

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

DEPARTMENT: Aviation

AGENDA DATE: November 23, 2021

CONTACT PERSON NAME AND PHONE NUMBER: Sam Rodriguez, PE, (915) 212-7301

DISTRICT(S) AFFECTED: 2

CITY STRATEGIC GOAL 1: Create an Environment Conducive to Strong, Sustainable Economic Development.

SUBJECT:

Resolution to authorize the City Manager to execute a License Agreement between the City of El Paso ("City") and Tikal Group, LLC, a Texas limited liability company ("Licensee"), to allow Licensee to locate news racks to dispense Licensee's newspaper in three areas of the El Paso International Airport, for a term of two years, in exchange for Licensee providing in-kind services equaling the value of the space and the license fee (\$15,000.00 annually), pursuant to the City's "In-Kind Services in Lieu of License Fees Payment", approved by the Director of Aviation on July 5, 2021.

Term for this agreement shall be for two (2) years. Licensee will provide in-kind services in lieu of license fees/payments. Total value of the space and license fee is \$15,000.00 annually.

BACKGROUND / DISCUSSION:

The Department of Aviation is requesting approval of this item to allow Tikal Group, LLC d/b/a Border Now to place three (3) newsstands offering the Border Now Magazine. The magazine will offer business, maquiladora trade and economy information to our passengers, visitors and business partners. Newsstands will be located in the Baggage Claim, main lobby and the Meet/Greet areas.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A: This is an in-kind item

BOARD / COMMISSION ACTION:

N/A

DEPARTMENT HEAD:



Sam Rodriguez, PE, Director of Aviation

RESOLUTION

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

That the City Manager is authorized to execute a License Agreement between the City of El Paso ("City") and Tikal Group, LLC, a Texas limited liability company ("Licensee"), to allow Licensee to locate newsracks to dispense Licensee's newspaper in three areas of the El Paso International Airport, for a term of two years, in exchange for Licensee providing in-kind services equaling the value of the space and the license fee (\$15,000.00 annually), pursuant to the City's "In-Kind Services in Lieu of License Fees Payment", approved by the Director of Aviation on July 5, 2021.

APPROVED THIS _____ **day of** _____ **2021.**

CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

STATE OF TEXAS)
)
COUNTY OF EL PASO) **LICENSE AGREEMENT**
 (Border Now)

THIS LICENSE AGREEMENT is made between the **CITY OF EL PASO** (“City”) and **TIKAL GROUP, LLC**, a limited liability company organized under the laws of Texas, DBA **BORDER NOW** (“Licensee”).

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

WHEREAS, the Licensee is engaged in providing print and electronic media concerning international trade with Mexico;

WHEREAS, the Licensee desires to provide printed versions of its publication “Border Now” (“Newspaper”) free of charge to the public in the areas designated by the City in the Airport terminal building located at 6701 Convair (“Terminal”);

WHEREAS, the City deems it advantageous to itself and the City to grant a License Agreement and certain rights and privileges, as hereinafter set out.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I – LICENSE

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1.1 LICENSE SITE

The Newspaper shall be dispensed from newspaper racks (“Newspaper Racks”) which shall be located in the following areas of the Terminal: 1) Meter Greeter; 2) Main Lobby; 3) Baggage Area, consisting of a total of approximately 75 square feet. The areas will be referred to collectively hereinafter as the “Licensed Premises.” Licensee shall coordinate the exact locations of the Newspaper Racks with the Director of Aviation (the “Director”) or designee. The specific location of the Newspaper Racks may change from time to time and will be agreed upon and documented by the Director or designee and Licensee who will identify the location on Exhibit “A” (Terminal Map) to be dated and signed by the Licensee and the Director.

1.2 DESCRIPTION OF PRIVILEGES, USES AND RIGHTS

The City grants to the Licensee the following privileges, uses, and rights, all of which shall be subject to the terms, conditions, and covenants hereinafter set forth:

- A. The nonexclusive right, license and privilege to place and maintain three (3) Newspaper Racks in the Terminal for the purpose of dispensing the Newspaper from the Licensed Premises.

