, or asserted violations relating in any way to the San Jacinto Plaza Café or Concessionaire's use thereof. Concessionaire shall promptly deliver to Lessor copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials it causes to be removed from the San Jacinto Plaza Café.

E. Concessionaire shall indemnify, defend and hold harmless Lessor, its officers, employees, successors and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses, damages (including but not limited to damages for the loss or restriction on use of rentable or usable space or of any amenity of the Leased Premises) costs, or expenses (including attorneys' fees, consultant fees, and expert fees) for the death of or injury to any person or damage to the San Jacinto Plaza Café or any property whatsoever, arising from or caused by the Concessionaire's failure to comply with any Environmental Laws or any covenants, terms or conditions relating to environmental matters. Concessionaire's obligations under this Section shall include, without limitation any and all costs incurred in connection with any investigation of the condition of the San Jacinto Plaza Café caused by Concessionaire's action or inaction when such inaction relates to Concessionaire's occupancy or use of the Leased Premises, and any and all costs of any required or necessary repair, cleanup, decontamination or remediation of the San

Jacinto Plaza Café resulting from any condition created or caused by Concessionaire, whether through action or inaction, when such inaction relates to Concessionaire's occupancy or use of the Leased Premises, and the preparation and implementation of any closure, remedial action, or other required plans in connection therewith. Concessionaire's obligations under this Section shall survive the expiration or earlier termination of this Agreement. The provisions in this paragraph are in addition to and are cumulative of the provisions and the remedies available by law or provided for under this Agreement to which Lessor may resort to cumulatively or in the alternative.

F. Notwithstanding any provisions to the contrary, Lessor, at its sole discretion, shall have the right to enter and inspect the Leased Premises, including Concessionaire's business operations thereon, upon reasonable notice and in a manner so as not to unreasonably interfere with the conduct of Concessionaire's business, to investigate the presence or potential presence of Hazardous Materials on the Leased Premises in violation of any Environmental Laws. During such inspection, Lessor shall have the right to visually inspect the Leased Premises and conduct such tests as it may determine, in its sole discretion, to be necessary or advisable. Lessor shall pay for the costs of such investigations; provided, however, that if the results of such investigation indicate the presence of Hazardous Materials on or about the San Jacinto Plaza Café in violation of Environmental Laws as a result of any actions or inactions of Concessionaire, then Concessionaire shall fully reimburse Lessor for such expenses within ten (10) days of receiving Lessor's written request for reimbursement.

G. Concessionaire's obligations and liability under this Section shall continue so long as Lessor bears any liability or responsibility under Environmental Laws for any action or inaction that occurred on the Leased Premises or any improvements thereon.

Section 9.6 Self Help

Notwithstanding any other provision in this Agreement to the contrary, Lessor shall have the right of self-help or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of any law or ordinance of the City of El Paso or any laws of the State of Texas or the United States.

ARTICLE 10 STANDARDS OF SERVICE

Section 10.1 Hours of Operation

A. Concessionaire shall ensure that the Facility is continuously and uninterruptedly open for business and provide all services and sales activities as required by this Agreement at such hours as may be established from time to time by the City Manager or Designee, in the City Manager's or Designee's sole and absolute discretion (hereinafter referred to as "Facility Hours"). Concessionaire hereby understands and agrees that the Facility Hours

may be seven (7) days per week, including local, state and federal holidays, twenty-four (24) hours per day.

B. If the City Manager or Designee deems it necessary, on an emergency basis, to serve the public during other than Facility Hours, Concessionaire shall remain continuously open and provide all services and sales activities at the Facility as required by the City Manager or Designee during the emergency period.

C. The Concessionaire shall not be deemed to have breached or be in default in respect of such operating requirement as a result of a temporary closing of the Facility in connection with maintenance or repairs, renovation or remodeling, inventories or other temporary closing in the normal course of the Concessionaire's business provided that Concessionaire has received from the City Manager or Designee, prior to such temporary closing, in writing, permission for such temporary closing.

D. Concessionaire shall prominently post in the Facility, in an area visible to customers, the current listing of the Facility's hours of operation.

Section 10.2 Conduct of Business

It is Lessor's intention that Concessionaire's business shall be conducted in a manner so as to meet the needs of the San Jacinto Plaza visitors and in a manner that will reflect positively upon the Concessionaire and Lessor. The Concessionaire shall offer quality products and shall equip, organize and efficiently manage the Facility to provide First Class service and products in a clean, attractive and pleasant atmosphere.

A. Concessionaire shall maintain an adequate staff of employees and maintain in the Leased Premises at all times a stock of merchandise as is designed to meet the reasonable food and beverage requests of the traveling public.

B. Concessionaire shall continuously stock, display and make available for sale a full and complete stock of merchandise consistent with the Required Concession Services. Concessionaire shall ensure that all such merchandise is at all times attractively and logically arranged and that all merchandise displays are fully stocked with product.

C. Concessionaire shall offer for sale only products of high quality which are safe, free of adulteration, sanitary and properly labeled and advertised. Upon written notice to Concessionaire by Lessor of any violation of this provision, Concessionaire shall immediately correct the condition objected to within four (4) hours after receipt of notice.

D. Concessionaire shall furnish prompt, courteous and efficient service adequate to meet all reasonable requests therefor, ensuring polite and inoffensive conduct and demeanor on the part of its representatives, agents, servants and employees.

E. Concessionaire shall, at all times during the Term and without any additional charge to customers, replace any merchandise determined by customers to be unsatisfactory,

flawed or defective or shall provide customers a full refund therefore; provided said customers have complied with any applicable warranty and use provisions applicable to the merchandise.

F. Concessionaire shall upon written demand from the City Manager or Designee cease selling any item that Lessor shall determine is objectionable for sale or display at the Facility and immediately remove such item from its inventory and not thereafter offer such item for sale at the Facility.

