CITY OF EL PASO, TEXAS
DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: Airport
AGENDA DATE: April 17, 2007
CONTACT PERSON/PHONE: Patrick T. Abeln, A.A.E.
DISTRICT(S) AFFECTED: 3

SUBJECT:
Resolution authorizing the City Manager to sign a Concession Agreement between the City of El Paso and CheckPoint Mailers, Inc. effective May 1, 2007.

BACKGROUND / DISCUSSION:
CheckPoint Mailers, Inc. ("CheckPoint") has been a concessionaire at El Paso International since March 1, 2005 when they began providing self-service shipping and mailing services for airline passengers with prohibited items that cannot pass through airport security. The initial term, which was effective from March 1, 2005 for one year with a one year option, has expired, however, remains active on a month-to-month basis. The Concessionaire desires to continue this service but has requested to revise the rates.

The new concession agreement will have a term of one year with two, one-year options allowing CheckPoint Mailers to remain in the El Paso International Airport Terminal to provide this convenient service to our passengers.

Due to new and constantly changing TSA regulations, the Concessionaire desires to raise the old fees of $8.00 for domestically addressed items and $12.00 for internationally addressed items have experienced a price increase as follows:

Domestic:	Each item/non-lighter	$ 9.95
	Each bag of liquids (2 or more)	19.95
	Each lighter	19.95
International:	Each item/non-lighter	$ 17.95
	Each bag of liquids (2 or more)	24.95

PRIOR COUNCIL ACTION:
Has the Council previously considered this item or a closely related one? If so, when?
Yes. The same type Agreement for the same Concessionaire was approved by Council on March 1, 2005.

AMOUNT AND SOURCE OF FUNDING:
How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A. This is a revenue-generating concession agreement.

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____
Raymond L. Telles, Assistant City Attorney

OTHER: Patrick T. Abeln, Director of Aviation _____
(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

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RESOLUTION

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

That the City Manager be authorized to sign a Concession Agreement by and between the City of El Paso and CheckPoint Mailers, Inc. ("Concessionaire") for the operation of a self-service security checkpoint mailing concession at the El Paso International Airport.

APPROVED AND ADOPTED on this _____ day of _____ 2007.

THE CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Patrick T. Abeln, A. A. E.
Director of Aviation

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Doc. No. 28967
Doc. Name: CheckPoint Mailers
Doc. Author: RTEL

CONCESSION AGREEMENT

EL PASO INTERNATIONAL AIRPORT
EL PASO, TEXAS

CHECKPOINT MAILERS, INC.
CONCESSIONAIRE

May 1, 2007
EFFECTIVE DATE

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Doc. No. 28967
Doc. Name: CheckPoint Mailers
Doc. Author: RTEL

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CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is made this ____ day of April 2007 between the **CITY OF EL PASO** ("City") and **CHECKPOINT MAILERS, INC.** ("Concessionaire").

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

WHEREAS, Concessionaire is engaged in the operation of a self-service security checkpoint mailing business and is prepared, equipped and qualified to supply that service at the Airport;

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

WHEREAS, Concessionaire desires to operate a checkpoint mailbox concession in the area designated by the City in the Airport terminal building;

NOW, THEREFORE, the parties agree as follows:

ARTICLE I – CONCESSION PRIVILEGES

1.01 CONCESSION SITE. The checkpoint mailbox concession shall be operated in the terminal building on the site specified on **EXHIBIT "A"** attached hereto and incorporated herein by reference (the "Concession Site").

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

A. The exclusive right, license and privilege to operate a self-service checkpoint mail service business in the terminal building.

B. The concession rights granted herein shall be subject to all applicable laws, ordinances, rules and regulations.

C. Prior to the Effective Date, Concessionaire must install (or cause to be installed) and operate a self-service metal secured drop box that has been designed to be blast resistant ("Drop Box") at the Concession Site; provided that such installation shall be subject to the prior written approval of the Director of Aviation.

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

A. That no alteration of the Concession Site or use of the Concession Site shall be made without the prior written consent of the Director of Aviation.

B. The Director of Aviation, from time to time, may require Concessionaire to relocate its Drop Box operations, at Concessionaire's sole expense, to other locations in or around the Airport terminal building during the term of this Agreement. The Director of Aviation will determine the location of all and any temporary Concession Sites and will provide Concessionaire ten (10) days' prior written notice of any required relocation.

C. Concessionaire warrants that it is able to and will provide and maintain first-class quality facilities and service on the Airport. Concessionaire agrees it will provide and maintain such quality facilities and service on the Airport during the term of this Agreement.

D. Concessionaire agrees that in the operation of its business on the Airport, it will not, on grounds of race, color, creed, sex, age, disability, sexual preference or national origin, discriminate or permit discrimination against any person or group of person in any manner prohibited by any laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force. City reserves the right to take any action as is necessary to enforce this paragraph, including termination of this Agreement.

E. Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E to insure that no person shall on the grounds of race, color, creed, sex, age, disability, sexual preference or national origin be excluded from participating in or receiving the services or benefits of any program or activity covered by this Subpart and Section 504 of the Rehabilitation Act of 1973. Concessionaire assures that it will require that its covered suborganizations (sub-concessionaires) provide assurances to City herein that they similarly will undertake affirmative action programs and that they will require assurance from their suborganizations (sub-sub-Concessionaires), as required by 14 CFR Part 152, Subpart E, to the same effect.

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F. Any improvements, facilities, decorations, fixtures, equipment, supplies and cabinets furnished by Concessionaire shall be in keeping with the general decor of the terminal building and shall be subject to the written approval of the Director of Aviation prior to installation.

ARTICLE II - INSTALLATIONS BY CITY AND CONCESSIONAIRE

2.01 TERMINAL BUILDING SPACE.

A. City shall provide existing lighting, air conditioning and electrical service.

B. Concessionaire shall provide all equipment and fixtures necessary in the proper conduct of Concessionaire's business.

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

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

ARTICLE III - SERVICES TO BE PERFORMED BY CONCESSIONAIRE

3.01 USE OF CONCESSION SITE. Concessionaire agrees that the Concession Site shall be used only and exclusively for the purpose of providing self-service shipping and mailing services for airline passengers with prohibited items (such as sharp objects, tools, scissors, pocket knife, cigar torch) that cannot pass through airport security checkpoints and for no other purpose whatsoever. Concessionaire's self-service kiosks shall not be used for the deposit of items that are considered illegal or prohibited by the United States Postal Service such as weapons, ammunition, batteries, flammable liquids, and explosives. All full lighters shall be drained of their fuel, foil wrapped, bubble wrapped, and packaged prior to shipping.

3.02 TYPE OF OPERATION. Concessionaire shall remove all items in each self-service kiosk at least twice a week during the entire term of this Agreement. In the event that an item considered to be illegal or prohibited by the United States Postal Service is discovered by Concessionaire, Concessionaire shall immediately notify the El Paso Police Department at (915) 780-4744 and Concessionaire shall turn such item over to the El Paso Police Department.

Concessionaire agrees that the self-service kiosks installed in the Concession Site shall be a blast mitigating self-service kiosks.

Improvements, structures, and appurtenances created and installed by Concessionaire shall be maintained by Concessionaire in a clean, safe, sound, and presentable condition at all times. Such maintenance shall include, but not be limited to, repair, replacement, and refinishing of interior walls, ceilings, and floors.

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It is further specifically agreed that Concessionaire shall not place any load upon the floor of the Concession Site exceeding the safe load per square foot that said floor was designed to carry as calculated by qualified structural engineers.

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

3.03 COST OF SERVICE. The charge to passengers for the use of the self-service Drop Box during the term of this Agreement shall be:

Domestic:	Each item/non-lighter	$ 9.95
	Each bag of liquids (2 or more)	$19.95
	Each lighter	$19.95
International:	Each item/non-lighter	$17.95
	Each bag of liquids (2 or more)	$24.95

The fees may not be changed without the prior written consent of the Director of Aviation.

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

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

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

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

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

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

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

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

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

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

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ARTICLE IV - TERM OF AGREEMENT

4.01 TERM. The term of this Agreement shall be for a period of one (1) year, commencing on the first day of May 2007 and ending the 30th day of April 2008.

4.02 OPTIONS TO EXTEND. City shall have the option to extend this agreement for two (2) additional terms of one (1) year each. In the event the City elects to exercise the option, the Director of Aviation shall notify the Concessionaire in writing.

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

4.04 TERMINATION. Either party to this Agreement may terminate this Concession Agreement by providing the other party thirty (30) days prior written notice.

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

5.01 CONCESSION SITE RENT. Concessionaire agrees to pay 10% of its Gross Receipts, as defined herein (the "Percentage Fee"). Percentage Fee is due and payable on the 15th of the month following that in which the revenues were earned.

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

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

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

Concessionaire agrees to operate its business upon the Airport so that a duplicate invoice and cash receipt, if applicable shall be issued with each sale or transaction, whether for cash or credit. Concessionaire further agrees to keep, in the El Paso area, books and records in accordance with generally accepted accounting practices, and such other records as City may request. The duplicate invoices or cash receipts, if applicable, and all other books and records of Concessionaire, as mentioned

in this Agreement, shall be available for inspection or audit by authorized representatives of City at all reasonable times during business hours for a minimum period of one (1) year after the end of each contract year and after any hold over or option period, if any. If an audit is required, appropriate records will be maintained legally for a period of sixty (60) days after completion of the audit.

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

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

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

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

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

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

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

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

5.06 PLACE OF PAYMENT. All rentals, fees or other charges provided herein shall be paid to City at the following address:

Accounting Department
El Paso International Airport
P.O. Box 971278
El Paso, Texas 79997-1278

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5.07 CONTRACTUAL LIEN. In addition to any other rights or remedies allowed by law, the City shall have a lien on all of the property of the Concessionaire, used or situated in the Concession Site, to secure payment of concession fees owed hereunder by Concessionaire to the City at any time during the existence of this Agreement. This lien shall not be in lieu of or in anyway affect the statutory landlord's lien given by law, but shall be in addition to that lien.

ARTICLE VI - INDEMNIFICATION AND INSURANCE

6.01 INDEMNIFICATION. WITHOUT LIMITING THE GENERALITY OF ANY OTHER INDEMNITY CONTAINED IN THIS AGREEMENT, CONCESSIONAIRE AGREES TO INDEMNIFY AND HOLD CITY HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, LIABILITIES AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF CONCESSIONAIRE'S ACTIVITIES ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF CONCESSIONAIRE OF ANY TERMS OF THIS AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF CITY, ITS AGENTS, CONTRACTORS, EMPLOYEES, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF CITY. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST CITY BY REASON OF ANY SUCH CLAIM, CONCESSIONAIRE, UPON RECEIPT OF WRITTEN NOTICE FROM CITY, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO CITY.

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

6.03 LIABILITY INSURANCE. Concessionaire, at its sole expense shall, throughout the term of this Concession Agreement, provide and keep in force for the benefit of City and Concessionaire, as their respective interest may appear, comprehensive general liability insurance in an amount not less than Two Hundred and Fifty Thousand Dollars ($250,000) for bodily injury to one person for each occurrence and Five Hundred Thousand Dollars ($500,000) for bodily injuries to more than one person arising out of each occurrence; and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand Dollars ($100,000) for property damage growing out of each occurrence and in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Action, whichever is greater.

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

A. A statement of the coverage;

B. A statement certifying the City to be listed as an additional insured;

C. A statement of the period during which the policy is in effect;

D. A statement that annual premium or the advance deposit premium for such policy has been paid in advance; and

E. An agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least fifteen (15) days' prior written notice to City.

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

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

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

A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days from the date said payments are due.

B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Concessionaire's property.

C. Make an assignment of any interest in this Concession Agreement for the benefit of creditors.

D. Be adjudged a bankrupt in involuntary bankruptcy proceedings.

E. Be made a party to a receivership proceeding in which a receiver is appointed for the property of affairs of the Concessionaire.

F. Abandon the Concession Site for ten (10) days.

G. Default in the performance of any of the covenants and conditions required (except rental payments) herein to be kept and performed by Concessionaire, and such default continues for a period of twenty (20) days after receipt of written notice from City of said default.

H. Violate any applicable laws, statutes or ordinances.

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

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

7.03 ASSIGNMENT AND TRANSFER. Concessionaire shall not assign, transfer, or sublease its rights granted hereunder.

ARTICLE VIII - REDELIVERY

Concessionaire shall make no unlawful or offensive use of the Concession Site and will at the expiration of the term hereof or upon any sooner termination, without notice, quit and deliver up said Concession Site to City peaceably, quietly and in as

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good order and condition, reasonable use and wear thereof excepted, as the same now are or may hereafter be improved by Concessionaire or City.

ARTICLE IX - GENERAL PROVISIONS

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

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

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

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

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

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

9.07 TAXES. Concessionaire shall be responsible for payment of any and all payroll taxes or other assessments attributable to the operation of Concessionaire's business, improvements or personal property located on the Concession Site regardless of

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ownership or title to same. **Concessionaire further indemnifies the City from all tax liability including but not limited to ad valorem real property taxes and personal property taxes.**

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

9.09 NOTICES.

A. Any notice under the terms of this Agreement shall be in writing to the following addresses:

CITY: Director of Aviation
El Paso International Airport
6701 Convair Road
El Paso, Texas 79925-1091

CONCESSIONAIRE: CheckPoint Mailers, Inc.
P. O. Box 2965
Huntersville, NC 28070
ATTN: Heather Lowry, President/CEO

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

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

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

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

9.13 EFFECTIVE DATE. Regardless of the date signed, this Concession Agreement shall be effective as of the date first noted on the title page.

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IN WITNESS WHEREOF, the parties have hereunto set their hands this ___ day of _____ 2007.

CITY OF EL PASO

_____
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

_____
Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Patrick T. Abeln, A.A.E.
Director of Aviation

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ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ___ day of _____, 2007, by **Joyce A. Wilson**, as **City Manager** of the **City of El Paso, Texas** (City).

_____
Notary Public, State of Texas

My Commission Expires:

_____

Doc. No. 28967
Doc. Name: CheckPoint Mailers
Doc. Author: RTEL

ATTEST:

_____

CONCESSIONAIRE: CHECKPOINT MAILERS, INC.

By: Heather C. Lowry
Printed Name: Heather C. Lowry
Title: President / CEO

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ACKNOWLEDGMENT

THE STATE OF North Carolina)
)
COUNTY OF Mecklenburg)

This instrument was acknowledged before me on this 30 day of March, 2007, by Heather Lowry, as president of CheckPoint Mailers, Inc. (Concessionaire).

Michael Alexander Robinson
Notary Public, State ~~of Texas~~ North Carolina

My Commission Expires:
10/22/2014

Doc. No. 28967
Doc. Name: CheckPoint Mailers
Doc. Author: RTEL