- B. The licensed rights granted herein shall be subject to all applicable laws, ordinances, rules and regulations.
- C. City hereby grants to Licensee the rights of ingress to and egress from the Licensed Premises by Licensee and its officers, employees, agents and servants, patrons and invitees, suppliers of service and furnishers of material. Said right shall be subject to such ordinances, rules and regulations relating to the use and operations at the Airport and subject further at all times, to the Director's or designee's approval and control.

1.3 CONDITIONS AND TERMS

This Agreement is entered into subject to the following conditions and terms.

- A. Licensee's activities shall be limited to the placement, maintenance, and removal of the Newspaper Racks. For purposes of this Agreement, "maintenance" shall include maintaining the Newspaper Racks in good repair; ensuring that the Newspaper Racks are clean; and restocking the Newspaper Racks with Licensee's Newspaper. Licensee shall restock copies of the Newspaper and clean the Newspaper Racks on a weekly basis.
- B. The Director or designee, from time to time, may require Licensee to relocate the Newspaper Racks to other locations in or around the Terminal during the term of this Agreement. The Director or designee will determine the locations of any temporary Newspaper Rack sites and will provide the Licensee fourteen (14) calendar days' prior written notice of any relocation. Licensee agrees to allow the Airport or third party contracted by the Airport to relocate the Newspaper Racks. 50
- C. The right to use public Airport facilities in common with others authorized to do so shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated under their authority with reference to aviation and air navigation; and all applicable rules, regulations and ordinances of City now in force or hereafter prescribed or promulgated by charter authority or by law.
- D. The Licensee warrants and agrees that it is able to and will provide and maintain Newspaper Racks that are clean; in good repair, and are mid-range or high quality fixtures on the Licensed Premises.
- E. Licensee will utilize only the roadways, or other direction, path, route, or form of travel that the City may designate, from time to time, for Licensee's operation and movement on or about the Airport.

**ARTICLE II - PLACEMENT OF
NEWSPAPER RACKS**

2.1 TERMINAL BUILDING SPACE

- A. The City shall provide:

- (1) Permission to locate the Newspaper Racks in specific locations that will not cause damage to the Licensed Premises and will ensure that Licensee's access to the Newspaper Racks is not blocked or restricted during normal business hours. If City determines that it must block or restrict access for a limited time, the City will provide Licensee with 24-hours notice prior to blocking or limiting access.
- (2) No Authorization to Enter Restricted Area. Licensee understands that Licensee, its agents, employees, servants, and independent contractors are not authorized by City to enter restricted areas as defined in Title 14 of the El Paso City Code, as amended.
- (3) Existing lighting, air conditioning, and electrical service for Licensed Premises.
- (4) City represents and warrants the Licensed Premises comply with all requirements of all applicable governmental authorities in effect as of the Effective Date. During the term, City shall take appropriate and timely action to maintain the Terminal in compliance with all applicable governmental regulations, including without limitation, the Americans with Disabilities Act, hereafter imposed by order of any governmental agency or any other authority, at its sole cost and expense and without reimbursement from Licensee; provided, however, that if any requirement is imposed solely as a result of the specific and unique use of the Licensed Premises by Licensee, then Licensee shall bear the cost of compliance. 500

B. The Licensee shall provide:

- (1) Placement, maintenance, and removal of the Newspaper Racks and access to the Newspaper Racks by Airport employees, visitors, and members of the public 24 hours per day, seven days per week. Licensee will use diligence and care in the placement, maintenance, and removal of the Newspaper Racks to avoid damage to Airport property. Should any damage occur, Licensee shall, at its own cost, repair all such damage without delay in a professional manner to the reasonable satisfaction of the Director.
- (2) The Newspaper Racks and copies of the Newspaper necessary in the proper conduct of the Licensee's business.
- (3) Licensee shall not install or place any additional fixtures, outlets, or circuits in the Terminal.
- (4) Licensee is familiar with the restrictions imposed on City by 49 CFR Part 1540 and 1542 as amended and agrees to assume responsibility for compliance with said regulations as they relate to access and identification procedures on the Premises. Licensee recognizes that all persons in or on the Licensed Premises must comply with federal safety and security requirements and agrees that all employees shall, as a condition of being on the Licensed Premises, be badged by the Airport and that all other persons shall be escorted in accordance with Airport requirements. Licensee shall also require that all personnel of any subcontractor or sublicensee

shall also be similarly badged and/or escorted.