G. Concessionaire shall have its display windows, signs, and permitted advertising displays adequately illuminated continuously during the Facility Hours and, if such hours are less than twenty-four (24) hours, such additional hours as the City Manager or Designee may establish from time to time in the City Manager's or Designee's sole and absolute discretion.

H. Concessionaire shall accept as payment for goods and services at least the following nationally recognized credit or charge cards: Master Card, VISA and Discover.

I. Concessionaire shall ensure that the area around the Facility is kept clear of any boxes, cartons, barrels or other similar items which would impede entrance to or exit from the Facility. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner within and around the Facility is strictly prohibited.

J. Concessionaire shall not place or install any racks, stands, Trade Fixtures, pedestal signs, displays of products, or other items outside the boundaries of the Leased Premises without the prior written approval of the City Manager or Designee.

K. Concessionaire shall be required to respond to any customer complaints in writing within ten (10) days of receipt, with a good faith effort to explain, resolve or rectify the corresponding problem. Concessionaire shall provide the City Manager or Designee with a copy of any complaint received the same day it is received by the Concessionaire and shall provide the City Manager or Designee with a copy of the written response the same day it is sent. Complaints received by Lessor shall be forwarded to the Concessionaire, who shall respond utilizing the above procedure.

L. Concessionaire shall provide all services authorized hereunder to its customers and patrons upon a fair, equal and nondiscriminatory basis and shall charge fair, reasonable and nondiscriminatory prices; provided, however, that Concessionaire may make or give such reasonable and nondiscriminatory discounts, rebates or other similar price reductions as it may desire to its employees.

Section 10.3 Personnel

A. The management, maintenance and conduct of Concessionaire's operations hereunder shall at all times during the Term be under the supervision and direction of an

active, qualified, competent and experienced manager representing Concessionaire, who shall at all times be authorized to represent and act for Concessionaire. Said manager shall have full authority to make day-to-day business decisions on behalf of Concessionaire, with respect to the concession operations contemplated by this Agreement, and shall represent the Concessionaire in dealings with Lessor and coordinate all concession activities with Lessor. Concessionaire will cause such manager to be assigned a duty station or office on the Leased Premises at which he shall be available during normal business hours. Concessionaire will, at all times during the absence of such manager, assign or cause to be assigned a qualified subordinate to be available and in charge of the Leased Premises, services and facilities to act for the manager in the manager's absence.

B. Concessionaire shall, in the operation of the food and beverage services under this Agreement, use its best efforts to employ or permit the employment of only such personnel as will assure a high standard of service to the public. All such personnel, while on or about the Leased Premises, shall be clean and neat in appearance and courteous at all times and shall be appropriately attired, with uniforms in such instances as are appropriate. No personnel employed by Concessionaire while on or about the Leased Premises shall be permitted to use improper language, act in a loud, boisterous or otherwise improper manner or be permitted to solicit business in an inappropriate manner.

C. Concessionaire shall recruit, train, supervise, direct and deploy the number of representatives, agents and employees, collectively referred to as "personnel" necessary to promptly provide services to all customers and to meet all of the requirements of this Agreement. Concessionaire hereby agrees that it shall provide the minimum personnel levels as indicated in Concessionaire's Proposal. Concessionaire shall be continuously responsible for actively managing personnel levels to ensure that changes in passenger activity, due to schedule changes, load factor changes or bus delays are adequately accommodated through increased levels of personnel. Any actual or perceived degradation in either: (i) the customer service requirements or other duties, rights or responsibilities set forth in this Agreement provided by Concessionaire in the course of conducting Concessionaire's permitted uses; or (ii) the training and competence of Concessionaire's personnel; shall be conveyed to the Concessionaire. Upon such notice, Concessionaire hereby agrees that it shall promptly institute training programs and/or add additional adequately trained and capable staff to the satisfaction of Lessor.

D. Concessionaire shall maintain a close check over attendants and employees to insure the maintenance of a high standard of service to the public. Concessionaire shall take all proper steps to discipline, transfer or terminate employees, as appropriate, who participate in acts of misconduct on the Leased Premises. Wellbeing

E. The City Manager or Designee shall have the right to object to the demeanor, conduct, or appearance of any employee of Concessionaire or any of its invitees or those doing business with it, whereupon Concessionaire shall take all steps necessary to remedy the cause of the objection within three (3) business days. Failure to take necessary steps to remedy the cause of the objection within the three (3) business days may be cause for termination of this Agreement. If requested by Concessionaire, the City Manager or

Designee shall present its objections in writing and provide the opportunity to reply to the objections, such reply to be given consideration by the City Manager or Designee.

Section 10.4 Signs and Advertising

~~A. For purposes of this Section, signs shall include, but not necessarily be limited to, identification signs, company logos, advertising or promotions, photographs, art displays and the like.~~

~~AB. Concessionaire shall have the right to install and operate upon or in the Leased Premises, and at Concessionaire's sole cost and expense, signs containing its name and representing its business.~~ Concessionaire acknowledges Lessor's desire to maintain a high level of aesthetic quality in the Leased Premises~~concession Facility~~. Concessionaire ~~covenants and~~ agrees that it will, in the exercise of its privileges to install and maintain appropriate a menu signs on the Leased Premises at its sole cost, ~~Concessionaire #~~ will submit to the City Manager or Designee the size, design, content and intended location of ~~each and the menu every sign~~ it proposes to install on or within the Leased Premises, and that no signs of any type shall be installed on or within the Leased Premises without the specific prior written approval of the City Manager or Designee as to the size, design, content and location. Concessionaire is prohibited from installing advertising signs or products not directly associated with its business. Handwritten or hand lettered signs are prohibited. Notwithstanding any prior written approval, upon written notice from the City Manager or Designee at any time during the Term. Concessionaire shall install, remove or modify any signs that the City Manager or Designee deems necessary. Failure to require removal of any sign placed on or about the Leased Premises without written permission shall not limit the City Manager's or Designee's ability to require removal of any unapproved sign.

