

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

**DEPARTMENT:** Sun Metro  
**AGENDA DATE:** February 8, 2011  
**CONTACT PERSON NAME  
AND PHONE NUMBER:** Jay Banasiak, Director, 534-5810  
**DISTRICT(S) AFFECTED:** Citywide

**SUBJECT:**

That the City Manager be authorized to sign the Lease and Concession Agreement by and between the CITY OF EL PASO and DANIEL H. MORALES DBA BIG BOY CONCESSIONS, for the operation of food and beverage concessions at the City's Bert Williams Downtown Santa Fe Transfer Center.

**BACKGROUND / DISCUSSION:**

Sun Metro solicited competitive proposals to lease, develop and operate a food, beverage, vending, and retail concession at Sun Metro's Bert Williams Downtown Santa Fe Transfer Center ("Downtown Transfer Center") in connection with its obligation to serve the traveling public and received no responses. On February 4, 2010 the Federal Transit Administration (FTA) authorized Sun Metro to contact potential vendors directly to arrange for the provision of these services to the public.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

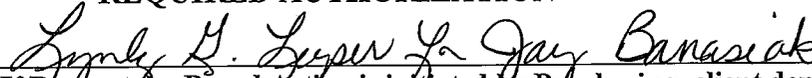
This service will be provided at no cost to the City of El Paso. Anticipated revenue to the City is \$24,000 per year.

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

  
(If Request for Board Action is initiated by Purchasing, client department should sign also)

CITY CLERK DEPT.  
2011 FEB -4 PM 12:12

*Information copy to appropriate Deputy City Manager*

RESOLUTION

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

THAT the City Manager be authorized to sign the Lease and Concession Agreement by and between the CITY OF EL PASO and DANIEL H. MORALES DBA BIG BOY CONCESSIONS, for the operation of food and beverage concessions at the City's Bert Williams Downtown Santa Fe Transfer Center.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_ 2011.

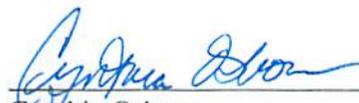
THE CITY OF EL PASO

\_\_\_\_\_  
John F. Cook  
Mayor

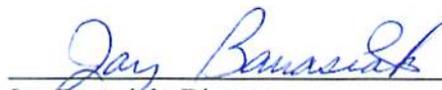
ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Cynthia Osborn  
City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Jay Banasiak, Director  
Mass Transit Department

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO    )

**LEASE AND CONCESSION  
AGREEMENT**

**THIS** Lease and Concession Agreement (hereinafter designated as the “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the **CITY OF EL PASO** (hereinafter designated as the “Lessor”), acting by and through its Mass Transit Department Board, and **DANIEL H. MORALES DBA BIG BOY CONCESSIONS** (hereinafter designated as “Concessionaire”).

**WITNESSETH:**

**WHEREAS**, the City of El Paso’s Mass Transit Department, also known as Sun Metro, is governed by the Mass Transit Department Board pursuant to Chapter 453 of the Texas Transportation Code; and

**WHEREAS**, the City of El Paso, through its Mass Transit Department, owns, operates and maintains numerous public transportation transfer centers in the City of El Paso, State of Texas; and

**WHEREAS**, the provision of food and beverage service is essential to the traveling public and other patrons of Lessor’s transfer centers; and

**WHEREAS**, Concessionaire is engaged in the business of operating a fast food restaurant; and

**WHEREAS**, Lessor solicited competitive proposals to lease, develop and operate a food, beverage, vending, and retail concession at Sun Metro’s Bert Williams Downtown Santa Fe Transfer Center (“Downtown Transfer Center”) in connection with its obligation to serve the traveling public and received no responses; and

**WHEREAS**, on February 4, 2010 the Federal Transit Administration (FTA) authorized Sun Metro to contact potential vendors directly; and

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

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

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

**ARTICLE 1  
DEFINITIONS**

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

**“Concessionaire”** means Daniel H. Morales dba Big Boy Concessions.

**“Concessionaire Employees”** means employees of Concessionaire that are employed at the Downtown Transfer Center not including any sublessees, agents, invitees, contractors, representatives, subcontractors, or suppliers of Concessionaire.

**“Department”** means the Mass Transit Department of the City of El Paso.

**“Director”** means the Director of the Mass Transit Department of the City of El Paso.

**“Disadvantaged Person”** means a citizen or lawful permanent resident of the United States of America who is socially and/or economically disadvantaged, as defined in 49 CFR Parts 23 and 26.

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

**“Facility”** or **“Facilities”** mean: (i) the locations at the Downtown Transfer Center that are identified in Exhibit A attached hereto and by this reference made a part of this Agreement, for the sale of Concessionaire’s goods; and (ii) any temporary or permanent concession space intended for the sale of Concessionaire’s goods added to this Agreement by the Director pursuant to the terms of this Agreement, as may be modified from time to time throughout the Term.

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

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

substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq, as amended.

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

**"Lease Year"** means the twelve (12) month period commencing upon the Effective Date and terminating on each one year anniversary thereof.

**"Leased Premises"** means the areas of the Downtown Transfer Center leased by Lessor to Concessionaire, whether on a temporary or permanent basis, as depicted in **Exhibit A** attached hereto and by this reference made a part of this Agreement, as may be modified from time to time throughout the Term.

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

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

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

**"Rules and Regulations"** means those rules, regulations, policies, and procedures that have been established by the City or the Department for the orderly and efficient use of the Downtown Transfer Center by Concessionaire and other users of the Downtown Transfer Center, as the same may be amended, modified, or supplemented from time to time.

**"Storage and Support Space"** means: (i) a location or locations at the Downtown Transfer Center that are identified in **Exhibit A** attached hereto and by this reference made a part of this Agreement, for administrative purposes or the preparation or storage, but not the sale of Concessionaire's goods; and (ii) any temporary or permanent locations intended for like purposes added to this Agreement by the Director pursuant to the terms of this Agreement, as may be modified from time to time throughout the Term.

**"Structural Elements"** means the foundation, subfloor, support beams and girders, roof and exterior walls of the Transfer Center.

**“Sublease”** means a lease executed by and between Concessionaire and a third party, approved by Lessor, conveying to said third party the same interest in a portion of the Leased Premises that Concessionaire enjoys by virtue of this Agreement.

**“Sublessee”** means the legal entity, but not Concessionaire, that has the right to occupy and operate concession services in a portion of the Leased Premises by virtue of a Sublease with Concessionaire.

**“Sun Metro Disadvantaged Business Enterprise”** and **“SMDBE”** means, as certified and verified by Lessor, a business, whether it is a sole proprietorship, partnership, company or corporation, of which at least fifty-one percent (51%) of the interest is owned and controlled by one or more Disadvantaged Persons.

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

**“Transfer Center”** means the Bert Williams Downtown Santa Fe Transfer Center, located at 601 Santa Fe Street in Downtown El Paso, Texas

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

## **ARTICLE 2 SCOPE**

### **Section 2.1 Scope of Services**

For and in consideration of the mutual covenants hereof, Lessor hereby leases to Concessionaire and Concessionaire hereby agrees to lease space in the Downtown Transfer Center for the purpose of providing First Class food and beverage service for the traveling public and other patrons of the Downtown Transfer Center, as more fully enumerated within Concessionaire’s Proposal found in **Exhibit D** attached hereto and by this reference made a part of this Agreement.

## **ARTICLE 3 LEASED PREMISES**

### **Section 3.1 Description of Leased Premises**

Lessor hereby leases to Concessionaire and Concessionaire hereby agrees to lease from Lessor approximately **1,306 square feet**, more or less, of concession space comprising the Facilities in the Transfer Center, the location being specifically described in **Exhibit A** attached hereto and by this reference made a part of this Agreement.

Concessionaire is also granted the exclusive right to operate two outdoor vending carts within the perimeter of the Downtown Transfer Center, pursuant to the terms as more fully enumerated within Concessionaire's Proposal found in **Exhibit D** attached hereto and by this reference made a part of this Agreement, and subject to the restrictions on uses and privileges stated herein.

### **Section 3.2 Additions and Deletions to the Leased Premises**

Lessor and Concessionaire may, from time to time, by amendment to this agreement, add additional space or spaces, including additional space or spaces at other City Transfer Center facilities, or delete space or spaces from the Leased Premises, or may add rights, licenses, or privileges, or delete rights, licenses or privileges granted to Concessionaire. All space added to the Leased Premises, or space added at other Transfer Center facilities, or rights, licenses, or privileges added pursuant to this section shall be subject to all the terms, conditions, and other provisions of this Agreement and Concessionaire shall pay to Lessor all sums, fees, and charges applicable to such additional space, rights, licenses, or privileges in accordance with the provisions of this Agreement.

### **Section 3.3 Leasehold Improvements and Trade Fixtures provided by Lessor**

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

### **Section 3.4 Services and Physical Aspects of the Leased Premises**

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

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

### **Section 3.5 Requirements to Remain in Confines of Leased Premises**

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

### **Section 3.6 Access by Concessionaire**

A. Subject to the provisions herein or any other applicable Rules and Regulations, the needs of Lessor during any construction or renovation project, and such restrictions as Lessor may impose with respect to Concessionaire's use of the Leased Premises, Lessor hereby grants to Concessionaire, its agents, suppliers, employees, contractors, passengers, guests, and invitees, the right and privilege of free and unrestricted access, ingress, and egress to the Leased Premises and to public areas and public facilities of the Transfer Center.

B. The ingress and egress provided for in this section shall not be used, enjoyed, or extended to any person engaging in any activity or performing any act or furnishing any in service for or on behalf of Concessionaire that Concessionaire is not authorized to engage in or perform under the provisions hereof unless expressly authorized in advance and in writing by Lessor.