2.2 ALTERATIONS, ADDITIONS OR REPLACEMENTS

Licensee shall make no alterations, additions or replacements to the Licensed Premises. Any alterations, replacements, or improvements made shall be considered a material breach of this Agreement, and City may terminate this Agreement in accordance with the provisions set forth in Article VII and require Licensee to remove said alterations, additions, or replacements at Licensee's sole cost.

**ARTICLE III - SERVICES TO BE PERFORMED
BY LICENSEE**

3.1 HOURS OF OPERATION

The Newspaper Racks will be available to the public seven (7) days a week 24 hours per day.

3.2 TYPE OF OPERATION

Licensee shall ensure that service is available on a fair, reasonable and non-discriminatory basis to the public.

3.3 COMPLIANCE WITH LAWS

All activities of Licensee on the Licensed Premises shall be done in accordance with all 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, including, but not limited to, those which shall impose any duty upon the City or Licensee, with respect to the use, or occupation of the Licensed Premises.

3.4 SOLICITATION AND CONDUCT

The Licensee shall prohibit its agents and employees from engaging in the placement, maintenance, and removal of its Newspaper Racks on or about the Airport in a loud, offensive or objectionable manner. In the event of questionable conduct in such activity, the Director or designee shall be sole judge in determining if said conduct is a violation of this paragraph. Upon receipt of notice from the Director or designee, the Licensee shall immediately take all steps necessary to eliminate the undesirable conduct.

The Licensee, its agents and employees shall undertake the placement, maintenance, and removal of Newspaper Racks at the Airport in such a manner as to maintain a friendly and cooperative relationship with other companies engaged in business at the Airport.

The Licensee shall not engage in open public disputes, disagreements or conflicts that would be incompatible with the best interest of the public at the Airport. The Director or designee, shall have the right, but not be required, to resolve all such disputes, disagreements or conflicts; and her determination thereof or the manner in which the Licensee shall thereafter operate shall be binding upon the Licensee.

3.5 TRASH, GARBAGE, ETC.

The Licensee shall provide a complete and proper arrangement for the adequate disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of the operation of its business.

3.6 TAXES AND OTHER FEES

The Licensee shall bear, at its sole expense, all costs of operating the Newspaper Racks and shall pay, in

addition to the License Fee, all other costs connected with the use of the Licensed Premises, including, but not limiting the generality hereof, maintenance, insurance, any and all taxes, and all permits and licenses required by law. The Licensee shall have the right, however, at the Licensee'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 License Agreement.

3.7 MAINTENANCE

The Licensee shall, at its sole cost and expense, maintain the Licensed Premises and every part thereof in good order and repair and in good and safe condition; repair all damages caused by its employees, representatives, agents or contactors, or Licensee's operation of said service; and maintain and repair the Newspaper Racks on said Licensed Premises.

The Licensee further agrees that the Director or designee, shall be the sole judge of the quality of maintenance of the Licensed Premises. If Licensee fails to provide adequate maintenance, upon written notice by the Director or designee, the Licensee shall be required to provide maintenance of the Newspaper Racks. If Licensee fails to undertake said maintenance within seven (7) days after receipt of written notice, the City will have the right to perform the necessary maintenance through an appropriate contractor, the cost of such repairs and maintenance shall be borne by the Licensee.