B. Concessionaire agrees that the Lessor has the sole right to name the Leased Premises. The Lessor has the sole right to install identification signs at its cost and expense. Concessionaire does not have the right to install identification signs and company logos.

~~B.~~ C. Concessionaire shall not place or install any other racks, stands, Trade Fixtures, pedestal signs or other displays of products outside the boundaries of the Leased Premises without the express prior written approval of the City Manager or Designee.

~~D.C.~~ Upon the expiration or earlier termination of this Agreement, Concessionaire shall, if requested by the City Manager or Designee, remove ~~any and all identification signs regarding its menu~~ and similar devices placed by Concessionaire on or in the Leased Premises. In the event of the failure on the part of Concessionaire to diligently remove each and every sign as requested by the City Manager or Designee, Lessor may perform such work and, upon demand, Concessionaire shall pay the cost thereof to Lessor.

Section 10.5 Inspections of Service by Lessor

A. Concessionaire hereby acknowledges and agrees that Lessor shall have the right at

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its cost to monitor, inspect or test all of Concessionaire's services at any time through the use of its own direct review, the use of third parties and/or other means that do not unduly interfere with Concessionaire's operations.

B. Lessor reserves the right to conduct periodic performance audits of the Leased Premises to assure that all of the operational, safety and compliance standards of this Agreement are consistently performed by Concessionaire. Concessionaire acknowledges that such performance audits will be conducted by Lessor, or its designee, and hereby agrees to cooperate with any such performance audit.

i) Said performance audits may include minimum objective standards in the areas of (a) product quality, (b) customer service and (c) cleanliness and maintenance. Concessionaire shall be notified in writing by the City Manager or Designee of its failure to meet minimum standards and Concessionaire shall be given an opportunity to correct the deficiencies.

ii) In order to assure consistent adherence to performance standards throughout the Term, Lessor will use a rolling twelve (12) month cycle in the recording of incidents of failure to meet standards.

iii) Repeated violations and deficiencies in performance by Concessionaire, may be cause, at Lessor's sole discretion, to terminate this Agreement.

ARTICLE 11 INSURANCE AND INDEMNIFICATION

Section 11.1 Liability Insurance

The Concessionaire, at its sole cost and expense shall, throughout the term of this Agreement, provide and keep in force for the benefit of the Lessor and the Concessionaire, as their respective interests may appear, comprehensive general liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence, One Million Dollars (\$1,000,000.00) for bodily injuries to more than one person arising out of each occurrence, One Million Dollars (\$1,000,000.00) for property damage arising out of each occurrence, and Five Hundred Thousand Dollars (\$500,000.00) Fire Damage Liability, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

Section 11.2 Worker's Compensation

For the duration of this Agreement Concessionaire shall carry Worker's Compensation and Employers' Liability Insurance in the amount required by Texas law, for any employees of the Concessionaire that will be working on the Leased Premises. The policy must be endorsed to include a waiver of subrogation in favor of Lessor. Any termination, cancellation, or non-renewal of worker's compensation insurance coverage for Concessionaire shall be grounds for termination of this Agreement.

Section 11.3 Insurance Requirements

The Concessionaire shall maintain all required insurance with a solvent insurance company authorized to do business in the State of Texas. The policies shall provide that the insurance cannot be canceled or the amount of coverage changed without thirty (30) days prior written notice to the Lessor.

Certificates of insurance shall be delivered to the City Manager or Designee at least ten (10) days prior to the effective date of this Agreement and shall name the City, its officers, agents, servants and employees as additional insureds.

All such certificates of insurance shall also contain:

- A. A statement of the coverage provided by the policy;
- B. A statement certifying Lessor to be listed as an additional insured, except for Fire and Other Risks Insurance for which Lessor shall be listed as a loss payee;
- C. A statement of the period during which the policy is in effect;
- D. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. A statement that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least thirty (30) days' prior written notice to Lessor.

Lessor reserves the right to conduct an annual review of the insurance requirements contained herein and modify accordingly to be consistent with currently accepted standards of practice as it relates to this type of contractual arrangement.

Any failure to maintain the required insurance shall be grounds for termination of this Agreement.

Section 11.4 Performance and Payment Bonds

- A. Prior to the date of commencement of any construction, Concessionaire, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:
 - i) A performance bond in a sum equal to the full amount of the construction contract awarded. Said performance bond shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall guarantee Lessor against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Concessionaire to perform completely the work

described as herein provided.

ii) A payment bond in a sum equal to the full amount of the construction contract awarded. Said payment bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction contract.

B. In accordance with the Texas Insurance Code, if a performance or payment bond is in an amount in excess of ten percent (10%) of the surety's capital and surplus, Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas. If any portion of the surety's obligation is reinsured, the amount reinsured may not exceed 10% of the reinsurer's capital and surplus.

Section 11.5 Indemnification

CONCESSIONAIRE AGREES TO INDEMNIFY AND HOLD LESSOR HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEYS FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF CONCESSIONAIRE'S BUSINESS ON THE LEASED PREMISES, ITS USE OF THE LEASED PREMISES, OR FROM ANY BREACH ON THE PART OF CONCESSIONAIRE OF ANY TERMS OF THIS AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF CONCESSIONAIRE, ITS SUBLESSEES, AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE LEASED PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF LESSOR. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LESSOR BY REASON OF ANY SUCH CLAIM, CONCESSIONAIRE, UPON NOTICE FROM LESSOR, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO LESSOR.

