

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

DEPARTMENT: Airport

AGENDA DATE: December 9, 2014

CONTACT PERSON/PHONE: Monica Lombraña, A.A.E. -780-4793

DISTRICT(S) AFFECTED: All

SUBJECT:

Approve a Resolution that the City Manager be authorized to sign a Shoeshine Concession Agreement (Agreement) by and between the City of El Paso and Los Amigos Shoeshine (Concessionaire) for the operation of a shoeshine concession at El Paso International Airport (Airport).

BACKGROUND / DISCUSSION:

The current Shoeshine Concession Agreement with Los Amigos Shoeshine expires on January 31, 2015. Los Amigos Shoeshine and the Airport desire to enter into a new Agreement effective February 1, 2015.

The term of the Agreement is 1 year with automatic annual renewals unless cancelled by either party for a period not to exceed 5 years. The rental rate is \$35.00 per square foot (Minimum Annual Guarantee) or 15% of Gross Receipts, whichever is greater. The Premises contain 86 square feet of space therefore the Minimum Annual Guarantee is \$3,010.00 per year and \$250.83 per month.

PRIOR COUNCIL ACTION:

None

AMOUNT AND SOURCE OF FUNDING:

N/A – Revenue Generating

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



Monica Lombraña, A.A.E., Director of Aviation

Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Shoeshine Concession Agreement by and between the City of El Paso and Los Amigos Shoeshine for shoe shine services within the El Paso International Airport Terminal Building for an initial period of one (1) year with automatic one (1) year renewals, and in no event will the term of the Shoeshine Agreement exceed five (5) years.

ADOPTED THIS — day of _____ 20__.

Oscar Leaser
Mayor

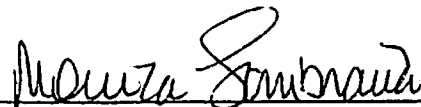
ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, A.A.E.
Director of Aviation

CITY CLERK DEPT.

2014 DEC -1 PM 5:12

SHOESHINE CONCESSION AGREEMENT

**EL PASO INTERNATIONAL AIRPORT
EL PASO, TEXAS**

**LOS AMIGOS SHOESHINE
CONCESSIONAIRE**

**FEBRUARY 1, 2015
EFFECTIVE DATE**

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EXHIBIT "A" - - SITE LOCATIONS

SHOESHINE CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is made this — day of _____, 201__
between the CITY OF EL PASO ("City") and LOS AMIGOS SHOESHINE ("Concessionaire").

WHEREAS, the City owns and operates the El Paso International Airport located in El Paso County, Texas ("Airport");

WHEREAS, the Concessionaire is engaged in the operation of a shoeshine business and is prepared, equipped and qualified to supply shoeshine services for the operation of a shoeshine business at the Airport;

WHEREAS, the City deems it advantageous to itself and to its operation of the Airport to grant and lease unto the Concessionaire the shoeshine concession area and certain rights, licenses and privileges, as hereinafter set out; and

WHEREAS, the Concessionaire desires to operate a shoeshine concession in the area designated by the City in the Airport terminal building.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I – CONCESSION PRIVILEGES

1.01 CONCESSION SITE. The shoeshine concession shall be operated in two (2) areas: (1) on the Lower Level of the Airport terminal building, consisting of approximately 40 square feet, and (2) on the Upper Level of the west concourse of the Airport terminal building, consisting of approximately 46 square feet. Both areas are identified on Exhibit "A", which is attached hereto and incorporated herein by reference, and shall collectively be referred to as the "Concession Site".

The Concessionaire may request additional location(s), subject to approval of the Director of Aviation, be included in the Concession Site. In the event any additional locations are approved, Exhibit "A" will be revised to identify all areas where the shoeshine concession can operate, and the revised exhibit will be dated and signed by the Concessionaire and the Director of Aviation.

1.02 DESCRIPTION OF PRIVILEGES, USES AND RIGHTS. The City grants to the Concessionaire the following privileges, uses, and rights, all of which shall be subject to the terms, conditions, and covenants hereinafter set forth:

- A. The non-exclusive right, license and privilege to operate a shoeshine business in the Airport terminal building for the purpose of providing shoeshine services to the public from the Concession Site.
- B. The concession rights granted herein shall be subject to all applicable laws, ordinances, rules and regulations.
- C. The right to temporarily install (or cause to be installed) and operate appropriate signs in the Concession Site to advertise shoeshine concession; provided that such installation and operation shall be subject to the prior written approval of the Director of Aviation.