ARTICLE IV - TERM OF AGREEMENT

4.1 TERM

The term of this Agreement shall be for a period of two years, commencing on the date on which the El Paso City Council approves the Agreement ("Effective Date"). Either party can terminate for convenience with thirty (30) days written notice to the other party prior to the expiration date of the initial term.

4.2 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, the parties will negotiate in good faith a reasonable resolution of this Agreement under the circumstances.

ARTICLE V – FEES, RENT AND PERCENTAGE FEES

5.1 CONSIDERATION

The License Fee includes the space for Newspaper Racks provided under this Agreement and the license itself (the "License Fee"). The value of the License Fee provided under this Agreement is \$1,250.00 per month. The annual cost of this License Fee is \$15,000.00 (\$1,250.00 x 12 months). In consideration for the License Fee, and in accordance with the City of El Paso Airports policy concerning "In-Kind Services In Lieu of License Fees Payments" (approved by the El Paso City Council on July 5, 2021), the Licensee shall provide the following in-kind services annually in lieu of the annual cash payment of \$15,000.00:

In the first year of the Term, Licensee shall provide City with one full-page ad (9 inches x12 inches) in twelve (12) issues of the printed edition of Border NOW magazine. Each full-page ad is valued at \$1,250.00. Twelve full-page ads total \$15,000.00 annually.

In the second year of the Term, Licensee shall provide City with one full-page ad (9 inches x12 inches) in twelve (12) issues of the printed edition of Border NOW magazine. Each full-page ad is valued at \$1,250.00. Twelve full-page ads total \$15,000.00 annually.

Attached hereto as Exhibit "B", is Licensee's Affidavit affirming the value of the in-kind services to be provided to the City.

5.2 DEFAULT FOR FAILURE TO PROVIDE IN-KIND SERVICES

Failure of the Licensee to provide any part of the in-kind services due pursuant to this Agreement shall constitute a default under this Agreement. If the Licensee is in default for failure to provide any part of the in-kind services, the City shall have the right, upon ten (10) days written notice, to cancel this Agreement.

In the event of default under this section of the Agreement, the City shall provide Licensee fourteen (14) days' written notice to remove the Newspaper Racks. If Licensee fails to remove the Newspaper Racks, the City shall have the right to re-enter and resume possession of the Licensed Premises and to remove the Licensee's property without being guilty of any manner of trespass or conversion and without prejudice to any other remedies, which might be used by the City.

5.3 CONTRACTUAL LIEN

In the event of default pursuant to Section 5.2, City shall have a lien upon all goods, chattels, personal property, except delivery vehicles, as security for fees due and to become due for the remainder of the Agreement term, which 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 Licensee grants to City a security interest in all of Licensee's personal property placed in or on the Licensed 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 or its successor agency, and any other laws pertaining thereto and the Railroad Commission of the State of Texas. In the event City exercises the option to terminate the license as provided herein, the City, after providing reasonable notice to Licensee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Licensee's property on the Premises and sell it at public or private sale after giving Licensee 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, for such prices and terms as City deems best. The proceeds of the sale shall be applied first to the necessary proper expense of removing, storing and selling such property, then to the payment of any License Fee due or to become due under this Agreement, with the balance, if any, to be paid to Licensee.

ARTICLE VI - INSURANCE AND INDEMNIFICATION

6.1 LIABILITY INSURANCE

Licensee, and any contractor or subcontractor that performs any service on behalf of Licensee under the terms of this Agreement, shall obtain, provide proof of, and maintain for the term of this Agreement, the following:

1. Commercial General Liability Insurance for the benefit of City and Licensee, as their respective interests may appear, including all the usual coverage known as: (a) Premises/operations liability, (b) Products/completed operations, and (c) Personal/advertising injury for minimum limits of One Million Dollars (\$1,000,000.00) for

bodily injury to one person for each occurrence, and One Million Dollars for property damage arising out of each occurrence, 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.

2. Automobile Liability with Minimum Limits of \$1,000,000 Bodily Injury/\$500,000 Property Damage Liability per occurrence; and
3. Statutory Workers' Compensation Insurance and Employers Liability Insurance with Minimum Limits of \$1,000,000 per occurrence.