Section 11.6 Release of Liability for Certain Damages

Lessor shall not be liable for, and is hereby released from any and all liability to Concessionaire, to Concessionaire's insurance carrier, or to anyone claiming under or through Concessionaire for any loss or damage whatsoever to the property or effects of Concessionaire including, but not limited to, damage resulting from the accidental discharge or discharge beyond Lessor's control, of water or other substances from pipes, sprinklers, or conduits, containers or appurtenances thereto, or for any damage resulting from the discharge or failure of electrical current regardless of cause or origin. The provisions of this Section shall not be construed as a limitation of Lessor's rights, but are additional to the rights and exclusions from liability provided herein and by operation of law to which Lessor can resort to cumulatively or in the alternative.

ARTICLE 12
DAMAGE OR DESTRUCTION OF PREMISES

Section 12.1 Partial Damage

If, through no fault of the Concessionaire, all or a portion of the Leased Premises are partially damaged by fire, explosion, the elements, the public enemy, or other casualty, but the Leased Premises are not rendered untenable, the same will be repaired with due diligence by the Lessor. If the damage is caused by the act or omission of Concessionaire, agents, invitees, contractors, representatives, suppliers, or employees, Lessor may repair and reconstruct the Leased Premises and Concessionaire shall be responsible for reimbursing Lessor for the cost and expenses incurred in such repair.

Section 12.2 Extensive Damage

If the damage by causes referred to in Section 12.1 shall be so extensive as to render all or a portion of the Leased Premises untenable, but capable of being repaired in thirty (30) days, the same shall be repaired with due diligence by Lessor at its own cost and expense, subject to the limitations of Section 12.1 and the monthly rental payments required herein, shall abate from the time of such damage until such time as the Leased Premises are fully restored and certified by Lessor as ready for occupancy; provided, however, that if said damage is caused by the act or omission of Concessionaire, agents, invitees, contractors, representatives, , suppliers or employees, the monthly rental payments shall not abate; Lessor may repair and reconstruct the Leased Premises and Concessionaire shall be responsible for reimbursing Lessor for the cost and expenses incurred in such repair.

Section 12.3 Complete Destruction

In the event all or a portion of the Structural Elements of the Leased Premises are completely destroyed by fire, explosion, the elements, the public enemy or other casualty or so damaged that they are untenable and cannot be replaced for more than thirty (30) days, Lessor shall be under no obligation to repair, replace and reconstruct said Lease Premises, and the monthly rental payments payable hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as the Leased Premises are fully restored. If, within twelve (12) months after the time of such damage or destruction, the Structural Elements of the Leased Premises shall not have been repaired or reconstructed, Concessionaire may terminate this Agreement in its entirety or only as to that portion of the Leased Premises completely destroyed as of the date of such damage or destruction.

Notwithstanding the foregoing, if the Leased Premises, or a portion thereof, are completely destroyed as a result of the act or omission of Concessionaire, agents, invitees, contractors, representatives, suppliers or employees, the monthly rental payments shall not abate and Lessor

may, in its discretion, require Concessionaire to repair and reconstruct the Leased Premises within twelve (12) months of such destruction and pay the costs therefore; or Lessor may repair and reconstruct the Leased Premises within twelve (12) months of such destruction and Concessionaire shall be responsible for reimbursing Lessor for the costs and expenses incurred in such repair.

Section 12.4 Limits of Lessor’s Obligations Defined

It is understood that, in the application of the foregoing Sections, Lessor’s obligations shall be limited to repair or reconstruction of the Structural Elements of the Leased Premises. Redecoration and replacement of Leasehold Improvements, Trade Fixtures, and Personal Property shall be the responsibility of Concessionaire, at its sole expense, and any such redecoration and refurbishing/re-equipping shall be of equivalent quality to that originally installed hereunder and shall be subject to written approval of the City Manager or Designee.

Section 12.5 Damage or Destruction of Leasehold Improvements and Trade Fixtures

Provided that Lessor has repaired or rebuilt the Structural Elements of the Leased Premises as applicable (and subject to the limitations described above), should the Leasehold Improvements, Trade Fixtures, and Personal Property provided by Concessionaire or by Lessor on behalf of Concessionaire or any part of them be destroyed or damaged, they shall in all instances be repaired or replaced by Concessionaire, whether or not said damage or destruction is covered by insurance. If Concessionaire fails to repair or replace such damaged Leasehold Improvements and Trade Fixtures subject to a schedule set by Lessor and in accordance with the procedures described in, and provided further that this Agreement has not been terminated, Lessor may make such repairs or replacements and recover from Concessionaire the cost and expense of such repair or replacement, plus ten percent (10%) thereof for administrative costs.

**ARTICLE 13
TERMINATION**

Section 13.1 Termination by Concessionaire

This Agreement may be terminated by Concessionaire upon the default by Lessor in the performance of any covenant or agreement herein required to be performed by Lessor and the failure of Lessor to remedy such default for a period of sixty (60) consecutive days after receipt from Concessionaire of written notice to remedy the same, provided, however, should the nature of the default be such that it cannot be cured within the specified time period, Lessor shall be deemed to have cured such default if it shall commence performance and thereafter diligently prosecute the same to completion.

Section 13.2 Termination by Lessor

- A. This Agreement may be terminated by Lessor upon the occurrence of one or more of the following events:
 - i) Concessionaire shall fail to pay any part of the rentals, fees or charges agreed upon hereunder for a period of thirty (30) days after Lessor has notified

Concessionaire that payment was not received when due;

ii) Concessionaire shall (except with the prior written consent of Lessor) abandon the Leased Premises or any substantial part thereof, except if such is due to a labor strike or labor dispute in which Concessionaire is involved, and Concessionaire fails to immediately cure such default;

iii) Any interests of Concessionaire hereunder shall be levied upon under execution;

iv) Concessionaire shall: (a) file a voluntary petition in bankruptcy or have an involuntary petition in bankruptcy filed against it and the same shall not be dismissed within ninety (90) days; (b) be adjudged insolvent according to law; or (c) make any assignment of its property for the benefit of creditors; or

v) Concessionaire shall default in the performance of any covenant or obligation hereunder and such default continues without remedy to the Lessor's satisfaction for thirty (30) days after Lessor has notified Concessionaire of such default.