1.03 CONDITIONS AND TERMS. This Agreement is entered into subject to the following conditions and terms.

- A. That no alteration of the Concession Site or use of the Concession Site shall be made without the prior written consent of the Director of Aviation.
- B. The Director of Aviation, from time to time, may require Concessionaire to relocate its shoeshine operations, at the Concessionaire's sole expense, to other locations in or around the Airport terminal building during the term of this Agreement. The City will determine the location of all and any temporary Concession Site and will provide the Concessionaire ten (10) days' prior written notice of any relocation.
- C. The Concessionaire warrants that it is able to and will provide and maintain first-class quality facilities and service on the Airport. The Concessionaire agrees it will provide and maintain such quality facilities and service on the Airport during the term of this Agreement.
- D. The Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E to insure that no person shall on the grounds of race, color, creed, sex, age, disability, sexual preference or national origin be excluded from participating in or receiving the services or benefits of any program or activity covered by this Subpart and Section 504 of the Rehabilitation Act of 1973. The Concessionaire assures that it will require that its covered suborganizations (sub-Concessionaires) provide assurances to the City herein that they similarly will undertake affirmative action programs and that they will require assurance from their suborganizations (sub-sub-Concessionaires), as required by 14 CFR Part 152, Subpart E, to the same effect.
- E. Any improvements, facilities, decorations, fixtures, equipment, supplies and cabinets furnished by the Concessionaire shall be in keeping with the general decor of the terminal building and shall be subject to the written approval of the Director of Aviation prior to installation.

ARTICLE II - INSTALLATIONS BY CITY AND CONCESSIONAIRE

2.01 TERMINAL BUILDING SPACE.

A. The City shall provide:

- (1) Two (2) seating units owned by the City which are located within the Lower Level of the Airport terminal building and on the Upper Level of the west concourse of the Airport terminal building.

B. The Concessionaire shall provide:

- (1) All leasehold improvements, including, but not limited to, sales counters, display cabinets, interior partitions, additional lighting fixtures, decorations and all other fixtures, equipment and supplies.
- (2) All equipment, furniture, furnishings and fixtures necessary in the proper conduct of the Concessionaire's business, with the exception of two (2) seating units as identified in Section 2.01 A. (1). The Concessionaire will be responsible for providing any seating units at any locations added to the Concession Site.

2.02 APPROVAL OF PLANS AND CONSTRUCTION. If the Concessionaire desires to make improvements to the Concession Site, the Concessionaire shall submit final plans and specifications, layout and architectural renderings to the Director of Aviation prior to installation.

2.03 ALTERATIONS, ADDITIONS OR REPLACEMENTS. Following completion of the initial installations by the Concessionaire, the Concessionaire shall make no alterations, additions or replacements to the Concession Site without the prior written approval of the Director of Aviation.

ARTICLE III - SERVICES TO BE PERFORMED BY CONCESSIONAIRE

3.01 HOURS OF OPERATION. The shoeshine concession will be operated and continuously open for business to the public seven (7) days a week during the hours of operation established by the Director of Aviation. The Director of Aviation reserves the right to assign new hours or to modify the schedule to accommodate peak hours at the Airport.

3.02 TYPE OF OPERATION. The Concessionaire shall furnish service on a fair, reasonable and non-discriminatory basis to the public. Service shall be prompt, courteous and efficient and shall be adequate to meet the demands for said service on the Airport.

The Concessionaire shall maintain and operate the concession in a first-class manner and shall keep the Concession Site in a safe, clean, and orderly condition at all times, satisfactory to the City. All services shall conform in all respects to federal, state and municipal laws, ordinances and regulations. The Concessionaire shall continuously maintain any necessary licenses or permits at its sole expense.

3.03 PERSONNEL. The Concessionaire shall, at all times, retain an active, qualified, competent and experienced manager to supervise the concession operations and be authorized to represent and act for the Concessionaire.

The Concessionaire shall be required to properly uniform or dress its attendants and employees, who shall be clean, courteous, efficient and neat in appearance at all times. The Concessionaire shall not employ any person or persons who shall use improper language or act in a loud, boisterous and otherwise improper manner or who are unable to meet the required security regulations applicable at the Airport.

The Concessionaire shall maintain a close check over attendants and employees to insure the maintenance of a high standard of service to the public, the performance of such obligation to be determined at the sole and reasonable discretion of the City. The Concessionaire shall replace the services of any attendant or employee whose conduct the Director of Aviation feels is detrimental to the best interest of the Airport or the City of El Paso.

3.04 LAWS, ORDINANCE, ETC. The Concessionaire, its attendants and employees, shall observe and obey all laws, ordinances, regulations and rules of federal, state and municipal governments which may be applicable to its operations at the Airport, or its operation of motor vehicles on public streets and roadways surrounding the Airport, now in force or which may hereafter be in force.

3.05 SOLICITATION AND CONDUCT. The Concessionaire shall prohibit its agents, servants, attendants, and employees from engaging in the solicitation of its shoeshine services on or about the Airport in a loud, boisterous, offensive or objectionable manner. In the event of questionable conduct in such solicitation, the Director of Aviation shall be sole judge in determining if said conduct is a violation of this paragraph. Upon receipt of notice from the Director of Aviation, or her designee, the Concessionaire shall immediately take all steps necessary to eliminate the undesirable condition.

The Concessionaire, its agents, servants, attendants, and employees shall so conduct said shoeshine business on the Airport to maintain a friendly and cooperative relationship with other companies engaged in business at the Airport. The Concessionaire shall not engage in open public disputes, disagreements or conflicts which would tend to deteriorate the quality of the shoeshine service of the Concessionaire or which would be incompatible with the best interest of the public at the Airport. The Director of Aviation, or her designee, shall have the right, but not required, to resolve all such disputes, disagreements or conflicts; and her determination thereof or the manner in which the Concessionaire shall thereafter operate shall be binding upon the Concessionaire.

3.06 TRASH, GARBAGE, ETC. The Concessionaire shall provide and use suitable covered metal receptacles for all garbage, trash and other refuse. Piling of boxes, cartons, barrels, inventories or other similar items, in an unsightly or unsafe manner, on or about the Concession Site is forbidden.

3.07 COST OF SHOESHINE CONCESSION. The Concessionaire shall bear, at its sole expense, all costs of operating the concession and shall pay, in addition to the concession fee, all other costs connected with the use of the Concession Site and facilities, including, but not limiting the generality hereof, maintenance, insurance, any and all taxes, and all permits and licenses required by law. The Concessionaire shall have the right, however, at the Concessionaire's sole cost and expense, to contest the legality of any tax, levy or assessment but shall not allow disputed amounts to remain unpaid during such contest. Failure to pay any taxes or assessments in a timely manner may result in termination of this Concession Agreement.

3.08 MAINTENANCE. The Concessionaire shall, at its sole cost and expense, maintain the Concession Site and every part thereof in good order and repair and in good and safe condition; repair all damages caused by its employees, patrons, or its operation of said service; and maintain and repair all equipment on said Concession Site.

The Concessionaire further understands and agrees that the Director of Aviation shall be the sole judge of the quality of maintenance and that upon written notice by the Director of Aviation to the Concessionaire, the Concessionaire shall be required to perform whatever maintenance the City deems necessary. If said maintenance is not undertaken by the Concessionaire within ten (10) days after receipt of written notice, the City shall have the right to enter on the Concession Site and perform the necessary maintenance, the cost of such repairs and maintenance shall be borne by the Concessionaire.

ARTICLE IV - TERM OF AGREEMENT

4.01 TERM. The initial term of this Agreement shall be for a period of one (1) year, commencing on the first day of February 2015 and the term will automatically renew on an annual basis, unless either party gives written notice to the other party no later than ninety (90) days prior to the expiration date of the year in which the term will be renewed. In no event will the Term be extended beyond January 31, 2020.

4.02 NATIONAL EMERGENCY. In the event the rights and privileges hereunder are suspended by reason of change in airport security regulations, war or other national emergency, this Agreement shall be immediately canceled.

ARTICLE V – FEES, RENT, MINIMUM ANNUAL GUARANTEE AND PERCENTAGE FEES

5.01 CONCESSION SITE RENT. The Concessionaire agrees to pay \$35.00 per square foot of Concession Site per annum (the "Minimum Annual Guarantee") or 15% of Gross Receipts (the "Percentage Fee"), whichever is greater. For purposes of the calculation of rent, the parties agree that the Concession Site contains 86 square feet of space. Therefore, the rent due and payable to the City shall be either the Minimum Annual Guarantee of \$3,010.00 per year (\$35.00 per sq. ft. x 86 sq. ft.) or the Percentage Fee of 15% of the Concessionaire's Gross Receipts, whichever is greater. If the Concession Site is expanded to

include additional locations, the Minimum Annual Guarantee will be adjusted to include the additional square footage.

The term "Gross Receipts" is defined as all income received by the Concessionaire from the conduct of its business in the Concession Site. It shall be all-inclusive whether or not said income is made by cash or credit, or whether the income is collected or uncollected. Sales made from the Concession Site shall include items ordered in the Concession Site, whether in person or by computer or telephone and items which will be shipped to a customer as a result of a sale on the Concession Site.

Deductions from the calculation of Gross Receipts shall be allowed only for the amount of any federal, state, or local excise and sales taxes presently or hereafter levied upon such revenue.

The Minimum Annual Guarantee shall be paid in equal monthly installments of \$250.83. The installments shall be paid in advance on or before the first day of each and every month during the term or any extension of this agreement. Any deficiency between this Minimum Annual Guarantee monthly installment and the Percentage Fee (if greater) shall be paid to the City on or before the 20th day of the month following the month for which the Gross Receipts were reported.

5.02 RECORDS OF CONCESSIONAIRE. The Concessionaire shall keep true and accurate amounts, records, books, and data which shall show all sales made for cash, credit, or otherwise (without regard to whether paid or not) and shall set forth the number of transactions and all the Gross Receipts of the Concessionaire.

The Concessionaire agrees to operate its business upon the Airport so that a duplicate invoice and cash receipt, if applicable shall be issued with each sale or transaction, whether for cash or credit. The Concessionaire further agrees to keep, in the El Paso area, books and records, in accordance with generally accepted accounting practices, and such other records as the City may request. The duplicate invoices or cash receipts, if applicable, and all other books and records of the Concessionaire, as mentioned in this Agreement, shall be available for inspection or audit by authorized representatives of the City at all reasonable times during business hours for a minimum period of one (1) year after the end of each contract year and after any hold over period, if any. If an audit is required, appropriate records will be maintained legally for a period of sixty (60) days after completion of the audit.

With the payment of monthly Rentals, as provided in Section 5.01 above, the Concessionaire shall submit to the City a statement showing the number of retail transactions and Gross Receipts from the operation of the Concessionaire's business on the Concession Site for the preceding calendar month. These reports shall show such reasonable detail and breakdown as is required by City.

Within ninety (90) days following the end of each contract year of operation of the concession, a statement showing Gross Receipts for the preceding contract year is to be submitted and verified from the records by a representative of the Concessionaire. Such statement shall be signed by a representative of the Concessionaire as an accurate report of the Concessionaire's Gross Receipts for the preceding contract year. If, after the submission of the Concessionaire's annual statement, the City reasonably questions the accuracy of such statement, the City may, at its sole option, require the Concessionaire to

submit at the Concessionaire's own cost, a certified statement prepared by an independent certified public accountant. Any failure or omission by the City to request a certified statement in any given year shall not operate to bar or destroy the right of the City to request such a certified statement in any subsequent year. Such statement showing Gross Receipts for the preceding contract year is to be accompanied by the Concessionaire's payment covering any deficiency between payment made during the year of previous operation and payment due for such year of operation. If the statement and other records show that the amount due to the City is less than the total payments already made by the Concessionaire, then the City shall credit to the Concessionaire the excess amount against the next year's monthly Minimum Annual Guarantee. Upon termination or cancellation of this Agreement, any amounts paid to the City in excess of the required amounts shall be refunded to the Concessionaire provided the Concessionaire is not in default of the terms of this Agreement. The Concessionaire, at its own expense, shall supply all record forms in a type, style and form satisfactory to the City. The submission of such statement by Concessionaire shall not be construed to limit City's right to request audits in accordance with Section 5.04 of this Agreement.

The Concessionaire shall maintain monthly statements, as required hereunder, for a minimum of one (1) year at a place of business accessible to City in El Paso, Texas. Concessionaire shall maintain annual statements, as required hereunder, at its principal place of business, for a minimum of four (4) years, and shall forward same to the City during that time, if requested by the Director of Aviation.

5.03 AUDIT. For the purpose of determining accuracy of reporting Gross Receipts, the Director of Aviation may make a spot test audit and base its findings for the entire period upon such spot test; provided however, that such a spot test shall include at least twenty-five percent (25%) of the total time of the period being audited.

In addition, the Director of Aviation shall have the right, during any one calendar year of this Agreement, to authorize up to two (2) audits of the Concessionaire's records pertaining to Concessionaire's business conducted at the Airport. Such audits shall be undertaken by a reputable firm of certified public accountants with offices in El Paso. The cost of such audits shall be borne by the City, unless the results of such audits reveal a discrepancy of more than five percent (5%) between the Gross Receipts reported in accordance with this article III and the Gross Receipts as determined by audit for any twelve (12) month period. In case of such discrepancy, the full cost of the audit shall be borne by the Concessionaire.

Failure of the City to exercise its right to audit the Concessionaire, as set forth herein, shall in no way be construed as a waiver of any right to payment by the City of any rental or other payments due the City under the terms of this Agreement, and the City hereby expressly reserves its rights under common or statutory law, or otherwise, to enforce all terms of this Agreement, including any right to payment hereunder.

5.04 DELINQUENT RENT. Without waiving any other right of action available to the City in the event of default in payment of rent, fees, or charges hereunder, should the Concessionaire fail to pay any Rent within ten (10) days from the time payment is due, the Concessionaire agrees to pay interest in an amount equal to the highest rate allowed by applicable law.

5.05 DEFAULT FOR FAILURE TO PAY RENT, FEES OR CHARGES. Failure of the Concessionaire to pay any rent due within ten (10) days after the due date shall cause the Concessionaire to be in default under this Agreement. If the Concessionaire is in default for failure to pay amounts due, the City shall have the right, upon ten (10) days written notice or demand, to cancel this Agreement.

In the event of default under this section of the Agreement, the City shall then have the right to re-enter and resume possession of the Concession Site and to remove the Concessionaire's property there from without being guilty of any manner of trespass or conversion and without prejudice to any other remedies, which might be used by the City.

5.06 PLACE OF PAYMENT. All rentals, fees or other charges provided herein shall be paid to the City at the following address: Accounting Department, El Paso International Airport, 6701 Convair Road, El Paso, Texas 79925-1029.

5.07 CONTRACTUAL LIEN. In addition to any other rights or remedies allowed by law, the City shall have a lien on all of the property of the Concessionaire, used or situated in the Concession Site, to secure payment of concession fees owed hereunder by the Concessionaire to the City at any time during the existence of this Agreement. This 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.

ARTICLE VI - INDEMNIFICATION AND INSURANCE

6.01 INDEMNIFICATION. The Concessionaire agrees to indemnify and hold the City harmless against any and all claims, demands, damages, costs, and expenses, including investigation expenses and reasonable attorney's fees for the defense of such claims and demands, arising out of or attributed directly, or indirectly to the operation, conduct or management of the Concessionaire's business in the Airport terminal building, its use of the Concession Site, or from any breach on the part of Concessionaire of any terms of this Lease, or from any act or negligence of the Concessionaire, its agents, contractors, employees, subtenants, or assignees in or about the Concession Site including claims and damages arising in whole, or in part, from the negligence of the City. In case of any action or proceeding brought against the City by reason of any such claim, the Concessionaire, upon notice from the City, agrees to defend the action or proceeding by counsel acceptable to the City.

6.02 INSURANCE. The Concessionaire, at its sole cost and expense, shall throughout the term of this Concession Agreement, keep or cause to be kept on all improvements now or hereafter located in the Airport terminal building, insurance for the mutual benefit of the City and the Concessionaire against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, riots, vandalism and malicious mischief in an amount equal to the actual replacement cost of such improvements without deduction for depreciation ("Full Insurable Value").

6.03 LIABILITY INSURANCE. The Concessionaire, at its sole expense shall, throughout the term of this Lease, provide and keep in force for the benefit of the City and the Concessionaire, as their respective interest may appear, comprehensive general liability insurance in an amount not less than Two Hundred and Fifty Thousand Dollars (\$250,000) for bodily injury to one person for each

occurrence and Five Hundred Thousand Dollars (\$500,000) bodily injuries to more than one person arising out of each occurrence; and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand Dollars (\$100,000) for property damage growing out of each occurrence and in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Action whichever is greater.

6.04 AUTHORIZED INSURANCE COMPANIES. All such policies of insurance shall be written by insurance companies authorized to do business in the State of Texas and shall be written by companies approved by the City, such approval not to be unreasonably withheld. Such policy shall be delivered to the City at least ten (10) days prior to the effective date of the insurance policy. Each policy shall contain:

- A. A statement of the coverage;
- B. A statement certifying the City to be listed as an additional insured;
- C. A statement of the period during which the policy is in effect;
- D. A statement that annual premium or the advance deposit premium for such policy has been paid in advance; and

ARTICLE VII - TERMINATION OF AGREEMENT, CANCELLATION, ASSIGNMENT AND TRANSFER

7.01 TERMINATION. This Agreement shall terminate at the expiration of the term hereof, or sooner as provided in this Agreement, and the Concessionaire shall thereafter have no further interest or right in the Concession Site.

7.02 CANCELLATION BY CITY. This Agreement shall be subject to cancellation by the City in the event the Concessionaire shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days from the date said payments are due.
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of the Concessionaire's property.
- C. Make an assignment of any interest in this Agreement for the benefit of creditors.
- D. Be adjudged a bankrupt in involuntary bankruptcy proceedings.
- E. Be made a party to a receivership proceeding in which a receiver is appointed for the property of affairs of the Concessionaire.

- F. Abandon the Concession Site for ten (10) days.
- G. Default in the performance of any of the covenants and conditions required (except rental payments) herein to be kept and performed by the Concessionaire, and such default continues for a period of twenty (20) days after receipt of written notice from the City of said default.
- H. Violate any applicable laws, statutes or ordinances.

In any of the aforesaid events, the City may immediately cancel this Agreement and take immediate possession of the Concession Site and remove the Concessionaire's effects forcibly, if necessary, without being deemed guilty of trespassing and the Concessionaire shall cease all operation at the Airport immediately.

The failure of the City to declare this Agreement terminated upon the default of the Concessionaire for any of the reasons above shall not operate to bar or destroy the right of City to cancel this Agreement for any subsequent violation of the terms of this Agreement.

7.03 ASSIGNMENT AND TRANSFER. The Concessionaire shall not assign, transfer, or sublease its rights granted hereunder without the prior written approval of the City.

ARTICLE VIII - REDELIVERY

The Concessionaire shall make no unlawful or offensive use of the Concession Site and will at the expiration of the term hereof or upon any sooner termination, without notice, quit and deliver up said Concession Site to the City peaceably, quietly and in as good order and condition, reasonable use and wear thereof excepted, as the same now are or may hereafter be improved by the Concessionaire or the City.

ARTICLE IX - GENERAL PROVISIONS

9.01 CONTRACT INTERPRETATION. The City and the Concessionaire agree that this Agreement has been freely negotiated by both parties and that in any controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this Agreement or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

9.02 CONFLICTS BETWEEN CONCESSIONS. In the event of a conflict between the Concessionaire and any other concessionaire at the Airport as to the services to be sold by respective concessionaires, the City shall have the sole right to decide what services may be sold by each concessionaire and the Concessionaire agree to be bound by such decision.

9.03 INSPECTION. The City, by its officers, employees, agents and representatives, shall have the right at all reasonable times to enter upon the Concession Site for any purpose including, but not limited to, inspecting the Concession Site, observing the performance by the Concessionaire of their obligations hereunder, or for any other reason.

9.04 NON-WAIVER. No waiver of any breach or default by the City hereunder shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition.

9.05 INDEPENDENCE OF AGREEMENT. It is understood and agreed that nothing herein contained is intended or should be construed as creating or establishing a relationship of co-partners between the parties hereto, or as constituting the Concessionaire as the agent, representative or employee of the City for any purpose or in any manner whatsoever. The Concessionaire is to be and shall remain an independent contractor with respect to all services performed hereunder.

9.06 INVALID PROVISIONS. In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained; provided that the invalidity of such covenant, condition or provision does not materially prejudice either the City or the Concessionaire in its respective rights and obligations contained in the valid covenants, conditions or provisions herein.

9.07 TAXES. The Concessionaire shall be responsible for payment of any and all payroll taxes or other assessments attributable to the operation of the Concessionaire's business, improvements or personal property located on the Concession Site regardless of ownership or title to same. The Concessionaire further indemnifies the City from all tax liability including but not limited to ad valorem real property taxes and personal property taxes.

9.08 PARAGRAPH HEADINGS. The paragraph headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provisions of this Agreement.

9.09 NOTICES.

- A. Any notice under the terms of this Agreement shall be in writing. If such notice is given by the Concessionaire, it shall be submitted to the Director of Aviation, El Paso International Airport, 6701 Convair Road, El Paso, Texas 79925-1091, or to such revised address as notified by the City. If given by the City, such notice shall be submitted to the address of the Concessionaire at the following address:

Elizabeth Anchondo
Los Amigos Shoeshine
3240 Tomahawk
El Paso, TX 79936
(915) 592-9015

- B. 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. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

9.10 GENERAL CIVIL RIGHTS PROVISIONS.

The Concessionaire agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Concessionaire from the bid solicitation period through the completion of the Agreement. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the Concessionaire or its transferee for the period during which Federal assistance is extended to the City through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

(a) the period during which the property is used by the City or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which City or any transferee retains ownership or possession of the property.

The City reserves the right to take any action as is necessary to enforce this paragraph, including termination of this Agreement.

9.11 ACDBE REQUIREMENTS. In accordance with 49 CFR Part 26, the City has implemented an Airport Concession Disadvantaged Business Enterprise ("ACDBE") plan ("City ACDBE Plan") under which qualified firms may have the opportunity to operate an Airport concession. The Concessionaire submitted to the City an ACDBE Compliance Plan ("Compliance Plan"), which is incorporated herein by reference, concerning the ACDBE firms that will participate in this Concession. The Concessionaire shall comply with the provisions of Part 23, the City ACDBE Plan and the Compliance Plan. The Concessionaire shall not employ any subcontractor or subconcessionaire except as provided in the Compliance Plan, and shall not substitute any subcontractor or subconcessionaire identified in the Compliance Plan unless the substitute has been approved by the City in accordance with the City ACDBE Plan. The Concessionaire shall timely submit to the City all reports required under Part 26 or the City ACDBE Plan to demonstrate the Concessionaire's compliance with its Compliance Plan

9.12 **SUCCESSORS AND ASSIGNS.** All of the terms, covenants, and agreement herein contained shall be binding upon and shall inure to the benefit of successors and assigns of the respective parties hereto.

9.13 **LAW GOVERNING; VENUE.** This Agreement shall be construed in accordance with the laws of the State of Texas and venue shall be in the courts in El Paso County, Texas.

9.14 **LIABILITY.** It is understood and agreed that the City shall have no liability to the Concessionaire for damage to or loss of any property of the Concessionaire, its employees, agents, servants, subcontractors, or patrons from any cause whatsoever.

9.15 **EFFECTIVE DATE.** Regardless of the date signed, this Lease shall be effective as of February 1, 2015 in all respects.

IN WITNESS WHEREOF, the parties have hereunto set their hands this ____ day of _____ 20__.

CITY OF EL PASO

Tomás González
City Manager

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

Monica Lombraña, A.A.E.
Director of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 20__.
by Tomás González, as City Manager of the City of El Paso, Texas.

Notary Public, State of Texas

My Commission Expires:

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

CONCESSIONAIRE: Los Amigos Shoeshine

By: E. Anchondo
Printed Name: Elizabeth Anchondo
Title: Owner

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 20 day of November, 2014,
by Elizabeth E Anchondo, as Concessionaire.

Eric Gardon
Notary Public, State of Texas

My Commission Expires:
May 22, 2017