City, its officials, employees, agents and contractors shall be included as an Additional Insured on the Commercial General Liability and Automobile Liability policies, in the policy itself and shall be reflected on the certificate of insurance or through a blanket endorsement attached to the policy stating that the City is named as an Additional Insured through a contract, and the policies and certificate of insurance must contain a "blanket waiver of subrogation" clause in favor of the City.

The Licensee and their subcontractors' or sublicensees insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents and contractors shall be in excess of the Licensee's or Licensee's subcontractor's or sublicensee's insurance and shall not contribute to the Licensee's or Licensee's subcontractor's or sublicensee's insurance. 50

All policies shall provide either in the policy itself or have reflected on the certificate of insurance or through a blanket endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without thirty (30) calendar days prior written notice to the City or ten (10) calendar days prior written notice for non-payment of insurance policy premiums. 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.

Prior to undertaking any work under this Agreement, the Licensee, at no expense to the City, shall furnish to the City a certificate of insurance with blanket endorsements affecting coverage for each of the insurance policies provided in this Agreement.

6.02 INDEMNIFICATION

WITHOUT LIMITING THE GENERALITY OF ANY OTHER INDEMNITY CONTAINED IN THIS AGREEMENT, LICENSEE AGREES TO INDEMNIFY AND HOLD CITY AND ITS OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES 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 LICENSEE'S ACTIVITIES ON THE LICENSED PREMISES, ITS USE OF THE LICENSED PREMISES, OR FROM ANY BREACH ON THE PART OF LICENSEE OF ANY TERMS OF THIS AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF LICENSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, 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, LICENSEE, UPON RECEIPT OF WRITTEN NOTICE FROM CITY, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO CITY. THE OBLIGATIONS OF LICENSEE UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THE AGREEMENT.

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

7.1 TERMINATION

This Agreement shall terminate at the expiration of the term hereof, or sooner as provided in this Agreement, and the Licensee shall thereafter have no further interest or right in the Licensed Premises.

7.2 CANCELLATION BY CITY

This Agreement shall be subject to cancellation by the City in the event the Licensee shall fail to provide the whole or any part of the in-kind services agreed upon; or in the event Licensee should do any of the following:

- A. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of the Licensee's property;
 - B. Make an assignment of any interest in this Agreement for the benefit of creditors;
 - C. Be adjudged a bankrupt in involuntary bankruptcy proceedings;
 - D. Be made a party to a receivership proceeding in which a receiver is appointed for the property or affairs of the Licensee;
 - E. Abandon the Licensed Premises;
 - F. Default in the performance of any of the covenants and conditions required herein to be kept and performed by the Licensee (except Default for Failure to Provide In-Kind Services under Section 5.2), and such default continues for a period of twenty (20) days after receipt of written notice from the City of said default; or
 - G. Violate any applicable laws, statutes or ordinances.
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In any of the aforesaid events, the City may immediately cancel this Agreement and take immediate possession of the Licensed Premises and remove the Licensee's effects forcibly, if necessary, without being deemed guilty of trespassing and the Licensee shall cease all operation at the Airport immediately.

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

7.3 ASSIGNMENT AND TRANSFER

The Licensee shall not assign, transfer, or sublease its rights granted hereunder.

ARTICLE VIII - REDELIVERY

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

ARTICLE IX - GENERAL PROVISIONS

9.01 TIME IS OF THE ESSENCE

Time is and shall be deemed of the essence in respect to the performance of each provision of this Agreement.

9.02 NOTICES

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

- CITY:** City Clerk
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890
- COPY TO:** El Paso International Airport
6701 Convair Road
El Paso, Texas 79925-1099
- LICENSEE:** Border Now
Attn: Sergio L. Ornelas Ramirez
550 S. Mesa Hills Drive, Suite B3
El Paso, Texas 79912

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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, which, in the case of the City, may be done administratively and without the need for action by the El Paso City Council.