If any of the aforesaid events occur, Lessor shall have the right to terminate this Agreement and re-enter and take possession of the Leased Premises; provided, however, should the nature of the default be such that it cannot be cured within the specified time period, Concessionaire shall be deemed to have cured such default if it shall commence performance and thereafter diligently prosecute the same to completion. Failure of Lessor to declare this Agreement terminated upon the default of Concessionaire for any reasons set out herein shall not operate to bar or destroy the right of Lessor to terminate this Agreement by reason of any subsequent violation of the terms of this Agreement.

B. Notwithstanding any other provisions of this Agreement, if at any time Lessor, in its sole discretion, requires all or any part of the Leased Premises hereunder, Lessor, upon ninety (90) days written notice to Concessionaire, shall terminate this Agreement with respect to those portions of the Leased Premises so required.

C. No receipt or acceptance of money by Lessor from Concessionaire after the expiration or termination of this Agreement or after service of any notice, after the commencement of any suit, or after final judgment for possession of the Leased Premises, shall reinstate, continue, or extend the terms of this Agreement, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of Lessor to retake and resume possession of the Leased Premises.

Section 13.3 Right of Entry Upon Termination

In any case in which provision is made herein for the termination of this Agreement by Lessor or in the case of abandonment or vacating of the Leased Premises by Concessionaire,

Lessor may enter upon the Leased Premises to re-lease the Leased Premises. Concessionaire agrees to save Lessor harmless from any loss or damage or claim arising out of the action of Lessor in pursuance of this paragraph except for any loss, damage, or claim caused by the sole negligence of Lessor or its employees.

Section 13.4 Rights Upon Expiration or Early Termination

A. Upon expiration of this Agreement or the early termination of this Agreement, Concessionaire shall return the Leased Premises to Lessor clear of all Concessionaire owned Trade Fixtures and Personal Property. Title to all Lessor owned Trade Fixtures shall remain with Lessor. Title to all Leasehold Improvements made to Leased Premises by Lessor or Concessionaire shall vest in Lessor. Concessionaire shall have thirty (30) days after expiration or early termination of this Agreement in which to remove the Concessionaire owned Trade Fixtures and Personal Property, during which occupancy by Concessionaire for the purposes of removal shall be subject to rent due as provided in Section 7.1 and during which time Concessionaire shall continue to be bound by the terms and conditions of this Agreement. However, such continued occupancy shall not be deemed to operate as a renewal or extension of the Term nor create any new tenancy of the Leased Premises.

B. If Concessionaire fails to so remove said Concessionaire owned Trade Fixtures or Personal Property as provided herein, Lessor may remove same at Concessionaire's expense or at its option, Lessor may take title to the Concessionaire owned Trade Fixtures in lieu of such removal by or for Concessionaire with no additional consideration due to Concessionaire. In the event such option is exercised by Lessor, Concessionaire hereby agrees to execute all documents deemed necessary by Lessor to effectuate such transfer.

C. If either: (i) Concessionaire terminates this Agreement under the provisions of 13.1, or (ii) Lessor takes any part of the Leased Premises under the provisions of 13.2 herein, Lessor shall pay to Concessionaire the underappreciated value of certified Leasehold Improvements and Concessionaire owned Trade Fixtures installed by Concessionaire. The depreciation of such Leasehold Improvements and Concessionaire owned Trade Fixtures shall be calculated on a straight line ten (10) year basis from the date said Leasehold Improvements or Trade Fixtures were installed. Concessionaire hereby agrees to execute all documents deemed necessary by Lessor to effectuate such transfer.

ARTICLE 14 GENERAL PROVISIONS

Section 14.1 Compliance with Law

Concessionaire shall at all times during the Term, comply with all applicable ordinances and laws of any city, county, state government or of the U.S. Government, and of any political division or subdivision or agency, authority, or commission thereof which may have jurisdiction to pass laws or ordinances or to make and enforce rules or regulations with respect to the Leased Premises.

Section 14.2 Non-Discrimination

Concessionaire, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof does hereby covenant and agree as follows:

A. That no person on the grounds of race, age, disability, creed, color, sex or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises.

B. That in the construction of any improvements on, over, or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

C. That Concessionaire for himself, his heirs, personal representative, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the facilities are constructed, maintained, or otherwise operated on the said property described in this lease for a purpose for which a Department of Transportation program or activity is extended or for another for the provision of similar services or benefits, the Concessionaire shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation – Effectuation of Title VI of the Civil Right Act of 1964, and as said regulation may be amended. Concessionaire shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

D. That, in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate this Agreement and re-enter and repossess the Leased Premises and the improvements thereon, and hold the same as if said Agreement had never been made or issued.

Section 14.3 Conflict of Interest

No employee, officer, or agent of the Lessor shall participate in selection, or in the award or administration of an agreement if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

1. The employee, officer or agent.
2. Any member of his immediate family,
3. His or her partner, or
4. An organization which employs, or is about to employ, has a financial or other interest

in the firm selected for award.

The Lessor's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from the Concessionaire, potential contractors.

Section 14.4 No Liens

Concessionaire shall pay for all labor done or materials furnished in the repair, replacement, development or improvement of the Leased Premises by Concessionaire, and shall keep Leased Premises and Concessionaire's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Concessionaire's act or omission.

Section 14.5 Eminent Domain

In the event that the United States of America, the State of Texas, or such other entity shall, by exercise of the right of eminent domain or any other power, acquire title in whole or in part to the Leased Premises, including any portion assigned to Concessionaire, Concessionaire shall have no right of recovery whatsoever against Lessor but shall make its claim for compensation solely against the United States of America, the State of Texas, or such other entity as the case may be.

