

ATTACHMENT L

**PUBLIC AUTOMOBILE PARKING FACILITIES AND SHUTTLE BUS MANAGEMENT
AGREEMENT
AUSTIN-BERGSTROM INTERNATIONAL AIRPORT**

THIS MANAGEMENT AGREEMENT is made and entered into as of the 1st day of October, 2009 between the City of Austin, Texas, acting through its Executive Director of the Department of Aviation, and AMPCO System Parking, a California corporation, a subsidiary of ABM Industries, Incorporated.

WHEREAS:

- The City owns and operates Austin-Bergstrom International Airport.
- The City has selected Ampco System Parking to manage the public automobile parking facilities and shuttle buses at the Airport utilizing a Request for Proposals.

NOW, THEREFORE, for and in consideration of the fees, covenants and agreements contained herein, the parties agree as follows:

1. DEFINITIONS

- 1.1 **"ACDBE"** means the Airport Concession Disadvantaged Business Enterprise program, the program required under 49 CFR Part 23 whereby qualified disadvantaged business enterprises are granted an opportunity to participate in Airport concession contracts.
- 1.2 **"Agreement"** means this Public Automobile Parking Facilities and Shuttle Bus Management Agreement.
- 1.3 **"Airport"** means the Austin-Bergstrom International Airport.
- 1.4 **"Applicable Law"** means all applicable federal, state and local laws, codes, ordinances, rules, regulations, judgments, decrees, or directives of any Governmental Authority having jurisdiction over the Airport, the Parking Facilities, or Company.
- 1.5 **"City"** means the City of Austin, a Texas home-rule municipal corporation.
- 1.6 **"Company"** means AMPCO System Parking and its permitted subcontractors, successors or assigns.
- 1.7 **"Contract Year"** means a period of twelve months commencing on the Effective Date, or anniversary of the Effective Date.
- 1.8 **"Customer"** means a person who uses the Airport Parking Facilities.
- 1.9 **"Daily Receipts"** means all monies, cash or credit, paid or payable for parking services in a twenty-four (24) hour period commencing at 12:00 a.m., and other authorized revenue-generating activities such as abandoned car sales and State sales tax.
- 1.10 **"Department"** means the City of Austin Department of Aviation.
- 1.11 **"Director"** means the official appointed by the City Manager or other lawful authority to serve as the head of the Department of Aviation, or the Director's designee.

- 1.12 **"Effective Date"** means October 1, 2009.
- 1.13 **"Governmental Authority"** means any governmental, judicial or administrative entity, body or authority.
- 1.14 **"Headways"** means the maximum time a parking lot patron will wait for Shuttle Bus pick-up at designated locations.
- 1.15 **"Gross Receipts"** means all parking fees and charges collected or should have been collected or due hereunder by Company resulting from the parking or storing of vehicles on Airport Parking Facilities.
- 1.16 **"Parking Facilities"** means the Airport public and employee surface parking lots and parking garage, as defined in Section 3 below and depicted on **Exhibit A**, attached hereto and made a part hereof, together with all improvements thereto.
- 1.17 **"Parking Fee Schedule"** means the schedule of fees and rates established by the City from time to time for the privilege of parking in the Parking Facilities.
- 1.18 **"Parking Program Manager"** means the City employee designated to coordinate Airport parking activities.
- 1.19 **"Premises"** means the space provided Company in the Parking Administration building as shown in **Exhibit B** and the offices at the toll plazas.
- 1.20 **"Procedures Manual"** means the approved, written procedures and standards for the management and operation of the Parking Facilities prepared by the Company and approved by the Director.
- 1.21 **"Resident Manager"** means the Company's senior, full-time, local representative who will manage daily parking lot operations.
- 1.22 **"Revenue Control Equipment"** means all laser readers, computer workstations utilizing the computerized parking control system software, gates, gate controllers, cash auditing terminals, and ticket issuing machines owned by the City and used by the Company in operation of the Designated Parking Facilities.
- 1.23 **"Revenue Control System" or "RCS"** means the equipment and procedures developed by the City for the control and security of the revenue derived from operation of the Parking Facilities.
- 1.24 **"Revenue Control System Contractor"** means the contractor engaged by the City to provide and maintain the Revenue Control System.
- 1.25 **"Shuttle Bus"** means a bus, van or other motor vehicle used to transport Customers or employees between terminal building and Parking Facilities.
- 1.26 **"Shuttle Bus Cost"** means the airport Shuttle Bus operating costs, which include monthly lease or installment purchase payments, fuel, oil, tires, maintenance and repair, radio equipment, drivers' wages and benefits and other similar vehicle operating expenses, but excluding the cost to operate and maintain equipment installed and owned by Company;
- 1.27 **"Shuttle Bus System"** means the fleet of Shuttle Buses.
- 1.28 **"Staffing Schedule"** means the set of charts identifying the positions to be filled by personnel of the Company in performance of this Agreement and the minimum number of personnel that shall be working in each such position during each day of the week and

each clock hour of each such day, as agreed to by the Director, and incorporated into the Procedures Manual.

- 1.29 **“Valet Parking”** means the parking service in which (a) a customer delivers his or her vehicle into the care, custody, and control of Company at a designated valet drop-off location on the Airport, (b) Company personnel park the vehicle in a designated valet parking area, and (c) upon request by the customer, Company personnel return the vehicle to the customer at a designated valet parking pick-up location on the Airport.

2. TERM

- 2.1 **Initial Term.** The Agreement shall be effective as of the Effective Date and continue in force for a term of five (5) years (“Initial Term”), unless sooner terminated or extended in accordance with the terms and conditions of this Agreement.
- 2.2 **Renewal Terms.** Provided that Company is not in default, the parties may agree to extend the term of this Agreement on the same terms and conditions for up to two additional terms (each a “Renewal Term”) of one (1) year each by written agreement executed at least six months prior to the end of the Initial Term, or first Renewal Term, as applicable. Neither party shall be under an obligation to agree to extend the Initial Term.

3. PARKING FACILITIES

The Parking Facilities consist of:

- 3.1 **Parking Garage**, a three story structure; with public parking in 2,447 spaces on floors one and two only. It is located north of the Terminal building as shown on Exhibit A.
- 3.2 **Lot A**, a paved, 1,819 space surface parking lot, located north of the parking garage, as shown on Exhibit A.
- 3.3 **Lot B**, a paved, 1,283 space surface parking lot, located north of Lot A, as shown on Exhibit A.
- 3.4 **Lot C**, a paved, 1,564 space surface parking lot, located east of long-term parking Lot B, as shown on Exhibit A.
- 3.5 **Lot D**, a paved, 1,422 space surface parking lot, located north of long-term parking Lot B, as shown on Exhibit A.
- 3.6 **Lot E**, a paved, 533 space surface parking lot, located east of long-term parking Lot D, as shown on Exhibit A.
- 3.7 **Lot F**, a paved, 1,073 space surface parking lot, located north of long-term parking Lot D, as shown on Exhibit A.
- 3.8 **Lot G**, a paved, 1,214 space surface parking lot, located east of long term parking Lot E and north of long-term parking Lot C, as shown on Exhibit A.
- 3.9 **Lot H**, a paved 450 space surface parking lot used for overflow parking located on Rental Car Lane, as shown on Exhibit A.
- 3.10 **Other**, such other garage or surface parking lot that the City develops at the Airport during

the term of this Agreement, and directs Company to manage.

4. RIGHTS, PRIVILEGES AND OBLIGATIONS OF COMPANY

- 4.1 **Management and Operation.** The City hereby grants to Company the right, and Company hereby assumes the obligation, to operate and manage the Shuttle Bus System and the Parking Facilities for the term of this Agreement.
- A. Except as otherwise directed in writing by the Director, Company shall operate the Parking Facilities and Shuttle Bus System twenty-four (24) hours per day, every day of the year for so long as this Agreement remains in effect.
- B. Company shall operate the Parking Facilities and Shuttle Bus System solely for Airport uses, and for no other purpose whatsoever, without the prior written consent of the Director.
- 4.2 **Purpose.** The City is entering into this Agreement to ensure that a high level of service is made available to Customers. Company shall manage, staff, maintain and operate the Parking Facilities in a first class manner in accordance with the terms, conditions and covenants of this Agreement, the Procedures Manual, Applicable Law, and best management practices in the industry. Company agrees that its operating budgets are, and shall be throughout the term of this Agreement, consistent with attaining the standards required in this Agreement. Company shall take all reasonable steps to ensure that prompt, courteous and efficient service is provided to all Customers. Company shall pay from its own operating funds, all necessary expenses incurred in the operation of the Parking Facilities, subject to reimbursement by the City in accordance with the provisions of Section 11 below.
- 4.3 **Valet Parking.** Company shall provide a full service Valet Parking operation at the Airport. Company shall provide all labor and other services necessary to operate the Valet Parking. The City will make available curb space on the terminal roadway for valet drop off, and space in the terminal parking garage, or other location, for storage of valet parked vehicles. The Department may terminate or suspend the Valet Parking operation at any time upon forty-five (45) days' prior written notice to Company.
- 4.4 **Entry and Exit Functions.** Company shall monitor and operate all entrances and exits to the Parking Facilities and shall perform cashier functions at all Parking Facilities in accordance with the Procedures Manual and reasonable instructions received from the Director.
- 4.5 **Traffic Management.** Company shall monitor and manage all traffic problems in the Parking Facilities by all necessary or reasonable means, including directing traffic, placing and removing cones or barricades and erecting or replacing delineators.
- 4.6 **Lot Inventory.** Company shall take nightly inventory of all vehicles in the Parking Facilities, except in any lot designated and exclusively used as an Employee Lot. Company shall take the nightly inventory in accordance with the Procedures Manual and the direction of the Director, using equipment provided by the City.
- 4.7 **License Plate Recognition.** If requested to do so by the Director, Company shall implement, operate, and maintain a License Plate Recognition (LPR) system using

equipment provided by the City.

4.8 **Revenue Control System.**

- A. As of the Effective Date, the RCS is an Amano McGann on-line real-time parking management system designed specifically to accommodate the parking demands of the Airport parking environment.
- B. The RCS is a credit card on file system requiring Payment Card Industry (PCI) compliance, which, as of the Effective Date, is being monitored through a third party consolidated security scanning service. The Company shall ensure compliance with PCI standards currently in effect and any revisions of the PCI standards implemented in the future by maintaining the existing service or providing a similar service acceptable to the City.
- C. Company shall operate the Revenue Control System in each area of the Parking Facilities.
- D. Company shall cooperate with and reasonably assist the Revenue Control System Contractor with revenue control system maintenance, trouble-shooting, and implementation of system upgrades.
- E. The Revenue Control System includes components specially developed by or on behalf of the City, including, but not limited to software. Such components and software shall not be used, duplicated, reverse engineered, licensed, or sold without the express written consent of the City and the owner of the copyright or other intellectual property right to the Revenue Control System or any component or part thereof. Company shall execute such license agreements as may be required by the City or the owner of the copyright or other intellectual property right to the Revenue Control System, or any software or component or part thereof. COMPANY SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL CLAIMS OF COPYRIGHT INFRINGEMENT OR OTHER INTELLECTUAL PROPERTY CLAIMS OF ANY THIRD PERSON ARISING FROM COMPANY'S BREACH OF ITS OBLIGATIONS UNDER THIS SECTION. If Company develops any software or other product ("deliverable") at the City's expense for use in Company's operations under this Agreement, Company agrees that upon their creation, the deliverables shall be considered as work made-for-hire by Company for the City and the City shall own all copyrights in and to the deliverables; provided, however, that nothing in this section shall negate Company's sole or joint ownership of the deliverables arising by virtue of Company's sole or joint authorship of the deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, Company hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to the deliverables. With respect to work made-for-hire, Company agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by City, to City upon delivery of the deliverables to City or at such other time as City may request.
- F. Company shall perform central computer monitoring functions of the Revenue

Control System as described herein and as otherwise directed by the Director. Company shall perform, at such frequency as the Director may direct, the following central computer monitoring functions: report initiation (print-out and storage media), collection, distribution and storage; data reconciliation and audit; video recording and video auditing; on-line transaction and other data queries, and communication with various City departments; and system status monitoring reporting and correction.

- G. Company represents that it understands and is capable of efficiently operating the Revenue Control System, to its full capability, including license plate inventory and space control, that is in place on the Effective Date. Company shall fully cooperate with the City, if during the term of this Agreement, the City changes or replaces the Revenue Control System. The Company will train its employees in the proper use of the existing Revenue Control System or any other Revenue Control System that the City may have installed.
- H. Company shall provide the following maintenance and repair services with respect to the Revenue Control Equipment:
 - 1) replacement of gate arms,
 - 2) loading tickets in dispensers,
 - 3) clearing ticket jams,
 - 4) correcting minor problems,
 - 5) clearing jams in card readers and point of sale equipment, and
 - 6) promptly report in writing any damage to the RCS, malfunctions, defects, and recurring maintenance problems with the Revenue Control Equipment to the Parking Program Manager and the Revenue Control System Contractor.

The cost of materials used by Company in performing RCS maintenance and repair shall be a reimbursable expense under Section 11.4; provided, however, any maintenance or repair required to be performed on the Revenue Control System as a result of damage caused by the Company's gross misuse, willful misconduct, abuse or negligent operation of the Revenue Control System shall be performed at the Company's sole cost and expense, and shall not be reimbursed by the City. In no event shall Company perform or cause to be performed any work on the Revenue Control System other than on Revenue Control Equipment.

4.9 **Revenue Handling and Accounting.** Company shall:

- A. Collect parking fees from Customers, and remit such fees to the Department, as directed by the Director.
- B. Perform accounting and on-site auditing for all parking revenues and accounts.
- C. Maintain control and accountability, including proper procedures and controls for all ticketed, ticketless, and non-normal (exception and non-revenue) transactions.

4.10 **Procurement of Goods, Services and Equipment**

- A. When instructed to do so in writing by the Director, Company agrees to procure goods, services, and equipment necessary or appropriate for the operation of the Parking Facilities on behalf of the City. In procuring such goods, services, and equipment, Company shall comply with all Applicable Law governing City procurements. Without limiting the general applicability of the foregoing sentence, all procurements over \$50,000 must be solicited through competitive sealed bids or proposals in accordance with the requirements of Texas Local Government Code Chapters 252 or 271, as applicable. Notice of the solicitation must be given as provided in Texas Local Government Code Chapter 252. Unless Company is advised in writing that a procurement is exempt by law from the requirements of a competitive solicitation, or the requirement for competitive solicitation is waived by the Director, Company shall obtain at least three bids or proposals for all goods, services, or equipment procured by Company under this Agreement, regardless of the contract amount. Company shall evaluate all bids or proposals, and make a written recommendation to the Director as to which offer is the low responsive bid, or the best proposal, as applicable. The City shall make the final determination as to all contract awards. The Procedures Manual shall include detailed procedures for procuring common types of goods, services, and equipment required in the operation of the Parking Facility.
- B. The cost of goods, services, and equipment procured by Company under this Section shall be passed through to the City without markup, except for Company's actual costs incurred in the procurement as authorized in advance by the Director, as reimbursable expenses pursuant to Section 11.2 or 11.4, as applicable, unless otherwise provided in this Agreement. The City shall be entitled to the benefit of any volume discount, rebate or other incentive granted to Company with respect to any purchase of goods or services for which it is reimbursed by the City.
- C. The Director must approve in advance the term of any lease or installment purchase of goods, services, or equipment. If the term of any Director-authorized lease or installment purchase agreement extends past the expiration date of this Agreement, Company shall, upon expiration of this Agreement, assign all its rights and obligations in such lease or installment purchase agreement to the City or Company's successor as manager of the Parking Facilities, as instructed by the Director. All leases and installment purchase agreements entered into by Company under this Agreement must expressly pre-authorize an assignment by Company to the City or successor manager, without any additional consent of the lessor or lender, as applicable. The assumption of any lease or installment purchase agreement by the City or successor manager shall not relieve Company of any obligations incurred by Company prior to the effective date of the assignment to the City or successor manager.
- D. If so instructed by the Director in writing, Company shall sell or dispose of surplus Parking Facility goods, equipment and vehicles in a manner determined by the Director, subject to Applicable Law. All proceeds of sale shall be the property of the City, and shall be remitted by Company to the City, less actual expenses of sale. Company may not sell or dispose of any Parking Facility goods, equipment or vehicles without the prior written consent of the Director.

- E. All goods, services or equipment purchased by Company for which the City reimburses Company shall become property of the City immediately upon reimbursement. At any time during the term of this Agreement or thereafter, Company shall, upon the request of the Director, execute a bill of sale or such other document as the Director determines is appropriate and sufficient to vest title in or otherwise evidence ownership by the City. This provision shall survive expiration or termination of this Agreement.
- 4.11 **Construction Disruption.** During the term of this Agreement, there will be occasional disruption in portions of the Parking Facilities resulting from City-directed construction. Company acknowledges that such disruption will occur, agrees to cooperate with the City and any of the City's contractors or subcontractors to manage and minimize the disruptions in the Parking Facilities. Company will not be entitled to any additional Management Fee (as defined in Section 9.1) or other additional compensation as a result of such construction disruption.
- 4.12 **Frequent Parker Program.** Company shall administer the Department's frequent parker program in accordance with the Procedures Manual and instructions from the Director.
- 4.13 **Shuttle Bus Operations.**
- A. The Company shall operate, maintain and repair the Shuttle Buses in accordance with this Agreement, the Procedures Manual, and the directions of the Director. The Company shall pay all Shuttle Bus Costs, subject to reimbursement by the City in accordance with Section 11.2.
 - B. Shuttle Buses shall be used to transport Customers between the surface parking lots and the Airport terminal, unless otherwise authorized in writing by the Director. In addition, the Company shall, if so instructed, provide Shuttle Bus services between any points on the Airport for any purpose identified by the Airport Director, including, but not limited to, transporting Customers and Airport employees during airport emergencies. The City reserves the right to separately contract for Shuttle Bus services between locations other than between the Parking Facilities and the Airport Terminal.
 - C. If requested by the Director, Company shall assist the City in procuring new or replacement Shuttle Buses, and in disposing of used or obsolete Shuttle Buses. Assistance in procurement may include recommending size, type and other specifications of Shuttle Buses, identifying potential vendors, assisting in the drafting of a solicitation to acquire Shuttle Buses, and assisting in the evaluation of bids or proposals. Company shall make written recommendations to the Director whether the Shuttle Buses should be leased, lease-purchased, purchased on installments, or purchased outright. The recommendations shall include estimated costs for each option. The Director shall have the final determination in all Shuttle Bus procurement decisions.
 - D. The Company shall operate Shuttle Buses along routes approved by the Director, and incorporated into the Procedures Manual.
 - E. All Shuttle Buses must use alternative fuels (to the extent such fuels are available), unless otherwise approved, in writing, by the Director. As used in this

section, "Alternative Fuels" is defined as provided in Title 10 CFR Part 490.2, which, as of the Effective Date, means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials (including neat biodiesel); three P-series fuels (specifically known as Pure Regular, Pure Premium and Pure Cold Weather) as described by United States Patent number 5,697,987, dated December 16, 1997, and containing at least 60 percent non-petroleum energy content derived from methyltetrahydrofuran, which must be manufactured solely from biological materials, and ethanol, which must be manufactured solely from biological materials; and electricity (including electricity from solar energy). The Department has constructed a propane fueling station on the Airport. All propane powered Shuttle Buses must use the Airport propane fueling station exclusively, unless the propane station is inoperative. The City shall issue Company a card for each Shuttle Bus, which will allow it to fuel at the Airport propane station. Charges for fuel purchased at the Airport propane station is charged to and paid directly by the City, and therefore shall not be included in the Shuttle Bus Costs. Company shall not include the cost of propane fuel in developing its operating budgets. Company shall be reimbursed its costs for purchases of propane fuel under Section 11.4. only when the City's propane station is inoperable

- F. The Company shall operate a separate shuttle route to service Parking Facilities that are used exclusively as employee lots.
- G. The number of buses dedicated to each lot must be commensurate with the demand at any time of the day to reasonably assure that no Customer or employee is without transportation longer than the maximum waiting time specified in the Shuttle Bus Headway Schedule approved by the Director and incorporated into the Procedures Manual.
- H. The Director shall approve the Shuttle Bus color and all markings on Shuttle Buses. Shuttle Buses shall prominently display the Airport Parking Facility logo and trade name, if any, adopted by the Department. The Department reserves the exclusive right to use space on the Shuttle Buses for commercial advertising. Company shall not place any inscriptions or advertisements on shuttle buses without the Director's prior approval.
- I. Company shall not perform vehicle maintenance on the Airport, except as directed or authorized in advance by the Director in writing. Vehicle maintenance performed on airport property will be in compliance with the Department of Aviation's Storm Water Pollution Prevention Plan and associated Best Management Practices.
- J. Company's Shuttle Bus operators shall assist Customers with their luggage when entering and exiting the Shuttle Bus.

4.14 **Employee Parking.** Company shall manage and administer the Department's employee parking program in accordance with the directions of the Director and the Procedures Manual.

- 4.15 **Reports.** Company shall generate and submit daily or monthly reports as provided in this Agreement and the Procedures Manual, including but not limited to, monthly summary of revenue from all parking operations, vehicle inventory activity, tickets issued and collected, unaccounted for tickets, and shall generate and submit such other reports at such times as the Director may direct. Daily and monthly reports shall be in a form approved by the Director and incorporated into the Procedures Manual.
- 4.16 **Contracts and Services.** Company shall, during the term of this Agreement, provide the contractual services listed below. The costs incurred to provide the contractual services are reimbursable under Section 11.2.
- A. *Credit Card Processing:* Contracts or services necessary to accept and process credit cards as a method of payment for parking that are compatible with the City's credit card acceptance equipment.
 - B. *Armored Car and Revenue Depository Services:* Contracts or services necessary for the collection and depositing of parking revenue to the City's bank account.
 - C. *GPS Shuttle Tracking System (RASTRAC).* Contract(s) for supporting, servicing and programming the cellular-based global positioning system used to monitor and track the Shuttle Buses.
 - D. *Towing and Abandoned Vehicle Services.* Contracts or services necessary to tow, remove and sell abandoned and other vehicles under Section 30.
 - E. *TrustWave UTM:* Monitored firewall for the detection and prevention of attempts by unauthorized persons or systems to access the RCS using the internet.
- 4.17 **Equipment and Service Vehicles.** Company, at its sole expense and without reimbursement, shall, during the term of this Agreement, provide the following:
- A. *Furniture and Computers:* All furniture, office equipment, computers, and related computer equipment necessary to support the operation of Company's office at the Airport. This obligation does not require the Company to provide computers and related equipment necessary to support the Revenue Control System, which will be provided by the City for Company's use. The Company shall provide all furniture, fixtures and equipment to furnish office space at the Premises.
 - B. *Service Vehicles:* Not less than three (3) service vehicles for use in performance of company's obligations under this Agreement, comprised of any combination of pick-up trucks or vans as approved by the Director. Such service vehicles shall be uniform in color and markings and such color and markings shall be approved in advance by the Director. At no time during the term of this Agreement may any service vehicle be more than five (5) model years old. Each service vehicle shall, at all times, be: (i) clean, in good working order, and free of body damage; (ii) equipped with a yellow emergency light and an electronic device for warning when the vehicle is being driven in reverse; and (iii) equipped with vehicle jump start and tire inflation units for customer service applications. At least two service vehicles shall be vans equipped with wheelchair lifts capable of transporting disabled Customers between the Parking Facilities and the Airport Terminal. The cost to purchase or lease the service vehicles is a non-reimbursable expense. The operating and maintenance cost of the service vehicles is also non-reimbursable,

except that the City will allow the service vehicles to refuel at the City fuel facility on the Airport at the City's expense. The cost of fuel from any location other than the Airport fuel facility is non-reimbursable.

- 4.18 **Customer Claims, Comments and Complaints.** Company shall handle and report to the Director, in a manner reasonably satisfactory to the Director and in accordance with the Procedures Manual, all Customer comments and complaints. Company shall report to the Director all claims made for loss or damage to vehicles or other property in connection with the operation of the Parking Facilities within one business day after receipt. Company shall deliver a written summary of each complaint received orally, and a copy of any written complaint, to the Director within twenty-four (24) hours after Company's receipt of the complaint and shall promptly prepare a written response to any written complaint for the Director's review. In such written response, Company shall make a good-faith effort to explain, resolve or rectify the cause of the complaint. Upon the Director's review and approval of the draft written response, Company shall prepare and send Company's response to the complaining person and the Director. Company shall prepare and deliver to the Director periodic reports summarizing complaint activity, as the Director may request. If a Customer experiences a problem in any way with the service provided by Contractor, or its agents or employees, Contractor shall be responsible for issuing any refunds due the Customer. Refunds under this section are not a reimbursable expense unless expressly authorized by the Director.
- 4.19 **General Maintenance.** Except as provided in Section 5.3, Company shall be responsible for all maintenance and custodial services required to keep all entry and exit lanes at the Parking Facilities, the interior space of the toll plazas, the interior space of the cashier booths, the Premises, all office areas, all office equipment and all administrative support and storage areas in a reasonably safe, clean, neat, orderly and attractive condition. Except as provided in Section 4.8 with respect to the Revenue Control System, Company shall keep all equipment used in Company's operations at the Airport, including all motor vehicles used by Company at the Airport, in good working order. Company shall collect and deposit daily all trash (except trash containing hazardous materials) into the trash dumpster provided by the Department at the Parking Administration Building. Company personnel will operate the city-provided equipment referenced in Sections 5.1 and 5.5 and Exhibit C. Company shall provide all custodial services necessary to keep the Parking Facilities in a reasonably safe, clean, neat, orderly and attractive condition. The City may direct Company to clean the third floor of the parking garage to mutually agreed upon standards. The Director shall be the sole judge of the quality of maintenance and cleanliness under this paragraph, and if the Director determines that the maintenance and cleanliness is not satisfactory, the Director shall so notify Company in writing, and such maintenance or custodial services required by the Director shall, to the extent reasonably possible, be performed by Company within five (5) days after Company's receipt of the Director notice. If Company fails to perform the maintenance or custodial services within five (5) days, the Department shall have the right, but not the obligation, to do so at Company's expense, without reimbursement.
- 4.20 **Casualties.** Company shall notify the Director, in writing, within one business day after the occurrence of any fire, flood, personal injury or other damage occurring within the Parking Facilities or Shuttle Bus operation. Company shall provide such additional information as

the Director may request.

- 4.21 **Compliance with Rules and Regulations.** Company and its officers, employees, guests, invitees, vendors and contractors shall observe, obey, and comply with all applicable rules, policies, procedures, and regulations of the City and the Department in effect during the term of this Agreement.
- 4.22 **Customer Assistance.** Company, at Company's expense without reimbursement, shall provide the personnel, equipment and supplies necessary to jump start motor vehicles, provide air for vehicle tires, and provide up to two (2) gallons of gas per vehicle located in any area at the Airport to Customers who are unable to operate their motor vehicles due to weak or dead batteries, deflated tires, or lack of fuel, respectively. Company is not obligated to provide any other mechanical service, but shall make reasonable efforts to resolve Customer's motor vehicle problems through assistance with communications or other means reasonably available. Company shall assist Customers who are unable to locate their motor vehicles.
- 4.23 **Coordination Between the City and Company.** Company shall send an executive level representative of Company from its home or regional office, who is familiar with the terms and conditions of this Agreement, to meet with the Department management staff not less than once every three (3) months throughout the term of this Agreement, and as reasonably requested by the Director. Company's executive level representative shall also be available as required to resolve any issue which cannot be managed by Company's local management. Company's cost to attend such meetings shall not be a reimbursable expense. Company shall participate in and actively support the City's processes for improving the quality of parking services provided to the public that may include, but not be limited to (a) participation in various work groups, (b) implementation of new services or parking products, or (c) initiating recommendations for improving the way the Department and the Company does business.
- 4.24 **Signage.** Company shall not install any signs in the Parking Facilities, the Premises, or elsewhere on the Airport (including in or about the plazas and booths) without the Director's prior written approval.
- 4.25 **Internal Control Structure.** Company shall maintain an internal control structure over all parking revenue and expenses to provide reasonable assurance that Parking Facility and Shuttle Bus System revenue, property, equipment and assets are safeguarded from loss or unauthorized use, that transactions are executed in accordance with Company's authority, and that financial records are maintained and are reliable for the purposes of preparing financial statements. The internal control structure shall be supported by (a) the selection, training, and development of qualified personnel, (b) an appropriate segregation of duties, (c) appropriate Company management review and oversight, and (d) the creation and dissemination of appropriate written policies and procedures.
- 4.26 **Ticket Supply.** The Company shall supply all ticket stock required to operate the Parking Facilities, as a reimbursable expense.
- 4.27 **Database Management.** The Company shall manage the parking customer electronic database and other data sources that may be implemented in the support of parking product initiatives, to include software and hardware support as may be necessary.

5. OBLIGATIONS OF CITY

- 5.1 **Parking Facilities and Equipment.** City shall install, repair, and maintain, at its sole cost, the parking garage, including the elevators; all Parking Facilities' paved surfaces (including striping and traffic markings); all Revenue Control Equipment; signs; ticket dispensers; toll booths and improvements thereto; and lighting (including re-lamping). The City may direct Company to perform such maintenance work to mutually agreed upon standards, and if the Company performs these tasks at the request of the City, its cost shall be a reimbursable expense.
- 5.2 **Maintenance of Revenue Control System.** Except as otherwise provided in Section 4.8, the Department shall be responsible to maintain, repair, and service the Revenue Control System.
- 5.3 **Premises.** The City shall provide office space in the Parking Administration Building for the Company's use to manage the Parking Facilities and Shuttle Bus System. The Department may at any time, upon sixty days' prior written notice to Company, substitute other office space reasonably comparable in size and amenities for Company's use. The Company may, with the Director's prior written approval and at Company's sole expense, reconfigure space as needed. Office space shall be set aside at each exit plaza for the Company's exclusive use. The City shall maintain and repair the windows, entry-ways, walls, floors, electrical systems, sprinkler systems, plumbing fixtures and heating, ventilation and air conditioning systems that serve the Premises.
- 5.4 **Employee Parking.** The City shall provide Company's employees parking, at no cost, in or around the Parking Administration Building and supervisory tollbooth offices or in a designated employee parking area established therefore by the Airport.
- 5.5 **Equipment and Supplies.** The City shall provide the equipment listed on **Exhibit C**. In the event that any of the equipment listed on Exhibit C is lost, damaged, or destroyed due to the negligence or willful misconduct of Company, Company shall repair or replace (at the City's option) such equipment at Company's expense, without reimbursement. Company shall provide routine maintenance and replacement parts for City supplied equipment, as a reimbursable expense including operating supplies such as, but not limited to, journal tapes, ribbons and revenue control forms.
- 5.6 **City's Right to Repair Parking Facilities.** The City shall have the absolute right at any time to make any repairs to the Parking Facilities and the Airport, as well as the right to enter any parking areas and facilities for the purpose of so doing, free, with the exception of liability for damage to tangible personal property of the Company caused solely by the City's negligence, from any and all liability to Company for damages sustained by Company for whatever reason as a result of the making of any such repairs.
- 5.7 **Utilities.** The City shall provide the following utilities to the Parking Facilities and the Premises at the City's expense: electricity; water; sewer facilities; basic telephone service/cabling (dial tone); and one telephone instrument per full time equivalent, excluding cashiers, drivers and attendants.

6. PERSONNEL

6.1 **Managers.** Company shall assign a full-time Resident Manager, an assistant Resident Manager, and an Accounting Manager approved by the City to supervise all aspects of Company's obligations under this Agreement. The Resident Manager, Assistant Resident Manager, and Accounting Manager shall each be present at the Airport a minimum of forty (40) hours per week, usually during normal business hours. The Resident Manager and Assistant Resident Manager shall have the overall responsibility to assure Company's compliance with the terms of this Agreement. The Assistant Manager shall assist the Resident Manager in the supervision of all aspects of this Agreement, shall act as the Manager in the Manager's absence, and shall be present at the Airport usually at times when the Resident Manager is not present. The Resident Manager shall not have responsibility for managing any parking facilities or operations other than the Parking Facilities at the Airport. The Resident Manager and the Assistant Resident Manager shall have a shift overlap that permits them to communicate appropriately about parking operations. The Accounting Manager shall perform accounting duties to reconcile Daily Receipts, monitor and maintain the Frequent Parker on-line accounts and prepare monthly revenue reports or other such reports as necessary. The Director may, in his or her sole discretion, direct that Company appoint a new Resident Manager, Assistant Resident Manager, or Accounting Manager at any time during the term of this Agreement. The Resident Manager, the Assistant Manager, and the Accounting Manager shall meet the qualifications set forth in the job descriptions for their positions in the Procedures Manual.

6.2 **Staffing Schedule.**

- A. Company shall employ all persons necessary to operate the Parking Facilities in accordance with the Staffing Schedule. Company shall increase or decrease its staffing at such times, in such amounts and manner, and for such durations as directed by the Director. All personnel classifications, except for Inventory Attendants, shall be available to be on duty in the Parking Facilities twenty-four (24) hours per day each day of the year. Inventory attendants shall be present to perform the daily inventory during the midnight shift (12:00 a.m. -7:00 a.m.).
- B. If the Director, in his or her sole discretion, determines that there is additional need for staffing, Company shall supply such additional personnel at such time, in such amount and manner and for such duration as directed by the Director. All costs and expenses described in Sections 11.2.A and 11.2.B below associated with the addition of personnel pursuant to this Section 6.2.B shall be reimbursable under Section 11.4 upon the prior written approval of the Director.
- C. By the 20th day of each calendar month, the Company shall submit to City in writing, for the next ensuing month, recommended changes to the staffing levels proposed by the Company for the following job classifications, as set forth in the Procedures Manual:
 - Shift Supervisors
 - Assistant Shift Supervisors
 - Cashiers
 - Attendants
 - Inventory Attendants

- Shuttle Bus Drivers
 - Valet Attendants
- D. The City shall have the right to create new job classifications and establish new positions as may be necessary from time to time to meet the changing requirements of the parking operation. Job descriptions will be reviewed by the Director, and upon approval, incorporated into the Procedures Manual.
- 6.3 **Revenue Control System Training.** Company covenants that all personnel operating the Revenue Control System will be fully trained in the proper operation and use of the Revenue Control System and Revenue Control Equipment prior to their assumption of duties. All such training shall conform to the standards and requirements set forth in the Procedures Manual. Cashiers in training status may work alone in a booth only during non-peak exiting periods.
- 6.4 **Cashier Change Bank.** Company shall establish a Cashier's Change Bank with Company's funds in the minimum amount of Ten Thousand Dollars (\$10,000.00) which shall be the responsibility of Company to maintain throughout the Term of this Agreement.
- 6.5 **Removal of Employees.** Subject to Applicable Law and the terms of Company's collective bargaining agreements with its employees, if any, Company shall, upon written notice by the Director, immediately and permanently remove from the parking payroll and operation at the Airport any employee who violates Applicable Law at the Airport, violates Airport rules and regulations or Procedures Manual, possesses alcohol, illegal drugs or firearms at the Airport, is under the influence of alcohol or illegal drugs at the Airport, or whose behavior is the subject of multiple verified Customer complaints, or whose actions, in the opinion of the Director, are detrimental to the public interest at the Airport.
- 6.6 **Criminal History Checks.** All persons employed at the Airport are subject to criminal history background checks, and failure to pass the background checks will disqualify a person from employment at the Airport. Neither Company, nor any of Company's subcontractors, shall hire for any position under this Agreement, or retain in its employment hereunder a person convicted of larceny, burglary, theft, embezzlement, other crime of moral turpitude, or any other crime proscribed by applicable Transportation Security Regulations, within the prior ten years. For each employee or potential employee, Company shall (and shall require its subcontractors to) perform a ten (10) year criminal history check in Texas and shall exercise a good faith effort to perform a criminal history check in each other state of the United States where an employee or potential employee has resided within the last ten (10) years.
- 6.7 **Labor Laws.** Company shall comply with all Applicable Law concerning employment practices in connection with its operations under this Agreement, including, without limitation, the Fair Labor Standards Act, and shall pay all appropriate Federal and State employment and withholding taxes, and shall maintain records demonstrating compliance. To the extent provided by Applicable Law, all such records shall be available for inspection by the Director, at any time during reasonable business hours, for a period of no less than three (3) years after end of the year of the term of this Agreement to which such records pertain. If, prior to the expiration of the above-stated inspection period, any audit or investigation is commenced by the City, or any claim is made or litigation commenced relating to this Agreement by the City, Company or a third party, the records shall be

maintained, and the City shall continue to have the right to inspect such records in the manner stated above, until the audit, claim or litigation is finally resolved (including the determination of any and all appeals or the expiration of time for an appeal). This provision shall survive the termination of this Agreement. **Company shall indemnify and hold the City harmless against any civil or criminal liability arising out of the violation of applicable labor or employment laws by Company, or its subcontractors except to the extent the violation was caused at the City's express directions.**

- 6.8 **Employee Theft.** Company shall report to the City any actual or suspected occurrences of larceny, burglary, theft, embezzlement or other crime of moral turpitude by employees of Company or its subcontractors, or any allegations of employee dishonesty within twenty-four (24) hours after Company first has knowledge thereof, whether directly related to employment at the Airport or not.
- 6.9 **Uniforms and Badges.** All Company employees shall wear uniforms and identification badges at all times while on duty at the Airport. Company shall provide badges and uniforms in accordance with the Procedures Manual and approved in advance by the City. Company shall issue each employee assigned to this Agreement a Company identification badge. Company personnel are required to wear the identification badge at all times while on the work site. Failure to wear the identification badge may be cause for removal of an individual from the work site. The Company shall provide, as a reimbursable expense, nameplates for the cashiers to insert in a nameplate holder mounted on the exterior of the cashier booths. The letters in the nameplate shall be at least one inch in height and be of a color that contrasts with the background of the nameplate.
- 6.10 **Employee Compensation.** Company shall pay each person employed at the Airport under this Agreement a minimum wage no less than the living wage established by the City from time to time for City employees. The living wage in effect as of the Effective Date is \$11.00 per hour. The City shall provide Company written notice of any changes in the living wage. Company shall provide persons employed at the Airport under this Agreement the benefits described in **Exhibit D**.
- 6.11 **Employee Training.** Company shall develop and implement a comprehensive training program for its employees at the Airport. Such training shall include, but not be limited to:
- Customer Service
 - Vehicle Inspection
 - Shuttle Operation
 - Safety Equipment
 - Lift Operation
 - Radio Operation
 - Curbside Positioning
 - Shuttle Routes
 - Accident / Injury Forms & Procedures
 - Vehicle Fueling
 - Driving Tactics / Decision Driving
 - PARC Equipment
 - Lot Maintenance
 - Processing Transactions

- Cash Handling
- Credit Card Transactions
- Count Accuracy
- Ticket Training
- Non-Revenue Transactions
- Emergency Operations

7. PROCEDURES MANUAL

Company shall prepare and submit to the Director for his approval the Procedures Manual. Company shall operate the Parking Facilities and Shuttle Bus System in accordance with the Procedures Manual. The Procedures Manual shall, at a minimum, address the following topics:

- a. General operating procedures for the Parking Facilities and Shuttle Bus System,
- b. Shuttle Bus routes and Headways,
- c. Staffing Schedules,
- d. Customer relations,
- e. Cash handling, credit card handling, reconciliation and refund procedures,
- f. Procedures for alerting the City to maintenance problems,
- g. Employee job descriptions and guidelines,
- h. Employee financial responsibilities,
- i. Internal financial controls,
- j. Audit (both procedural and operational) procedures, including procedures for auditing each cashier at the end of each shift,
- k. Reports to the City,
- l. Handling of non-standard transactions,
- m. Handling of suspected and known employee theft,
- n. Emergency procedures,
- o. The role, responsibilities and duties of Company and its managers and staff under the ABIA Business Continuity Plan, and Incident Response Plan,
- p. A plan to transition management of the Parking Facilities to a another manager as seamlessly as possible in the event that another parking operator is selected to manage the Parking Facilities upon expiration or earlier termination of this Agreement,
- q. Procedures for the removal, towing and sale of abandoned and other vehicles,
- r. Cleaning and Maintenance Schedules,
- s. Nightly Vehicle Inventory Procedures,
- t. Procedures for servicing and maintaining the Revenue Control Equipment and Systems, including the respective roles and responsibilities of Company and the

Revenue Controls System Contractor,

- u. Ticket Inventory and Storage Procedures, and
- v. Such other matters as are to be included under this Agreement.

If the Director disapproves the Company's Procedures Manual, Company shall promptly make such corrections as directed by the Director and submit a revised document. All procedures and standards shall, in the reasonable discretion of the Director, be subject to reasonable changes at any time. The City, at its sole discretion, may amend, or require Company to amend, the Procedures Manual periodically. The City shall be the sole judge of Company's compliance with Procedures Manual. Distribution of the Procedures Manual will be limited and controlled as directed by the City. Company shall prepare and distribute to its employees extracts and summaries of the Procedures Manual relevant to the particular job functions for operation of the Parking Facilities and Shuttle Bus System. The Procedures Manual is the property of the City, but nothing herein shall preclude Company from re-using or distributing those portions of the Procedures Manual that were developed by Company and not modified by the City.

8. PARKING FEES AND RATES; PARKING REVENUES

- 8.1 **Determination of Parking Fees and Rates.** The Parking Fee Schedule shall be established by the City and shall be subject to change by the City, at its sole discretion, upon ten (10) days written notice to Company. Company shall charge Customers only those rates which are established from time to time by the City. Company shall not permit complimentary use of parking spaces except in accordance with the Parking Fee Schedule or written authorization from the Director.
- 8.2 **Holding Monies.** The Company shall collect parking and other fees from Customers in accordance with the Parking Fee Schedule, and shall hold in trust for and on behalf of the City all such monies. The Company shall promptly deposit all monies and credit card receipts into a City-designated bank account daily, on Monday after weekends, and the next business day following bank holidays, or other schedule set by the City. It is Company's responsibility to protect parking revenues and to operate efficiently within the Revenue Control System established by the City.
- 8.3 **Overcharges and Undercharges.** If Company charges any Customer an amount greater than that authorized in the Parking Fee Schedule in effect at the time, the amount by which the actual charge exceeds the authorized rate shall constitute an overcharge which Company shall, if possible, promptly refund to the Customer, or otherwise shall be deposited in the City's bank account. Refunds of overcharges will be handled in accordance with the Procedures Manual. The amount of any such refund issued by Company from Company funds shall be a reimbursable expense under Section 11.4, provided that (a) Company provides substantiating evidence of such refund to the City and (b) the amount of the overcharge had previously been deposited by Company in the City's bank account. Except in cases that the Director determines are caused by an error or omission of the Department, or a computer or other equipment malfunction, whenever (a) Company charges any Customer a price which is less than that required under the Parking Fee Schedule, (b) Company fails to collect any parking fee which Company is required to collect, or (c) any fees which Company is required to collect on behalf of City are lost or

unaccounted for while the same are in the custody or control of Company for any reason whatsoever, then the amount by which the actual charge is less than that required under the Parking Fee Schedule, the amount of the fee which Company failed to collect or the amount which is lost or unaccounted for, shall, without demand by the City, be paid by Company into the City's designated bank account within two (2) business days after Company learns (or, in the exercise of reasonable diligence, should have learned) of such undercharge, failure to collect, or such loss or failure to account, and the cost of replacing such funds shall not be a reimbursable expense. Company shall promptly investigate each undercharge, failure to collect, loss or failure to account for any funds hereunder, and promptly provide to City a written report of the results of the investigation. Company shall not be required to reimburse the City for funds which are not collected as a result of the extension of credit to a Customer in strict accordance with written policies approved by the City including policies regarding collection of receivables.

8.4 **Losses.** If Daily Receipts or Gross Receipts are lost, stolen, or otherwise unlawfully removed from the custody and control of Company, Company shall continue to be responsible therefor, and shall deposit in the bank designated by the City, from Company's own funds, a like sum of monies within forty-eight (48) hours of discovery of the loss, theft, or unlawful removal. If the loss, theft, or unlawful removal is insured or otherwise secured by Company, any payments made to the City by such insurance company, bonding company, or other, shall be reimbursed to Company to the extent of such insurance proceeds or security deposit.

8.5 **Credit Cards.**

- A. Company must accept at a minimum MasterCard, Visa, and American Express from Customers in payment for parking at the Airport. Company shall provide credit card processing services, and the cost of such credit card processing services is a reimbursable expense.
- B. Company shall implement the necessary policies, procedures and technologies to achieve Payment Card Industry Data Security Standards (PCI DSS) compliance. These responsibilities include:
 - 1) Meeting the current requirements of the PCI DSS and any future revision.
 - 2) Requiring by contract that engaged third parties meet all PCI security standards.
 - 3) Working with Independent Scan Vendor.
 - 4) Protecting confidential data.
- C. **COMPANY SHALL BE LIABLE FOR AND INDEMNIFY AND HOLD THE CITY HARMLESS FROM ALL LOSSES, DAMAGES, CLAIMS AND LIABILITY ARISING OUT OF ANY BREACH OF PCI DSS, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.**

9. COMPENSATION

9.1 **Management Fee**

- A. The City shall pay to Company a fixed management fee (the "Management Fee") as compensation to Company for its services under this Agreement. The Management Fee shall cover Company's profit, corporate administrative, operating and overhead expenses, and any other Company expenses incurred in the operations described in this Agreement that are not reimbursable under Section 11. The City shall pay the Management Fee to Company in equal monthly installments in arrears, along with reimbursable expenses as provided in Sections 11.2 and 11.4. If the term of this Agreement commences or ends on any day other than the first and last day, respectively, of a calendar month, the Management Fee due hereunder for a portion of such month shall be prorated based upon the actual number of days in the month. The Management Fee payable to the Company shall be as follows:

<u>CONTRACT YEAR</u>	<u>ANNUAL MANAGEMENT FEE</u>
1	\$ 419,988
2	\$ 432,588
3	\$ 445,565
4	\$ 458,932
5	\$ 472,700
Option Year 1*	\$ 486,881
Option Year 2*	\$ 501,488

* If exercised by the parties.

- B. Notwithstanding any other provision hereof, the City shall have the right to set off and deduct any amounts due to the City from Company under this Agreement from the Management Fee or reimbursable expenses payable by the City to Company.
- C. The Management Fee is fixed and shall not be adjusted for any change to, alteration of or addition to the Parking Facilities or Company's other responsibilities under this Agreement, except by contract amendment signed by both parties.

9.2 **Incentive Fee.**

- A. To encourage Company to strive for superior performance under this Agreement, Company shall be entitled to receive, as additional compensation, an annual incentive fee ("Incentive Fee") if Company successfully meets specified performance goals. The maximum amount of the Incentive Fee for any Contract Year shall ten percent (10%) of the fixed Management Fee for such Contract Year. The Incentive Fee will be calculated at the end of each contract year based on a 100 point scale. If 100 points are awarded, the maximum incentive will be paid. If less than 100 points are awarded, the incentive fee shall be reduced proportionately.

- B. The Parties shall meet annually no later than the 90th day before the end of each Contract Year to determine the performance measures and associated point value of each for the following Contract Year. The performance measures and their respective point values shall be in writing, and when signed by both parties, shall be incorporated into and made a part of this Agreement. If the Parties are unable to agree upon performance measures and their associated point values by the 60th day before the end of a Contract Year, the Director may unilaterally develop and implement performance measures for the following Contract Year.
- C. Depending on the degree to which Company achieves the performance measures in any Contract Year, Company may be awarded all, none, or any part of the Incentive Fee. Company shall be responsible to document its achievement of the performance measures and eligibility for Incentive Fees for each Contract Year. Within sixty days after the end of each Contract Year, Company and the Department shall meet to review Company's performance and consider the amount of incentives, if any, earned for such Contract Year. If Company and the Department are unable to agree upon whether Company's met the applicable performance measures, or the amount of the Incentive Fee earned for such Contract Year, the decision of the Director shall be final.
- D. Company shall distribute at least one-half of the Incentive Fee earned in any Contract Year to its managers, contractors, and employees at the Airport in a manner deemed by Company to best reward past good performance and encourage future good performance.

10. LIQUIDATED DAMAGES

The parties acknowledge that failure by the Company to perform certain of its obligations under this Agreement will cause damages to the City that would be difficult to quantify. Therefore, it is agreed that the City, for the respective specific violations or omissions of the Company described below, may assess liquidated damages, as listed herein. Liquidated damages shall not be deemed to be a penalty, and shall be deducted from the Management Fee payment due the month following the date the liquidated damage is assessed. The provisions of this Section shall not preclude the City from exercising any other right or remedy available to the City for breaches of this Agreement by the Company. Liquidated Damages shall be assessed for the following:

- 10.1. **Unaccounted-for Transactions:** Unaccounted-for transactions in a month shall be calculated by adding the number of vehicles parked in the facilities at the start of the month to the sum of the number of tickets issued during the month, the number of credit card-in entries during the month and the number of PPP-in entries during the month, and subtracting the sum of tickets collected during the month, the number of credit card-out exits during the month, the PPP-out exits during the month and the number of vehicles parked in the facilities at the end of the month. Documented unused tickets during the month, such as system test tickets and damaged tickets, shall be subtracted from the tickets issued when performing this calculation. Company shall pay to the City the following liquidated damages for each unaccounted-for transaction:

<u>UNACCOUNTED FOR TRANSACTIONS AS A PERCENTAGE OF TOTAL TRANSACTIONS</u>	<u>CHARGE PER TRANSACTION (IN RANGE)</u>
Less than or equal to 0.2%	No Damages
0.2% to 0.4%	\$5.00
0.4% to 0.6%	\$10.00
0.6% to 1.0%	\$15.00
More than 1.0%	\$20.00

10.2 **Failure To Timely Submit Reports And Deliverables:** The failure of Company to submit any report or deliverable required under this Agreement by the third business day after the due date (as specified herein, or as extended in writing by the Director) shall result in the imposition of liquidated damages, as follows:

Any Audit Report required under Section 14	\$250 per day
Monthly Reports (§11.1)	\$100 per day
Certificates of Insurance (§17.8)	\$100 per day
Performance Bond/Letter of Credit (Section 19)	\$100 per day
Other reports and deliverables	\$100 per day

10.3 **Violations of Procedures Manual, etc.** If the Department determines that Company has failed to (a) comply with any material provision of the Procedures Manual (Section 7), (b) properly provide the maintenance and custodial services under §4.20, (c) properly maintain the Revenue Control Equipment under Section 4.8, or (d) comply with Airport Rules and Regulations (Section 4.21), the Department may send a written Notice of Violation to Company. If Company either denies that the violation occurred, or asserts that the violation was the result of an event of force majeure, it shall send written notice to the Director within ten (10) days of receipt of the Notice of Violation. The Director shall make the final determination on all Notice of Violation protests in good faith. Commencing with the third and each subsequent unexcused Notice of Violation issued within any rolling twelve month period during the term of this Agreement, liquidated damages shall be imposed in the amount of \$100 per Notice of Violation.

11. BUDGET AND REIMBURSEMENTS

Company shall prepare and submit its annual operating Parking Facility and Shuttle Bus operations budgets in coordination with the City's fiscal year, which commences on October 1 of each calendar year. Budget planning and preparation shall begin not later than February of each year, with the proposed budget submitted by Company to the Director not later than April 1st. Budget amendments must be approved by the Director in writing to be effective.

11.1 **Monthly Report.**

- A. Company shall prepare and submit a monthly report to the Director by the 20th of each calendar month with projected costs of maintaining and operating the Parking Facilities and Shuttle Bus System for the following month based on the

staffing levels established in accordance with Section 6.2. The form of the monthly report shall be reasonably satisfactory to the Director. Adjustments may be made between budgeted Line Item accounts by written request and approval of the Director. The same categories of personnel and operating costs used in the annual budget shall be itemized in the monthly report as follows:

- 1) Salaries and wages,
 - 2) Employee Benefit Costs,
 - 3) Equipment, Supplies, and Services,
 - 4) Uniform service,
 - 5) Badges,
 - 6) Cleaning supplies,
 - 7) Personnel training costs,
 - 8) Shuttle bus operations,
 - 9) Credit card processing fees,
 - 10) Third party contractual services, and
 - 11) Other items determined by the City in consultation with Company.
- B. Approved monthly expense amounts shall constitute the maximum payable for each category of expenditure, except for special items approved in advance in writing by the City.
- C. No wages for hours of coverage provided by Company in excess of the coverage specified by the City shall be reimbursed unless approved by the Director.

11.2 **Reimbursable Expenses.** Subject to all of the terms and conditions of this Agreement, the City shall reimburse Company for the following costs and expenses as actually incurred and paid by Company in the management and operation of the Parking Facilities and Shuttle Bus System, up to the amount of the applicable Operating Budget as described above.

- A. Base payroll costs, including regular salaries and wages (including sick days, vacations and holiday pay), employee incentives, and overtime;
- B. The cost of employee benefits, including FICA and State Unemployment, Federal Unemployment, 401-K expenses, retirement benefits, health, dental and life insurance, and worker's compensation insurance incurred and paid by Company on behalf of employees employed by Company at the Airport only;
- C. The cost of licenses, permits and fees associated therewith obtained in accordance with Section 16 (excluding drivers' licenses for operators of motor vehicles), pre-employment testing, criminal history checks, local personnel recruiting expenses to include advertising for recruits, local cellular telephone service for up to two (2) cellular telephones;
- D. The reasonable cost of necessary and appropriate training for Company employees working at the Airport;

- E. Maintenance and repair costs for cash registers, cashier booths and cashier stools;
 - F. The cost of all Revenue Control Equipment operating supplies such as journal tapes, ribbons, revenue control forms, computer printouts of license plate inventories and other similar supplies;
 - G. Office supply costs, including the cost of copier supplies and postage;
 - H. The cost of cones, flags, flashlights, office janitorial supplies, stools for cashier booths, name plates for cashier booths, and the cost of forms and printing;
 - I. The cost of uniforms;
 - J. The cost of providing an independent outside annual certification (audit) of revenues and expenses as required by Section 14.3, and the cost of obtaining an independent Service Auditor's Report on Controls under Section 14.5;
 - K. Shuttle Bus Costs;
 - L. Credit Card Processing Fees;
 - M. The cost of third party armored car and revenue depository service; and
 - N. Amounts paid to third parties for marketing expenses under Marketing Plans approved by the Director, including, the cost of media purchases (less rebates or discounts), market research, printing, logo licensing, promotional items, and production.
 - O. The cost to operate and maintain the "SMART DRIVE" system, if installed.
- 11.3 **Non-Reimbursable Expenses.** Notwithstanding any provision in Section 11.2 to the contrary, the following are not reimbursable expenses:
- A. Salaries, costs and expenses of non-resident or corporate office legal, internal audit, administrative, bookkeeping, and executive personnel of Company;
 - B. Home office travel and accommodations, home office and local entertainment and off-site general office expenses;
 - C. The costs or expenses of legal representation or of union negotiations and administration;
 - D. The cost of acquisition of any long distance telephone service or any cellular telephones other than that authorized in the above Section 11.2.C;
 - E. The cost of internet service or access;
 - F. The cost of obtaining and maintaining a cashier change fund pursuant to Section 6.4;
 - G. Any or all liquidated damages, penalties and fines paid by the Company and its employees;
 - H. Financing costs associated with Company's Change Fund;
 - I. Amounts payable by Company to City under the indemnification provisions hereof;

- J. The cost of the Performance Bond or Letter of Credit which Company is required to obtain in accordance with the provisions of Section 19 below and the cost of the insurance Company is required to provide in accordance with the provisions of Section 17 below, except for worker's compensation insurance;
- K. The cost to purchase, operate and maintain Company's service vehicles, as described in Section 4.17B;
- L. The cost of acquiring jump start units and tire inflation equipment;
- M. The cost of acquiring office equipment, furniture and computers;
- N. The cost of repairs for damages caused by negligence, willful misconduct, or omissions of Company or its employees;
- O. The cost of fuel Company uses on disabled Customer vehicles;
- P. The cost (including travel expenses) of meetings between executive level representatives of Company and City management staff incurred pursuant to Section 4.23; and
- Q. The cost of providing secondary procedural audits and other internal audits performed by Company managerial or corporate staff, as required by Section 14.4 and in accordance with the Procedures Manual.

11.4 **Reimbursable Non-Budgeted Expenses.** Subject to all of the terms and conditions of this Agreement, the City shall reimburse Company for non-budgeted costs and expenses actually incurred and paid by Company in the management and operation of the Parking Facilities as described below, subject, except as otherwise provided below, to the prior written approval of the Director in each instance.

- A. The cost, as agreed upon by the City, of any additional insurance policies, coverages, or increased limits of liability City requires Company to provide pursuant to Section 17.10.A below;
- B. All base payroll costs, including regular salaries and wages, sick days, vacation and holiday pay, employee incentives, new employee training (local), overtime, and all associated employee benefits as described in Section 11.2. above incurred by Company pursuant to Section 6.2.B above; provided, however, that the hourly wages for any individual employee added shall be within the wage ranges for the position such employee is filling as set forth in the Procedures Manual;
- C. The cost of refunds issued by Company pursuant to Section 8.3 to the extent made reimbursable under that Section;
- D. Costs of materials used in maintenance, repair and servicing of the Revenue Control System as authorized pursuant to Section 4.8;
- E. Costs incurred in moving vehicles in an emergency or at the Director's request (if not collectible from the owner or operator of the vehicle after reasonably diligent efforts) as provided in Section 30;
- F. Costs resulting from the addition by the City of any parking facility or operation to the Parking Facilities;

- G. The cost of obtaining an independent (third-party) operational audit pursuant to Section 14.2;
 - H. Costs incurred in the operation of any Temporary Parking Facility; and
 - I. Costs incurred in such other additional activities as the Director shall, in writing, direct Company to undertake hereunder; for which payment is due before a budget amendment can be submitted and approved.
- 11.5 **Invoice.** Company shall pay all costs and expenses connected with its operations when due. Company shall submit to the City, on or before the twentieth (20th) day of each month, itemized statements of all approved reimbursable expenses incurred and paid during the previous calendar month. Each such statement shall be accompanied by complete supporting documentation, proof of charges and disbursements, and other supporting documents as the City may from time to time request, including, but not limited to, paid invoices, payroll records, vehicle service records, paid checks and required ACDBE subcontractor reports.
- 11.6 **Purchases from Affiliates.** Company shall be entitled to reimbursement for the cost of goods and services purchased from an affiliated company, (i.e., a company which it controls, is controlled by or is under common control with) only to the extent Company has complied with the requirements of Section 4.9 and Section 20, and is able to demonstrate to the satisfaction of the Director that the prices for such goods and services are no greater than the lowest price available for comparable goods and services. Company must expressly identify all transactions with an affiliated company on its monthly itemized statement.
- 11.7 **Reimbursement of Budgeted Expenses.**
 On or before the twentieth (20th) day of each month, Company shall submit to the City a written report of all approved expenses incurred and paid in the operation of the Parking Facilities and Shuttle Bus System for the preceding month of operation. Reimbursement of the expenses under Section 11.2, shall be made by the City within thirty (30) days of its receipt from Company of monthly itemized statements submitted pursuant to Section 11.5 provided that (i) the statements are in the format required by the City; (ii) all appropriate supporting documents are attached to each statement; and (iii) the statement contains a statement that the City has not previously reimbursed Company for any of the itemized costs and expenses.
- 11.8 **Reimbursement of Authorized Non-Budgeted Expenses.** Reimbursement of the costs and expenses under Section 11.4 shall be made by the City within approximately thirty (30) days of its receipt from Company of monthly itemized statements provided that (i) the costs and expenses are approved as required by Section 11.4, (ii) the statements are in the form required by the City, (iii) the statement contains a statement that the City has not previously reimbursed Company for any of the itemized costs and expenses, and (iv) all appropriate supporting documents are attached to each statement.
- 11.9 **Objections to Invoices/Payment.** The City shall notify Company in writing of its objection to any item or items of expense which it deems to be non-reimbursable. Any such notice shall set forth the nature of the City's objection and shall be accompanied by the City's payment of the undisputed portion of such statement. If a disputed item is justified to the

reasonable satisfaction of the Director, it shall be promptly approved and paid.

- A. *Interest on Late Payments.* If the City does not timely pay a Contractor invoice as provided above, interest shall accrue on the unpaid balance at the interest rate stated in Texas Government Code Section 2251.025.
 - B. *Subject to Appropriations.* The City's payment obligations are payable only and solely from funds appropriated and available for the purpose of this Agreement. The absence of appropriated or other lawfully available funds shall render the Agreement null and void to the extent funds are not appropriated or available. The City shall provide Company written notice if the City fails to make an adequate appropriation for any fiscal year to pay the amounts due under this Agreement, or reduces any appropriation to an amount insufficient to permit the City to pay its obligations under this Agreement.
 - C. *Additional Sums Due the City.* If the City has paid any sum or sums or has incurred any obligation or expense for which Company has agreed to pay or reimburse the City, or if the City is required or elects to pay any sum or sums or incurs any obligation or expense because of the failure, neglect or refusal of Company to perform or fulfill any of the terms or conditions of this Agreement, then the City may set-off and deduct such amount from any amounts due Company under this Agreement. If the amount owed the City exceeds the amounts available for set-off, Company shall, immediately upon demand by the City, reimburse the City for the cost thereof. Any sum due from Company to the City under the provisions of this Paragraph shall bear interest at the rate stated in Section 11.10 from the due date thereof until paid in full.
- 11.10 **Late Payment:** If any payment required to be paid to the City hereunder by Company is not made when due, Company shall pay the City a late payment penalty equal to five percent (5%) of the amount due. Thereafter, interest shall accrue on all late payments at the lesser of one percent (1.0%) per month or the highest amount permitted by law per month on the amount outstanding for more than thirty (30) days from the payment due date.

12. MARKETING PROGRAM AND COMPENSATION

- 12.1 **Parking Marketing Services.** Company shall provide the following services:
- A. *Marketing Plan.* Provide to the Director for approval a general Parking Products Marketing Plan ("Marketing Plan"), with approximate budgets, aimed at marketing the Airport On-Site Parking Products. The marketing budget shall be set as provided in Section 11. The Marketing Plan shall be updated annually, by October 1st of each successive Contract Year. The Marketing Plan shall include the following information below for EACH PARKING PRODUCT, to detail all components and execution and budget of the Company's recommended marketing strategies:
 - 1) Product or event description;
 - 2) Marketing objectives;

- 3) Market research data (if available) to support the endeavor;
 - 4) Target audience(s);
 - 5) Listing of campaign elements, such as ads, print pieces, E-marketing, TV commercial, and banners;
 - 6) Deliverables and the timeline for submission to the Director;
 - 7) Aviation Department supplemental assistance, such as advertising trade, publicity, and use of Web site;
 - 8) Budget for media buy;
 - 9) Aviation trade enhancements;
 - 10) Proposed fee structure, and the estimated fees for creative execution;
 - 11) Budget for printing and other third party costs;
 - 12) Evaluation methodology; and
 - 13) Other elements to convey marketing planning for each Parking Product
- B. *Market Research:* Company shall plan, manage, create survey instruments, recommend methodology, execute, analyze, compile, report and present to Airport market research as requested in writing by the Director.
- C. *E-Marketing.* The Company shall utilize, where appropriate, the emerging marketing opportunities being presented by social websites, web video, iPod applications and other electronic media to communicate with the target market. Company shall comply with all laws, rules and regulations applicable to customer E-Marketing initiatives.
- D. *Account Service and Media Purchases.* Company shall provide Account Service and Media Purchases for parking marketing strategies as approved in writing by the Director in accordance with:
- 1) The approved Marketing Plan;
 - 2) As required by the Director;
 - 3) Additional approved plans recommended by Company.
- E. *Authorization Procedures for Creative Direction and Collateral.* Prior to public execution of strategies by Company, the Department must approve in writing purchase summaries and creative strategies to implement the campaign.
- F. *Design Standards.* Company shall observe and comply with the Airport identity design standards that are in place for use of Airport logo and on-Airport and in-terminal signs.

12.2 **Deliverables.**

- A. Company shall provide a monthly Marketing Services Budget, including a matrix for each Product or event to be marketed not less than 45, nor more than 90 days, prior to each campaign kick off, to include:

- 1) Media buys planned,
 - 2) Creative strategy costs,
 - 3) Trade purchases,
 - 4) Department resources needed,
 - 5) Reimbursable Third party costs, and
 - 6) Other costs.
- B. Affidavits to demonstrate media buys purchased actually ran, including make goods for pre-empted advertising spots, proof of performance (post analysis indicating percentage of target market reached) (monthly);
 - C. Any Advertising evaluation reports as measured by Company or independent party (periodic);
 - D. Other Company substantive information important to determining success of marketing campaigns;
 - E. Other information or documentation that are required to be provided to the Department under a Marketing Plan; and
 - F. Such other reports related to the Marketing Program that the Director may request.
- 12.3 **Marketing Program Evaluation.** The Director shall evaluate the success of Company's marketing endeavors to promote Airport's parking products and services to modify, delete, or continue marketing campaigns for each product.
- 12.4 **Coordination With Department Of Aviation Internal Resources.** Marketing of Airport parking is not an exclusive right granted to Company. The Department may, in its discretion, elect to enhance or replace Company's parking marketing efforts using its own resources. Company shall cooperate with the Department and coordinate Company's Marketing Program with the Department's own marketing efforts, including trade buys to supplement the media purchases.
- 12.5 **Reimbursement:** The City shall reimburse Company for marketing service expenses as provided in Section 11.
- 12.6 **Miscellaneous.**
- A. *Correction of Errors.* Errors or mistakes made by Company or an advertising agency shall be corrected by party responsible for such error or mistake at its cost.
 - B. *Creative Ownership.* All creative work and materials developed by Company shall be owned by the Department, and may be used, or re-used for any purpose, including, entrance into airport marketing campaign competitions, with appropriate reference to the subcontractor(s) for work credit.

13. OPTIONAL PARKING PRODUCTS AND SERVICES

- 13.1 **New Products and Services.** During the term of this Agreement, the Department may elect to add new or enhanced parking products and services ("New Services"). New Services may include, but not be limited to, reserved parking, dedicated VIP parking areas,

contract parking, pay-on-foot capability, providing covered parking, car washing and detailing, and oil and lube services.

- 13.2 **Procedure.** If the Department elects to add one or more New Services, it shall notify Company in writing and the parties shall meet to determine the necessary scope of work, changes in procedures if any, and the cost and budgetary impact. Company shall implement the New Services upon written direction from the Director; provided, however, Company, shall not be required to implement any New Service that would require Company to expend its own funds or to incur any expenses which are not reimbursable under Section 11, without Company's written consent. Implementation of New Services shall not entitle Company to an increase in Company's Management Fee.

14. AUDIT

- 14.1 **City's Audit Rights.** Company shall, at all times during the term hereof, maintain at the Airport complete and accurate books and records of its operations on the Airport in a form consistent with good accounting practices, including such books and records as would normally be examined by an independent certified public accountant in performing an audit or examination of Company's receipts and expenses in accordance with generally accepted auditing principles. If any books and records required by the City for examination or audit are not available at the Airport, Company shall deliver such information to the City within ten days of written demand, or Company shall pay all travel, lodging, meal and other expenses incurred by the City's auditor to examine such information at the location where Company keeps such books and records. Such books and records shall contain an itemized record of all receipts collected in connection with Company's operation of the Parking Facilities, of all other receipts, if any, derived by Company from its operations on the Airport, and of all expenses incurred in performing its obligations hereunder, in such detail as the City may request. All printed records produced by the Revenue Control System or Revenue Control Equipment shall be the sole property of the City, and Company shall have no access to the printed records console to make repairs, alterations or adjustments, except in the presence of the representative of the City designated by the Director for such purpose. All such books, records, supporting documents, and accounts shall be kept in accordance with generally accepted accounting principles and shall be available for inspection by the Director and his duly authorized representatives, at any time during reasonable business hours, for a period of no less than three (3) years after the end of each Contract Year (or, with respect to any year in which this agreement is terminated prior to the expiration thereof, the portion of such Contract Year) to which they pertain. The City shall further have the right, upon reasonable written notice to Company, to cause an audit to be made of the books and records of Company which relate to its operations at the Airport for any or all of the Contract Years (or, with respect to any year in which this agreement is terminated prior to the expiration thereof, the portion of such Contract Year) which ended no more than three (3) years prior to the date of the commencement of such audit. If, prior to the expiration of the above-stated record retention period, any audit or investigation is commenced by the City, or any claim is made or litigation commenced relating to this Agreement by the City, Company or a third party, the records shall be maintained, and the City shall continue to have the right to inspect such records in the manner stated above, until the audit, and any resulting claim or litigation is finally resolved

(including the determination of any and all appeals or the expiration of time for an appeal). If, as a result of an audit, it is established that Company is liable to the City for the payment of any sum, Company shall within ten days of receipt of written demand from the City, pay such sum to the City, together with interest thereon at the rate set forth in Section 11.10., from the date such sum should have been paid. Further, if such audit establishes that Company has overstated its reimbursable expenses by two percent (2%) or more or understated Gross Receipts by one percent (1%) or more, for any twelve-month or other audited period, in connection with the Company's operation of the Parking Facilities or Shuttle Bus System, then the entire expense of such audit shall be borne by Company and not be considered a reimbursable expense. The City's rights under this paragraph shall survive the expiration or earlier termination of this Agreement. The City's audit rights under this Section shall apply equally to any subcontractor to Company in the performance of Company's duties under this Agreement, and Company shall ensure the City's audit rights are preserved by inserting these terms and conditions in Company's subcontracts.

- 14.2 **Operational Audit.** The Director may direct the Company at any time to obtain an independent audit of Company's procedures for handling its operations pursuant to this Agreement and in accordance with the standards defined in the Procedures Manual (an "Operational Audit"). The audit shall be performed by a qualified auditor or parking consultant. Selection of auditor or consultant and scope of work, objectives, methodology, audit schedule and estimated costs of the audit must be pre-approved by the Director or his designee in writing. If so approved in advance, the reasonable cost of an Operational Audit shall be a reimbursable expense under Section 11.4. Such audits shall be completed within two (2) months after the Director's request, or as otherwise specified in notice directing the Operational Audit. Upon completion of an Operational Audit, the auditor shall file with the Department a written statement in a format approved by the Director summarizing the audit and the results thereof. The Company shall provide a written response, to the auditor and to the Department, within ten (10) days, for any report findings and recommendations. Upon request of the Director, the Company shall meet with the Director to discuss the results of an Operational Audit.
- 14.3 **Annual Certification of Revenues and Expenses.** Within ninety (90) days after the close of each Contract Year (or termination of this Agreement, if the Agreement is terminated prior to the expiration of a Contract Year), Company shall provide to the City a written report of an independent certified public accountant (CPA) licensed to practice in the State of Texas certifying (a) the actual amount of Gross Receipts required to be collected by Company hereunder and the amount of Gross Receipts actually collected, (b) the actual amount of any other revenue which Company is required to collect and the amount of all such revenue actually collected, and (c) the actual amount of reimbursable expenses to which Company was entitled for such year or portion thereof and the amount of such expenses Company actually received. The Company's independent CPA shall certify that the report has been prepared in accordance with generally accepted auditing standards and the terms and provisions of this Agreement. If such report indicates that the reimbursable expenses for such period have been underpaid, then the amount of such underpayment shall be added to the fees next due and owing to Company, unless the term hereof has expired in which event such amount shall be promptly refunded by the City to Company. If such report indicates that any Gross Receipts collected or required to be collected by Company hereunder has not been deposited into the bank account

designated by the City for such purpose, Company shall forthwith pay to the City a sum equal to the difference between the amount of the Gross Receipts deposited and the amount of Gross Receipts which should have been deposited together with interest at the rate stated in Section 11.10. from the date such amount was underpaid. In addition, if such report indicates that any fees or other reimbursable expenses for such period have been overpaid, then Company shall forthwith pay to the City a sum equal to the amount of such overpayment together with interest at the rate stated in Section 11.10. from the date such amount was overpaid. Additionally, if the annual certification audit establishes that Company has overstated its reimbursable expenses for the period audited by two percent (2%) or more, or understated Gross Receipts by one percent (1%) or more, then the full cost of the annual certification shall be borne by the Company and shall not be considered a reimbursable expense. The City's rights under this section shall survive the expiration or earlier termination of this Agreement.

- 14.4 **Secondary Procedural Audits.** Company shall cause audits of its accounting and operational procedures under this Agreement to be performed by an internal auditor from Company's home office. These audits shall be performed at least quarterly during each year of this Agreement, in accordance with the standards defined in the Procedures Manual. These audits shall include quarterly on-site field survey and ticket audits by internal auditors from Company's corporate office; audits of credit card activity, retrieval and charge-backs; timecard audits; operational and compliance audits; and other audits as necessary or as directed by the City, and in accordance with the Procedures Manual. Upon completion of each such audit, the auditor shall file with the City a written statement in a format approved by the City, stating when the audit was performed, the time period covered by the audit, the scope and methodology of the audit, and audit findings, conclusions and recommendations, including, as appropriate: the accuracy of Company's accounting of the receipts and deposits, the accuracy of exception transaction verifications performed on site, the accuracy of ticket accountability, the accuracy of Company's reports, including, without limitation, reports with respect to levels of staffing and adherence by Company to the terms and conditions of this Agreement. Such audits shall also confirm that all reimbursable expenses paid by the City were due and payable under the terms of the Agreement. The Company shall file a written response to the auditor and to the Department, within ten (10) days, for all audit reports containing one or more findings or recommendations for improvement, stating what actions will be taken by Company, and when, to correct any deficiencies or implement necessary improvements.
- 14.5 **Service Auditor's Report on Controls.** Company shall obtain and provide the City a *Service Auditor's Report on Controls Placed in Operation at a Service Organization and Tests of Operating Effectiveness* for Company's operations at the Airport within ninety (90) days after each Contract Year under this Agreement, or as otherwise directed in writing by the Director. This audit shall be conducted and reported by an independent certified public accountant (CPA) licensed to practice in the State of Texas and shall be completed in conformity with the standards established by the American Institute of Certified Public Accountants (AICPA). The audit report shall include detailed testing of controls and their operating effectiveness.

15. TELECOMMUNICATIONS SERVICES

- 15.1 **Voice, Data and Video Cabling:** City has installed a Premise Distribution System ("PDS"), consisting of copper and fiber optic cables, that spans the Airport campus. The Company shall procure and install all equipment, conduit and other hardware necessary to connect the Premises to the PDS. Wiring will be installed by City. All external telecommunications providers shall terminate at the demarcation point located in the City's Communications Center. Company shall use the PDS.
- 15.2 **Telephone Services:** The City will provide to Company one telephone per approved full-time employee, excluding cashiers, drivers, and attendants, for use in its offices at the Airport and the City shall pay the cost of all local telephone service incurred in the use of such telephones. All long distance and other telephone charges incurred by Company shall be paid by Company and shall not be a reimbursable expense. City has installed a Shared Tenant Service telephone system ("STS") to serve the airport campus. Telephone service is available through the STS to all Airport tenants. Company may elect to install its own telephone system, and if so, must provide, at its sole expense, and not as a reimbursable cost, its own switches, instruments and other equipment necessary to interface via the PDS to the Airport telecommunications demarcation point located in the Airport Communications Center. Company shall not enter into any telephone agreement which might impede City's plan to declare a Minimum Point of Entry, designate the demarcation point, or the implementation of STS.
- 15.3 **Data Communications Service:** The PDS carries data transmission services throughout the Airport site. All data transmission and switching equipment used must comply with City's specifications. Shared Tenant Services shall include data transmission lines (Frame Relay, ISDN, and T1) or Company may choose to use the PDS to connect to an alternate provider at the demarcation point.
- 15.4 **Invoicing and Payment:** Company must apply for and sign the Airport Shared Telephone System Terms of Usage. Company understands that it will be billed monthly for its long distance telephone charges under this section.
- 15.5 **Internet Access.** The City does not provide internet access to its contractors or concessionaires. Company must contract with an internet service provider of its own choosing as a non-reimbursable expense.

16. LICENSES, PERMITS AND TAXES

The City shall report and pay State of Texas sales and use taxes assessed on revenue received from parking operations under this Agreement, and Company shall not deduct any amount from Gross Receipts for such sales and use taxes prior to depositing such funds into the City's account. Except for sales and use taxes, Company shall pay, on or before their respective due dates, to the appropriate collecting authority, all ad valorem, personal property taxes, excise or occupation taxes that may be levied or charged in connection with the operation and management of the Parking Facilities hereunder. Company shall obtain and pay for all licenses or permits necessary or required by Applicable Law for the construction of improvements and/or the installation of equipment and furnishings, and as otherwise necessary for the conduct of its operations hereunder. Company shall, after notifying the City of its intention to do so, have the right to contest in good faith by all appropriate proceedings, the amount, applicability, or validity of any such tax, or assessment. Purchases of goods or services for City use are generally exempt from City, State

and most Federal taxes. Applications for reimbursement may not include exempted taxes. Company may request a Tax Exemption Certificate from the City Purchasing Office. Under no circumstances shall the City ever be liable to pay, or to reimburse Company for, any tax from which the City is exempt.

17. INSURANCE

Prior to commencing any work hereunder, Company shall obtain and maintain or cause to be obtained and maintained throughout the Term of this Agreement the following types of insurance:

- 17.1 **Workers' Compensation:** Worker's compensation insurance shall afford coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Texas Labor Code Title 5) and minimum policy limits for employer's liability of \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee. The following endorsements shall be added to the policy:
- i) A Waiver of Subrogation in favor of the City, form WC 420304
 - ii) A thirty (30) day Notice of Cancellation/material change in favor of the City, form WC 420601
- 17.2 **Commercial General Liability Insurance:** Commercial General Liability Insurance shall be provided with a minimum bodily injury and property damage per occurrence limit of \$1,000,000 for coverage A (Bodily Injury and Property Damage) and coverage B (Personal and Advertising Injury); and \$1,000,000 product/completed operations limit of liability. The policy shall contain the following provisions.
- i) Blanket contractual liability coverage for liability assumed under this Agreement
 - ii) Independent Contractors
 - iii) Fire Legal Liability with a minimum limit of \$50,000
 - iv) Medical expense coverage with a minimum limit of \$5,000 any one person
 - v) The City named as additional insured
 - vi) Thirty (30) day Notice of Cancellation in favor of the City
 - vii) Waiver of Transfer of Right of Recovery Against Others in favor of the City
- 17.3 **Business Automobile Liability Insurance:** Business automobile liability insurance shall be provided for all owned, non-owned and hired vehicles, including all Shuttle Buses, regardless of whether they are titled in the name of Company, the City, or a third party vehicle lessor, with a minimum combined single limit of \$1,000,000. The policy shall contain the following provisions:
- i) The City named as additional insured
 - ii) Thirty (30) day Notice of Cancellation in favor of the City
 - iii) Waiver of Transfer of Right of Recovery Against Others in favor of the City
- 17.4 **Commercial Crime Insurance Coverage:** Commercial Crime Insurance Coverage shall

be provided for all losses emanating from the handling of the City's checks, credit card receipts, or cash, including, but not limited to, losses resulting from dishonest or criminal acts, fraud, embezzlement, forgery, misappropriation or loss of funds and errors in the processing or reporting of funds. This policy shall be written for a minimum limit of \$1,000,000.

- 17.5 **Garage Liability Coverage:** Garage Liability coverage may be provided in place of the Commercial General Liability and Business Automobile Liability policies. The Garage Liability policy shall provide a minimum limit of liability of \$1,000,000 Auto Only/\$1,000,000 Aggregate other than Auto. Coverage shall be provided for all owned, hired and non-owned vehicles, including all Shuttle Buses, regardless of whether they are titled in the name of Company, the City, or a third party vehicle lessor. The policy shall contain the following endorsements in favor of the City of Austin:
- i) Additional Insured Endorsement
 - ii) Waiver of Subrogation
 - iii) Thirty (30) Day Notice of Cancellation
- 17.6 **Property Coverage:** Property coverage shall be provided by Company to provide all risk physical loss coverage for the vehicles and equipment in the care, custody and control of Company. Coverage shall continue throughout the contract term. The limit of coverage required is \$1,000,000 for vehicles in the Company's care, custody and control at any given time. City of Austin shall be added as loss payee as its interests in claims asserted may appear.
- 17.7 **Garagekeepers Liability Coverage.** Garagekeepers Liability may be used to provide the required property coverage for vehicles in the care, custody and control of the vendor. Comprehensive and collision coverage shall be provided on a Direct Primary basis. The minimum limit for the Garagekeepers coverage shall be \$1,000,000.
- 17.8 **Certificates of Insurance:** On or before the Effective Date, Company shall deliver to the Director, for itself and its subcontractors, and at least thirty (30) days prior to the expiration of any insurance policy(ies), an original certificate(s) of insurance as evidence that all coverage required hereunder is in effect. Such certificate(s) shall name the City as an additional insured. Company shall also deliver copies of such endorsements and other evidence of the coverage set forth in the certificate of insurance as the City may reasonably request.
- 17.9 **Insurance Ratings:** Company's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- 17.10 **Other:**
- A. The City reserves the right to review the insurance requirements set forth during the Term of this Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in Applicable Law, court decisions, and the claims

history of their industry or the financial condition of the insurance company as well as the Company. Company shall provide other insurance that the City may require in its reasonable discretion. The cost of any such additional insurance shall be a reimbursable expense under Section 11.4.A. All endorsements, waivers, and notices of cancellation endorsements shall indicate:

City of Austin/Department of Aviation
Attn: Airport Risk Manager
3600 Presidential Boulevard, Suite 411
Austin, Texas 78719

- B. The "other" insurance clause shall not apply to the City where the City is shown as an additional insured on any policy. It is intended that policies required in this Agreement, covering the City and Company, shall be considered primary coverage as applicable.
- C. If insurance policies are not written for amounts specified above, Company shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- D. The City shall be entitled, upon written request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by Applicable Law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- E. Company shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificate of insurance provided by Company.

18. INDEMNIFICATION

- 18.1 **THE COMPANY WILL INDEMNIFY THE CITY FROM AND AGAINST ANY AND ALL FINANCIAL LOSSES EMANATING FROM THE HANDLING OF GROSS RECEIPTS, DAILY RECEIPTS, THE CITY'S CHECKS, CREDIT CARD RECEIPTS, OR CASH, INCLUDING, BUT NOT LIMITED TO, LOSSES RESULTING FROM DISHONEST OR CRIMINAL ACTS, FRAUD, EMBEZZLEMENT, FORGERY, MISAPPROPRIATION OR LOSS OF FUNDS AND ERRORS IN THE PROCESSING OR REPORTING OF FUNDS.**
- 18.2 **COMPANY, FOR ITSELF AND ITS AGENTS, EMPLOYEES, SUBCONTRACTORS (OF EVERY TIER), AND THE AGENTS AND EMPLOYEES OF SAID SUBCONTRACTORS, SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), HARMLESS FROM AND AGAINST ANY AND ALL COST, LOSS, EXPENSE, CLAIMS, PENALTIES, DEMANDS, SUITS, CAUSES OF ACTION, AND JUDGMENTS (COLLECTIVELY, "INDEMNIFIED CLAIMS") FOR:**
 - **DAMAGE, CONTAMINATION, OR LOSS OF THE USE OF THE PROPERTY OF ANY PERSON (INCLUDING, BUT NOT LIMITED TO COMPANY, ITS AGENTS, OFFICERS, EMPLOYEES AND SUBCONTRACTORS, THE INDEMNIFIED PARTIES, AND CUSTOMERS); AND/OR**

- **DEATH, BODILY INJURY, ILLNESS, DISEASE, WORKERS' COMPENSATION, LOSS OF SERVICES, OR LOSS OF INCOME OR WAGES TO ANY PERSON (INCLUDING BUT NOT LIMITED TO THE AGENTS, OFFICERS, AND EMPLOYEES OF COMPANY, COMPANY'S SUBCONTRACTORS AND THE INDEMNIFIED PARTIES, AND CUSTOMERS, AND REGARDLESS OF WHETHER SUCH INJURY, ILLNESS OR DISEASE BECOMES IMMEDIATELY APPARENT OR FOLLOWING A LATENCY PERIOD OF ANY DURATION),**

TO THE EXTENT ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE NEGLIGENCE (OF EVERY KIND OR DEGREE), STRICT LIABILITY, OR WILLFUL MISCONDUCT (COLLECTIVELY "FAULT") OF COMPANY, ITS AGENTS EMPLOYEES, OR SUBCONTRACTORS (OF ANY TIER), IN THE PERFORMANCE OF ANY OTHER SERVICE TO BE PROVIDED BY COMPANY UNDER THE AGREEMENT, NO MATTER HOW, OR TO WHOM, SUCH LOSS MAY OCCUR.

- 18.3 Company shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all Indemnified Claims. Maintenance of the insurance required under this Agreement shall not affect Company's indemnity obligations. Company may contest the validity of any Claims, in the name of the Indemnified Parties or Company, as Company may in good faith deem appropriate, provided that the expenses thereof shall be paid by Company. In no event may Company admit liability on the part of an Indemnified Party, without the prior written consent of the Austin City Attorney.
- 18.4 The terms of each subcontract awarded by Company under the Agreement shall contain Indemnity provisions whereby the subcontractor shall indemnify the Indemnified Parties to the same extent as described above.
- 18.5 No specification or method of performance described herein shall relieve the Company of its responsibility or liability for compliance with any and all State, Federal, or local laws, ordinances, rules, regulations or orders, nor shall any specification or suggested method of performance constitute a waiver by an Indemnified Party of its rights to seek collection against Company's insurance or its rights to seek indemnification against Company in accordance with terms of such indemnification and hold harmless provisions.
- 18.6 **IN NO EVENT SHALL EITHER PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES IN ANY ACTION OR CLAIM ARISING UNDER OR CONCERNING THIS AGREEMENT.**
- 18.7 **Claims Against Company.** In the event that any claim, demand, suit, or other action is made or brought by any person, firm, corporation, or other entity against the Company arising out of or concerning this Agreement, the Parking Facilities or the Shuttle Bus System, or the Premises, the Company shall give written notice thereof, to the City within ten (10) days after being notified of such claim, demand, suit, or action. Such notice shall enclose a true copy of all written claims, and if the claim is not written or the information is not discernable from the written claim, state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the person, firm, corporation, or other entity making such claim or that instituted or threatened to institute any type of action or proceeding, the basis of such claim, action, or proceeding; and the name of any person against whom such claim is being made or threatened. Such written notice shall be delivered either personally or by mail and shall be directly sent to the Austin City Attorney, 301 West 2nd Street, Austin, Texas 78701, with a copy to the Director.

19. PERFORMANCE SECURITY

Upon execution of this Agreement, Company shall deliver to the Director, a performance bond, the penal amount of which shall be equal to the greater of TWO MILLION DOLLARS (\$2,000,000.00) or the sum of (i) the projected first Contract Year's management fee and (ii) twenty-five percent (25%) of the projected total first Contract Year operating expenses for the Parking Facilities and Shuttle Bus System. In lieu of a performance bond, Company may, at its option, provide, cash or an automatically renewable, for the Term of this Agreement, irrevocable letter of credit drawn on a City-approved bank in the foregoing amount, as a security deposit, to be held by the City as security for the performance of Company's obligations under this Agreement. The amount of the security shall be renewed annually, prior to the expiration of the Contract Year. Within thirty days of receipt of written notice, the Company shall increase the amount of the performance bond, cash deposit, or letter of credit to equal no less than the sum of the next Contract Year's management fee plus twenty five percent of the projected total next Contract Year's operating expenses for the Parking Facilities and Shuttle Bus System. City will hold the bond, letter of credit or cash deposit as security for the performance of the Company's obligations under the Agreement. The security shall not be considered an advance payment of fees, or a measure of damages in the event of default to make good any arrearage of amounts due under this Agreement. It will guarantee payment of appropriate revenues to the City and will be forfeited in whole or in part to satisfy Company's liability in the event of its failure to pay. Upon request of the City, Company shall restore the security to its original amount or increase it to reflect increased amounts due to the City. Provided Company is not in default at the expiration of this Agreement, the performance bond, letter of credit or cash deposit or any remaining balance thereof will be returned within sixty days after the expiration date, or the date Company surrenders possession of the Parking Facilities and Shuttle Buses to the City.

20. NON-DISCRIMINATION AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

- 20.1 **Agreement subject to Title 49 CFR Part 23.** This Agreement is subject to the requirements of the U.S. Department of Transportation's Airport Concession Disadvantaged Business Enterprise Program Regulations set forth in Title 49 CFR Part 23 ("Part 23"). Company agrees (a) that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement or other agreement covered by Part 23; and (b) to include the above statements in any subsequent management or concession agreement or contract covered by Part 23 that it enters and cause those business to similarly include the statements in further agreements.
- 20.2 **ACDBE Requirements.** In accordance with 49 CFR Part 23, 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. Company 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 Management Agreement. Contractor shall comply with the provisions of Part 23, the City ACDBE Plan and the Compliance Plan. Company 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. Company shall timely submit to the City all reports required under Part 23 or the City ACDBE Plan to demonstrate Company's compliance with its Compliance Plan.

- 20.3 **Nondiscrimination and Affirmative Action.** Company, for itself, its successors and assigns, as a part of the consideration of this Agreement, does hereby covenant and agree that: (1) no person on the grounds of race, color, religion, sex, national origin or ancestry, or age, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said Premises and improvements; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, national origin or ancestry, or age, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to unlawful discrimination; (3) that Company shall use the Airport facilities in compliance with all other requirements imposed by, or pursuant to, 49 CFR Part 21 (Non-discrimination in Federally Assisted Programs of the Department of Transportation), as said regulations may be amended; and (4) Company assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, Non-discrimination in Airport Aid Program, to ensure that no person shall on the grounds of race, color, religion, national origin or ancestry, sex, age, or physical or mental handicap be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E, or such employment activities covered in Chapters 5-3 and 5-4 of the Austin City Code. Company assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Section. Company assures that it will require that any covered subtenant similarly will undertake affirmative action programs and that the subtenant will require assurance from the subtenant's sub-subtenants, as required by 14 CFR Part 152, Subpart E, to the same effect. Company agrees to post, in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause.

21. PROHIBITED ACTS AND UNUSUAL RISKS

Company shall not knowingly:

- 21.1 Commit any nuisance on the Premises, or any other portion of the Airport, or do or permit to be done anything that may result in the creation or commission of such nuisance;
- 21.2 Cause or produce or permit to be caused or produced upon the Premises, or upon any other portion of the Airport, or to cause to emanate therefrom, any unusual, noxious, or objectionable smokes, gases, vapors, or odors;
- 21.3 Permit to be used or use the Premises or the Parking Facilities for any illegal purpose or for any purpose not expressly authorized hereunder;
- 21.4 Do or permit to be done anything which may interfere with the effectiveness or accessibility

of existing and future utilities systems or portions thereof on the Premises or Parking Facilities, or do or permit to be done anything which may interfere with free access and passage in the Terminal Complex or in the streets and sidewalks adjacent thereto;

- 21.5 Do or permit to be done any act or thing upon the Premises or upon any other portion of the Airport which will invalidate or conflict with any fire insurance policies covering the Airport or any part thereof or which, in the opinion of the Director, may constitute a hazardous condition, so as to increase the risks normally attendant upon the operations contemplated herein and elsewhere at the Airport;
- 21.6 Install or permit to be installed coin-operated vending machines or pay telephones on the Premises or in the Parking Facilities without the Director's written consent, which shall not be unreasonably withheld. The Director reserves the right to install and maintain, through independent contractors, such coin-operated vending machines or pay telephones on the Premises as Company may request. All revenues received by Company from vending machine or pay telephone operators shall be considered and reported as Gross Receipts; and
- 21.7 Change operating hours of any Parking Facility without the Director's prior written approval.

22. OPERATION OF OTHER PUBLIC PARKING FACILITIES

Neither Company, nor any other person or entity which it controls, is controlled by, or is under common control with, shall own, in whole or in part, operate or manage any public parking facility located within a five (5) mile radius of the Airport terminal. During the term of this Agreement, neither Company nor any other person or entity which it controls, is controlled by, or is under common control with, shall, without the prior written consent of the Director, which shall not be unreasonably withheld, acquire, own, in whole or in part, operate or manage any new or additional public parking facilities within a ten (10) mile radius of the Airport terminal. The ten mile restriction shall not apply to other City of Austin parking facilities. Company shall not divert potential Customers or encourage them to use other parking facilities except as may be directed by the Director.

23. ENVIRONMENTAL COMPLIANCE

23.1 Definitions. In this Section:

- A. "Environmental Laws" - shall refer to and include, without limitation, all Federal, State, City, and local statutes, laws, ordinances, rules and regulations, now or hereafter in effect, and as amended from time to time, related to pollution or the protection of the environment, including those related to emissions, discharges, releases or threatened releases of or the use, handling, treatment, storage, discharge, disposal, or transportation of Hazardous Materials. Environmental Laws specifically include, but are not limited to, the National Environmental Policy Act and as amended by Superfund Amendments and Reauthorization Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Hazardous Substances Act, the

Toxic Substances Control Act, the Clean Water Act, Safe Water Drinking Act, the Oil Pollution Control Act of 1990, the Clean Air Act, the Occupational Safety and Health Administration Hazard Communication Standards, the Environmental Protection Agency Oil Pollution Prevention and Response Rule (40 CFR Part 112), the Texas Hazardous Substances Act, and the Texas Water Quality Control Act.

- B. "Hazardous Materials" - shall refer to, and include, without limitation, all substances whose use, handling, treatment, storage, disposal, discharge, or transportation is governed, controlled, restricted, or regulated by Environmental Laws, that have been defined, designated or listed by any responsible Governmental Authority as being hazardous, toxic, radioactive, or that may present an actual or potential hazard to human health or the environment if improperly used, handled, treated, stored, disposed, discharged, generated or released. Hazardous Materials specifically include, without limitation, asbestos and asbestos-containing-materials, petroleum products, solvents, and pesticides. Company's Hazardous Materials shall mean Hazardous Materials introduced to the Premises by Company.
 - C. "Environmental Claims" – shall refer to, and include, without limitation, all claims, demands, suits, actions, judgments, and liability for: (i) removal, remediation, assessment, transportation, testing and disposal of Hazardous Materials as directed by any Government Authority, court order, or Environmental Law; (ii) bodily injury, or death; (iii) damage to or loss of use of property of any person; (iv) injury to natural resources; (v) fines, costs, fees, assessments, taxes, demands, orders, directives or any other requirements imposed in any manner by any governmental agency under Environmental Laws; and (vi) costs and expenses of cleanup, remediation, assessment, testing, investigation, transportation and disposal of a Hazardous Material spill, release, or discharge.
 - D. "Environmental Condition" shall mean any condition with respect to the soil, surface waters, groundwaters, surface or subsurface strata, ambient air or other environmental medium on or off the Premises or the Parking Facilities, whether or not yet discovered, which could or does result in any Environmental Claim to or against Company or City by any third party (including, without limitation, any Governmental Authority), including, without limitation, any condition resulting from the activities, operation or business of any other property lessee, permittee, licensee, City or operator on, off or in the vicinity of the Premises.
- 23.2 **Compliance.** In its operations at the Airport, Company shall strictly comply with all generally accepted industry environmental practices/standards, applicable Environmental Laws, and the applicable Airport Environmental Policies/ Procedures including, but not limited to, the Storm Water Pollution Prevention Plan ("SWPPP") and Spill Response Plan incorporated herein by reference. Without limiting the generality of the foregoing provision, Company shall not use or store Hazardous Materials on or at the Airport except as reasonably necessary in the ordinary course of Company's permitted activities at the Airport, and then only if such Hazardous Materials are properly labeled and contained, and notice of and a copy of the current material safety data sheet is provided to the City for each such Hazardous Material. Prior to commencing operations at the Airport, Company will complete an Airport baseline environmental questionnaire. Company shall not

discharge, release, or dispose of any Hazardous Materials on the Airport or surrounding air, lands or waters, except as allowed under applicable Environmental Laws. Company shall promptly notify the City of any Hazardous Material spills, releases, or other discharges by Company at the Airport and promptly abate, remediate, and remove the same in accordance with applicable Environmental Laws. Company shall provide the City with copies of all reports, complaints, claims, citations, demands, inquiries, or notices relating to the environmental condition of the Airport, or any alleged material noncompliance with Environmental laws by Company at the Airport within ten (10) days after such documents are generated by or received by Company. If Company uses, handles, treats or stores Hazardous Materials at the Airport, Company shall have a contract in place with an EPA or TCEQ approved waste transport or disposal company, and shall identify and retain spill response contractors to assist with spill response and facilitate waste characterization, transport and disposal. Complete records of all disposal manifests, receipts and other documentation shall be retained by the Company as required under applicable Environmental Laws and made available to City for review upon request. City shall have the right at any time to enter the Premises and Parking Facilities to inspect, take samples for testing, and otherwise investigate the Premises and Parking Facilities for the presence of Hazardous Materials.

- 23.3 **Responsibility.** Company shall be responsible for the Hazardous Materials of Company and its subcontractors. Company shall be liable for and responsible to pay all Environmental Claims to the extent caused by Company's use, handling, treatment, storage, disposal, discharge, or transportation of Hazardous Materials on or at the Airport, the violation of any Environmental Law by Company, or the failure of Company to comply with the terms, conditions and covenants of this Section. To the extent City incurs any costs or expenses (including attorney, consultant and expert witness fees) arising from Company's use, handling, treatment, storage, discharge, disposal, or transportation of Company's Hazardous Materials on the Airport, Company shall promptly reimburse the City for such reasonable costs upon demand. Company shall comply with all applicable reporting requirements under Environmental Laws with respect to spills, releases, or discharges of Hazardous Materials by Company or its subcontractors at the Airport.
- 23.4 **Environmental Indemnity.** IN ADDITION TO ANY OTHER INDEMNITIES IN THIS AGREEMENT, BUT EXCEPT AS OTHERWISE PROVIDED HEREIN, COMPANY SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY FROM ANY AND ALL ENVIRONMENTAL CLAIMS (INCLUDING REASONABLE ATTORNEY'S FEES, LITIGATION AND INVESTIGATION EXPENSES, AND COURT COSTS) TO THE EXTENT CAUSED BY COMPANY'S USE, HANDLING, TREATMENT, STORAGE, DISPOSAL, DISCHARGE, OR TRANSPORTATION OF COMPANY'S HAZARDOUS MATERIALS ON THE PARKING FACILITIES OR AT THE AIRPORT DURING THE TERM OF THIS AGREEMENT, THE VIOLATION OF ANY ENVIRONMENTAL LAW BY COMPANY PERTAINING TO COMPANY'S USE, OCCUPANCY, OR MANAGEMENT OF THE PARKING FACILITIES DURING THE TERMS OF THIS AGREEMENT, OR THE FAILURE OF COMPANY TO COMPLY WITH THE TERMS, CONDITIONS AND COVENANTS OF THIS SECTION. THE FOREGOING INDEMNITY AND OBLIGATION TO HOLD HARMLESS SHALL NOT APPLY TO ENVIRONMENTAL CLAIMS TO THE EXTENT THEY ARISE FROM ENVIRONMENTAL CONDITIONS (1) EXISTING ON THE PARKING FACILITIES PRIOR TO THE EFFECTIVE DATE, OR (2) ORIGINATING FROM PROPERTY

OUTSIDE THE PARKING FACILITIES.

- 23.5 **Removal.** Prior to the expiration or earlier termination of this Agreement, Company shall remove or remediate in accordance with applicable Environmental Laws and the Airport Environmental Rules and Policies, all of Company's Hazardous Materials from the Premises, the Parking Facilities, the Airport, and surrounding lands and waters. Unless instructed otherwise by the City, Company shall also, prior to vacating the Airport, remove all tanks, piping and other equipment which stored Company's Hazardous Materials, or which are contaminated by Company's Hazardous Materials.
- 23.6 **Compliance with Federal and State Stormwater Requirements.** Company acknowledges that the Airport is subject to the National Pollution Discharge Elimination System Program ("NPDES") and Federal Stormwater Regulations (40 CFR Part 122) and the Texas Pollution Discharge Elimination Program ("TPDES"). In its operations at the Airport, Company shall comply with all applicable provisions of NPDES, TPDES, Federal and State Stormwater Regulations, and the SWPPP, as they may be amended from time to time.
- 23.7 **Natural Resource and Energy Conservation and Management.** Company shall comply with all Applicable Laws, and Airport Rules and Regulations pertaining to recycling and energy or natural resource conservation and management at the Airport. The Department has, or will in the future establish and implement an Environmental Management System for the Airport. Company shall fully cooperate with Owner in the implementation and enforcement of all such conservation and management policies and programs.
- 23.8 **Survival.** The covenants, conditions, and indemnities in this Section shall survive termination of this Agreement. Company shall expressly include the provisions of this Section in all subcontracts.

24. ASSIGNMENT, TRANSFER AND SUBLETTING

- 24.1 Except as explicitly authorized herein, Company shall not assign, sublet, sell, convey, transfer, mortgage or pledge this Agreement or any part thereof without the Director's prior written consent. Any restrictions, which form a part of any written consent granted, shall be incorporated into a written instrument and shall form a part of this Agreement. Due to the significance of this Agreement and the nature of the services to be provided hereunder, the Director shall have the right, in his sole discretion, to withhold or condition his consent. Company shall not use, or permit any person to use, the Premises, the Shuttle Bus System, Parking Facilities, improvements thereon, or any portion thereof, except for the purposes as provided in this Agreement.
- 24.2 Company may make an assignment of its interest in this agreement to a lender for debt security purposes, without the Director's prior written consent, provided that such security agreement is consistent with this Agreement, and the City is given written notice thereof, including a copy of the security agreement.
- 24.3 If Company merges, consolidates, acquires, affiliates, or associates with any other person, company, corporation or other entity, or in any manner whatsoever either is bought out or buys out another person, company, corporation or other entity, and such merger, consolidation, acquisition, affiliation, association or buy out results in a change of control or

management of the operations authorized herein, such merger, consolidation, acquisition, affiliation, association or buy out shall be considered as an Assignment of this Agreement by Company which requires the Director's prior written approval.

- 24.4 Any assignment, transfer, sublease, pledge, or hypothecation without first obtaining the Director's written consent shall not be binding upon the City, but shall be a material event of default by Company.

25. TERMINATION BY THE CITY

- 25.1 **Events of Default.** Each of the following shall be an Event of Default for which the City may exercise all rights and remedies available under this Agreement or under law or in equity:

- A. Company fails to pay Gross Receipts, as set forth herein, and such failure continues more than ten (10) days after the date of receipt of notice from the City of such non-payment;
- B. Company fails to timely deposit Daily Receipts, as set forth herein;
- C. Company abandons the Premises, the Parking Facilities, or any substantial part thereof;
- D. Any interest of Company hereunder is levied under execution;
- E. Company files a voluntary petition in bankruptcy, has an involuntary petition in bankruptcy filed against it and this Agreement is not accepted within ninety (90) days in accordance with applicable Bankruptcy Rules;
- F. Company makes any assignment of its property for the benefit of creditors;
- G. Company fails to operate the Parking Facilities and Shuttle Bus System in accordance with the terms of this Agreement or fails to perform or observe any of the terms, covenants or conditions of this Agreement, and such failure continues for a period of thirty days after written notice from the City;
- H. Company falsifies or makes a material misrepresentation on any report required to be made by Company hereunder, including, without limitation, Gross Revenue reports and monthly expense reports;
- I. Company receives more than six Notices of Violation under Section 10.3 in any rolling twelve month period; or
- J. Any permit, license, or other governmental permission required for Company to manage the Parking Facilities is terminated, expires, or lapses, and is not reinstated within thirty (30) days.

- 25.2 **Termination.** In addition to any other right or remedy available to the City under this Agreement or at law or in equity, upon the occurrence of an event of default, and the failure of Company to cure such default within the time specified, the City may terminate this Agreement by upon ten days' prior written notice to Company. Should the nature of a default, excluding a failure to make any payment when due, be such that it is curable, but not capable of being cured within the time specified, Company shall be deemed to have

cured such default, if within such specified time period it commenced performance and thereafter diligently prosecuted the same to completion as soon as reasonably feasible.

- 25.3 **Liability Continues.** No such cancellation or termination of this Agreement shall relieve Company of its liability and obligations under this Agreement and such liability and obligations shall survive any such expiration or termination.

26. TERMINATION BY COMPANY

- 26.1 **Events of Default.** Company may terminate this Agreement at any time that it is not in default in its obligations after the happening of any one or more of the following events materially impairing the conduct of its normal business from the Premises:
- A. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereto, in such a manner as to substantially restrict Company for a period of at least ninety (90) days from operating thereon.
 - B. Issuance by any court of competent jurisdiction of an injunction in any way preventing or restricting the use of the Airport, and the remaining in force of such injunction for a period of at least ninety (90) days.
 - C. The material default by the City in the performance of any substantive covenant or agreement herein required to be performed by the City, and the failure by the City to cure such default within thirty days after receipt of written notice from Company specifying the default; provided, however, should the nature of the default be such that it is curable, but cannot be cured within thirty (30) days, the City shall be deemed to have cured such default, if within such thirty (30) day period it shall commence performance and thereafter diligently prosecute the same to completion.
 - D. The complete destruction of the Premises and the City's failure to replace said office, within ninety (90) days after said destruction.
 - E. The permanent abandonment of the Airport by the City.
- 26.2 **Termination.** Upon the happening of any such event, and the passage of the time periods described, Company shall have the right to terminate this Agreement by giving written notice thereof to the City at least thirty (30) days in advance of the date upon which termination is to be effective.

27. HOLDING OVER

In the event a new parking management operator has not been chosen by the expiration date of this Agreement, the City shall have the unilateral right to extend the term of this Agreement on month to month basis until such time as a new parking management agreement has become effective. The City agrees to provide Company with thirty (30) days written notice of the termination date of any holdover.

28. DAMAGE OR DESTRUCTION

- 28.1 **Damage to the Airport.** If any portion of the Parking Facilities or Premises is damaged, and such damage is capable of being repaired within six (6) months, it shall be repaired with due diligence by the City at its own expense, except to the extent the damage is caused by the negligence or willful misconduct of Company. If the damage is not reasonably capable of being repaired within six (6) months, the City shall have the option, in its absolute discretion, whether or not to repair the damage, but shall give Contractor written notice of its decision.
- 28.2 **Protection of Premises.** The City shall never be obligated to provide security to protect Company's personal property or the contents of the Premises against loss by fire or other casualty.

29. MEDIATION

- 29.1 Should any dispute arise between the parties to this Agreement other than a dispute regarding (1) the failure to pay fees or other payments as required by this Agreement, (2) possession, or (3) an adjustment of the fees, the parties agree to negotiate prior to prosecuting a suit for damages. However, this Section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within ten (10) days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within twenty (20) days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below.
- 29.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within twenty (20) days, a mediator trained in mediation skills to assist with resolution of the dispute. The parties agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within twenty (20) days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The mediation shall take place in Austin, Texas. The parties agree to participate in mediation in good faith for up to thirty (30) days from the date of the first mediation session. The parties shall share the costs of the mediator equally.

30. REMOVAL OF MOTOR VEHICLES

- 30.1 **Movement of Motor Vehicles.** Except as provided in Section 30.2, Company shall not move any motor vehicle in, or remove any vehicle from, the Parking Facilities, unless:
- the vehicle is in or obstructs a vehicular traffic aisle, entry, or exit in the Parking Facilities,
 - the vehicle prevents a vehicle from exiting a parking space in the Parking Facilities

- the vehicle is in or obstructs a marked fire lane,
- the vehicle is in a parking space that is designated for the exclusive use of a vehicle transporting a disabled person, and does not display the special disabled license plates or parking placard required by Applicable Law, or
- an emergency exists involving public convenience and safety or pursuant to the Director's written directives.

Any expenses incurred in the moving of motor vehicles in an emergency or at Director's request shall, if not collectible from the registered owner or operator of the motor vehicle after reasonably diligent efforts, constitute a reimbursable expense under Section 11.4.

- 30.2 **Abandoned Vehicles.** If a vehicle remains in any lot for sixty (60) consecutive days, Company shall describe it, to include license plate number, on an Abandoned Vehicle List, which will be forwarded immediately to the Parking Program Manager who will provide the name and address of the registered owner and lienholders of record to Company. Within forty-eight (48) hours of receipt of the information, Company shall notify the last known registered owner and each lienholder of record in accordance with Texas Transportation Code Chapter 683. If the vehicle remains on the lot and the registered owner does not respond within ten days after notice is given, the vehicle shall be considered to be an abandoned vehicle, and Company shall dispose of it in accordance with Texas Transportation Code Chapter 683 and City directives. Company shall include the net proceeds of abandoned vehicle sales proceeds after deducting related legal and sales expenses, in Gross Receipts in the month of such sale. Company shall comply with all Applicable Law concerning abandoned vehicles. **Company shall indemnify and hold the City harmless from any civil or criminal liability resulting from Company's violation of Applicable Law except to the extent the violation was caused at the City's express directions.** Notwithstanding the provisions of this section, a vehicle that remains in a lot for longer than sixty days shall not be placed on the Abandoned Vehicle List if the owner of such vehicle has made written arrangements in advance with Company for an extended stay. In such event, the vehicle shall be placed on the Abandoned Vehicle List if it remains in a lot for more than three business days after the expiration of the agreed-upon extended stay.

31. LEGAL RELATIONSHIPS

Company is, and shall be, an independent contractor hereunder and shall control all ways, means and details incident to the performance of its obligations under this Agreement. Except as expressly stated herein, nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto. Company's employees are not employees of the City, are not subject to the personnel policies of the City, and do not participate in the benefits which accrue to City employees.

32. PROHIBITED INTERESTS

No member, officer, or employee of the City during his or her tenure, and for one (1) year

thereafter, shall have any interest, direct or indirect, in this Agreement or its proceeds.

33. EXCLUSIVITY

Company's rights to provide parking and shuttle bus management service are non-exclusive. During the Term of this Agreement, the City may (i) replace the Company with another operator if this Agreement is terminated for any reason, and (ii) engage another contractor to manage other parking lots or garages constructed or acquired by the City at the Airport during the term of this Agreement, including operation of Shuttle Buses serving such lots or garages.

34. SURRENDER OF POSSESSION

- 34.1 Upon the expiration of the term of this Agreement, by expiration, termination, or otherwise, or of any renewal, or extension hereof, Company shall peaceably quit, deliver up, and surrender the Premises, Shuttle Buses, and the Parking Facilities to the Department, in good order, repair, and condition, reasonable wear and tear excepted. Company shall, immediately upon expiration or sooner of this Agreement, remove all furniture, equipment, supplies and other personal property owned by Company from the Airport, provided that such removal can be accomplished without material injury to any facilities at the Airport and provided that any damage caused to such facilities as a result of such removal is repaired by Company at its own cost and expense to the reasonable satisfaction of the Director. In no event may Company remove any furniture, equipment, supplies or other personal property owned by the City, or for which the City has reimbursed Company. Company shall have the right to remove all of its trade fixtures and equipment installed or placed by it at its own expense, in, on, or about the Premises.
- 34.2 At time of surrender, the Company shall transition to the new operator in an orderly fashion in accordance with the transition plan in the Procedures Manual. The Company shall deliver all equipment keys, computer cards and equipment operating manuals to the City. Company shall cooperate with the City and successor parking facility manager, and shall provide the successor parking facility manager all information and documentation regarding Company's operations at the Airport under this Agreement reasonably requested by the successor parking facility manager. Company's obligations under this section shall survive termination of this Agreement.

ARTICLE 35 NO LIENS

Company shall pay for all labor done or materials furnished in the repair, replacement, development, or improvement of their office space or other personal property, and shall keep said Premises and Company's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Company's act or omission. If any lien or encumbrance is asserted arising from any acts or omissions of Company, Company shall cause such lien to be released within thirty (30) days after receipt of notice from the City.

ARTICLE 36

SECURITY ARRANGEMENTS

The City shall provide, or cause to be provided, during the term of this Agreement, all proper and appropriate public fire and police protection similar to that afforded to other tenants or licensees at the Airport, and it will issue and enforce rules and regulations with respect thereto for all portions of the Airport. Company shall comply with the Airport Security Plan and may, subject to Chapter 13-1 of the Austin City Code, as amended, provide such additional or supplemental public protection as it may desire, but such right, whether or not exercised by Company, shall not in any way be construed to limit or reduce the obligations of the City hereunder.

ARTICLE 37 TRANSPORTATION SECURITY REGULATIONS

Company shall comply with applicable Airport security regulations and shall control the Parking Facilities so as to prevent unauthorized access to the air operations area. Company shall comply with all applicable Federal Transportation Security Regulations (Title 49 CFR Chapter XII). Company's security system must comply with Airport security plan. The City reserves the right to install security devices in or on the premises as it deems necessary. Company shall indemnify and hold the City harmless from and against all liability, claims, penalties, fines, cost, loss, or expense incurred by City arising out of, or concerning, a breach by Company of its obligations under this section.

38. GENERAL PROVISIONS

- 39.1 **Signs.** Company may display no signs on the Airport without the Director's prior written approval.
- 39.2 **Notices.** Any notice required to be given hereunder must be in writing and shall be given by (a) depositing same in the United States Mail, postage prepaid, registered or certified, with return receipt requested, addressed as set forth in this Section; (b) hand delivering the same to the party to be notified; or (c) overnight courier of general use in the business community of Austin, Texas. Notice given in accordance with this section shall be deemed delivered and effective on the earlier of actual receipt or three calendar-days next following deposit thereof in accordance with the requirements above. A party may, by giving written notice to the other, change the address at which its notices are to be delivered.

Notices to the City shall be sent to the following address:

Director of Aviation
Austin-Bergstrom International Airport
3600 Presidential Boulevard, Suite 411
Austin, Texas 78719

With a copy to:

City Attorney
City of Austin Law Department
P.O. Box 1088
Austin, Texas 78767-1088

Notice to Company shall be sent to the following address:

Ampco System Parking
808 South Olive Street
Los Angeles, CA 90014

Copy to:

Daniel G. Huberty, CPFM, MBA
Vice President Airports - Ampco System Parking
815 Walker, Suite 340, Houston, TX 77002

- 39.3 **Approvals, Consents and Notices.** All approvals, consents and notices called for in this Agreement must be in writing and signed by the party to be charged.
- 39.4 **Contract Administrator.** The Parking Program Manager, Department of Aviation, 3600 Presidential Blvd., Suite 411, Austin, Texas 78719, telephone (512) 530-6344, will act as the contact point between the City and the Company, and is designated the Contract Administrator. The Contract Administrator shall be authorized to act on behalf of the City to organize, schedule, coordinate work processes and review and approve Company's work projects. The Contract Administrator shall make every effort to resolve questions, expedite decisions and facilitate the review of work performed in a timely fashion.
- 39.5 **Consent not to be Unreasonably Withheld.** Unless otherwise provided herein, whenever consent is required hereunder by either party, such consent is not to be unreasonably withheld or to be delayed for any unreasonable period of time.
- 39.6 **Headings.** The articles, sections, subsections, and headings contained in this Agreement are used only to facilitate reference, and in no way define or limit the scope or intent of any of the provisions of this Agreement.
- 39.7 **Jurisdiction and Venue.** The laws of Texas without regard to conflicts of law principles govern this Agreement. Any disputes relating to this Agreement must be resolved in accordance with the laws of Texas. Venue of any action brought concerning this Agreement shall lie in Travis County, Texas, exclusively.
- 39.8 **Subordination to Agreement with the United States.** This Agreement is subject to the provisions of any agreement made between City and the United States Government relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or the expenditure of federal funds for the development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the FAA's Airport Improvement Program, or in order to impose and use passenger facilities charges under 49 U.S.C. Section 40117 or any successor thereto.
- 39.9 **Force Majeure.** The failure of a party to perform its obligations hereunder shall be excused to the extent, and for the period of time, such failure is caused by the occurrence of an event of Force Majeure. Force Majeure shall mean acts and events not within the control of the party claiming suspension, and which that party has been unable by the exercise of due diligence to avoid or prevent. Events of Force Majeure include, without limitation: Acts of God; strikes, lockouts or other industrial disputes; inability to obtain material, equipment or labor; epidemics, civil disturbances, acts of domestic or foreign terrorism, wars, riots or insurrections; landslides, lightning, earthquakes, fires, storms, floods or washouts; arrests and restraint of rulers and people; interruptions by government

or court orders; present or future orders of any regulatory body having proper jurisdiction and authority; explosions; and breakage or accident to machinery. The party invoking Force Majeure shall give prompt, timely and adequate notice to the other party, by facsimile transmission or telephone confirmed promptly thereafter in writing, and shall use due diligence to remedy the event of Force Majeure, as soon as reasonably possible. Nothing contained herein shall be construed to require a party to settle a strike or other labor dispute against its will.

No event of Force Majeure shall relieve Company from its monetary obligations under this Agreement, including but not limited to, Company's obligations to remit Gross Receipts or Daily Receipts to the City, nor shall the term of this Agreement be extended by any event of Force Majeure.

- 39.10 **Nonwaiver of Rights.** No waiver of default by either party of any terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept and observed by the other party.
- 39.11 **Invalidity of Clauses.** In the event that any covenant, condition or clause herein contained is held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity unenforceability of any such covenant, condition or clause, shall in no way affect any other covenants, conditions or clauses, provided that elimination of the invalid provision does not materially prejudice either the City or Company with regard to their respective rights and obligations and the remainder shall be construed and enforced as if the invalid or unenforceable provision were never included in the Agreement. The parties agree to use their best efforts to reform the Agreement to replace an invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intent of the invalid or unenforceable provision.
- 39.12 **Warranty of Authority.** Each party warrants and represents to the other that the person signing this Agreement on its behalf has been duly authorized and empowered to do so, that it has taken all action necessary to approve this Agreement, and that this Agreement is a lawful and binding obligation of such party, except as may be limited by applicable bankruptcy, insolvency or similar laws affecting creditor's rights, or with respect to the City, governmental immunity under the Constitution and laws of the State of Texas. Company shall furnish certified copies of resolutions of the Directors, By-laws, or other evidence of authority to the Director within thirty (30) days from the date of execution hereof.
- 39.13 **Rights to Proposal and Contractual Material.** All reports, charts, schedules, or other appended documentation to any proposal, content of basic proposal, or agreements and any responses, shall become property of the City upon receipt.
- 39.14 **Successors and Assigns Bounds.** This Agreement shall bind and inure to the benefit of the parties and their respective permitted successors, assignees, or subcontractors.
- 39.15 **Right to Amend.** The City and Company reserve the right to amend this Agreement. Any changes to this Agreement shall be in writing and mutually agreed upon and duly executed by both parties. In the event that the FAA, TSA, or other governmental authority of competent jurisdiction, shall require any modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport to use or

impose Passenger Facility Charges, or if it is necessary to modify this Agreement to comply with the requirements of Applicable Law, including regulations, orders and decisions of the FAA or TSA, City shall notify Company in writing. If the parties are unable to agree upon and execute a suitable amendment within the time frame required by the governmental authority, Company agrees that City may unilaterally modify this Agreement, upon advice of its legal counsel, as may reasonably be required to obtain such funds or comply with law. Nothing herein shall preclude Company from contesting such orders or decisions, but Company shall abide by the unilateral modification by City until such time if any as such governmental authority's order or decision is stayed, rescinded or invalidated as long as such stay, rescission or invalidation remains in effect.

39.16 **Liability of Agents and Employees.** No member, officer, agent, director or employee of the City or Company shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement, or because of any breach thereof, or because of its or their execution or attempted execution.

39.17 **Time of the Essence.** Time is expressed to be of the essence of this Agreement.

39.18 **Entire Agreement**

A. This Agreement, together with the exhibits listed below, constitute the entire Agreement between the parties hereto with respect to the subject matter of this Agreement. It is further understood and agreed by Company that the City and its agents have made no representations or promises with respect to this Agreement, except as expressly set forth herein, and that no claim or liability or cause for termination shall be asserted by Company against the City, and the City shall not be liable by reason of the breach of any representations or promises not expressly stated in this Agreement. The City and Company are the only parties to this Agreement and as such are the only parties to enforce its terms. Nothing in this Agreement gives, or shall be construed to give or provide, any benefit, direct or indirect, to third parties unless a third party is expressly described as an intended beneficiary of its terms.

B. The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits hereto, and have sought and received whatever advice needed for them to form a full and complete understanding of all rights and obligations herein. The exhibits to this Agreement are as follows:

Exhibit A -Parking Facilities Layout Map

Exhibit B - The Premises

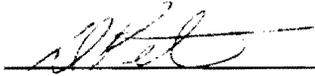
Exhibit C - Inventory of City-Provided Equipment

Exhibit D - Employee Benefits

**REMAINDER OF PAGE LEFT BLANK INTENTIONALLY
SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the City and Company have executed this Agreement by their duly authorized representatives as of the Effective Date.

CITY OF AUSTIN



Approved as to form
Assistant City Attorney

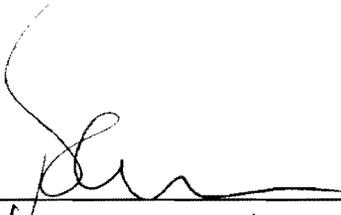
By: 

Name: Jim Smith

Title: Executive Director Auction

Date: 4/14/09

AMPCO SYSTEM PARKING

By: 

Name: SAM CHERKAOU

Title: VICE PRESIDENT

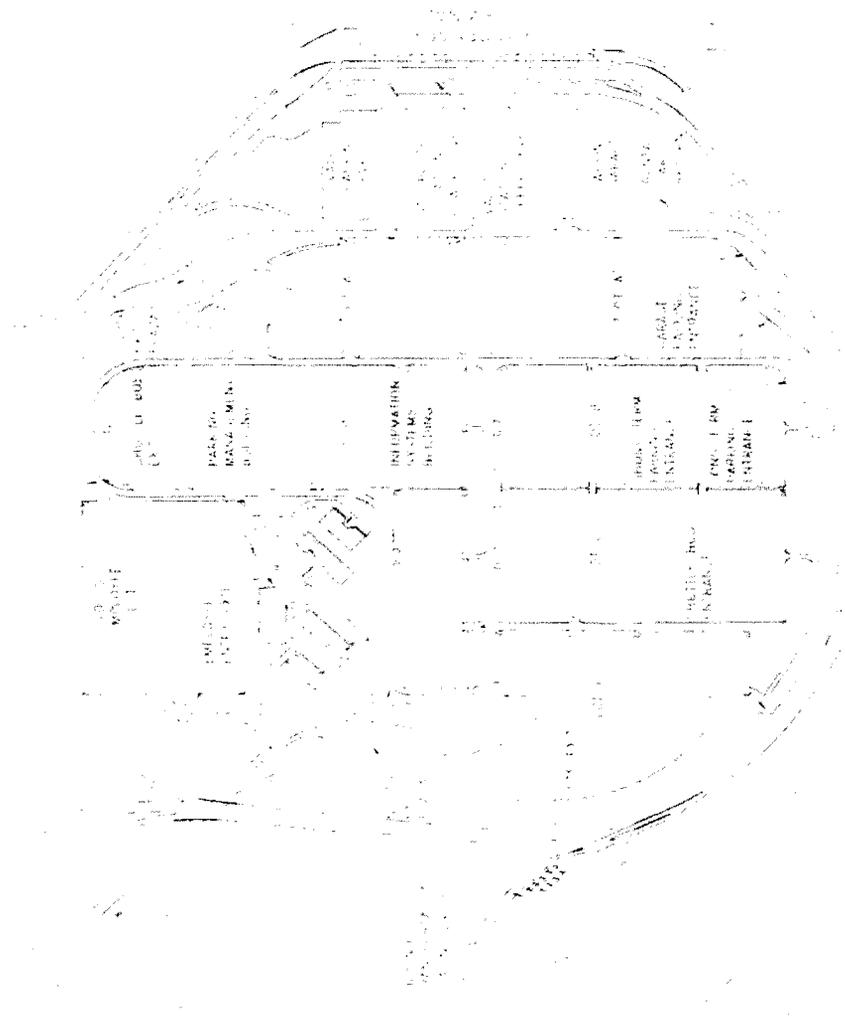
Date: 09-10-09

**EXHIBIT A
PARKING FACILITIES**

EXHIBIT A

SITE PLAN

ZONING PERMITS AND REGULATIONS AIRPORT
2011-11-15



1
2

EXHIBIT B
PREMISES

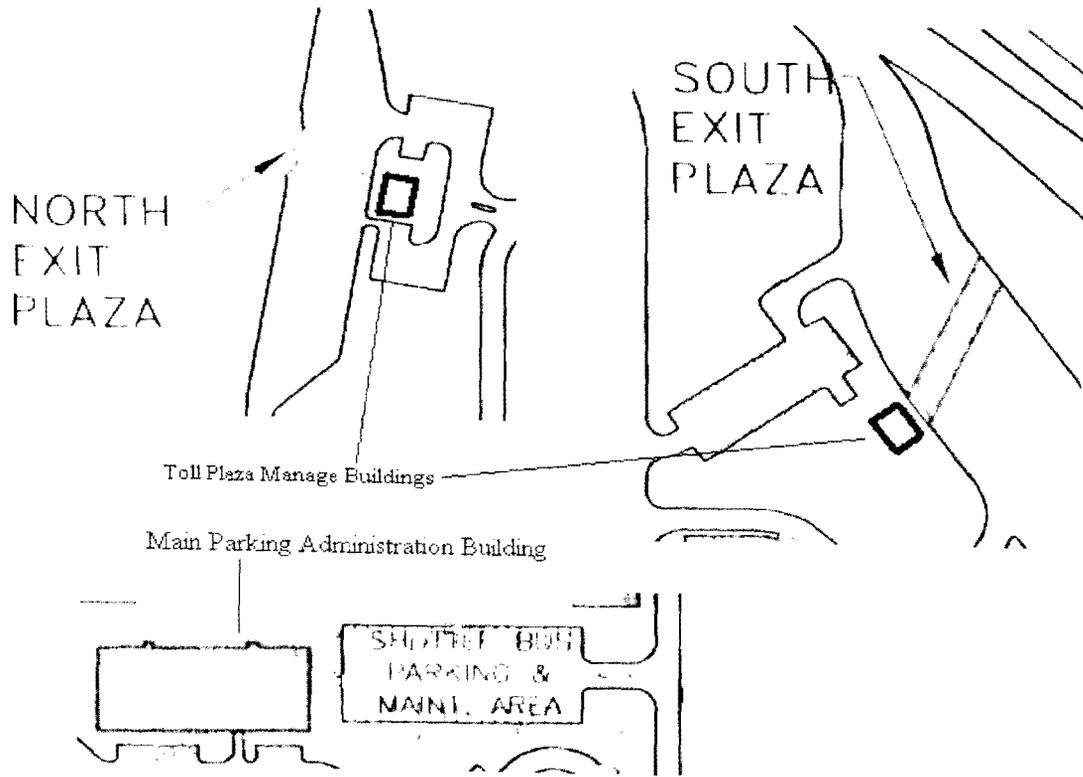


EXHIBIT C INVENTORY OF CITY-PROVIDED EQUIPMENT

Facility Management System (FMS) Equipment:

The components that make up the Parking Revenue Control System are 15 Fee Computers w/ License Plate Inventory Client and AmanoCharge Client (FC), 13 Ticket Dispensers (TD), 7 Automatic Vehicle Identification (AVI) Access Points, 3 Telecomm Boxes, 68 Loop Detection Points, 68 barrier gate controllers, 24 Proximity Card Readers, 20 Magnetic Stripe Card Readers, 6 ExpressParcs (EPs), 11 Client Workstations w/ Monitor and McGann Professional Client (1 w/ AmanoCharge Client), 14 Pan Tilt Zoom Cameras, 14 Camera Client Computers w/ Monitor, 1 Closed Circuit Television (CCTV) Digital Video Recorder (DVR) Server, 1 License Plate Inventory (LPI) Server, 1 AmanoCharge Credit Card Processor Server, 1 Internet Information Services (IIS) Server, 1 McGann Professional Server w/ MS SQL 2005, 1 Backup Server w/ MS SQL 2005.

TD's:

There are four Amano AGP-2000 Ticket Dispensers (TDs) located at the entry to Garage Parking, three located at the entry of Daily Parking and four at the entry to Long-term parking. There are two Amano ETP-22 Ticket Dispensers located at the exits from the Ground Transportation Staging Area (GTSA). The purpose of the Ticket Dispenser is to provide a receipt of entry into the parking area or to provide proof of payment and inspection at GTSA.

FC's:

There are nine Amano AGP-5200 Phase III Fee Computers located at the South Toll Plaza, five located at the North Toll Plaza, and one located at the Valet Terminal. The purpose of the Fee Computer is to process tickets and handle cash and credit card (through the use of the AmanoCharge client) payment upon exit. The Fee Computers also use the License Plate Inventory client to check for invalid dates and times on tickets and to determine parking fees for lost and damaged tickets. The information from these transactions are stored locally on the PC hard drive and is also transmitted to the McGann Professional Server and then stored in the SQL Database for reporting and reconciliation purposes. The credit card information is sent to the AmanoCharge Server for verification and approval.

EP's:

There are four Amano AGP-4400 ExpressParcs at the South Toll Plaza and two at the North Toll Plaza. The EPs allow customers to exit using a ticket from one of the entrance ticket dispensers and accept payment by credit card for any parking fees incurred. A receipt of the transaction is then generated and issued to the customer.

AVI's:

There are seven Automatic Vehicle Identifier (AVI) points on site. They consist of Transcore tag readers, McGann MT-280 communication boards, and Amano AGP-1700 Parking Gates. They are located at the service entrance to Lot A, shuttle bus entrance to Lot C, shuttle bus entrance to Lot E, Main Shuttle Bus entrance, Main Shuttle Bus Exit, Lot G shuttle bus entrance, and Lot G shuttle bus exit. The purpose of the AVI access points is to monitor the activity and allow access of the shuttle buses and the service vehicles in the parking area without having to go through the public parking entries or exits. The AVI is linked to the McGann Professional Server and access can be granted or denied by the software. The McGann Professional Server also logs all access attempts and results in the SQL database.

Barrier Gate Controllers:

There are sixty-eight barrier gate controllers. Two are located at the entry of the Ground Transportation Staging Area (GTSA) and their purpose is to provide entry into the area for shuttles and taxis and to control the traffic flow into the area. Two are located at the exit of GTSA to enforce the use of Debit Proximity Cards for tracking and billing purposes. Two are located in Lot A to allow exit only to long-term parking since the two areas have a different rate structure. There are four located on the shuttle bus route at the main shuttle entry and entries to Lots F, D, and B. This allows shuttle buses different entry points to Long-term Parking and restricts the public from entering the shuttle bus access road. These gates allow entry only. There is one located at the service entrance to

Lot A behind the North Toll Plaza building to allow entry only to Lot A for shuttle busses and service vehicles. Two are located at the Main Shuttle Bus Exit behind Lot C (one is located at the AVI point and another just ahead to prevent "tailgating" out of the lot). Both of these gates allow exit only. Two are located at the employee lot (Lot G) entrance and two at the exit of Lot G, which are used to control the flow of traffic in and out of Lot G and restrict entry to proximity card reader only (or AVI access in the case of the Lot G shuttle bus / employee entrance). One is located at the Lot G Shuttle Bus exit to restrict exit to shuttle busses only. This gate is exit only. There are twenty-five located throughout the long term parking lots (five in Lot B, six in Lot C, five in Lot D, four in Lot E, and five in Lot F) used to control access to the lots. When a lot reaches capacity the gates in that lot lower and allow only exiting until the number of occupied spaces drops to a specified number at which time the lot reopens. There are four at the entrance to the long term parking lots, three at the entrance to Lot A, and four at the entrance to the short term parking garage used to control access to the parking facility and to enforce the use of the Ticket dispensers, proximity card readers, or magnetic stripe card readers. There are nine at the South Toll Plaza and five at the North Toll Plaza used to control exit from the parking facility and to enforce the use of the Fee Computers, ExpressParcs, proximity card readers, or magnetic stripe card readers. All of the Barrier Gate Controllers can be remotely controlled through the McGann Professional system except the two at the entrance to GTSA.

Proximity Card Reader:

There are two proximity card readers located at the entry to Lot G. Their purpose is to restrict entry into the area to personnel with valid proximity cards. There are two at the exit of Lot G intended to restrict exiting of Lot G to personnel with valid proximity cards only. There are four at the entrance to the long term parking lots, three at the entrance to Lot A, and four at the entrance to the short term parking garage to allow access to personnel with valid proximity cards. There are four at the South Toll Plaza and two at the North Toll Plaza to allow personnel with valid proximity cards to exit the facility. There is one at the Valet Curbside Check-in. There are two at the exits of the Ground Transportation Staging Area to debit the accounts of Ground Transportation providers entering the airport facility. The readers are connected to the McGann Professional Server, which gives control to grant or deny access remotely. Activity is sent to the McGann Professional Server and then stored in the SQL database to be used for reporting purposes.

Magnetic Stripe Card Reader:

There are four magnetic stripe card readers at the entrance to the long term parking lots, three at the entrance to Lot A, and four at the entrance to the short term parking garage. These readers allow the use of a credit card or ParkPerk™ card to gain entrance to the parking facility. There are four located at the South Toll Plaza and two located at the North Toll Plaza to allow exiting the parking facility by using a credit card or ParkPerk™ card as means of payment (this option is only available to a customer who has also used the magnetic stripe card reader system to enter the parking facility). There are two located at the exit of the Ground Transportation Staging Area to allow the use of magnetic stripe cards for Ground Transportation accounts. There is one located at the Valet Curbside Check-in to allow the use of ParkPerk™ cards for customers parking in valet. The readers are connected to the McGann Professional Server, which gives control to grant or deny access remotely.

Activity is sent to the McGann Professional Server and then stored in the SQL database to be used for reporting purposes.

CCTV System:

There are nine Pan Tilt Zoom (PTZ) cameras located in the lanes at the South Toll Plaza and five located in the lanes at the North Toll Plaza. In each lane the PTZ camera is connected to the Camera Client to allow viewing of license plates on vehicles exiting the parking facility for entry into the License Plate Inventory client on the Fee Computer. All PTZ cameras are also connected to the CCTV DVR Server for monitoring and archival purposes.

Client Workstations:

There are eleven Client Workstations with the McGann Professional Client. One is located in the North Plaza, one in the South Plaza, two in the Parking Management Office reception area, one in the Ground Transportation Staging Area booth, one in the Ground Transportation Staging Area manager's office, one in the City of Austin Finance department, one in the Parking Management Accounting office (which also has the AmanoCharge client

loaded), one in the Parking Management manager's office, one in the City of Austin Parking manager's office, and one in the City of Austin Information Systems office. The purposes of these units are to provide an interface to the system in order for these groups to perform their various duties and to obtain reports from the data stored on the McGann Professional, AmanoCharge, and License Plate Inventory Servers.

McGann Professional Server:

There is one McGann Professional Server. Its purpose is to collect raw data from the lane equipment, remotely program and synchronize lane equipment, monitor lot counts, monitor equipment status, allow remote management of parking equipment, provide a communication link between the McGann Professional software and the lane equipment, process credit card transactions from the automated lane equipment (magnetic stripe card readers and ExpressParcs), manage ParkPerk™ card accounts, manage debit card accounts, manage contract parker accounts, provide reporting on all data collected, and archive and backup all parking revenue and access data.

AmanoCharge Server:

There is one AmanoCharge Server. Its purpose is to provide a communication link between the AmanoCharge application and the Fee Computers to allow the processing of credit card data. It also stores transaction information from Fee Computer credit card transactions and generates reports regarding this data.

Loop Detector:

There are sixty-eight loop detection points throughout the parking facility. The purpose of the loop detector is to sense the presence of a vehicle by the vehicle interrupting a magnetic field generated by a loop of wire beneath the driving surface. There are three different applications of loop detectors in the parking facility. One application uses the loop to detect vehicle presence to arm proximity card readers, magnetic stripe card readers, AVIs, ticket dispensers, ExpressParcs, Fee Computers and barrier gate controllers to ensure that a vehicle is present before allowing a transaction to occur. Another application uses the loop as a safety and closing device for barrier gate controllers in order to prevent vehicle impacts with barrier gate arms and to signal the barrier gate controller to close the gate arm after a vehicle has passes through the gate. The final application uses a set of loops to determine presence and direction of a vehicle travel to determine facility and lot counts. In all applications the loop detector is housed in an Amano AGP-1700 Parking Gate and is connected to a set of loops.

Telecomm Units:

There are several pieces of equipment involved in the Telecomm aspect of the parking operation. There are two telecomm boxes located in the long term parking lots (one in Lot B and one in Lot C) and one at the Ground Transportation Staging Area that house fiber to RS-485 converters and surge suppressors. The fiber to RS-485 converters relay communication between the parking equipment and the RS-485 to RS-232 converters (TCs) at the servers. The TCs convert signals in RS-485 coming from parking equipment and fiber converters into RS-232 which is directly usable by the servers.

CCTV Servers:

The CCTV Server is connected to all PTZ cameras and monitors and records all activity. It has an archive of footage captured by the PTZ cameras that can be searched for specific events. It also allows a user to Pan Tilt or Zoom the cameras connected to the server.

LPI Server:

The License Plate Inventory Server collects data from the Handheld Units (HHUs) and inputs it into the License Plate Inventory. The data is then used by LPI clients to determine validity of parking tickets and to determine parking fees of lost and damaged tickets. The LPI server maintains a list of all license plates currently parked in the facility as well as recently exited plates. It also keeps an archive of all license plates that have ever parked in the facility for tracking and security purposes.

IIS Server:

The IIS Server maintains the Frequent Parker "ParkPerk™" website and communicates registration and redemption data to the McGann Professional Server.

Backup Server:

The Backup Server is intended as a failover for any services lost from another server failure. It runs update services for client workstations and other servers, anti-virus update server, a backup instance of MS SQL 2005, and file server services.

RasTrac Shuttle Tracking System:

System of one computer and communication devices installed in each shuttle that is used to monitor and track the Shuttle Buses

**EXHIBIT D
EMPLOYEE BENEFITS**

Employee Benefits Program: Benefits for full-time (average 30 or more work hours per week) Hourly Employees are as follow:

Health benefits: Please refer to the following Health Benefits Attachments

Vacation: Based on 40 hr work week:

<u>Service Period</u>	<u>Annual</u>
0 – 3 months	No accrual 3 – 12 months week
2 nd – 3 rd year	1 week
4 th yr – 7 th yr	2 weeks
8 th yr and there after	3 weeks

<u># of hours per month</u>	<u># of hours per year</u>
0	
3.33 hours	40
3.33 hours	40
6.67 hours	80
10 hours	120

Vacation accrual is based on average hours worked per week, i.e., worked average 32 hours per week, one week of vacation equals to 32 hours vacation benefit. New rates begin to accrue after reaching the threshold periods. Employees, working less than an average of 30 hours per week, are not eligible for vacation benefits.

Holidays:

New Years Day
 Memorial Day
 Independence Day
 Labor Day
 Thanksgiving Day
 Christmas Day

If worksite is open for operation, employee working receives double time pay for holiday worked. If the worksite is closed for operation, employee receives straight time pay for holiday not worked if he/she is available to work the day before and the day after the holiday. If the worksite is a 24 hrs/7 days operation, the holiday will be observed on the actual holiday. If the worksite is a Monday through Friday operation, holiday pay will be determined by the day the holiday was observed. For example, July 4th falls on a Sunday, it is observed on Friday, July 2nd in accordance to the Corporate holiday calendar for the regional and branch offices.

Jury Duty: Time off is given, but it is without pay. Employee must provide notice from the courts for jury duty service or it will be considered unexcused absences.

401K Plan: Employees with 1 year or more of service are eligible to participate in the Company's 401k Retirement Plan. Employees can defer between 1% to 50% pre-tax basis into their 401k with a company matching.

Employee Stock Purchase Plan: All employees are eligible to participate in the stock purchase plan. Through payroll deductions, employees are able to purchase company stock at a discounted rate.

**SOUTH CENTRAL REGION HOURLY EMPLOYEES
ABM BENEFIT PLAN RATES FOR 2009**

Enrollment of plan will be effective on the seventh month following employees' six months anniversary date of hire if they choose to participate and cannot be changed during the plan year, until next the open enrollment period. The Company will continue to pay a significant portion of your healthcare cost. The monthly costs levels for employees for 2009 are:
AETNA HEALTH INC. www.aetna.com 1-800-888-982-3862
Group # 0002

POS Plan

Employee Only	Employee + 1	Employee + Family
Premium \$456.46	Premium \$954.03	Premium \$1,369.40
Employee Pay \$114.12	Employee Pay \$611.69	Employee Pay \$ 1,027.06
Company Pay \$ 342.34	Company Pay \$ 342.34	Company Pay \$342.34

HMO Plan

Employee Only	Employee + 1	Employee + Family
Premium \$478.65	Premium \$ 1,000.37	Premium \$1,435.95
Employee Pay \$ 119.66	Employee Pay \$641.38	Employee Pay \$1,076.96
Company Pay \$ 358.99	Company Pay \$ 358.99	Company Pay \$ 358.99

Assurant Dental Plan

Employee Only	Employee + 1	Employee + Family
Premium \$12.07 Employee Pay \$ 0	Premium \$ 19.53 Employee Pay \$0	Premium \$29.91 Employee Pay \$0

Assurant Dental Group # PCDR11 1-800-733-7879

[NO PREMIUM] employee responsible for co-pay according to services rendered

Life Insurance Full time hourly also eligible for a Life Insurance and Accidental Death and Dismemberment benefit at no cost to the employee.

Sick Time - Full Time employees get three sick days a year starting on their 6 months anniversary date of employment sick days are not allowed to be carried over.