9.03 ATTORNEY'S FEES

If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

9.04 AGREEMENT MADE IN TEXAS

The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts in El Paso County, Texas.

9.05 GENERAL CIVIL RIGHTS PROVISION

Licensee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from federal assistance. If the Licensee transfers its obligation to another, the transferee is obligated in the same manner as the transferor. This provision obligates the Licensee for the period during which the property is owned, used or possessed by the Licensee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

9.06 COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this contract, the Licensee, for itself, its assignees, and successors in interest (for purposes of this Section 10.06 hereinafter referred to as the "Contractor"), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract. 500
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City (for purposes of this Section 9.06 hereinafter referred to as the "sponsor") or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the

information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States. 500

9.07 AFFIRMATIVE ACTION

Licensee assures that it will undertake an affirmative action program as required 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 Airport use, or otherwise applicable to persons leasing Premises from the City of El Paso, to insure that no person shall, on the grounds of race, color, sex, age, disability or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Subpart. Licensee assures that it will require that its covered sub-organizations (sublicensees) provide assurances to City, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations (sublicensees) to the same effect.

9.08 FAA ORDER 1400.11

Pursuant to Federal Aviation Administration Order 1400.11, effective August 27, 2013, and because the described Premises are located at the El Paso International Airport which is subject to regulation by, among others, the U.S. Federal Aviation Administration, the parties specifically agree to the following (except as Licensee is mandated by security requirements imposed by Licensee's federal government customers):

1. A. Licensee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the property described in this License for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Licensee will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations set out in Federal

Aviation Administration Order 1400.11, Appendix 4, as same may be amended from time to time (the “Acts and Regulations”) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to the License, in the event of breach of any of the above nondiscrimination covenants, City will have the right to terminate the License and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said easement had never been made or issued. [FAA Order 1400.11, Appendix C]

2. A. Licensee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Licensee will use the Premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations. 50

B. With respect to the License, in the event of breach of any of the above nondiscrimination covenants, City will have the right to terminate the License and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said easement had never been made or issued. [FAA Order 1400.11, Appendix D]

3. A. During the term of this License, Licensee for itself, its successors in interest, and assigns, as a part of the consideration hereof, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
 - 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
 - The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
 - Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
 - The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope,

coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). Grantee shall take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 U.S.C. 1681 et seq).

B. In the event of breach of any of the covenants in this section 3, City shall have the rights and remedies set forth in sections 1 and 2 above, in addition to all other rights and remedies available to it under applicable law. [FAA Order 1400.11, Appendix E]

9.09 CUMULATIVE RIGHTS AND REMEDIES

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

9.10 INTERPRETATION

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

Words of gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

9.11 AGREEMENT MADE IN WRITING

This Agreement contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

9.12 PARAGRAPH HEADINGS

The Table of Contents of this Agreement and the captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

9.13 SEVERABILITY

If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

9.14 SUCCESSORS AND ASSIGNS

All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon City and Licensee and their successors, assigns, legal representatives, heirs, executors and administrators.

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9.15 TAXES AND OTHER CHARGES

Licensee shall pay any and all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against Licensee or City, with respect to the Licensed Premises, any improvements, equipment, personal property or inventory thereon or Licensee's use and/or occupancy of the Licensed Premises, during the term of this Agreement including any extensions or option periods granted thereto. City is a tax-exempt governmental entity and shall not be responsible for any taxes or assessments arising from Licensee's use of the property or possession of the Licensed Premises.

Licensee in good faith may contest any tax or governmental charge; provided that Licensee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom.

9.16 WAIVER OF WARRANTY OF SUITABILITY

CITY DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY ARISE BY OPERATION OF LAW. Except as otherwise provided in this License, LICENSEE PROVIDES THE LICENSED PREMISES AS-IS AND CITY DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS THAT ARE VITAL TO LICENSEE'S USE OF THE LICENSED PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE.