Section 14.6 No Third Party Beneficiary

This Agreement is made for the benefit of the parties hereto, and nothing herein shall be construed to create any right or benefit enforceable by any third party.

Section 14.7 Force Majeure

No party to this Agreement is responsible to the other party for nonperformance or delay in performance of the terms and conditions herein due to acts of God, fire, flood or other casualty events, acts of government, wars, riots, strikes, work stoppage, accidents or interruptions in delivery systems in transportation, or other causes beyond the control of the parties ("Force Majeure").

Section 14.8 Attorney's Fees

If either Lessor or Concessionaire brings any action or proceeding to enforce, protect or establish any right or remedy hereunder, the losing party shall be responsible for the payment of the prevailing party's reasonable attorneys' fees and court costs.

Section 14.9 Cumulative Rights and Remedies

All rights and remedies of either party here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by either party of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

Section 14.10 Governmental Function

Concessionaire expressly agrees that, in all things relating to this Agreement, Lessor is performing governmental functions, as defined by the Texas Tort Claims Act. Concessionaire further expressly agrees that every act or omission of Lessor that, in any way, pertains to or arises out of this Agreement falls within the definition of governmental function. Accordingly, Concessionaire further agrees that liability, if any, for damages for injury to or death of any person or for damage to any property, arising, if at all, out of or in connection with activities under this Agreement, shall be determined under the limited waiver of sovereign immunity contained in the Texas Tort Claims Act.

Section 14.11 Independent Contractor

In the performance of Concessionaire's obligations under this Agreement, it is understood, acknowledged and agreed between the parties that Concessionaire is at all times acting and performing as an Independent Contractor, and Lessor shall neither have nor exercise any control or direction over the manner and means by which Concessionaire performs Concessionaire's obligations under this Agreement, except as otherwise stated herein. Concessionaire understands and agrees that Concessionaire and Concessionaire's employees, agents, servants or other personnel are not employees of Lessor. Concessionaire shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefit to Concessionaire or any of Concessionaire's employees, agents, servants or other personnel performing services or work under this Agreement, whether it be of a direct or indirect nature. Further in that regard, it is expressly understood and agreed that for such purposes neither Concessionaire nor Concessionaire's employees, agents, servants or other personnel shall be entitled to any of Lessor's payroll, insurance, unemployment, worker's compensation, retirement or any other benefits whatsoever.

Section 14.12 Interpretation of Agreement

It is understood and agreed that nothing herein contained is intended or should be construed as in any way creating or establishing the relationship of co-partners between the parties hereto, or as constituting Concessionaire as the agent, representative, or employee of Lessor for any purpose or in any manner whatsoever. Concessionaire is to be and shall remain an independent contractor under this Agreement and agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for Social Security, Worker's Compensation Insurance, Unemployment Insurance, or Retirement Benefits, Pensions, or Annuities now or hereafter imposed under any state or federal laws which are measured by the wages, salaries, or other remunerations paid to persons employed by Concessionaire for work performed under the terms of this Agreement. **Concessionaire agrees to indemnify and save Lessor harmless for any such contributions or taxes or liability therefor.**

Section 14.13 Licenses

Concessionaire shall obtain and pay for all licenses or permits necessary or required by law for the construction of Leasehold Improvements, the installation of Trade Fixtures, and any other licenses necessary for the conduct of its operations hereunder. Lessor shall assist Concessionaire where necessary in obtaining said licenses and permits.

Concessionaire in good faith may contest any tax or governmental charge; provided that Concessionaire may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless, in the opinion of counsel satisfactory to Lessor, such action will not adversely affect any right or interest of Lessor.

14.14 Complete Agreement

This Agreement, together with the Attachment(s) attached hereto, constitutes the entire Agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto.

14.15 Amendment/Assignment

This Agreement and the obligations hereunder shall not be amended, assigned, transferred or encumbered, in any manner, unless done so in writing and signed by the authorized representatives of the parties.

14.16 Governing Law

This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter and/or any ordinance of the City.

14.17 Venue

The Parties hereto agree that this Agreement shall be enforceable in El Paso, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in El Paso County, Texas. Should the need for dispute resolution arise, venue is in El Paso County, Texas.

14.18 Severability

All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this Agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.

14.19 Section Headings

The section headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

14.20 Notices

All notices provided under this Agreement shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City:	City of El Paso City Manager P.O. Box 1890 El Paso, Texas 79950	Copy to: Parks and Recreation Director P.O. Box 1890 El Paso, Texas 79950
	Concessionaire: Ruben Holguin Cuellar 708 El Parque El Paso, Texas 79912	

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Either party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other party in the manner set forth herein.

14.20 Execution and Counterparts

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no party shall be required to produce an original or all of such counterparts when making such proof.

14.21 Warranty of Capacity to Execute Contract

The person signing this Agreement on behalf of Concessionaire warrants that he/she has the authority to do so and to bind Concessionaire to this Agreement and all the terms and conditions contained herein.

(Signatures begin on following page)

IN WITNESS WHEREOF on the _____ day of _____, 2015.

THE CITY OF EL PASO

Tomás González
City Manager

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

ACKNOWLEDGMENT

This instrument was acknowledged before me on this _____ day of _____, 2015, by Tomás González, as **City Manager** of the **City of El Paso, Texas** (Lessor).

Notary Public, State of Texas

My Commission Expires:

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Sol M. Cortez
Assistant City Attorney

Tracy Novak, Director
Parks and Recreation Department

APPROVED AS TO CONTENT:

Cary S. Westin, Director
Economic & International Development

IN WITNESS WHEREOF on the _____ day of _____, 2015.

CONCESSIONAIRE:

By: _____

Printed Name:

Title: Owner/President

THE STATE OF _____)

)

COUNTY OF _____)

ACKNOWLEDGMENT

This instrument was acknowledged before me on this _____ day of _____, 2015, by _____ as **Owner/President** of _____ (Concessionaire).

Notary Public, State of Texas

My Commission Expires:

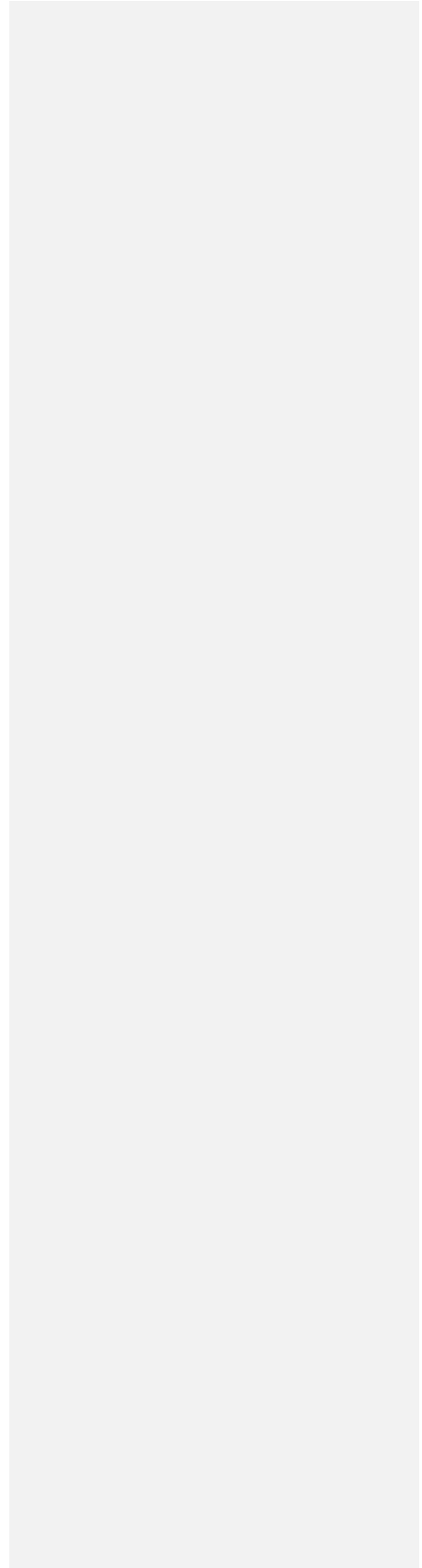


Exhibit A

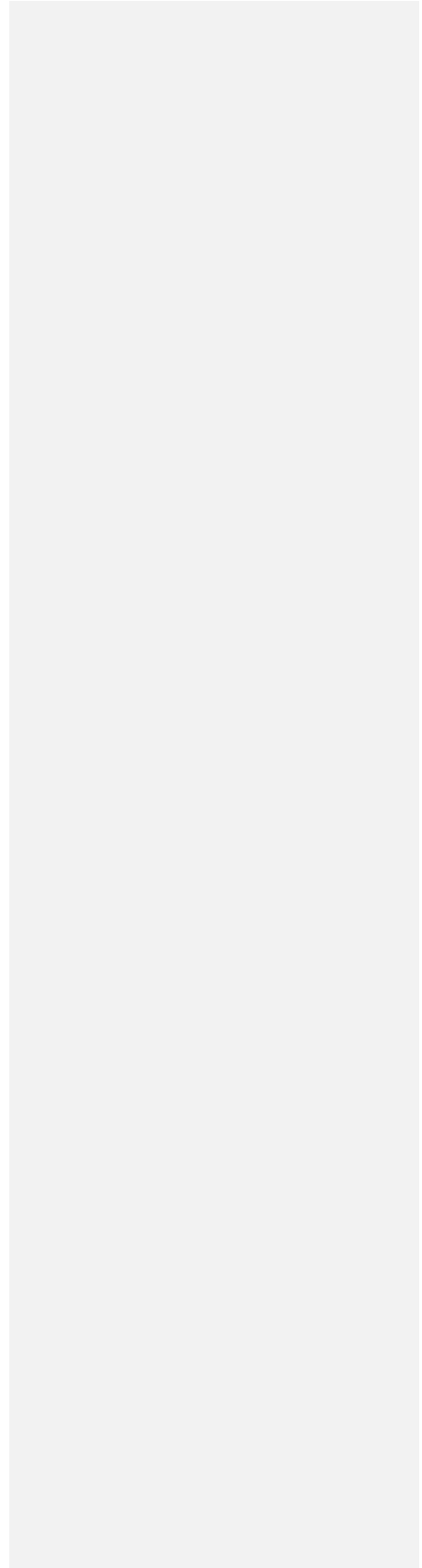


Exhibit B

Proposed Improvements

1. Fixed equipment:
 1. Exhaust Fan
 2. Ice Machine
 3. Storage Shelving
 4. 3 Compartment sink
 5. Handsink
 6. Commode
 7. Stainless steel counter top

My Investment

1. Electric fryer- \$2562 vs \$700 for gas
2. Electric flat top \$5,354 vs \$1030 for gas
3. 4 Section steam table \$1,829
4. Microwave \$360.
5. Hot Hold Cook \$5,080
6. Double door fridge \$1,800
7. Music System Wireless \$1,099
8. Approximate investment- \$18,000

Exhibit C

1. All items as identified in the construction drawings available with the City Engineer
2. Stainless steel countertops
3. Exhaust hood
4. 3-compartment sink
5. Ice machine

Exhibit D



Menu	
☐ Beverages	
☐ Bottled Water	1.50
☐ Can Sodas	1.50
☐ Tea	1.50
☐ Lemonade	3.00
☐ Energy Drink	3.00
☐ Snacks	
☐ Fries	2.00
☐ Cheese Fries	3.00
☐ Nachos	3.00
☐ Fruit Cups	4.00
☐ Parfait	3.00
☐ Entrees	
☐ Hot Dog	3.00
☐ Gourmet Dog	4.00
☐ Gourmet Ft. long	6.00
☐ Gourmet Hamburger	4.00
☐ Gourmet Cheeseburger	5.00
☐ Chicken Lettuce Wrap	5.00
☐ Walking Tacos	5.00
☐ Hot Ham & Cheese San	5.00



San Jacinto Café Concessionaire

Strategic Goal 4

Enhance El Paso's Quality of life through recreational, cultural,
and educational environments



Property



"Delivering Outstanding Services"



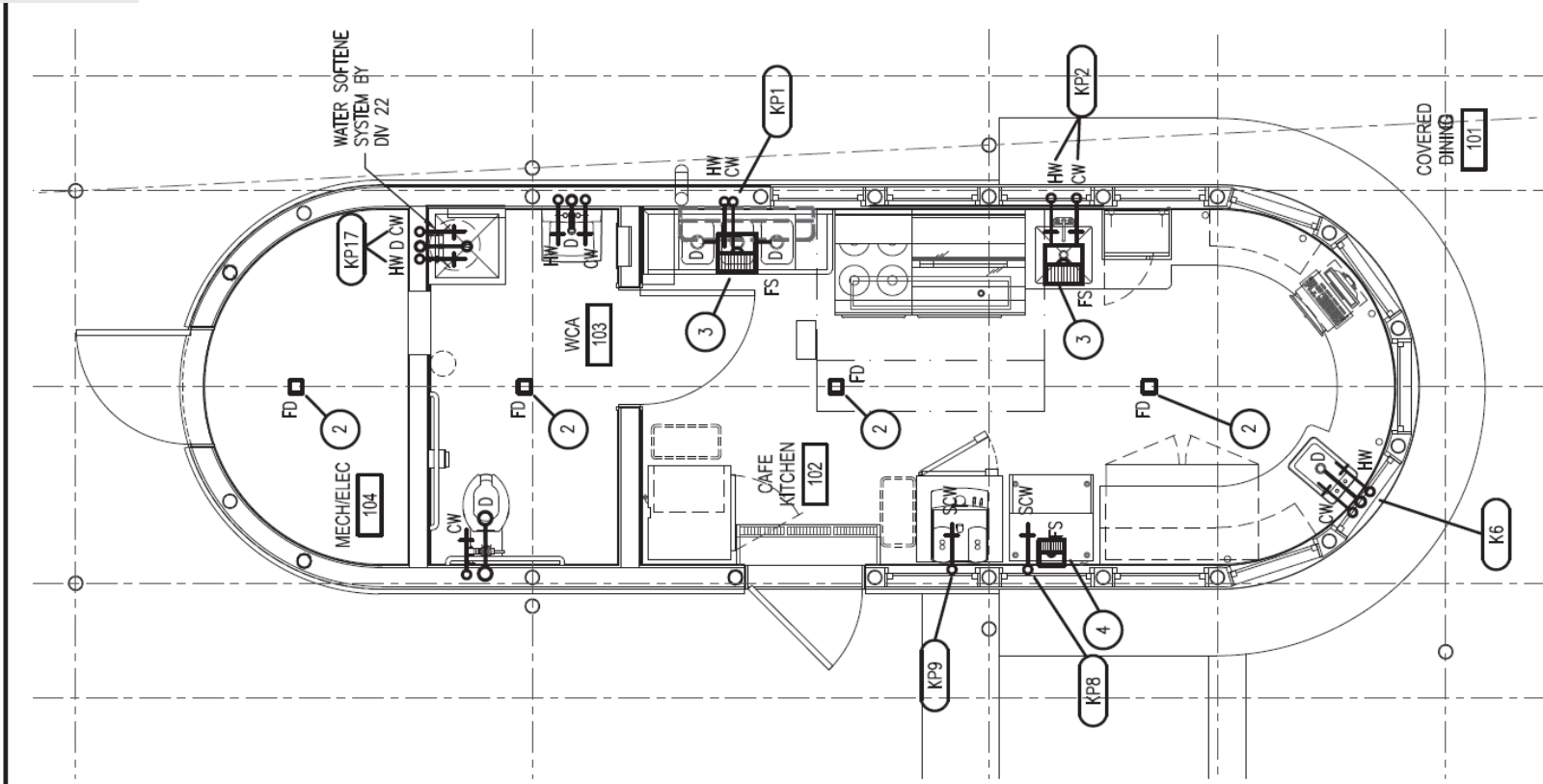
Property



"Delivering Outstanding Services"



Property



"Delivering Outstanding Services"



Summary

Property: 177 Square Foot Concession Building

Rent: \$5,400 per year

Concession Fee: \$600 per year (per Schedule C)

Healthy Food Requirement: 10% of menu items

Term: One year

Renewal Option: One, One-Year Renewal



Menu Example

➤	Beverages	
➤	Bottled Water	1.50
➤	Can Sodas	1.50
➤	Tea	1.50
➤	Lemonade	3.00
➤	Energy Drink	3.00
➤		
➤	Snacks	
➤	Fries	2.00
➤	Cheese Fries	3.00
➤	Nachos	3.00
➤	Fruit Cups	4.00
➤	Parfait	3.00
➤	Entrees	
➤	Hot Dog	3.00
➤	Gourmet Dog	4.00
➤	Gourmet Ft. long	6.00
➤	Gourmet Hamburger	4.00
➤	Gourmet Cheeseburger	5.00
➤	Chicken Lettuce Wrap	5.00
➤	Walking Tacos	5.00
➤	Hot Ham & Cheese San	5.00



The Hot Dog



"Delivering Outstanding



The Burger



"Delivering Outstanding Services"



The Wrap



"Delivering Outstanding Services"



Walking Tacos

A title card with the words "Walking Tacos" written in a large, orange, cursive font. The background is a blurred image of a white bowl and a red bottle.

"Delivering Outstanding Services"



Questions?