C. Lessor shall have the right at any time or times to close, relocate, reconstruct, change, alter, or modify any such means of access provided for Concessionaire's use pursuant to this Agreement or otherwise, either temporarily or permanently, provided that reasonable notice is given to Concessionaire and that reasonably convenient and adequate means of access, ingress, and egress exist or are provided in lieu thereof. Lessor shall suffer no liability by reason thereof and such action shall in no way alter or affect any of Concessionaire's obligations under this Agreement.

### **Section 3.7 Access by Lessor**

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

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

### **Section 3.8 Redelivery of Leased Premises**

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

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

## **ARTICLE 4 TERM**

### **Section 4.1 Term**

The Effective Date of this Agreement shall be February 14, 2011. The term of this Agreement shall commence on the Effective Date and shall continue for a period of two (2) years from the effective date. Lessor shall have the option to extend this Agreement for two (2) additional one (1) year terms.

### **Section 4.2 Holding Over**

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

## **ARTICLE 5 USES AND PRIVILEGES**

### **Section 5.1 Exclusive Uses**

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

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

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

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

## **Section 5.2 Non-Exclusive Uses**

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

A. The right and obligation to provide for the sale of any items related to Concessionaire's privileges herein that Lessor, in its sole discretion, determines necessary for the convenience and comfort of the traveling public and other patrons of the Transfer Center.

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

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

## **ARTICLE 6 RESTRICTIONS ON USES AND PRIVILEGES**

### **Section 6.1 Outdoor vending carts.**

Concessionaire has the exclusive right to operate two outdoor vending carts within the perimeter of the Downtown Transfer Center, as more fully enumerated within Concessionaire's Proposal found in **Exhibit D** attached hereto and by this reference made a part of this Agreement, provided that:

A. No more than two vending carts shall be allowed on the premises at any time.

B. Concessionaire shall provide the vending carts.

C. Vending cart locations shall be approved in writing by the Director prior to their placement.

D. Vending carts shall not obstruct any customer pathway or bus way. Vending carts shall not be placed inside the Transfer Center at any time.

E. All vending carts shall adhere to all City ordinances and regulations, including any necessary permits and inspections.

F. The design, signage, size, color, merchandise and overall appearance of vending carts shall be approved in writing by the Director prior to their placement.

G. Concessionaire shall properly maintain the vending carts.

H. Lessor shall have the right to ask Concessionaire to replace the vending carts if they become deteriorated, or do not comply with city inspections or become a health or safety hazard.

I. Lessor shall take reasonable steps through security personnel to ensure that unauthorized vendors are not allowed to sell merchandise on the premises. However, Lessor does not guarantee that unlicensed or unauthorized individuals will not attempt to sell merchandise on the premises from time to time.

## **Section 6.2 Use of Premises**

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

Concessionaire hereby expressly agrees, at all times during the Term, at its own cost, to maintain, use and operate the Leased Premises and all improvements, furnishings, fixtures, and equipment thereon in a clean, wholesome, and sanitary condition, and in compliance with any and all present and future laws, ordinances and valid rules and regulations relating to public health, safety or welfare.

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

## **Section 6.3 Obligation for Continuous Operation**

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

## **Section 6.4 Prohibited Uses**

Concessionaire and its Sublessees shall not conduct operations in or on the Leased Premises in a manner that in the judgment of the Director:

- A. Adversely or materially interferes with the Lessor's exercise of satisfactory continuing control over the use of the premises to carry out the intended purpose of providing public transportation.
- B. Adversely or materially interferes with the Lessor's right to safely conduct operations on the premises for the intended purpose of providing public transportation.
- C. Adversely or materially interferes or would be likely to interfere with the reasonable use by others of common facilities at the Transfer Center;
- D. Hinders or would be likely to hinder police, firefighting or other emergency personnel in the discharge of their duties;
- E. Would or would be likely to constitute a hazardous condition at the Transfer Center;
- F. Would or would be likely to increase the premiums for insurance policies maintained by Lessor unless such operations are not otherwise prohibited hereunder and Concessionaire pays the increase in insurance premiums occasioned by such operations;
- G. Would involve any illegal purposes.

#### **Section 6.5 Public Address System**

Concessionaire shall not have the right to make or cause to be made on its behalf any announcements over any public address system in the Transfer Center. Concessionaire shall permit the installation on or in the Leased Premises of a public address system, and shall permit the broadcasting thereon of bus schedules and other information, if the Director deems such installation necessary.

#### **Section 6.6 Interference with Terminal Building Systems**

Concessionaire shall not do, or permit, anything which may interfere with the effectiveness of utility, heating, ventilating, air-conditioning or other Transfer Center building systems or portions thereof on or adjoining the Leased Premises (including lines, pipes, wires, conduits and equipment connected with or appurtenant thereto) or interfere with the effectiveness of elevators or escalators in or adjoining the Leased Premises, or overload any floor in the Leased Premises. Concessionaire shall not install wireless communication systems without the prior written consent of the Director.

#### **Section 6.7 Conflicts with Other Concessions**

Notwithstanding the provisions of Article 5, Concessionaire specifically understands and agrees that, in the event of a conflict between Concessionaire and any other concessionaire or lessee in the Transfer Center as to specific items to be sold or services to be provided by respective concessionaire or lessee, the Director shall have the final decision as to which product or service may be sold or provided by each concessionaire or lessee and Concessionaire agrees to be bound by such decision; provided, however, that the Director's decision shall be consistent with the intent of Article 5.

**ARTICLE 7  
RENTALS AND ACCOUNTING RECORDS**

**Section 7.1 Rentals**

For the Facilities privileges granted herein, Concessionaire shall pay to Lessor rent in the amount of \$24,000.00 per year, payable in 12 equal monthly payments.

**Section 7.2 Time of Payment**

The rent payment due to Lessor shall be paid on or before the 15<sup>th</sup> day of the second month following the beginning of the initial term and continue monthly throughout the end of the term, including any renewal terms.

All rental payments provided for herein shall be paid to Lessor at the following address:

City of El Paso  
Mass Transit Department  
700-A San Francisco Street  
El Paso, TX 79901-1060

**Section 7.3 Unpaid Rent, Fees and Charges**

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

**Section 7.4 Landlord's Lien**

It is expressly agreed that in the event of default in the payment of rent or any other sum due from Concessionaire to Lessor under the terms of this Agreement, Lessor shall have a lien upon all Leasehold Improvements, Trade Fixtures, goods, chattels, Personal Property or equipment, save and except delivery vehicles or rolling stock belonging to Concessionaire which are placed in or become a part of the Leased Premises, as security for rent due and to become due for the remainder of the Term. Such lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Concessionaire grants to Lessor a security interest in all of Concessionaire's personal property placed in or on the Leased Premises for purposes of this contractual lien; provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Concessionaire, any sublessee or any assignee of the Concessionaire. In the event Lessor exercises the option to terminate the leasehold as provided herein, Lessor, after providing reasonable notice to Concessionaire of its intent to take possession and giving an

opportunity to cure the defaults may take possession of all of Concessionaire's property on the Premises and sell it at public or private sale after giving Concessionaire reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit and for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first to the necessary and proper expense of removing, storing and selling such property, then to the payment of any rent due or to become due under this Agreement, with the balance, if any, to be paid to Concessionaire.

#### **Section 7.5 Cash and Record Handling Requirements**

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

#### **Section 7.6 Utility Charges**

Concessionaire shall provide, maintain, and pay all utility charges for all utilities used in the Leased Premises, including deposits, installation costs, meters, and service charges. Payment of utilities shall not be considered a payment of rent or credit against any other provision of this Agreement.

In any Leased Premises in which utility meters are not installed, Concessionaire shall be responsible for payment of all utilities used by Concessionaire in said Leased Premises based on a price per square foot as determined by the Director, which will be payable monthly and adjusted from time-to-time by Lessor based on increases or decreases in utility rates and consumption for the Transfer Center. The provisions of this Section shall not relieve Concessionaire of the requirement to install meters where possible.

#### **Section 7.7 No Abatement or Set-Off**

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

### **ARTICLE 8 IMPROVEMENTS**

#### **Section 8.1 Improvements to Leased Premises.**

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

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

Concessionaire, at its sole expense, must obtain appropriate approval from all local, state, and federal agencies, as required, for the completion of any and all improvements. All improvements shall be planned and constructed in accordance with the laws and ordinances of the City of El Paso with applicable building codes and all applicable state and federal laws; and in compliance with the rules and regulations of the FTA or any successor agencies, where applicable.

All improvements, furniture, fixtures, and equipment used in the Leased Premises shall be of high quality, safe, fire-resistant, state of the art, and attractive in appearance.

### **Section 8.2 Construction Without Approval**

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

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

### **Section 8.3 Title to Improvements**

All Leasehold Improvements made to the Leased Premises by Concessionaire, and additions and alterations thereto made upon said Leased Premises by Concessionaire, shall be and remain the property of Concessionaire until the termination of this Agreement whether by expiration of the Term, cancellation, forfeiture or otherwise. Upon the termination of this Agreement, whether by expiration, cancellation, forfeiture or otherwise, title to such Leasehold Improvements shall vest in Lessor, pursuant to 12.4.

### **Section 8.4 Removal and Demolition**

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

## **ARTICLE 9 MAINTENANCE AND OPERATION OF TRANSFER CENTER**

### **Section 9.1 City's Responsibilities**

A. Lessor, by its own forces or by contract, shall operate, maintain, repair and keep in good condition the Transfer Center and all additions, improvements, facilities, and equipment now or hereafter provided by Lessor at or in connection with the Transfer Center, except the Leased Premises which include, but are not limited to, any Leasehold

Improvements, Trade Fixtures, and Personal Property utilized, constructed, or installed by Concessionaire. Lessor shall provide exterior window washing.

## **B. Utilities**

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

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

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

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

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

## **Section 9.2 Concessionaire's Responsibilities**

A. Except for Structural Elements of the Leased Premises for which Lessor is responsible under Section 9.1 above, Concessionaire shall, without cost to Lessor, maintain the Leased Premises in good appearance, repair and safe condition, including any Leasehold Improvements, Trade Fixtures, and Personal Property utilized, constructed, or installed by Concessionaire. Custodial services shall be provided by Concessionaire for the Leased Premises in a prompt and timely manner as required to keep all portions of the Leased Premises clean, neat, wholesome and attractive. Concessionaire shall maintain and repair all Leasehold Improvements and Trade Fixtures within the Leased Premises or utilized in Concessionaire's operations, whether installed by Concessionaire or by Lessor. Concessionaire shall repair all damages caused by itself or its agents, contractors, employees, Sublessees, concessionaires, licensees, or customers

or by its operation of said privileges in the Transfer Center. All maintenance, repairs, replacement, renovation and remodeling shall be of equal quality to the original in materials and workmanship, and all paint colors shall be subject to the prior written approval of the Director.

B. On or about the commencement of each Lease Year, representatives of Lessor and Concessionaire shall tour the Leased Premises and jointly agree upon what, if any, routine refurbishment is required to maintain the Leased Premise in First Class condition, and Concessionaire shall promptly undertake such refurbishment at its sole cost and expense. If Concessionaire and Lessor cannot jointly agree upon the type and extent of refurbishment, Lessor may determine the refurbishment required. For purposes of this section, refurbishment shall mean the routine repainting or redecoration of public areas within the Leased Premises, including the replacement or repair of worn carpet, tile, furniture, furnishings, fixtures or finishes.

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

### **Section 9.3 Lessor's Right to Inspect and Make Repairs**

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

### **Section 9.4 Trash and Garbage**

A. Concessionaire shall provide and pay all costs for a complete and proper arrangement for the adequate sanitary handling of all trash, garbage and other refuse caused as a result of its operations pursuant hereto and shall provide for its timely removal from the Transfer Center. Concessionaire shall provide and use suitable covered receptacles for all garbage, trash and other refuse on or in connection with the Leased Premises. Piling of boxes, cartons, barrels or other similar items in or in view of a public area shall not be permitted. Concessionaire shall keep any areas used for trash and garbage storage prior to removal from the Transfer Center in a clean and orderly condition so as to not attract rodents, pests and birds or create an offensive odor.

B. In transporting trash and refuse from the Leased Premises, Concessionaire shall use only carts, vehicles or conveyances that are covered, leak proof and equipped with wheels suitable for operating on carpets without damage thereto. Such disposal shall take

place during hours as may be approved by the Director.

C. Concessionaire shall be responsible for the proper disposal of its refuse in such a manner as to not contaminate or restrict sewer lines within the Leased Premises and elsewhere in the Transfer Center. All such disposal methods shall be in full accord with applicable regulations governing local, state, and federal laws, rules, and regulations. Concessionaire shall, at its own expense, check and clean all grease traps and grease receptors at least monthly. The expense of any breakage, stoppage, or damage resulting from a violation of this provision, wherever such occurs, shall be borne by Concessionaire who may, or whose employees, agents, or invitees may, have caused it.

D. In the event that, Lessor establishes a Transfer Center-wide recycling program during the Term, Concessionaire agrees to participate in any such program at its own cost.

## **Section 9.5 Environmental Regulations**

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

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

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

C. Concessionaire shall, at its sole expense, procure, maintain in effect, and comply with all conditions of any permits, licenses, and other governmental and regulatory approvals required for Concessionaire's use of the Transfer Center, including, without limitation, discharge of materials or wastes into or through any storm or sanitary sewer serving the Transfer Center. Concessionaire shall cause any and all Hazardous Materials removed from the Transfer Center to be removed and transported solely by duly licensed haulers to duly licensed facilities for disposal. Concessionaire shall in all respects handle, treat and manage any and all Hazardous Materials on or about the Transfer Center in conformity with all applicable Environmental Laws or any successor laws thereto and prudent industry practices regarding the management of such Hazardous Materials. Upon the expiration or earlier termination of the Term, Concessionaire shall cause any Hazardous Materials it has brought into the Transfer Center to be removed from the Terminal and to be transported for use, storage, or disposal in accordance and compliance with all applicable Environmental Laws; provided, however, that Concessionaire shall not take any remedial action in response to the presence of any Hazardous Materials on or about the Transfer Center, nor enter into any settlement agreement, consent decree, or

other compromise with respect to any claims relating to any Hazardous Materials in any way connected with the Transfer Center without first notifying Lessor in writing of Concessionaire's intention to do so and affording Lessor ample opportunity to appear, intervene, or otherwise appropriately assert and protect Lessor's interest with respect thereto.

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

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

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

**remedial action, or other required plans in connection therewith. Concessionaire's obligations under this Section shall survive the expiration or earlier termination of this Agreement. The provisions in this paragraph are in addition to and are cumulative of the provisions and the remedies available by law or provided for under this Agreement to which Lessor may resort to cumulatively or in the alternative.**

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

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

## **Section 9.6 Self Help**

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

## **ARTICLE 10 STANDARDS OF SERVICE**

### **Section 10.1 Hours of Operation**

A. Concessionaire shall ensure that the Facility is continuously and uninterruptedly open for business and provide all services and sales activities as required by this Agreement at such hours as may be established from time to time by the Director, in the Director's sole and absolute discretion (hereinafter referred to as "Facility Hours"). Concessionaire hereby understands and agrees that the Facility Hours may be seven (7) days per week, including local, state and federal holidays, twenty-four (24) hours per day.

B. If the Director deems it necessary, on an emergency basis, to serve the public during other than Facility Hours, Concessionaire shall remain continuously open and

provide all services and sales activities at the Facility as required by the Director during the emergency period.

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

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

## **Section 10.2 Conduct of Business**

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

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

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

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

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

E. Concessionaire shall, at all times during the Term and without any additional charge to customers, replace any merchandise determined by customers to be unsatisfactory, flawed or defective or shall provide customers a full refund therefore; provided said customers have complied with any applicable warranty and use provisions applicable to the merchandise.

F. Concessionaire shall upon written demand from the Director cease selling any

item that Lessor shall determine is objectionable for sale or display at the Transfer Center and immediately remove such item from its inventory and not thereafter offer such item for sale at the Transfer Center.

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

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

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

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

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

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

### **Section 10.3 Personnel**

A. The management, maintenance and conduct of Concessionaire's operations hereunder shall at all times during the Term be under the supervision and direction of an active, qualified, competent and experienced manager representing Concessionaire, who shall at all times be authorized to represent and act for Concessionaire. Said manager shall have full authority to make day-to-day business decisions on behalf of Concessionaire, with respect to the concession operations contemplated by this Agreement, and shall represent the Concessionaire in dealings with Lessor and coordinate all concession activities with Lessor. Concessionaire will cause such manager to be assigned a duty station or office on the Leased Premises at which he shall be available

during normal business hours. Concessionaire will, at all times during the absence of such manager, assign or cause to be assigned a qualified subordinate to be available and in charge of the Leased Premises, services and facilities to act for the manager in the manager's absence.

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

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

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

E. The Director shall have the right to object to the demeanor, conduct, or appearance of any employee of Concessionaire or any of its invitees or those doing business with it, whereupon Concessionaire shall take all steps necessary to remedy the cause of the objection. If requested by Concessionaire, the Director shall present its objections in writing and provide the opportunity to reply to the objections, such reply to be given consideration by the Director.

#### **Section 10.4 Delivery of Goods**

A. Concessionaire shall arrange for the timely delivery of all goods, stock and supplies, at such times, in such location(s) and by such routes as determined by the

Director. Concessionaire shall make significant efforts to avoid using the public areas for large quantity deliveries during peak periods. Concessionaire shall be responsible for the return of all pallets, storage containers and other equipment belonging to its suppliers.

B. Concessionaire shall monitor the movement of deliveries of merchandise to avoid conflict with other Transfer Center functions and shall coordinate its use of the receiving docks with the use by other tenants or licensees of Lessor, as determined by the Director. Any containers moving through the public areas or common areas must be covered or otherwise protected.

C. Concessionaire shall maintain that portion of the receiving dock assigned for its use and designated for the delivery of its merchandise, supplies, or fixtures in a safe and sanitary condition.

D. If at any time during the Term, Lessor shall provide or designate a service for the delivery, receiving and/or distribution of merchandise, supplies and fixtures at the Transfer Center, Concessionaire shall be required to use said service at Concessionaire's proportional cost of said service.

#### **Section 10.5 Signs and Advertising**

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

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

C. With the exception of two outdoor vendor carts whose locations must be approved by the Director, Concessionaire shall not place or install any other racks, stands, Trade

Fixtures, pedestal signs or other displays of products outside the boundaries of the Leased Premises without the express prior written approval of the Director.

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

## **Section 10.6 Inspections of Service by Lessor**

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

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

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

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

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

## **ARTICLE 11 INSURANCE AND INDEMNIFICATION**

### **Section 11.1 Liability Insurance**

The Concessionaire, at its sole cost and expense shall, throughout the term of this Agreement, provide and keep in force for the benefit of the Lessor and the Concessionaire, as their respective interests may appear, comprehensive general liability insurance in an amount not

less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence, One Million Dollars (\$1,000,000.00) for bodily injuries to more than one person arising out of each occurrence, One Million Dollars (\$1,000,000.00) for property damage arising out of each occurrence, and Five Hundred Thousand Dollars (\$500,000.00) Fire Damage Liability, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

### **Section 11.2 Worker's Compensation**

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

### **Section 11.3 Insurance Requirements**

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

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

All such certificates of insurance shall also contain:

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

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

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

#### **Section 11.4 Performance and Payment Bonds**

A. Prior to the date of commencement of any construction, Concessionaire, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

i) A performance bond in a sum equal to the full amount of the construction contract awarded. Said performance bond shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall guarantee Lessor against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Concessionaire to perform completely the work described as herein provided.

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

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

#### **Section 11.5 Indemnification**

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

**THE NEGLIGENCE OF LESSOR. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LESSOR BY REASON OF ANY SUCH CLAIM, CONCESSIONAIRE, UPON NOTICE FROM LESSOR, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO LESSOR.**

#### **Section 11.6 Release of Liability for Certain Damages**

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

### **ARTICLE 12 DAMAGE OR DESTRUCTION OF PREMISES**

#### **Section 12.1 Partial Damage**

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

#### **Section 12.2 Extensive Damage**

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

#### **Section 12.3 Complete Destruction**

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

Notwithstanding the foregoing, if the Leased Premises, or a portion thereof, are completely destroyed as a result of the act or omission of Concessionaire, its sublessees, agents, invitees, contractors, representatives, subcontractors, suppliers or employees, the monthly rental payments shall not abate and Lessor may, in its discretion, require Concessionaire to repair and reconstruct the Leased Premises within twelve (12) months of such destruction and pay the costs therefore; or Lessor may repair and reconstruct the Leased Premises within twelve (12) months of such destruction and Concessionaire shall be responsible for reimbursing Lessor for the costs and expenses incurred in such repair.

#### **Section 12.4 Limits of Lessor's Obligations Defined**

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

#### **Section 12.5 Damage or Destruction of Leasehold Improvements and Trade Fixtures**

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

### **ARTICLE 13 TERMINATION**

#### **Section 13.1 Termination by Concessionaire**

This Agreement may be terminated by Concessionaire upon the occurrence of one or more of the following events:

A. The abandonment of the Transfer Center as a bus terminal or the removal of all bus passenger service from the Transfer Center for a period of greater than ninety (90) consecutive days;

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

### **Section 13.2 Termination by Lessor**

A. This Agreement may be terminated by Lessor upon the occurrence of one or more of the following events:

i) Concessionaire shall fail to pay any part of the rentals, fees or charges agreed upon hereunder for a period of thirty (30) days after Lessor has notified Concessionaire that payment was not received when due;

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

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

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

v) Concessionaire shall default in the performance of any covenant or obligation hereunder and such default continues for thirty (30) days after Lessor has notified Concessionaire of such default.

If any of the aforesaid events occur, Lessor shall have the right to terminate this Agreement and re-enter and take possession of the Leased Premises; provided, however, should the nature of the default be such that it cannot be cured within the specified time period, Concessionaire shall be deemed to have cured such default if it shall commence

performance and thereafter diligently prosecute the same to completion. Failure of Lessor to declare this Agreement terminated upon the default of Concessionaire for any reasons set out herein shall not operate to bar or destroy the right of Lessor to terminate this Agreement by reason of any subsequent violation of the terms of this Agreement.

B. Notwithstanding any other provisions of this Agreement, if at any time Lessor, in its sole discretion, requires all or any part of the Leased Premises hereunder for any Transfer Center purpose including, but not limited to, Transfer Center renovations, enlargements, or revisions, Lessor, upon ninety (90) days written notice to Concessionaire, shall terminate this Agreement with respect to those portions of the Leased Premises so required.

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

### **Section 13.3 Right of Entry Upon Termination**

In any case in which provision is made herein for the termination of this Agreement by Lessor or in the case of abandonment or vacating of the Leased Premises by Concessionaire, Lessor may enter upon the Leased Premises to re-lease the Leased Premises. Concessionaire agrees to save Lessor harmless from any loss or damage or claim arising out of the action of Lessor in pursuance of this paragraph except for any loss, damage, or claim caused by the sole negligence of Lessor or its employees.

### **Section 13.4 Rights Upon Expiration or Early Termination**

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

B. If Concessionaire fails to so remove said Concessionaire owned Trade Fixtures or Personal Property as provided herein, Lessor may remove same at Concessionaire's

expense or at its option, Lessor may take title to the Concessionaire owned Trade Fixtures in lieu of such removal by or for Concessionaire with no additional consideration due to Concessionaire. In the event such option is exercised by Lessor, Concessionaire hereby agrees to execute all documents deemed necessary by Lessor to effectuate such transfer.

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

## **ARTICLE 14 GENERAL PROVISIONS**

### **Section 14.1 Rules and Regulations**

Concessionaire shall observe and obey all Rules and Regulations established, promulgated or adopted from time to time during the Term, by Lessor, governing conduct on and operations at the Transfer Center and use of its facilities. Concessionaire shall not violate, nor knowingly permit its officers, agents, employees, invitees or independent contractors acting on Concessionaire's behalf to violate any such Rules and Regulations.

### **Section 14.2 Compliance with Law**

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

### **Section 14.3 Non-Discrimination**

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

A. That in the event facilities are constructed, maintained, or otherwise operated on the Leased Premises for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation,

and as said regulations may be amended.

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

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

D. That Concessionaire shall use the Leased Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Right Act of 1964, and as said regulation may be amended. Concessionaire shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

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

#### **Section 14.4 Affirmative Action**

Concessionaire assures it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall, on the grounds of race, color, sex, or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for, or otherwise applicable to persons leasing premises from Lessor of El Paso. Concessionaire assures that it will require that its covered suborganizations, including but not limited to Sublessees, provide assurances to Lessor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their suborganizations including but not limited to Sublessees, to the same effect.

#### **Section 14.5 Disadvantaged Business Enterprise Participation**

A. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. Concessionaire agrees 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 49 CFR Part 23.

Concessionaire agrees to include the above statement in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters and cause those businesses to similarly include the statements in further agreements.

B. In accordance with federal regulations 49 CFR Part 23, it is Lessor's obligation to assure that SMDBEs have the opportunity to compete for available revenues at the Transfer Center. Concessionaire agrees that for each Contract Year of the Term of this Agreement, it shall undertake good faith efforts to provide a level of SMDBE participation equal to or greater than ten percent (10%) of concession Gross Revenue through:

- i) Assignment of a portion of the concession granted hereunder to one or more SMDBEs as Sublessees;
- ii) Ongoing and continuous ownership of all or a portion of Concessionaire in accordance with the SMDBE Policies and Procedures;
- iii) Purchases of goods and services used in the operation of the concession granted hereunder from SMDBEs in accordance with the SMDBE Policies and Procedures; or
- iv) A combination of these participation options.

C. Concessionaire acknowledges that only those SMDBE participants certified by Lessor as of the Effective Date will be recognized by Lessor in the Concessionaire's obligation to fulfill its SMDBE participation requirement; provided, however, that said SMDBE participants may be modified from time to time throughout the Term in accordance with the SMDBE Policies and Procedures.

D. Concessionaire shall submit reports and supporting documentation, in accordance with the SMDBE Policies and Procedures, on a quarterly basis evidencing compliance with the SMDBE participation requirements as set forth herein. Said quarterly reports, including supporting documentation, are due within twenty (20) days following the end of each quarter of each Calendar Year throughout the Term. Lessor may assess a late fee of One Hundred Dollars (\$100.00) per day for each day said quarterly report is delinquent.

Lessor retains the right to examine, or have its designee examine, all Concessionaire purchase records, financial statements, tax records, contracts, and other related documents relative to Concessionaire's compliance with SMDBE participation requirements. Concessionaire agrees to cooperate with any such investigations and acknowledges that failure to supply requested documentation shall be deemed a breach of this Agreement. All such reports and supporting documentation and records must be retained by Concessionaire for a period of three (3) years following termination of this Agreement and will be made available for inspection upon request by Lessor, or any

other governmental unit with jurisdiction.

E. In the event that Concessionaire fails to meet the levels of SMDBE participation set forth herein, and fails to undertake good faith efforts sufficient to support the granting of a waiver from the levels of SMDBE participation set forth herein, the Concessionaire shall, within thirty (30) days of receipt of a written determination of non-compliance issued by Lessor present a written plan of action that will be implemented during the ensuing Lease Year to remedy any and all non-compliance issue(s).

F. Continued Non-Compliance with the SMDBE participation provisions as stated in this Section shall constitute a material breach hereof, and in the event of such non-compliance, Lessor shall have the right to terminate this Agreement or, at its option, assess liquidated damages in the form of fees to be paid to Lessor within thirty (30) days of such assessment. As used herein, "Continued Non-Compliance" shall mean two (2) or more written determinations of non-compliance issued by Lessor during the Term.

G. For purposes of this Section, "SMDBE Policies and Procedures" means those rules, regulations, policies, and procedures that have been established by Lessor or the Department in order to effect Lessor's implementation of 49 CFR Parts 23 and 26 as the same may be amended, modified, or supplemented from time to time.

#### **Section 14.6 Conflict of Interest**

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

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

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

#### **Section 14.7 Debarred Bidders**

The Concessionaire, including any of its officers or holders of a controlling interest, is obligated to inform the Lessor whether or not it, or any or its subcontractors or agents, is or has been on any debarred bidders' list maintained by the United States government. Should the Concessionaire be included on such a list during the performance of this Project, it shall so inform the Lessor. The Concessionaire hereby certifies that it and its subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from any of the covered transactions by any Federal Department or agency.

#### **Section 14.8 No Liens**

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

#### **Section 14.9 Eminent Domain**

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

#### **Section 14.10 Terms Binding Upon Successors**

All the terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. The provisions of this Section shall not be deemed as a waiver of any of the conditions relative to assignment of subletting herein before set forth.

#### **Section 14.11 No Third Party Beneficiary**

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

#### **Section 14.12 Force Majeure**

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

#### **Section 14.13 Attorney's Fees**

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

#### **Section 14.14 Cumulative Rights and Remedies**

All rights and remedies of either party here enumerated shall be cumulative and none

shall exclude any other right or remedy allowed by law. Likewise, the exercise by either party of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

#### **Section 14.15 Governmental Function**

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

#### **Section 14.16 Independent Contractor**

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

#### **Section 14.17 Interpretation of Agreement**

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

## **Section 14.18 Licenses**

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

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

## **14.19 Complete Agreement.**

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

## **14.20 Amendment/Assignment.**

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

## **14.21 Governing Law.**

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

## **14.22 Venue.**

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

## **14.23 Severability.**

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

#### **14.24 Section Headings.**

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

#### **14.25 Notices.**

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

City:	City Clerk City of El Paso 2 Civic Center Plaza El Paso, Texas 79901	Copy to:	Director Mass Transit Department 700-A San Francisco El Paso, Texas 79901
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Concessionaire:  
Daniel H. Morales  
dba Big Boy Concessions  
attn: Daniel H. Morales  
Owner/President  
2309 Bassett Ave.  
El Paso, Texas 79901

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

#### **14.26 Representation of Counsel; Mutual Negotiation.**

Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

#### **14.27 Execution and Counterparts.**

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

**14.28 Warranty of Capacity to Execute Contract.**

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

(Signatures begin on following page)

IN WITNESS WHEREOF on the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**THE CITY OF EL PASO**

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

**ACKNOWLEDGMENT**

THE STATE OF TEXAS )  
  )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2011,  
by **Joyce A. Wilson**, as **City Manager** of the **City of El Paso, Texas** (Lessor).

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:

\_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Cynthia Osborn  
Assistant City Attorney

  
\_\_\_\_\_  
Jay Banasiak  
Director Mass Transit Department

(Signatures continue on following page)

IN WITNESS WHEREOF on the 31<sup>st</sup> day of January, 2011.

CONCESSIONAIRE:  
**DANIEL H. MORALES DBA BIG BOY  
CONCESSIONS**

By: *Daniel Morales*  
Printed Name: Daniel H. Morales  
Title: Owner/President

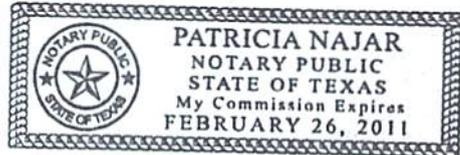
**ACKNOWLEDGMENT**

THE STATE OF TX )  
COUNTY OF El Paso )

This instrument was acknowledged before me on this 31<sup>st</sup> day of January, 2011,  
by **Daniel H. Morales** as **Owner/President** of **Daniel H. Morales dba Big Boy Concessions**  
(Concessionaire).

*Patricia Najjar*  
Notary Public, State of Texas

My Commission Expires:  
*Feb 26, 2011*



# EXHIBIT "A"

## Description of Leased Premises

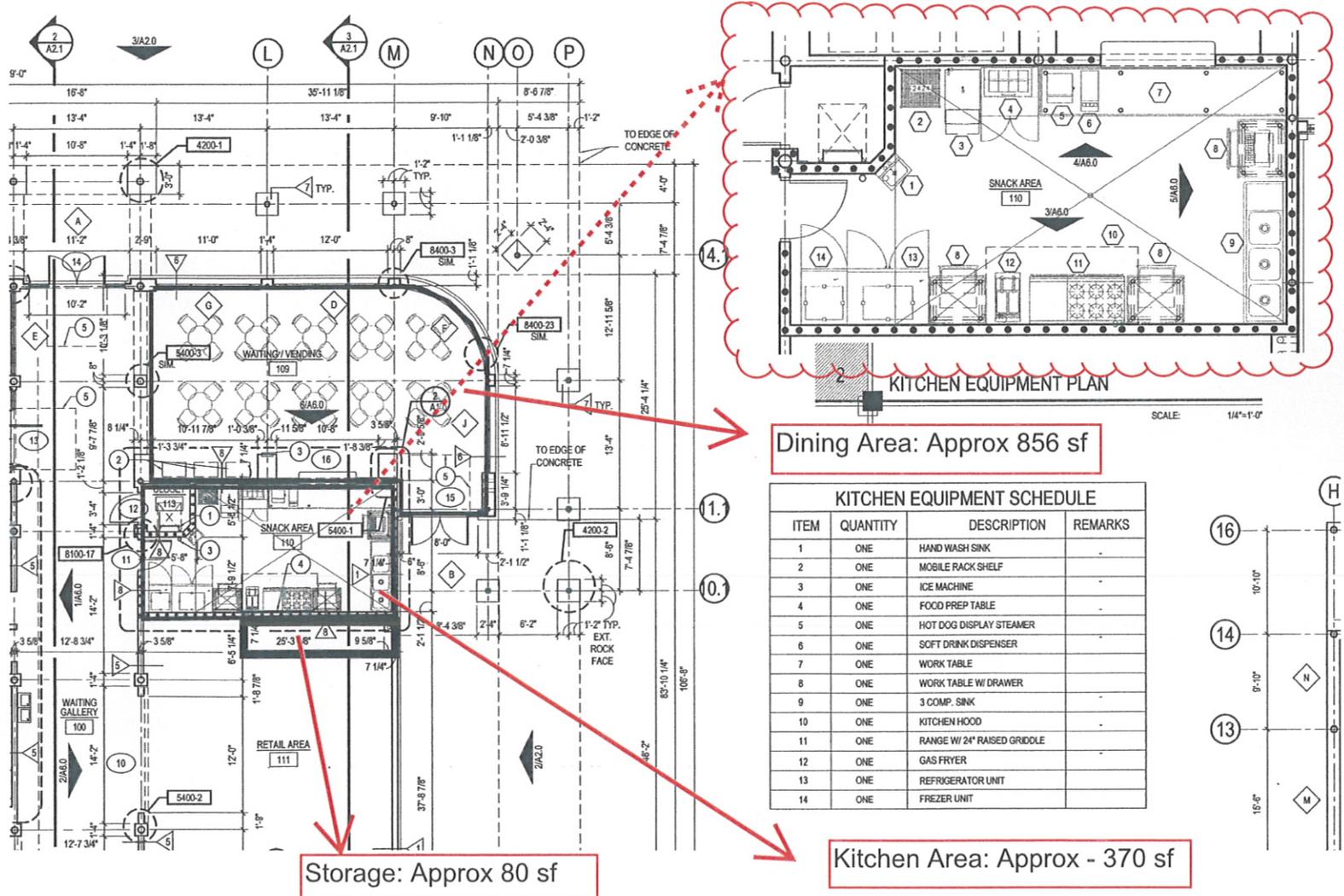
Leased premises include approximately 1,306 sq. ft. including a dining and kitchen area adjacent to each other located inside the northeast corner of the Bert Williams Downtown Santa Fe Transfer Center.

### Dining Area:

Approximately 856 sq. ft. The dining area includes 8 tables with 24 chairs and is equipped with two trash receptacles at each opposite end.

### Kitchen Area:

Approximately 370 sq. ft. that includes a list of fixtures and equipment items listed as part of Exhibit "D". Adjacent to the kitchen, on the south side, there is approximately 80 sq. ft. of storage room that is also part of the leased premises.



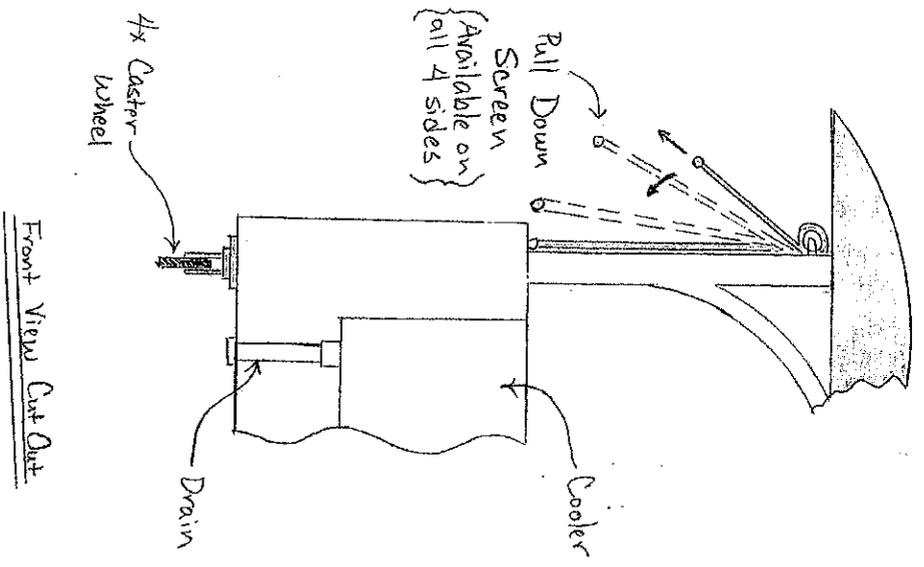
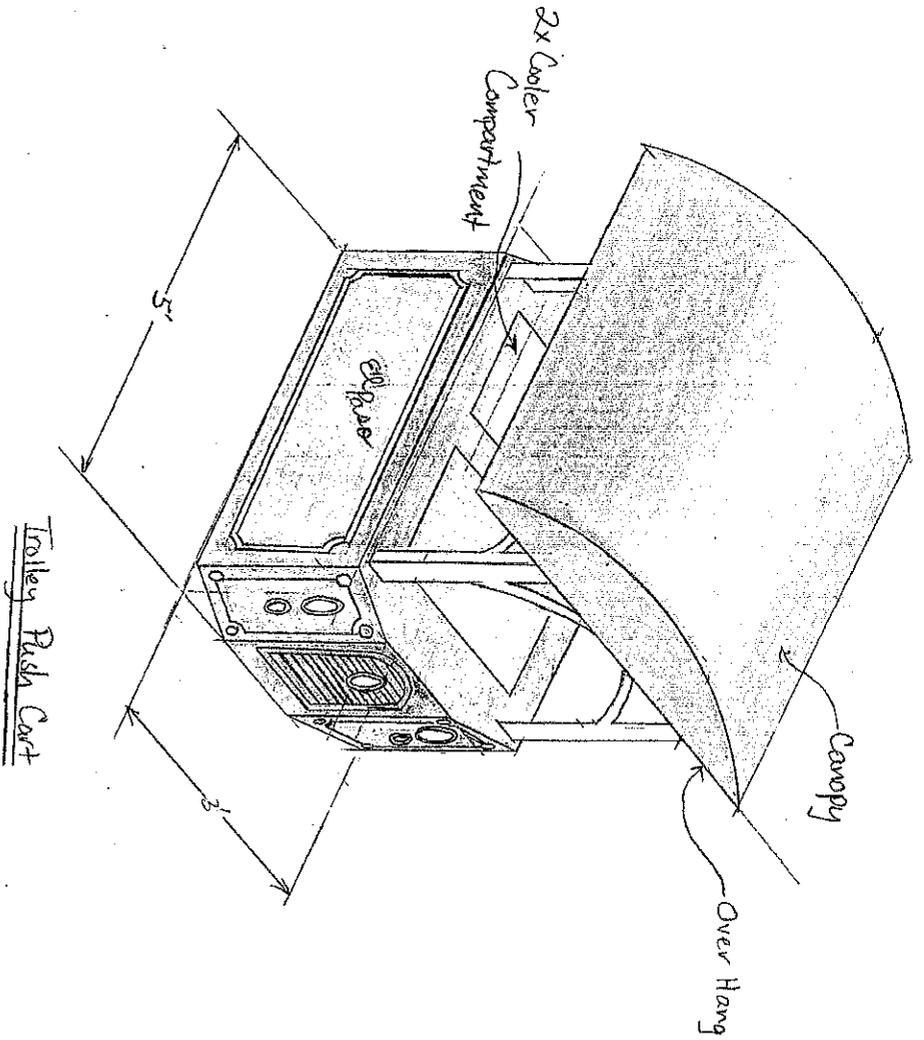
**Exhibit “B”**

Trade fixtures:

Two (2) vending carts.

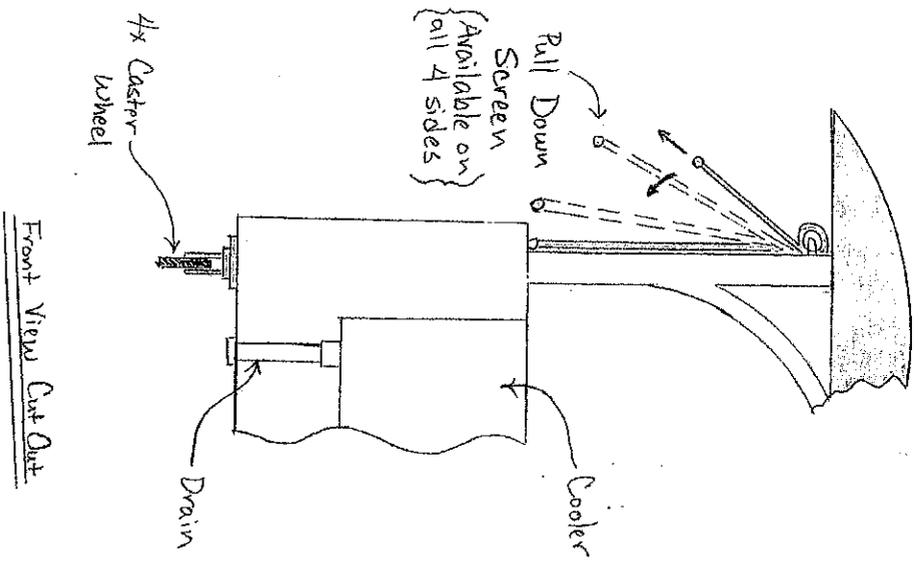
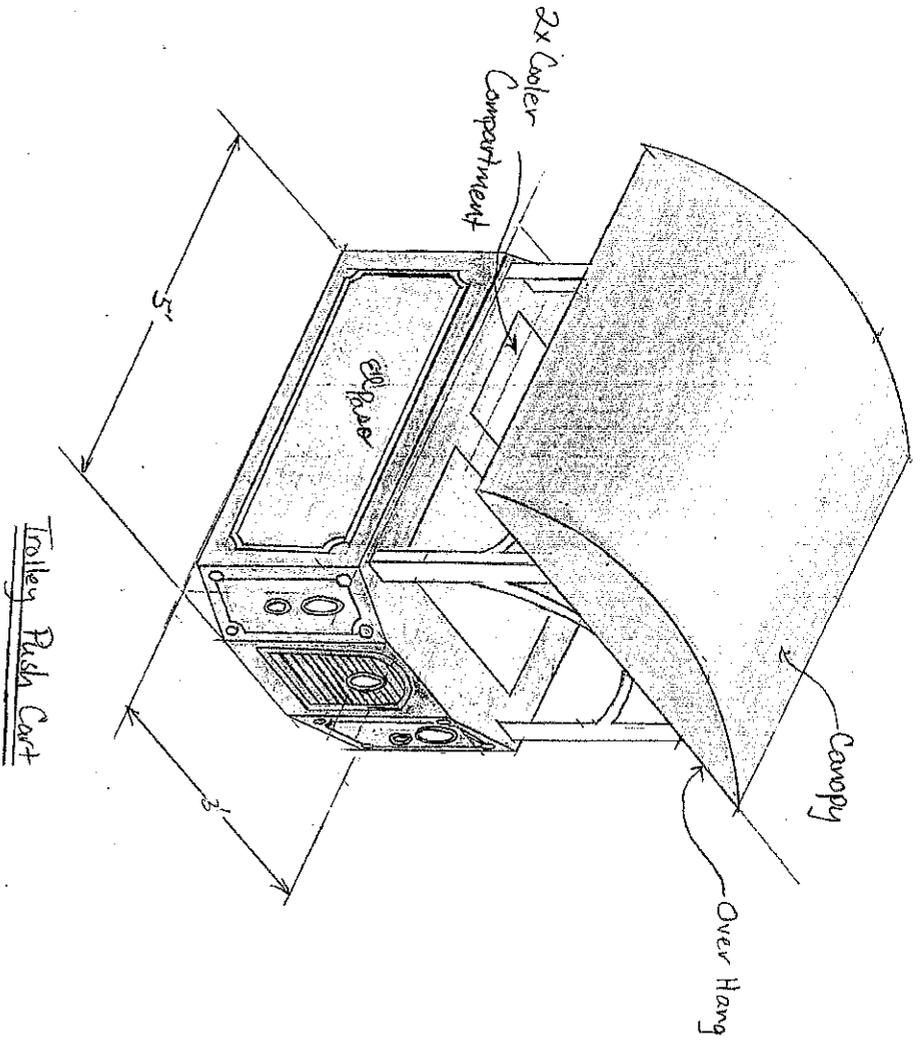
# Big Boy ICE CREAM

Donna McDonald 2/29/2010



# Big Boy ICE CREAM

Donna McDonald 2/29/2010



## EXHIBIT "C"

### Kitchen Equipment Inventory List Bert Williams Downtown Santa Fe Transfer Center

Item No.	Quantity	Description
1	3	Storage Racks 2 plastic and 1 metal
2	1	Stainless Steel Sink with 3 wash basins
3	1	Industrial Garbage Disposal
4	1	Deep Fryer
5	1	Industrial Stove/ Oven/ 6 burners/1hot plate
6	1	1Salad Bar
7	1	Coke Dispenser /w/ Apparatus- * Leased Equipment
8	1	Stainless Steel Freezer
9	1	Double Door Stainless Steel Refrigerator
10	3	Stainless Steel Tables
11	1	Deep Fryer
12	1	Ice Machine
13	1	Electric Roaster Oven
14	1	Crock Pot
15	1	Industrial Hand Held Mixer
16	1	Bread Warmer
17	5	Cleaning Utensils For Stove Hot Plate
18	4	Deep Fryer Hand Tools
19	1	Ecolab Apex Manual Utensil Sanitizer
20	1	Ecolab Sanitizer Dispenser
21	1	Drain Plug
22	1	1/4 Full Jug Liquid Multi Quat Sanitizer
23	1	Stainless Steel Bowl
24	6	Stainless Steel Containers with Covers
25	2	Large Pots with Blue Handles
26	26	Utensils
27	2	Large Ice Scoops
28	2	Small Ice Scoops
29	2	35 Gallon Plastic Trash Cans
30	1	Mop and Bucket
31	1	Hazardous Waste Container
32	1	Fire Extinguisher
33	1	Hand Wash Sink
34	1	Automatic Paper Towel Dispenser
35	1	Soap Dispenser
36	1	Set of Heat Lamps
37	1	Squeegee
38	1	Scale
39	1	Heating Pot for Crock Pot
40	2	Grill Utensils
41	1	Salt Shaker
42	1	Sugar Shaker
43	2	Stainless Steel Refrigerator Racks
44	1	Large Square Pan

## EXHIBIT "C" (Continued)

### Kitchen Equipment Inventory List

#### Bert Williams Downtown Santa Fe Transfer Center

Item No.	Quantity	Description
45	1	Stainless Steel Strainer
46	1	Calculator
47	8	Tables
48	24	Chairs

Exhibit “D”

# Big Boy Ice Cream

City of El Paso  
December 9, 2010  
SUN METRO  
RETAIL/RESTAURANT TRANSFER CENTERS  
RFI #: 2010-208R



2309 BASSETT AVE, EL PASO, TEXAS 79901 \* (915) 532-7534 \* FAX (915) 532-7534

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Appendix A.1, A.2 (Menu).....	Attached
Appendix B (sample survey).....	11
Appendix C (school program sample).....	Attached

### Offer Amount

\$24,000 per year

Negotiable

*They pay for utils*



# Big Boy Ice Cream

Concessions Inc.

2309 Bassett Ave. Ph. (915) 532-7534  
El Paso. Tx. 79901

December 9, 2010



Respondent:

Daniel H. Morales  
Big Boy Ice Cream  
2309 Bassett Ave  
El Paso, Texas 79901  
(915) 532-7534  
Cell (915) 820-7282  
Fax (915) 532-4178 / 532-8130  
[danielmorales@fruitikifruitbars.com](mailto:danielmorales@fruitikifruitbars.com)

Big Boy Ice Cream has been an established business in central El Paso for over 50 years. As a third generation family business, the value of customer satisfaction has been perfecting throughout the years.

Big Boy Ice Cream has contributed in El Paso's downtown tradition since 1967, providing employment opportunities to our community. Catering to El Pasoans has been a priority to our business.

We recently have been awarded the downtown street vending carts by the City of El Paso, our dedication to provide the community with convenience, service, and satisfaction is goal. In addition, we have had an established successful restaurant, located in Fox Plaza for 10 years, serving delicious Mexican food to the El Paso community.

Big Boy Ice Cream is requesting for your confidence and trust in our business, I ask for the opportunity to establish and share our business merit with the Sun Metro Transfer Centers.

Sincerely,

Daniel Morales  
Big Boy Ice Cream  
Owner / President

## INTRODUCTION

Big Boy currently has catered and is highly recommended to El Paso through special events throughout the city such as:

Park and Receptions sport games and tournaments, Chalk Fest, 16 de Septiembre, Poppy Festival, Thanksgiving Parade, Christmas Light Parade, and any contracted event such as car show, concerts, festivals, holidays and sport events. Every weekend we prepare for food vending at the Fox Plaza Swap Meet and the Woolco Swap Meet, and daily operating and managing downtown push-carts.

Our largest and most proud event is:  
First Light, Brut Sun Bowl Thanksgiving Parade

The Thanksgiving Parade has an expected turnout of 250,000 to 300,000 people within a 3 hour period. This parade has a three mile stretch on one of El Paso's main streets. Big Boy has been hosting this event for 15 years.

The preparation of this event is a two week process; we manufacture all our product fresh for this event such as cotton candy, candy apples, pop corn, Chicharrines and so much more other goods. An average of 150 push carts are decorated with concession goods for this grand event. Big Boy joins with high school organizations for an opportunity to fundraise during the event by contracting volunteers to work a push cart. Any carts not used for fundraising purposes will be offered to other local vendors.

Over 25 exposed food vendors are contracted to work certain approved locations along Montana Ave. These locations are all prepared at Big Boy Ice Cream, then are taken to the designated locations the morning of the event.

Big Boy Ice Cream works around the clock to acquire all necessary licenses and permits for this one day event, then organizes the vendors by posting a notice and a map of the Thanksgiving Parade route. Any interested vendors must follow the requirements of the Health Department and meet all Big Boy Ice Cream Deadlines.

Big Boy Concessions partners with the Department of Public Health by hosting a pre-inspection meeting about the event, questions are answered for the vendors during this meeting by the Department of Public Health.

Giving Big Boy the opportunity to participate in past Park and Recreation scheduled games, tournaments and events have been and honor and privilege. Big Boy Ice Cream is requesting for your confidence and trust in our business and in what we do best.

## **CLIENT LIST**

### **Park and Recreation Tournament and Special Events**

Big Boy Ice Cream has a vast history in participating and providing service to El Paso Parks. Since the public swimming pools were associated with the parks, Big Boy had concessions inside the majority of locations.

Big Boy attends to tournaments and serves not only the customers but caters to the home game team and family by donating a free lunch ticket per team member. Big Boy also provides spring water to the coaches and all participating teams during the full tournament schedule.

911 S. Ochoa Ste B, El Paso, Texas 79901 Contact Paula (915) 351-1098

### **Mercado Fox Plaza Weekend Swapmeet**

Every weekend Big Boy Ice Cream assembles 4 food stands, 7 mobile push-carts, providing food goods and service to the traffic of 15,000 swapmeet customers. Our vendors provide food such as chilendrinās, corn in a cup (traditional style), tripitas, gorditas and so much more mouth watering choices. We also refresh our customers with natural fruit waters (agua frescas), bottle water, gatorades, and coca-cola products all chilled ready to drink and enjoy.

In addition, Big Boy supplies other food vendors with ice and manufactured goods such as cotton candy, candy apples, chicharrines to name a few.

5559 Alameda Ave, El Paso Texas, 79905 Contact Jeanette (915) 779-8424

### **Consulado Mexicano 16 de Septiembre event at San Jacinto Plaza**

For the past two years Big Boy has attended the great celebration event of the Mexican Revolution ceremony at San Jacinto Plaza. This event is a one night remembrance of the day before the Mexican Revolution. More than 20,000 people gather to relive and celebrate this historic event.

Big Boy participates in organizing, contracting, and obtaining proper permits and licensing for this event. Big Boy also assembles 5 food stands that provide traditional Mexican foods for the customers enjoying the event.

910 E San Antonio, El Paso Texas, 79901 Contact (915) 533-3644

## REFERENCES

### Financial References

3 YEARS

Wells' Dairy, Inc. aka  
Blue Bunny Ice Cream  
Contact: Randy Markley  
1 Blue Bunny Drive  
Po Box 1310  
Le Mars, IA 51031  
1-800-942-3800 Ext. 6829  
Office (949) 713-9277  
Fax (929) 713-9278

15 YEARS

Pepsico Food Service  
Aka Frito Lay  
Contact: Tom Zwirner  
Email: Tom.Zwirner@fritolay.com  
4921 Calle de Tierra, NE  
Albuquerque, NM 87111  
Office (505) 298-7336  
Cell (505) 301-0216  
Fax (505) 299-2315

40 YEARS

Coca-Cola  
Contact: Rudy Armendariz  
Email: rarmendariz@cokecece.com  
11001 Gateway Blvd. W.  
El Paso, Texas 79935  
1-800-647-2653  
(915) 593-2653  
Fax (915) 594-6977

30 YEARS

Sam's Club  
Contact: Danny Martinez  
Cielo Vista Location  
7001 Gateway Blvd. W  
El Paso, Texas 79925  
(915) 771-0004

### Associated Business

50 YEARS

Park and Recreation  
Contact: Paula Powell  
Email: powellpj@elpasotexas.gov  
911 S. Ochoa, Ste. B  
El Paso, Texas 79901  
(915) 351-1098  
Cell (915) 240-3315  
Fax (915) 542-2656

30 YEARS

Sun Bowl Association  
Contact: Joe Daubach  
4150 Pinnacle St. #100  
El Paso, Texas 79902  
(915) 533-4416

8 YEARS

UTEP Concessions aka  
Sodexo  
Contact: Saul Chee  
500 W University St  
#207A  
Union Building  
El Paso, TX 79968  
(915) 449-2757

5 YEARS

Convention Center  
Contact: Mike Paterson  
1 Civic Center Plz  
El Paso, Texas 79901  
Office (915) 534-0601  
Cell (915) 541-5156

30 YEARS

Central Business  
Association  
Contact: Alonso Flores  
201 E Main Dr, #1603  
El Paso, TX 79901

### Bank Reference

40 YEARS

Chase Bank  
Contact: Jorge Munoz  
201 E Main Dr  
El Paso, TX 79901  
(915) 546-6639

40 YEARS

Chase Bank  
Contact: David LoPiccolo  
2829 Montana Ave  
El Paso, TX 79903  
(915) 680-5307

## Food Products

### Goods

- Unexposed Foods: Prepackaged
  - Chips
  - Candy
  - Popcorn
  - Chicharrines
  - Candy Apples
  - Cotton Candy
  - Pumpkin Seeds
  - Cookies/Donuts
  - Fruitiki Fruit Bars
  - Can/Bottle Beverages
  - Blue Bunny Ice Cream (see pamphlet for ice cream variety)
  
- Exposed Foods
  - Pickles
  - Nachos
  - Hot Dogs
  - Chilindrinás
  - Snow Cones
  - Corn in a cup (Elote)
  
- Daily Options
  - Coffee
  - Tamales
  - Burritos
  - Gortitas
  - Menudo
  - Pancakes
  - Caldo De Res
  - Hot Chocolate
  - Breakfast of the Day
  - Lunch Special of the Day
  - Hamburgers/Cheeseburgers

Price List (see attachment Appendix A)  
Blue Bunny Ice Cream Pamphlet (Appendix A.1)  
Full Restaurant Menu (Appendix A.2)

## **Methods of Management and Operation**

### **Personnel/Staff Proposed Information** Staff and Qualifications

Proposed Number of Managers at headquarters location Two (2)

- Director of project; Overseer; licensing, permits, health permits
- Duties include but not limited to: manager of program; sustain licensing, permits, health inspections/permits; maintaining track of employees, contracting interested vendors, cash-flow, inventory tracking, control service calls for maintenance/repair, record of equipment and location, provide necessary training for vendors

(2) Vendors/Cashiers- Duties include: vend of concession goods, ordering and inventory of goods, cleanliness of and surroundings, organization of concession area (behind and in front of the counter) and overall appearance of facility, communication with headquarters on daily inventory, ice, cleanliness of area and Sun Metro perimeter, customer flow, and schedule of events.

(2) Cooks/Prep cooks – Duties include: creating special of the day schedule for the week menu, preparation of foods, inventory of food, prepping and labeling product with description and date of preparation, overall cleanliness of kitchen and surroundings, organization of kitchen, must comply with all Department of Health procedures and restrictions.

(2) Perimeter Push Cart Vendors – Will be established outside the Sun Metro Facility in a new trolley designed cart (Appendix C). Vend of concession goods, ordering and inventory of goods, cleanliness of and surroundings, organization of concession area cleanliness of area and Sun Metro perimeter, customer flow, and schedule of events.

### **Hours of Operation**

Hours of Operation – Subject to change due to special events throughout the calendar year

\*Extended for special events

Monday to Friday 7am to 6pm \*

Saturday 7am to 6pm\*

Sunday (optional) 8am to 5pm\*

## **Operation Plan and Goals**

Goals- Catering to El Pasoans have been a priority to our business, providing convenience, service, and customer service and product satisfaction is the heart of our concession service we provide.

Customer Service Program – Big Boy Ice Cream plans to launch a customer satisfaction program, we will evaluate in a quarterly basis and adjust accordingly. Vendors are expected to be bilingual, groomed, and uniformed.

Frequency of use – Customer service will be practice on a daily basis, satisfaction of the customer is a high priority, customer suggestions and comments will be recorded, and practiced if applicable.

Customer Service Survey/Evaluation and Sample Summary  
Example: Refer to Appendix B

## **POS System**

Big Boy works with two different POS systems; Aloha and First Data. Both systems are capable handling of cash flow and credit cards, menu setup, ticket functions, daily sales, and reports.

Big Boy will use a First Data POS system at the Sun Metro Transit Centers.

Data Analysis Mythology – Yearly analysis of data will be statistically analyzed and recorded during the three year period plus (two year extension) and provided upon request to the City of El Paso and/or Sun Metro.

## **Vending Machine If Applicable**

Big Boy Concessions is capable of partnering with a company who will qualify under all Sun Metro requirements, and work under the same entity as Big Boy.

This company has equipment to provide dry and frozen goods, including frozen food.

## **Security programs**

Vendors are to keep cash box out of public view, cash must be put away after each transaction. Big Boy Ice Cream has never had a problem or incident of theft in the past, due the City Police being in the area at all times, if further security is needed, Big Boy will take further measures. Mobile Watch Program- Big Boy Ice Cream is a member of the Business and Mobile Watch Program with the Police department; all of our vendors will be required to attend these training workshops taught by Officer Slack and Officer Gomez bi-yearly. This program allows our vendors to be aware of their surroundings and report any suspicious activity to the Police.

## Appendix A – Products and Pricelist

Bottled Water .....	\$1.00
Taco Plate (3).....	\$5.00
Burritos .....	\$2.00
Coffee/Hot Chocolate .....	\$1.00
Candy.....	\$0.05, \$.35, \$.60, \$1.00
Chicharrines .....	\$1.25
Chilindrinas .....	\$2.50
Frito Lay Chips .....	\$1.25
Coke Can 12oz .....	\$0.60
Coke Bottle.....	\$1.00
Cotton Candy .....	\$1.50
Corn in a Cup 8oz .....	\$2.00
Corn in a Cup 12oz .....	\$3.00
Extra Bread or Tortilla or Cheeze add on.....	\$0.50
Fruitiki Bar .....	\$1.00
Gatorade 20oz .....	\$1.25
Gatorade 24oz .....	\$1.50
Gortita Plate (3) .....	\$5.00
Hamburger .....	\$2.00
Hot Dog.....	\$1.00
Blue Bunny Ice Cream .....	\$2.00
Agua Fresca 20oz/32oz .....	\$1.00, \$1.50
Menudo 16oz/30oz .....	\$3.00,\$4.50
Nachos .....	\$2.00
Pickles .....	\$1.00
Pop Corn .....	\$1.25
Pumpkin Seeds .....	\$1.25
Snow Cones 6oz/12oz....	\$1.00, \$1.50
Breakfast of the Day .....	\$2.99
Special of the Day .....	\$4.99

## Appendix B - Customer Service Survey

Grading Scale 1 2 3 4 5      1-Poor    2-Needs Improvement    3-Fair    4-Great    5-Excellent

- |   |           |
|---|-----------|
| 1. How would you rate customer service?         | 1 2 3 4 5 |
| 2. How do you rate vendor personal cleanliness? | 1 2 3 4 5 |
| 3. How would you rate surrounding cleanliness?  | 1 2 3 4 5 |
| 4. How would you rate food good variety?        | 1 2 3 4 5 |
| 5. How would you rate coldness of drinks?       | 1 2 3 4 5 |
| 6. How would you rate food freshness?           | 1 2 3 4 5 |
| 7. How would you rate overall presentation?     | 1 2 3 4 5 |
| 8. How would you rate temperature of hot food?  | 1 2 3 4 5 |

Please feel free to add your personal comments and suggestions.

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Other information you would like to share.

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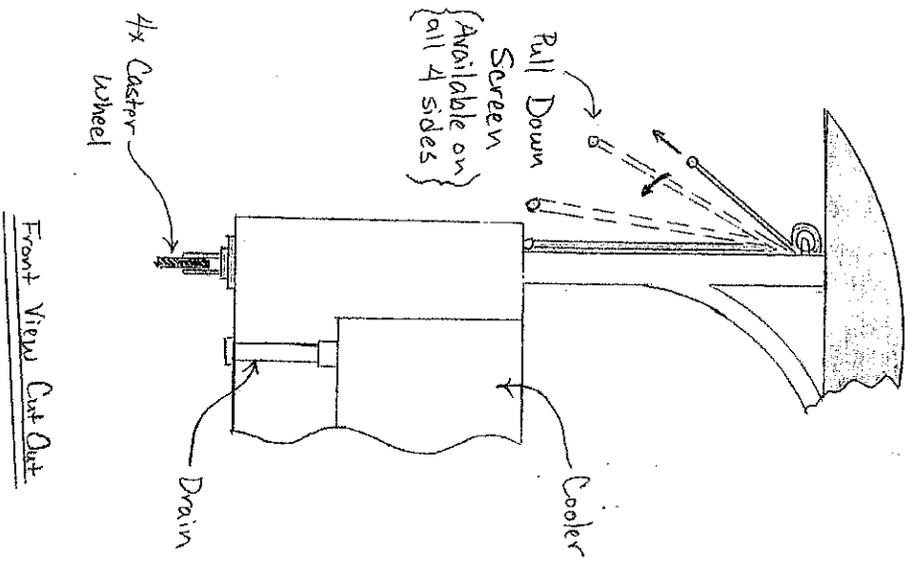
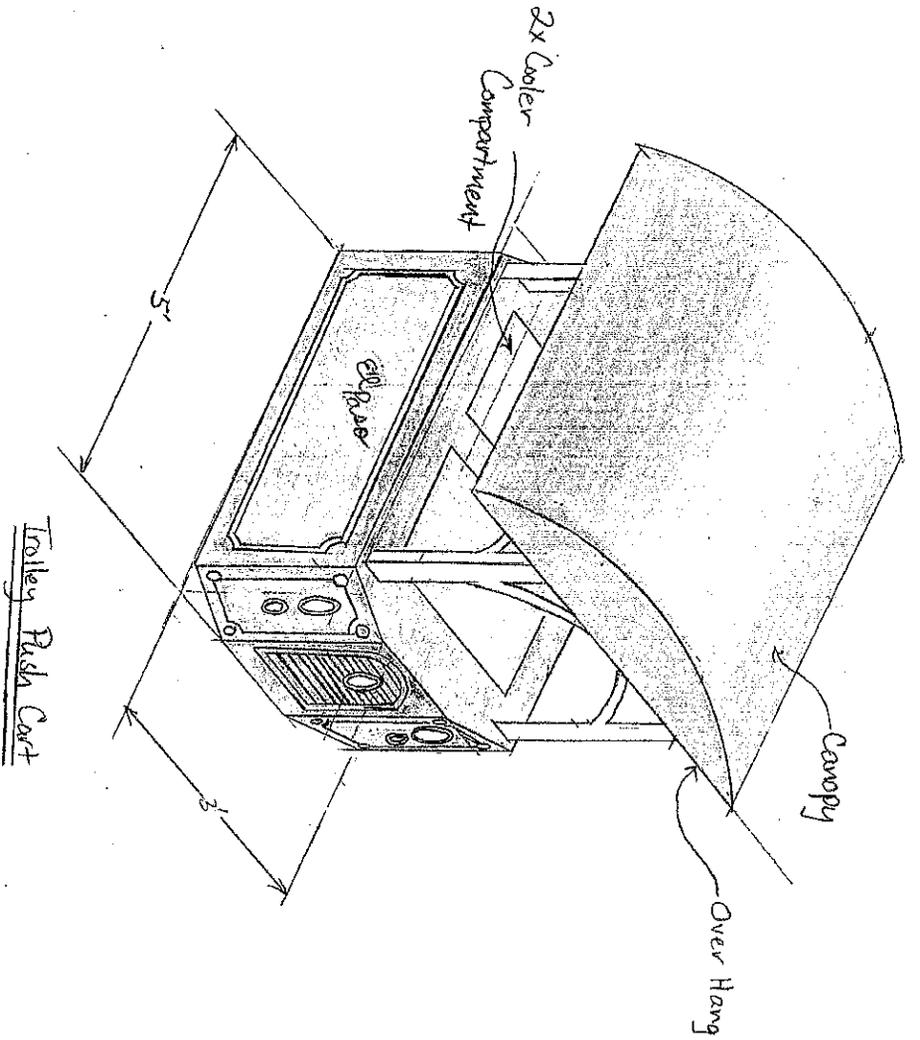
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Thank you for participation in our customer satisfaction survey, please feel free to contact us for any question or concerns you may have about our Concessions.

Big Boy Ice Cream \* 2309 Bassett Ave, El Paso Texas 79901 \* 915-532-7534 \* Fax (915) 532-4178

# APPENDIX C



Front View Cut Out

# Big Boy ICE CREAM

Donna McDonald 2/24/2010