9.17 SURVIVAL OF CERTAIN PROVISIONS

All provisions of this Agreement which expressly or impliedly contemplate or require performance after the expiration or termination of this Agreement hereunder shall survive such expiration or termination of this Agreement, including without limitation, Section 6.02 and Article VIII.

9.18 SUBORDINATION OF AGREEMENT

All rights granted in this Agreement shall be subordinate to the rights in any deed from the United States to the City of El Paso. This License shall further be subordinate to the provisions of any existing or future agreements between City and the United States relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States Government be to substantially destroy the commercial value of the Licensed Premises, Licensee may cancel this License in its entirety.

9.19 FORCE MAJEURE

Neither party to this Agreement is responsible to the other party for non-performance or delay in performance of the terms and conditions herein due to acts of God, acts of government, wars, riots, strikes, accidents in transportation, fuel or materials shortages, or other causes beyond the control of the parties.

9.20 AUTHORIZATION TO ENTER AGREEMENT

If Licensee signs this Agreement as a corporation, Licensee warrants to City that Licensee is a duly authorized and existing corporation, that Licensee is qualified to do business in the State of Texas, that Licensee has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Licensee is authorized to do so. Upon City's request, Licensee will provide evidence satisfactory to City confirming these representations.

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9.21 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties.


(Signatures Begin on Following Page)

IN WITNESS WHEREOF, this Agreement is approved:

CITY OF EL PASO


Tomás González
City Manager

APPROVED AS TO FORM:



Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:



Sam Rodriguez, P.E.
Director of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

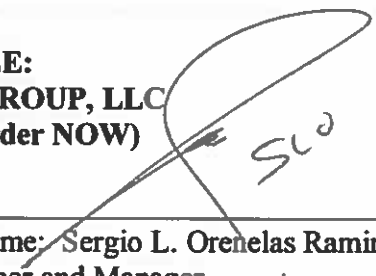
This instrument was acknowledged before me on this _____ day of _____, 2021,
by Tomás González, as City Manager of the City of El Paso, Texas.

Notary Public, State of Texas

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

LICENSEE'S SIGNATURE AND ACKNOWLEDGMENT:

LICENSEE:
TIKAL GROUP, LLC
(DBA Border NOW)



Printed Name: Sergio L. Orenelas Ramirez
Title: Owner and Manager
Date: 9/11/2021

ACKNOWLEDGMENT

THE STATE OF Texas
COUNTY OF El Paso

This instrument was acknowledged before me on this 8 day of November, 2021, by Sergio L. Orenelas Ramirez, as Owner and Manager of Tikal Group, LLC (DBA Border NOW).

Abil Ozorio
Notary Public, State of Texas

My Commission Expires:

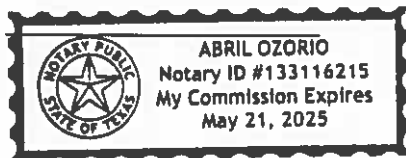
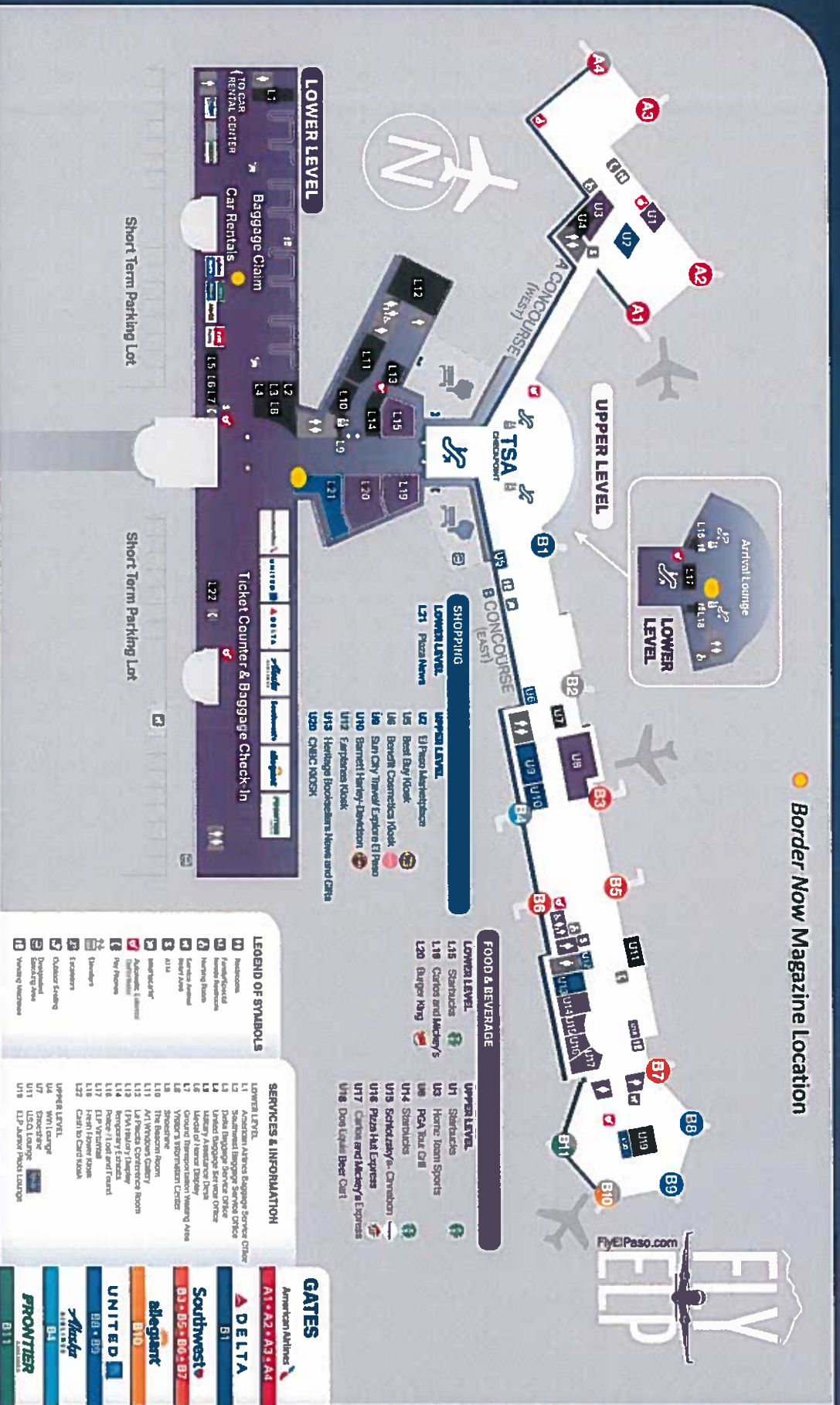


Exhibit A – Concession Locations



FREE WI-FI PROVIDED BY DIGITAL EL PASO • AVAILABLE IN ALL AREAS

@FLYELP & #FLYELP

EXHIBIT "B"

AFFIDAVIT

STATE OF TEXAS)
COUNTY OF EL PASO)

I, the undersigned, do hereby swear or affirm that the following facts are true:

1. My name is Sergio L. Ornelas Ramirez.
2. I am over the age of 18.
3. I am the Owner and Manager of Tikal Group, LLC, DBA Border NOW.
4. The value of a one-page (9 inches x 12 inches) ad in the print edition of Border NOW is \$1,250.00.
5. The value of a one-page (9 inches x 12 inches) ad in twelve (12) print editions issues of Border NOW is \$15,000.00.

STATE OF TEXAS)
COUNTY OF EL PASO)

ACKNOWLEDGMENT

This instrument was acknowledged before me on this 8 day of November, 2021 by Sergio L. Ornelas Ramirez, as Owner and Manager of Tikal Group, LLC, DBA Border NOW.

Abil Ozorio
Notary Public, State of Texas

My Commission Expires:

