

September 28, 2009

PROSPECTIVE BIDDERS:

Attached is the Solicitation for Bids (“**SFB**”), including the Instructions to Bidders, APPENDIX "A" (“**Bid**”) and APPENDIX "B" (“**Agreement**”), for an Automated Teller Machine Concession at Lambert-St. Louis International Airport®.

The attached Appendix "B" is a generic agreement. The Agreement will be modified only to the extent necessary for this Concession.

Your fully complete bid must be submitted on the Appendix "A" by **2:00 P.M., LOCAL TIME, Tuesday, December 1, 2009**. An original and three fully complete copies of each bid must be submitted.

A Pre-Bid Conference is scheduled for **Thursday, October 22, 2009 at 2:00 p.m.**, local time, in the Airport Properties Conference Room, St. Louis Airport Authority, Lambert-St. Louis International Airport®, West Terminal.

All inquiries regarding this SFB should be directed to Nora O’Donnell Airport Properties Specialist, at (314) 426-8033 (nlo’donnell@flystl.com) or Robert Salarano at (rcsalarano@flystl.com).

Sincerely,

Robert C. Salarano
Airport Properties Division Manager

Enclosures



SOLICITATION FOR BIDS
AUTOMATED TELLER MACHINE CONCESSION
LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®
ST. LOUIS, MISSOURI

September 28, 2009

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**SOLICITATION FOR BIDS
INSTRUCTIONS TO BIDDERS**

**AUTOMATED TELLER MACHINE CONCESSION
LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®**

1. SOLICITATION:

The City of St. Louis (“**City**”) owns Lambert-St. Louis International Airport® (“**Airport**”). The Airport is operated by the City of St. Louis Airport Authority (“**Authority**”). The Authority invites bids from qualified bidders for the development, management and operation of an Automated Teller Machine (“**ATM**”) Concession at the Airport.

This Solicitation for Bids (“**SFB**”) includes: INSTRUCTIONS TO BIDDERS; APPENDIX "A" (“**Bid**”); APPENDIX "B" (“**Agreement**”); and Attachments 1 through 4. The meaning of words and phrases defined in Article I of the Agreement shall apply throughout this SFB.

A Pre-Bid Conference is scheduled for **October 22, 2009, 2:00 p.m.**, local time, in the Airport Properties Conference Room, MTN-2450, St. Louis Airport Authority, Lambert-St. Louis International Airport®, West Terminal, Baggage Claim Level.

An original and three fully complete copies of the Bid must be deposited in a sealed envelope in the Airport Properties Office, West Terminal, Room MTN-2501, 10701 Lambert International Boulevard, St. Louis, Missouri, 63145, by 2:00 P.M., local time, **December 1, 2009**. The words "**BID FOR AUTOMATED TELLER MACHINE CONCESSION**" must be plainly written across the left-end face of the envelope. The name and address of the bidder must also appear on the face of the envelope.

Bids received after the due date and time, or not delivered to the designated point, will not be considered. Bids will be publicly opened and read immediately following the 2:00 p.m. deadline.

2. AIRPORT OBJECTIVES:

The goal of the Authority is to secure a Concessionaire(s) that will provide a high level of ATM services to the traveling public, Airport employees and other Airport users on a **non-exclusive basis**. To accomplish this goal, the Authority has established the following objectives for this SFB which must be met by the successful bidder(s):

- Provide a first-class, full-service ATM Concession that meets Airport user needs and adds value to other Airport and airline services;
- Provide passengers with access to their accounts via ATMs at locations throughout the Airport terminals;

- Provide a high level of service at prices that are attractive to Airport users and no more than charged at non-Airport locations;
- Provide an ATM Concession with state-of-the-art equipment that is reliable, easy to use, well-maintained and visually attractive;
- Be responsive to the FAA and City goals for Airport Concession Disadvantaged Business Enterprise (“**ACDBE**”) participation in concessions;

The order of these objectives should not be construed as an indication of their relative merit as viewed by the City.

3. GENERAL DESCRIPTION OF THE OFFER:

Through this SFB, the City desires to award up to four ATM locations on the mid-level of the West Terminal and on the lower level of the East Terminal to the most qualified and responsive bidder(s) submitting the highest and best bids. The Agreement(s) term shall consist of five years, commencing on March 1, 2010.

The offering consists of Premises at the Airport as shown in EXHIBIT “A” of the Agreement. The spaces will be delivered to the Concessionaire **AS-IS**. Concessionaire(s), at its own expense, will be responsible for all design, construction and fixturing necessary to conduct an ATM Concession.

Choice of locations will be awarded based upon the ranking of the qualified bidder(s) as determined by the bid item stated in the Bid. The highest overall qualified and responsive bidder shall be granted first choice of locations, one on the mid-level of the West Terminal and one on the lower level of the East Terminal. The second highest overall qualified and responsive bidder shall be granted second choice of locations in each terminal. The third highest overall qualified and responsive bidder shall be granted third choice of locations in each terminal. The fourth highest overall qualified and responsive bidder shall be granted the remaining location in each terminal.

The successful bidder(s) shall pay a Concession Fee of Twenty-one Thousand Dollars (\$21,000) per Contract Year and a percentage fee (bid item) of the surcharge from all Foreign ATM Transactions originating at bidder’s ATM(s) and/or the sale of other products or services sold from the ATM(s) located at the Airport (see Article V of the Agreement).

A 15% goal for **ACDBE** participation has been established for this Concession. For more specific information regarding ACDBE participation, refer to Section 20 of the Instructions and/or Article XII of the Agreement.

This SFB is not to be construed or interpreted as a contract or a commitment of any kind by the City. Nor does it commit the City to pay for any cost incurred by a bidder in the submission of a Bid or any cost incurred prior to the execution of a formal contract with the City.

4. THE CONCESSION AGREEMENT:

The Agreement attached hereto as APPENDIX "B" is the generic contract under which the City intends that the successful bidder(s) shall be granted the right to develop, manage and operate an ATM Concession at the Airport.

The City does not anticipate making substantial changes to the Agreement. Bidders are advised that requests for revisions to the Agreement will be entertained until **November 16, 2009 and must be in writing**. Bidders are encouraged to submit their inquiries early. All decisions by the City pertaining to revisions shall be finalized and made known to potential bidders and interested parties prior to the Bid due date (see explanation in Section 11 of this SFB).

5. BIDDER'S QUALIFICATIONS:

In order to be a qualified and responsive bidder, the bidder must be judged to meet all of the following criteria as required in the Appendix "A".

A. Experience:

Bidder has successfully managed and operated ATMs for at least the last five consecutive years. ACDBE participant, if not the primary bidder, must have ATM or banking-industry experience for at least three years; and/or financially responsible in managing and operating a business primarily providing the goods or services for which they are proposing to contract for, for at least the last year and can provide the documentary evidence. **ACDBE participant must be ACDBE certified by the Authority's Certification & Compliance Office prior to submittal of the Bid.**

B. Financial Stability:

Bidder has been financially responsible in managing and operating ATMs for the last five consecutive years and can demonstrate that he/she can raise the capital to design and construct the necessary improvements and infrastructure, and staff to operate the Concession. ACDBE participant, if not the primary bidder, has been financially responsible for managing and operating an ATM or has banking-industry experience for at least the last three years; and/or financially responsible in managing and operating a business primarily providing the goods or services for which they are proposing to contract for, for at least the last year and can demonstrate financial success with appropriate documentary evidence.

C. Authority:

If a financial institution, bidder is now authorized or chartered to operate a financial institution by the appropriate regulatory agency. Bidder must furnish a copy of the appropriate regulatory authorization and will obtain any other licenses and/or permits from federal, state and/or local authorities necessary to provide or perform ATM services before commencement date of the Agreement.

Bidder is licensed to do business in Missouri, or has applied for and meets the qualifications for obtaining a license to do business in Missouri and can obtain the license or Fictitious Name Registration, if applicable, before commencement date of the Agreement.

D. Airport Concession Disadvantaged Business Enterprises ("ACDBE"):

- 1) Bidder or its ACDBE participant, if not the primary bidder, must be ACDBE certified by the Missouri Regional Certification Committee ("MRCC") **prior** to submittal of a Bid. The ACDBE certification must be submitted with the Bid. The St. Louis Airport Authority's DBE Program Office provides a link to the MRCC list of current certified firms at their web site: www.mwdbe.org.
- 2) Good Faith Efforts documentation or a request for waiver, if applicable, must be submitted to and approved by the Authority's DBE Program Office. This documentation must be received by the DBE Program Office no later than **November 16, 2009**.

6. THE BID:

The Bid is attached hereto as APPENDIX "A". An original and three fully complete copies of the Bid, marked as such, must be deposited in a sealed envelope in the Airport Properties Office, Main Terminal, Room MTN-2501, 10701 Lambert International Boulevard, St. Louis, Missouri, 63145, by 2:00 P.M., local time, **December 1, 2009**. The words "**BID FOR AUTOMATED TELLER MACHINE CONCESSION**" must be plainly written across the left-end face of the envelope. The name and address of the bidder must also appear on the face of the envelope.

Bids received after the due date and time, or not delivered to the designated point, will not be considered and will be returned unopened. Bids will be publicly opened and the bid item read immediately following the 2:00 p.m. deadline.

Bids may not be conditioned in any manner. Any conditional Bid or any Bid with erasures or alterations will be rejected. Incomplete Bids, Bids not submitted on the Bid forms provided herewith, or bids submitted on altered Bid forms will not be considered. The Bid shall become the property of the City upon receipt. The City shall have the right to use or dispose of each Bid in any manner without payment or liability of any kind whatsoever.

In order to be considered responsive to this SFB, the bidder is required to complete, execute, have notarized and submit the Bid in full, pages A-1 through A-12 as written; and provide the additional information required in Section 5 of these instructions as addenda to the Bid.

Each Bid must be accompanied by a **Bid Bond** in the form of a cashier's check drawn on a commercial bank in the amount of Five Thousand Dollars (\$5,000) payable to the City of St. Louis; or a standard commercial guaranty bond to the City of St. Louis, written by a surety company authorized to do business in Missouri having a "Best" key rating of not less than A and a "Best" Financial Size Category of not less than Class VIII for a penalty amount equal to the Bid Bond

amount; and shown on the most recent **U.S. Treasury Circular No. 570** as having an "underwriting limitation" of not less than the Bid Bond amount.

The Bid Bond shall provide as its condition that the principal, as bidder, having been notified of being selected as the successful bidder, will, within 15 days of such notification, enter into and execute the Agreement and provide the Performance and Payment Bond and certificate of insurance in the amount and form required by Article V and Article IX of the Agreement. **The City will not recommend a bidder to the Airport Commission without this documentation.**

The City reserves the right to thoroughly investigate the financial status, experience and record of the bidder.

7. QUESTIONS:

Should the bidder find a discrepancy in or omission from the INSTRUCTIONS TO BIDDERS or the APPENDICES "A" or "B", or should the bidder be in doubt as to their meaning, the bidder shall at once, and not later than **November 16, 2009**, notify the Airport Properties Division Manager in writing. The Airport Properties Division Manager will distribute written answers by addenda to this SFB to all interested parties of record. **The City is not responsible for any oral instructions or comments.**

8. BIDDERS RESPONSIBLE FOR BID:

The bidder shall carefully examine the entire contents of this SFB including the Agreement, addenda, exhibits, the Premises and other materials and judge for itself all circumstances and conditions affecting a bidder's Bid. Failure on the part of any bidder to make such thorough examination or to investigate thoroughly the conditions of the Bid shall not be grounds for a declaration that the bidder did not understand the SFB. Bidder agrees that the submission of a Bid shall be construed to mean that the bidder has made all necessary examinations and investigations, agrees to fulfill all requirements and provisions of the agreement and is entirely familiar with and understands all such requirements.

The City cannot predict the effect that future air carrier expansion, contraction or relations will have on Concession activity under any Agreement. Each bidder is cautioned therefore to use its best judgment when bidding.

All statistical data in this SFB and subsequent addenda, while believed to be accurate, are to be used by bidder(s) at their sole risk. The City does not accept any responsibility or liability in any fashion for the use of such data in structuring a Bid by any bidder in response to this SFB.

9. RIGHT TO REJECT BIDS:

The City reserves the right to reject any Bid or bidder which, in the City's sole opinion, does not have adequate qualifications, the necessary experience, the organizational or financial capacity to fulfill the requirements of this SFB; the ability to achieve the Airport's goals and objectives; or does not submit all required Bid information.

The City reserves the right to cancel this SFB at any time as well as the right to reject all bids and/or to advertise for new bids. The City reserves the right to waive minor irregularities and formalities. The City reserves the right, in the City's sole opinion, to establish a "cure" period in the event submitted bids deem it to be necessary action.

The City, in addition to the previously stipulated reservations, reserves the right to disqualify any bidder and reject any Bid submitted that is not, in the City's sole and absolute discretion, competent or qualified to perform the work and services contemplated herein or any Bid not in compliance with the procedural requirements for submitting a Bid, or not in the best interest of the City. The submission of a Bid by any bidder shall not in any way commit the City to enter into an agreement with the bidder. This list of the City's rights is not all inclusive.

10. DISQUALIFICATION OF BIDDER:

The City reserves the right, in its sole and absolute discretion, to reject any Bid if:

- A. Bidder submits more than one Bid under the same or different names. Reasonable grounds for believing that the bidder is interested in more than one Bid will cause rejection of all bids in which the bidder has an interest; or
- B. There is reason for believing that collusion exists among bidders. Participants in such collusion will not be considered in future bids for an ATM Concession; or
- C. Bidder is in arrears or is currently in default to the City on any debt or contract, or is a defaulter as surety or otherwise on any obligation to the City, or the bidder has failed to perform faithfully in any current or previous contract with the City within the last five years; or
- D. Bidder is currently involved in litigation with the City regarding any previous contract obligations; or
- E. Bidder submits a Bid that contains a Foreign ATM Transaction Percentage of less than 30% per Contract Year.

11. BASIS FOR AWARD:

The Revised Code of the City of St. Louis states that contracts for Airport concessions shall be let on public bids to the highest most qualified and responsive bidder(s), reserving to the City's Airport Commission the right to reject any and all bids and the right to limit bids to qualified bidders as determined by the Airport Commission. The Bid item shall be the highest Foreign ATM Transaction Percentage per Contract Year, but not less than 30%. The City may take up to 90 days to complete its evaluation.

The Agreement shall be awarded to the bidder(s) who demonstrates the best capability to finance, design, install, market, manage and operate a first-class Concession. The basis for award

includes, but is not limited to, the following criteria (not in any order of importance):

- A. Demonstrated experience in the management and operation of an ATM. Include letters from references regarding bidder's quality, reliability of service, financial stability, or such other conditions deemed relevant by the City. The key operating party, as designated from time to time, of a joint venture with the required years of experience qualifies the joint venture team for time required experience.
- B. Itemized listing of any proposed products to be sold to the public and their prices.
- C. Proposed management structure, style, staffing and method of operation.
- D. Timetable for installation and commencement of full operation.
- E. Compliance with the requirements of this SFB document.
- F. Level of ACDBE participation or lack thereof.
- G. Graphic representation of the proposed installation.

A contract award under this SFB will be made by the Airport Commission to the successful bidder(s) that the Airport Commission determines, at its sole discretion, to be the most qualified and responsive bidder(s) that submitted the highest and best Bid. The Airport Commission shall consider all aspects of the Bid in making its determination.

Following an award, the terms of the Agreement must be approved and authorized by the Airport Commission; the City's Board of Estimate and Apportionment; and the City's Board of Aldermen.

12. EQUAL OPPORTUNITY IN EMPLOYMENT:

The bidder(s) shall comply with the City's requirement for an affirmative action program as directed in the Mayor's Executive Order on Equal Opportunity in Employment.

13. RELEASE OF BONDS:

The City shall return or release all unsuccessful bidders Bid bonds within ten days after the successful bidder(s) have been awarded the Agreement(s) by the Airport Commission.

14. FORFEITURE:

If a successful bidder refuses or neglects to execute an Agreement or fails to furnish the required certificate of insurance and performance and payment bond or other documents required by the City prior to presentation to the Airport Commission, the Bid bond submitted with the Bid shall be forfeited by the bidder and retained by the City as liquidated damages. No plea by the bidder of error or mistake in its Bid or change in circumstances shall be available to the bidder as a basis for the recovery of its Bid bond. The City, in its sole and absolute discretion, may then award the Bid

to the next highest ranked qualified and responsive bidder, who shall be subject to the same procedures and timetables as provided herein. If that selected bidder also forfeits, the City in its sole and absolute discretion, may award the Bid to the next highest ranked qualified and responsive bidder, who shall be subject to the foregoing provisions and so on, until all ATM concessions have been awarded or there are no remaining qualified bidders.

15. AIRLINE INFORMATION:

- A. The Airport West Terminal is served by the following scheduled major air carriers: Air Canada Jazz, AirTran Airways, American Airlines, Continental Airlines, Delta Air Lines, Frontier Airlines, United Airlines and US Airways.
- B. The Airport is currently served by the following scheduled commuter air carriers on Concourses A, C and D: American Connection, American Eagle, Continental Express, Delta Connection, Great Lakes Airline, United Express, US Airways Express.
- C. The Airport East Terminal is currently served by Southwest Airlines, USA 3000 and non-scheduled (charter) airline operators such as Air Choice One and Ryan International Airlines.
- D. The Airport is served by the following air cargo carriers at FBO and cargo facilities operated on Airport property: Air Transport International, Airborne Express, DHL Airways, Federal Express and United Parcel Service.
- E. Currently, the West Terminal and the East Terminal combined have 52 leased gates. There are four concourses (“A”, “B”, “C”, and “D”) extending from the West Terminal. The Airport provides shuttle service between terminals.

16. PASSENGER INFORMATION AND ATM REVENUE HISTORY:

The following tables of enplaned Airport passengers and ATM revenue history is offered for bidder’s use.

Foreign ATM Fees Paid to the Airport by Month and Year

Month	2005	2006	2007	2008	2009
January	\$2,633	\$3,873	\$4,863	\$4,479	\$4,988
February	\$2,484	\$3,687	\$4,106	\$4,471	\$4,055
March	\$2,864	\$5,168	\$4,558	\$4,639	\$4,964
April	\$2,555	\$4,478	\$4,657	\$4,521	\$4,347
May	\$3,177	\$5,593	\$4,944	\$5,273	\$4,567
June	\$4,313	\$5,304	\$4,765	\$5,445	\$5,399
July	\$4,185	\$5,096	\$5,086	\$5,353	\$5,549
August	\$4,724	\$4,846	\$5,174	\$5,079	
September	\$4,040	\$4,243	\$4,106	\$4,942	
October	\$4,035	\$5,106	\$4,500	\$4,649	
November	\$5,540	\$4,585	\$4,167	\$3,884	
December	\$5,786	\$4,987	\$4,413	\$5,211	
Total	\$46,336	\$56,966	\$55,339	\$57,946	\$33,869

Enplaned Passengers by Terminal

Concourse	2005	2006	2007	2008	2009*
West Total	5,546,651	5,543,674	5,584,022	4,985,747	2,474,875
E	1,861,267	2,061,224	2,130,241	2,222,143	1,300,665
Grand Total	7,407,918	7,604,898	7,714,263	7,207,890	3,775,540

*through July

17. PREMISES:

The goal of the Authority is to secure a Concessionaire that will provide the highest quality service to the traveling public, Airport employees, Airport tenants and other Airport users on a non-exclusive basis at the Airport.

The successful bidder's rights are described in Article III of the Agreement attached hereto and made a part hereof. The rights granted in Article III can only be exercised within the Premises described in Exhibit "A" of the Agreement. No storage is provided outside of the spaces listed in Exhibit "A".

18. MINIMUM SERVICES AND OPERATING REQUIREMENTS:

The minimum standard of service and operating requirements are described in Article VI of the

Agreement.

The City is dedicated to providing quality services at reasonable prices to Airport users. **The Concessionaire cannot charge Airport customers more for ATM services than are charged customers at off-Airport branches.**

19. CONSTRUCTION:

Successful bidder(s) shall receive the Premises "**AS-IS**" and will be required to design, provide, and install all applicable tenant finishes, including but not limited to lighting, power, plumbing, HVAC, interior finishes, all furnishings, fixtures, trade fixtures, equipment and signage necessary to operate a first-class concession.

The materials must provide the highest level of fit and finish yet must be durable enough to survive in the high traffic airport environment. Finishes should be easy to maintain and keep clean.

Passenger flow must be addressed to eliminate queuing into the concourses. For more information regarding construction at the Airport refer to Article VII of the Agreement.

20. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE ("ACDBE") PARTICIPATION:

In accordance with Regulations of the U.S. Department of Transportation, 49 CFR Part 23, the City has implemented an **ACDBE** concession plan under which qualified firms may have the opportunity to operate an Airport business. The ACDBE goal for this Concession is 15% participation in the ownership, management and control of the business by the methods of participation allowed by DOT 49 CFR Part 23. The goal shall be measured as a percentage of total Gross Receipts. This goal remains in effect throughout the Term of the Agreement. Bidder(s) shall take all necessary and reasonable steps to achieve this goal.

Acceptable methods of ACDBE participation in the ownership, management and control of the business include concession agreements and sub-agreements, joint ventures, partnerships or any other legal arrangements that result in bonafide ownership and control by the ACDBE participant. Bidder(s) are cautioned that certain methods are not acceptable (e.g., limited partnerships or joint ventures for investment only).

If a bidder is unable to secure ACDBE participation in ownership, management and control of the business, the Airport will consider other methods of participation towards the ACDBE goal (i.e. purchase of goods and services from certified ACDBEs).

The bidder is required to submit information concerning the ACDBE firm(s) that will participate in an ATM Concession by completing the ACDBE Utilization Plan, "**Attachment 4**", attached hereto and incorporated herein.

All bidders are required to complete a Good Faith Efforts form, “**Attachment 2**”, attached hereto and incorporated herein, whether the ACDBE goal is met or not. “**Attachment**” 2 documents and demonstrates that the bidder has taken the necessary and reasonable steps in attempting to meet the ACDBE goal; or that it is not economically feasible at this time to enter into a joint venture, sublease, partnership or other eligible arrangement with an ACDBE firm. If the bidder is unable to meet the goal, a request for partial or full waiver must be submitted to the Authority's DBE Program Office. Requests for waiver must be submitted no later than **November 16, 2009** to allow for review and approval of bidder’s request. Waivers will only be considered if the bidder has satisfactorily completed "Good Faith Efforts" procedure described in "**Attachment 2**". The requirements of this paragraph are not intended to force the bidder to change its business structure.

The MRCC must certify the ACDBE participant. This certification process can take up to 90 days. Certification of the ACDBE participant must be current. The successful bidder will be responsible for meeting the ACDBE reporting requirements outlined in the Agreement.

For more information regarding ACDBE participant certification refer to "**Attachment 3**", attached hereto and incorporated herein.

If an award of the Concession is made and a bidder’s ACDBE participation is less than the goal, the Concessionaire must continue good faith efforts throughout the term of the Agreement and attempt to increase ACDBE participation to meet the goal set forth in Article XII of the Agreement.

21. CHANGEOVER FROM CURRENT CONCESSIONAIRE:

If applicable, the successful bidder shall be responsible for the efficient changeover from the current Concessionaire.

22. REQUIREMENTS FOR DISABLED:

The successful bidder(s) shall be required to comply with the Americans with Disabilities Act ("**ADA**"), plus any federal, state, city and/or county laws, regulations, codes and/or ordinances pertaining to disabled individuals having access to Concessionaire’s Premises.

23. AIRPORT SECURITY REQUIREMENTS:

- A. **SECURITY.** The bidder, at its sole cost, shall be required to conduct all its activities at the Airport in compliance with the Airport security plan, which is administered by the Airport Police Department. The bidder shall obtain the proper access authorizations for its employees, consultants, sub consultants, and suppliers (i.e., badges and vehicle access), and shall be responsible for such persons’ compliance with all the Airport rules and regulations, including those regarding security. Any employee, consultant, sub consultant or supplier who violates such rules may be subject to revocation of his/her access authorization, including authorization for access to restricted areas.

The security status of the Airport is subject to change without notice. Security requirements are applicable to the current security status of the Airport. Should the

security status of the Airport change at any time during the term of the Agreement, a written notice shall be issued to the bidder detailing all applicable security modifications. The bidder, at its sole cost, shall be required to take immediate steps to comply with the security modifications.

- B. FINGER PRINTING. All persons applying for an Airport ID badge must submit to a fingerprint-based criminal history record check.
 - C. AIRPORT ID BADGES. All employees must obtain an Airport ID badge from the Airport Police Department and must display same upon entering and at all times while on site. Airport ID badges are picture-type and non-transferable. Under no circumstances will unescorted persons be allowed to enter or remain in restricted area without a valid Airport ID Badge.
 - D. VEHICLE ACCESS. Only direct support vehicles and/or equipment will be allowed on the Airfield Operations Area (“AOA”). Qualifying vehicles must be approved by the Airport Police Department.
24. FRANCHISE: Franchise bidders must provide the required information or financial capabilities, franchise operations and must include information on the operations of the franchisor. Franchisees shall include a letter from franchisor granting approval to bid at the Airport.

APPENDIX "A"
THE BID

AUTOMATED TELLER MACHINE CONCESSION
AT
LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®

Airport Commission. It is understood that the Agreement is not binding on the bidder or the City unless and until it is approved and fully executed by the City.

The bidder represents and warrants that the Bid is made without any connection with any other person making a Bid for this same purpose and that it is in all respects fair and without collusion or fraud; that no Authority or City officer or employee or person whose salary is payable in whole or in part from the City Treasury holds direct or indirect interest therein or in the supplies or materials or equipment and work or labor to which it relates, or in portion of the profits thereof; that the bidder is not currently in arrears to the City or to any other agency thereof upon a debt or contract, or a defaulter as surety or otherwise upon any obligations or has failed to perform faithfully in any current or previous contract with the City within the last five years; and that the bidder is not currently involved in litigation with the City regarding any previous contract obligation.

2. CERTIFICATION STATEMENTS:

The bidder certifies and warrants by the following assurances and covenants, that the bidder is fully qualified to manage and operate a non-exclusive ATM Concession at the Airport.

A. Experience:

Bidder certifies and warrants that it has successfully managed and operated an ATM for at least the last five consecutive years. ACDBE participant, if banking industry related, must have ATM experience for at least three years; and/or financially responsible in managing and operating a business primarily providing the goods and services for which they are proposing to contract for, for at least the last 12 months. ACDBE participant must be ACDBE certified by the MRCC through the Authority's DBE Program Office prior to submittal of the Bid.

B. Financial Stability:

Bidder certifies and warrants that it has been financially responsible in managing and operating ATMs. Bidder also certifies and warrants that the ACDBE participant, if banking industry related, has been financially responsible in the managing and operating of an ATM for at least three years; and/or financially responsible in managing and operating a business primarily providing the goods or services for which they are proposing to contract for, for at least the last 12 months and can demonstrate financial success with the appropriate documentary evidence.

C. Authority:

If a financial institution, bidder certifies and warrants that it is now authorized or chartered to operate a financial institution by the appropriate regulatory agency. Bidder must furnish a copy of the appropriate regulatory authorization and will obtain any other licenses and/or permits from federal, state and/or local authorities necessary to provide or perform ATM services.

D. Airport Concession Disadvantaged Business Enterprises ("ACDBE") Participation:

- 1) Bidder or its ACDBE participant, if not the primary bidder, must be ACDBE certified by the MRCC prior to submittal of a Bid. A copy of the ACDBE certification must be submitted with the Bid.
- 2) Good Faith Efforts documentation and/or request for waiver, if applicable, must be submitted to and approved by the Authority's DBE Program Office prior to submittal of a Bid. To fulfill this requirement, bidder must complete and submit **Attachment 2** no later than **November 16, 2009**.
- 3) ACDBE participant, if not the primary bidder, has been financially responsible in managing and operating an ATM or a banking industry-related business for at least the last 12 calendar months and can demonstrate financial success with the appropriate documentary evidence.
- 4) ACDBE participant, if not the primary bidder, is now licensed to do business in the State of Missouri; or has applied for and meets qualifications for obtaining all necessary licenses to do business in Missouri, and can obtain the licenses before commencement date of the Agreement.

3. EQUAL OPPORTUNITY IN EMPLOYMENT:

The bidder certifies and warrants that it complies with the City's requirements for an affirmative action program described in the Mayor's Executive Order on Equal Opportunity in Employment.

4. INFORMATION TO BE SUBMITTED BY BIDDER:

Bidder must submit the following information as evidence of bidder's qualifications and for purposes of Bid evaluation. These items will be used to establish bidder's record of experience, financial responsibility, service and operational capability and compliance with the ACDBE participation goal and other contractual requirements. All required items must be submitted complete and in the proper form.

A. Experience:

- 1) Documentation of bidder's experience that complies with Section 2A, in the management and operation of an ATM or banking industry related business. This must include a list of businesses, locations, term of contract(s) and a description of management and operational responsibilities, individual contact for each contract (including name, address and telephone number) during the last two calendar years.
- 2) Documentation of whether or not bidder has had an agreement terminated or cancelled within the last five calendar years, and if applicable, a statement defining the reasons for termination or cancellation.

B. Financial Stability:

The last two calendar or fiscal years financial statements prepared in accordance with generally accepted accounting principles, with independent Certified Public Accountant (CPA) statements attached, certifying statements as reviewed or audited and expressing CPA's opinion on the statements, or such other documentary evidence as may be acceptable to the Authority. ACDBE participant must submit the same financial information as the primary bidder for the last calendar year.

C. Authority:

- 1) A copy of bidder's license (Certificate of Corporate Good Standing and ATM/Banking Authority; or completed license application submitted to the Secretary of State), dated within the last 60 days to do business in the State of Missouri.
- 2) A copy of ACDBE participant's certification from the MRCC, if ACDBE participation is included.
- 3) A copy of the ACDBE's license (Certificate of Corporate Good Standing and ATM/Banking Authority; or completed license application submitted to the Secretary of State), dated within the last 60 days to do business in the State of Missouri.
- 4) Registration of Fictitious Name if applicable.

D. Airport Concession Disadvantaged Business Enterprise ("ACDBE"):

- 1) ACDBE certification letter from the MRCC.
- 2) ACDBE utilization plan that must, at a minimum, identify the certified ACDBEs that will participate and the nature of their participation, being as specific as possible; and provide the cumulative annual percentage of ACDBE utilization offered by bidder in the performance of this Bid.
- 3) The documentation of Good Faith Effort form and/or waiver approved and issued by the Authority's DBE Program Office.

The ACDBE certification review process takes several weeks to complete. It is the bidder's responsibility to provide adequate lead-time to complete the certification process for Bid submittal. Failure to provide adequate review time will prevent the Bid from being qualified and/or deemed responsive.

- E. A business plan detailing bidder's ability and plan of operation to meet the standards described in Section 18 of the INSTRUCTIONS TO BIDDERS, that includes at a minimum, but not limited to the following:

- 1) Description of type of personnel bidder offers to provide a high level of service in accordance with Article VI of the Agreement;
- 2) Description of the types of products and services that bidder proposes to offer at the Airport in accordance with the requirements of Article III of the Agreement;
- 3) Description of record keeping methods required by Article VI of the Agreement for the purposes of recording receipts and accounting for revenues by Concessionaire and ACDBE participant(s);
- 4) A complete list of proposed pricing that complies with Article VI of the Agreement;
- 5) Graphic representation of proposed installation by Concessionaire.

The Bidder's Bank References are:

	<u>Name</u>	<u>Address</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

The Undersigned hereby submits a letter from _____ (Name of Bank) indicating the bidder's credit standing, to include reference to bidder's payment history and ability to borrow funds to develop the premises.

BUSINESS ORGANIZATION

INDIVIDUAL ONLY

The bidder is an individual doing business under the name of _____,
in the City of _____, State of _____.

That the following is a complete and accurate list of the names and addresses of all persons
interested in the Bid:

<u>Name</u>	<u>Address</u>
_____	_____
_____	_____
_____	_____

That bidder is represented by the following resident agents in the City of St. Louis, Missouri:

<u>Name</u>	<u>Address</u>
_____	_____
_____	_____

PARTNERSHIP ONLY

That bidder is the duly authorized representative of a partnership doing business under the name of _____, in the City of _____, State of _____.

That the following is a complete and accurate list of the names and addresses of the members of said partnership:

<u>Name</u>	<u>Address</u>
_____	_____
_____	_____
_____	_____

That said partnership is represented by the following resident agents in the City of St. Louis, Missouri:

<u>Name</u>	<u>Address</u>
_____	_____
_____	_____
_____	_____

CORPORATION ONLY

That bidder is the duly authorized, qualified and acting _____ of _____,
a corporation organized and existing under the laws of the State of _____.

That the following is a complete and accurate list of the officers and directors of said corporation:

Directors

President	_____	_____
V. President	_____	_____
Secretary	_____	_____
Treasurer	_____	_____
St. Louis Manager or Agent	_____	_____

and the following officers are duly authorized to execute contracts on behalf of said corporation:

PROPOSAL TO BOND

The authorized representative of (Surety Company Name) _____
(Surety Company Address) _____ licensed
in Missouri, as Surety, does hereby state that he/she understands the obligations of the bidder under
the Bid above presented and further understands and agrees to perform as surety for the bidder as
required by Article V of the Agreement, in the event that the Bid of
_____ (Bidder) is accepted by the City of St. Louis, Missouri.

Signed by _____

Title _____

Date _____

-OR-

If the Bidder intends to submit a cashier's or other certified check or Irrevocable Letter of Credit as
security for the Performance and Payment Bond requirement of Article V of the Agreement, bidder
shall so signify its intentions by signing this document on the space provided below.

Signed by _____

Title _____

Date _____

BIDDER'S SIGNATURE

Legal Name
Of Company _____

Address _____

Phone _____

FEDERAL TAX I.D. NO.: _____

ATTEST: (SEAL)

Secretary

Bidder's Signature

Subscribed and sworn to, before me, a Notary Public in and for the County and State aforesaid, this day of _____, 20____.

My Commission Expires:

Notary Public Signature

ATTACHMENT 1
BID CHECKLIST

BID CHECKLIST

IMPORTANT NOTE: The following list of items to be included in a Bid is provided for bidder's convenience. Please review the enclosed bidder's checklist VERY carefully.

ALL BIDDERS ARE REQUIRED TO SUBMIT ALL DOCUMENTS WITH THEIR BID.

- Appendix "A" (Bid), intact, pages A-1 through A-12 fully completed, signed and notarized. Bidder is to complete each page as it applies to their business organization.
- Bid Bond. Cashier's check or standard commercial guaranty bond in the amount of Five Thousand Dollars (\$5,000).
- Documentation of Experience described in Section 4A of the Bid.
- Documentation of Financial Stability described in Section 4B of the Bid.
- Documentation of Bidder's State of Missouri License described in Section 5C of the Bid.
- Documentation of MRCC certified ACDBE certification or waiver described in Section 5D of the Bid, obtained from Authority's DBE Program Office.
- Copy of completed Good Faith Efforts Form (Attachment 2) and ACDBE Utilization Plan (Attachment 4).
- Documentation of ACDBE partner's State of Missouri License described in Section 5D of the Bid.
- Disclosure of any trademark, copyright, licensing and other contractual or property rights.
- Franchise letter (if applicable).

ALL BIDDERS ARE REQUIRED TO SUBMIT THE FOLLOWING ITEMS TO THE AIRPORT DBE PROGRAM OFFICE FOR APPROVAL NO LATER THAN: November 16, 2009: (include a copy of each of these documents with your Bid)

- Attachment 2 completed ACDBE Good Faith Efforts Procedure Form. All certified ACDBEs must include your company as one of the participants, along with other participants you may choose. If unable to obtain ACDBE participation, a full or partial waiver may be issued by the Authority's DBE Program Office and must be received prior to submission of your Bid.
- Attachment 4, ACDBE Utilization Plan. If the bidder is ACDBE certified, list your company on the form as a participant.

ATTACHMENT 2
GOOD FAITH EFFORTS PROCEDURE
DOCUMENTATION

TO BE SUBMITTED BY ALL BIDDERS
DIRECTLY TO THE
AIRPORT AUTHORITY'S
DBE PROGRAM OFFICE

NO LATER THAN

November 16, 2009

GOOD FAITH EFFORTS PROCEDURE

Each Bidder must submit documentation, using Documentation of Good Faith Efforts Forms attached, of its effort to achieve Airport Concession Disadvantaged Business Enterprise (ACDBE) participation in the Agreement. Listed below are the criteria that will be applied to determine whether the Bidder has actively and aggressively sought to meet the contract goal. The list is for the purpose of guidance and is neither exclusive nor exhaustive. Other factors and types of efforts may be relevant and will be considered in appropriate cases as well as the variety, nature and number of efforts made by the Bidder in seeking to meet the Airport Authority's goals.

Criteria for Determining Good Faith Efforts

The following criteria will be used:

1. Whether the Bidder attended any pre-solicitation meetings scheduled by the Airport;
2. Whether the Bidder advertised in general circulation, trade association, and minority-focused media concerning ACDBE opportunities in the Agreement;
3. Whether the Bidder provided written notices to a reasonable number of specific ACDBE's indicating that their interests in the Agreement were being solicited in sufficient time to participate effectively;
4. Whether the Bidder followed up initial solicitations of interest by contacting ACDBE's to determine with certainty whether the DBE's were interested;
5. Whether the Bidder selected portions of the work to be performed by ACDBE's in order to increase the likelihood of meeting the ACDBE goals, including where appropriate, breaking down the operation into economically feasible units to facilitate ACDBE participation;
6. Whether the Bidder provided interested ACDBE's with adequate information about the specifications and requirements of the Agreement;
7. Whether the Bidder negotiated in good faith efforts with interested ACDBE's, i.e. not rejecting ACDBE's as unqualified without sound reasons based on a thorough examination of their capabilities;
8. Whether the Bidder made efforts to assist interested ACDBE's in obtaining bonding, lines of credit or insurance required by the Airport Authority;
9. Whether the Bidder effectively used the services of available community organizations, i.e. local, state and federal minority business assistance offices and other organizations that provide assistance in ACDBE recruitment and placement.

Documentation to Accompany Good Faith Efforts Form

1. Copies of all advertisements which appeared in minority publications, including the names of the publication, the date on which the advertisement appeared and the audience to which the publications were directed, i.e. general audience publication, ACDBE supplier publication;
2. Copies of notification of available opportunities to all minority associations known to the Bidder. As a minimum, notification will include minority associations in the St. Louis area. Such notifications will be in writing and mailed in a timely manner consistent with Bid due date and certification requirements. The date and time for submitting Bids will be specified in the advertisement and notices and opportunities will be described as accurately as possible in reasonable detail;
3. Copies of all letters and other communications, including enclosures and attachments, which were sent to minority associations. Include the name, address, and date of mailing of each letter sent. The Bidder should have available copies of all correspondence and a record of all telephone replies in response to solicitations;
4. The record of telephone responses should include date and time of the incoming calls and the date and time it was returned or responded to. Bidders are requested to respond promptly to both telephone and mail responses from ACDBE associates since delays may be erroneously interpreted as an attempt to discourage ACDBE participation;
5. Documentation which objectively shows the capabilities of available ACDBE companies should be provided. The Bidders should make a concerted effort to segment the work to be performed under the Agreement in ways that accommodate the size and capabilities of known available ACDBE's;
6. Solicitation letters inviting proposals from ACDBE's should accurately describe segmented portions of work to be subcontracted and encourage inquiries for further details. The solicitation letters should be sent in a timely manner so as to allow ACDBE's sufficient opportunity to develop proposals for the work described. All solicitation letters must specify the due date for the information of the addressee. Bidders are also strongly urged to follow up such letters with telephone calls to determine the ACDBE's level of expertise.

Determination of Good Faith Efforts

The DBE Program Office will assess the good faith efforts form and any other documentation submitted by the Bidder's for good faith effort. Determination of a Bidder's good faith effort will be made on a case by case basis.

DOCUMENTATION OF GOOD FAITH EFFORTS

The Bidder shall document and describe the good faith efforts taken to meet the ACDBE goal by completing this form:

- Yes___ No___ Apportioned the Agencies rights to be performed by ACDBE's in order to increase the likelihood of achieving the stated goal.

- Yes___ No___ Solicited ACDBE's by written notification at least (21) calendar days prior to Bid opening of opportunities for participation.

- Yes___ No___ Eliminated any agreements between the Bidder and the ACDBE in which ACDBE promises not to provide participation in the Bids of other Bidders.

- Yes___ No___ Assisted ACDBE's that need assistance in obtaining bonding, insurance, or lines of credit.

- Yes___ No___ Attended the Pre-Bid meeting scheduled by the Authority.

- Yes___ No___ Notified disadvantaged economic development assistance agencies and organizations which provide assistance in recruitment and placement of ACDBE's.

- Yes___ No___ Advertised in general circulation media, trade association publications, disadvantage-focused media of interest in utilizing ACDBE's and area of interest.

List publications: _____

Describe any other efforts made to secure ACDBE participation and the results of those efforts.

In addition to the ACDBE's proposed for this Bid, list below all ACDBE's that were contacted and not included in this Bid.

Firm Name: _____

Address: _____

Contact person and Phone Number: _____

Method of Solicitation: _____

Reason not included in Bid: _____

Firm Name: _____

Address: _____

Contact person and Phone Number: _____

Method of Solicitation: _____

Reason not included in Bid: _____

Firm Name: _____

Address: _____

Contact person and Phone Number: _____

Method of Solicitation: _____

Reason not included in Bid: _____

Firm Name: _____

Address: _____

Contact person and Phone Number: _____

Method of Solicitation: _____

Reason not included in Bid: _____

Firm Name: _____

Address: _____

Contact person and Phone Number: _____

Method of Solicitation: _____

Reason not included in Bid: _____

Firm Name: _____

Address: _____

Contact person and Phone Number: _____

Method of Solicitation: _____

Reason not included in Bid: _____

Firm Name: _____

Address: _____

Contact person and Phone Number: _____

Method of Solicitation: _____

Reason not included in Bid: _____

The demonstration of good faith efforts by the Bidder must in the end prove the Bidder had actively and aggressively sought out ACDBE's to participate in the management and operating responsibilities of a Concession at Lambert-St. Louis International Airport®. The information provided will be evaluated to determine if the Bidder is responsive. All the information provided must be accurate and complete in every detail. Use additional sheets if necessary.

ATTACHMENT 3
ACDBE CERTIFICATION
INFORMATION

For the most recent packet of certification forms, please contact the Authority as follows:

Donald C. Robertson
Assistant Airport Director
DBE Program Office
P.O. Box 10212
St. Louis, MO 63145-0212
314-426-8111

The M/W/DBE certification application is also available as a **pdf** file on our web site at
www.mwdbbe.org/.

ATTACHMENT 4
ACDBE UTILIZATION PLAN

**TO BE SUBMITTED BY ALL BIDDERS
DIRECTLY TO THE
AIRPORT AUTHORITY'S
DBE PROGRAM OFFICE**

NO LATER THAN

November 16, 2009

ST. LOUIS AIRPORT AUTHORITY
**AIRPORT CONCESSIONAIRE DISADVANTAGED BUSINESS ENTERPRISE
UTILIZATION PLAN**

SOLICITATION NAME: _____

NAME OF BIDDER: _____

The bidder shall utilize the maximum number of **certified** disadvantaged owned business enterprises (ACDBEs) possible in responding to the Solicitation.

FIRM NAME	CERTIFYING	WORK	ANTICIPATED
ADDRESS	AGENCY	TO BE PERFORMED/	GROSS
PHONE NUMBER	CERT. DATA	MATERIALS SUPPLIED	REVENUE
CONTACT PERSON	CATEGORY		
FEDERAL ID NO.	CERTIFICATION NO.		
(A)	(B)	(C)	(D)

TOTAL PROJECTED GROSS RECEIPTS: \$ _____

TOTAL DBE SUBGROSS RECEIPTS: \$ _____ PERCENTAGE DBE: _____

BIDDER AUTHORIZED SIGNATURE

DATE

APPENDIX “B”

SAMPLE AGREEMENT

LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®



COMPANY NAME

AUTOMATED TELLER MACHINE

CONCESSION AGREEMENT

NO. _____

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LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®
CONCESSION AGREEMENT
(Automated Teller Machine)

THIS AGREEMENT, made and entered into as of the ____ day of _____ 200_, by and between the CITY OF ST. LOUIS (“City”), a municipal corporation of the State of Missouri and _____ (“Concessionaire”), a corporation organized and existing under the laws of the State of _____.

WITNESSETH, THAT:

WHEREAS, the City now owns, operates and maintains an international airport known as “Lambert-St. Louis International Airport®” (“Airport”), located in the County of St. Louis, Missouri;

WHEREAS, an Automated Teller Machine (ATM) Concession at the Airport is desirable for proper accommodation of the public;

WHEREAS, the City has determined that it is in the public’s best interest for the following objectives to be met in the provision of an ATM Concession:

- Provide a first-class, full-service ATM Concession that meets Airport user needs and adds value to other Airport and Airline services;
- Provide passengers with access to their accounts via ATMs at assigned locations throughout the Airport terminals;
- Provide a high level of services at prices that are attractive to Airport users;
- Provide an ATM Concession with equipment that is reliable, easy to use and well maintained;
- Be responsive to the Federal Aviation Administration (FAA) and City goals for Airport Concession Disadvantaged Business Enterprise (“ACDBE”) participation in concessions;

The order of these objectives should not be construed as an indication of their relative merit as viewed by the City.

WHEREAS, the City has advertised and received bids for the right to manage and operate an ATM Concession at the Airport, and by this process the City has determined that the Concessionaire is a qualified bidder for this business and has submitted a Bid deemed advantageous to the public and the City.

NOW, THEREFORE, for and in consideration of the payments, promises and the mutual covenants and agreements herein contained and other valuable considerations, the City and the Concessionaire agree as follows:

ARTICLE I

DEFINITIONS

Section 101. Definitions. The following words and phrases shall have the following meanings:

“Agreement” shall mean this concession contract for an Automated Teller Machine Concession and any amendments thereto, duly approved by the City.

“Airport” as stated in the preamble hereof.

“Airport Concession Disadvantaged Business Enterprise (ACDBE)” shall mean a concession that is a for-profit small business concern:

- That is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged; or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more such individuals; and
- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

“Airport Properties Department” shall mean that department of the City of St. Louis Airport Authority that has as its primary responsibility the administration of all tenant, permittee, concessionaire and other space at the Airport, and shall be the Concessionaire’s point of contact with the Airport on all issues related to this Agreement.

ATM Transaction Fee” shall mean a fixed percentage of the surcharge for each Foreign ATM Transaction.

“Authority” shall mean the City of St. Louis Airport Authority, the City department responsible for managing and operating the Airport.

“Build-Out or Build-Out Costs” shall mean costs incurred for the demolition/redevelopment of existing improvements and/or construction of new Improvements to the Premises, including: furnishings; fixtures and finishes (including Removable Fixtures); costs of architectural design and engineering fees; permits; insurance and construction bonds; but excluding the costs of interest during construction and overhead of the Concessionaire.

“City” as stated in the preamble hereof.

“Concession” as stated in the preamble hereof.

“Concessionaire” as stated in the preamble hereof.

“Contract Year” shall mean a period of twelve (12) consecutive calendar months commencing on the date specified in Article IV.

“Director” shall mean the Director of Airports of the City of St. Louis Airport Authority, and incorporates the granting of approval requirements of Article XV hereof.

“Environmental Laws” shall mean all applicable federal, state, and local statutes, ordinances, regulations, rules, laws, permits, permit conditions, and orders relating to the generation, use, storage, transportation, or disposal of Hazardous Materials, including, without limitation, the Clean Air Act, 442 U.S.C. §1251 *et seq.*, and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. §1401 *et seq.*; the Noise Control Act, 42 U.S.C. §4901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. §651 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*; as amended by the Hazardous and Solid Waste, Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. §300f *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §9601 *et seq.*; as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right to Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Hazardous Material Transportation Act, 49 U.S.C. §9601 *et seq.*; the Toxic Substance Control Act, 15 U.S.C. §2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. §2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, U.S.C. §1010 *et seq.*

“Environmental Permit” shall mean any and all permits, licenses, approvals, authorizations, consents, or registrations required by Environmental Laws, whether federal, state or local, which pertain to the production, use, treatment, generation, transportation, processing, handling, disposal, or storage of Hazardous Materials. (See Article XIV)

“Foreign ATM Transaction” shall mean a transaction made with an ATM card not issued by Concessionaire for which a surcharge is administered.

“Good Faith Efforts” shall mean efforts to achieve an ACDBE goal or other requirement that, by their scope, intensity and appropriateness to this objective, can reasonably be expected to meet the program’s requirement.

“Gross Receipts” shall mean the total revenues from all sources and all types at the Airport under the Agreement and any derivative thereof performed by Concessionaire, its subcontractors, subsidiaries, associated companies or otherwise, regardless of the point of origin or delivery of the order; and, only the following may be excluded or deducted, as the case may be, from Gross Receipts:

- federal, state, county and municipal sales taxes or other sales taxes separately stated and collected from customers;
- cash or credit refunds given to customers for returned products or unperformed services purchased at the Airport;

- receipts in the forms of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers;
- sale or trade-in value of any equipment or fixtures approved for removal by the Director and owned by Concessionaire.
- gratuities paid by customers to members of Concessionaire's staff.

“Hazardous Materials” shall mean friable asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs), petroleum, or crude oil or any fraction thereof, natural gas, source material, special nuclear material, and byproduct materials regulated under Environmental Laws, pesticides regulated under Environmental Laws, and any hazardous waste, toxic, or dangerous substance or related material, including any material defined or treated as a hazardous substance, hazardous waste, toxic substance, or contaminant (or comparable term) under any of the Environmental Laws.

“Improvements” shall mean all construction and fixtures built or erected by the Concessionaire, and forming a part of and which are permanently affixed or attached to any portion of Airport real property or improvements within the Premises.

“Premises” shall mean a location or locations described in Article II that have been designated by the City for the sale of Concessionaire's services, and for other uses provided specifically herein, together with all Improvements thereon.

“Remediation Costs” shall mean any reasonable losses, expenses, or costs incurred by the City in connection with environmental remediation: (i) required by the appropriate governmental agency responsible for enforcing Environmental Laws or Environmental Permits, and (ii) attributable to Hazardous Materials left on City property in violation of Environmental Laws or Environmental Permits, and caused by, or arising out of, Concessionaire's operations at the Airport or the Concessionaire's use of the City's property. Remediation Costs include investigation and evaluation costs, costs to implement institutional controls or restrictive covenants, sampling and analysis costs, reporting costs, planning and design costs, consultant and contractor costs, labor costs, equipment costs, construction costs, access costs, disposal costs, transportation costs, reasonable administrative costs, reasonable attorneys' fees and other legal fees and litigation expenses, permit fees and costs, monitoring costs, oversight and inspection costs, claims, demands, causes of action, suits, judgments, damages, compensation, debts, costs, expenses, losses, penalties, fines, stipulated penalties, punitive damages, and other similar liabilities arising out of Concessionaire's violation of Environmental Laws or Environmental Permits.

“Removable Fixtures” shall mean all furnishings, equipment and fixtures installed by the Concessionaire that are not permanently affixed to any wall, floor or ceiling in the Premises.

ARTICLE II

PREMISES

Section 201. Premises. City hereby permits the Concessionaire to install, maintain and operate at the Premises on Airport property including the Airport terminals in accordance with rights granted under Article III, as described in **Exhibit “A”**, attached hereto and made a part hereof. The rights granted in Article III hereof must only be exercised within the Premises.

The Director shall have the right to add, substitute, relocate or delete portions of the Premises upon reasonable notice to the Concessionaire. The City will not be liable or responsible for any loss whatsoever, including without limitation, any inconvenience or loss by the Concessionaire of work time, profit or business, actual, incidental, consequential or special damages resulting from these changes to the Premises.

Concessionaire accepts the Premises “**AS IS**” with no warranties or representations of any kind, expressed or implied, either oral or written, made by the City or any of its agents or representatives. City without limitation expressly disclaims and negates as to the Premises any implied or expressed warranty for a particular purpose and any expressed or implied warranty with the respect to the Premises or any portion thereof.

Section 202. Access. Subject to the terms, covenants and conditions of this Agreement hereof, Concessionaire has the right of free access, ingress to and egress from the Premises for Concessionaire’s employees, agents, guests, patrons and invitees.

ARTICLE III

CONCESSION RIGHTS

Section 301. Rights. City hereby grants to Concessionaire, subject to and in accordance with all of the terms, covenants, warrants and conditions of this Agreement the nonexclusive right, license and privilege and Concessionaire hereby assumes the obligation to design, construct and to operate, manage and maintain an ATM Concession within the Premises.

Section 302. Limitation of Rights. Concessionaire is not granted the right to offer for sale any merchandise, products, or services, or engage in any other business or commercial activity on the Airport that is not specifically granted under this Agreement. If any services or products, other than those specifically mentioned in Section 301 are offered for sale by Concessionaire, Concessionaire shall cease and desist from any further sale or provision thereof immediately and no later than upon receipt of written notice from the Director.

Concessionaire shall not engage in advertising or provide an area for the distribution of advertisements on behalf of any company other than itself. City shall be the sole judge as to whether the conduct of Concessionaire’s representative in the solicitation of business constitutes

a violation of this paragraph, and upon notice from the City, Concessionaire shall forthwith take all steps necessary to eliminate the undesirable condition.

This Agreement grants no real or implied rights to any concession privileges on the Airport other than in the designated areas.

ARTICLE IV

CONCESSION TERM

Section 401. Term. The term of this Agreement shall consist of five Contract Years as written below:

Commencement Date: March 1, 2010

Expiration Date: February 28, 2015

Section 402. Surrender of Possession. No notice to quit possession at the expiration date of the term of this Agreement shall be necessary. Concessionaire covenants and agrees that at the expiration date of the term of this Agreement, or at the earlier termination hereof, it will peaceably surrender possession of the Premises, in as good condition as that existing at the time of Concessionaire's initial entry upon the Premises under this Agreement, reasonable wear and tear, acts of God, and other casualties excepted, and the City shall have the right to take possession of the Premises with or without due process of law.

Section 403. Holdover Provision. If Concessionaire shall, with the prior written approval of the Director, holdover after the expiration of the term of this Agreement, the resulting tenancy shall, unless otherwise mutually agreed, be a tenant at will on a month-to-month basis. During such month-to-month tenancy, Concessionaire shall pay to City the same Concession Fee as set forth herein, unless different fees shall be agreed upon by the Director on behalf of the City and the Concessionaire, and shall be bound by all terms, covenants and conditions of this Agreement.

ARTICLE V

FEES AND RENTALS

Section 501. General. Concessionaire, for and in consideration of the rights and privileges granted herein, agrees to pay the concession fees and other fees and charges as set forth below in Sections 502, 503, 505 and 510 and the utilities described in Article VIII, without demand, during the term of this Agreement.

Section 502. Concession Fee. During each Contract Year or portion thereof, the Concessionaire agrees to pay to City the fees as set out below:

- A. The Concessionaire agrees to pay to City an annual fee of Twenty-one Thousand Dollars (\$21,000) in 12 monthly payments of One Thousand Seven Hundred Fifty Dollars (\$1,750).
- B. An ATM Transaction Fee consisting of a percentage of the surcharge for all Foreign ATM Transactions. (All computations of this portion of the Concession Fee shall be based upon the percentage defined in the Bid.)

Section 503. Payment. Payments for each month of each Contract Year for part A above shall consist of a payment in advance on or before the first day of each month. Payments for part B above shall consist of an amount equal to that portion of the Concession Fee applicable to the preceding month to be paid on or before the 15th day of the second and each succeeding month. See Section 505 and Article XIII for the amount of any applicable service charge or liquated damages.

Section 504. Reports.

- A. Concessionaire shall submit to the City, by the 15th day of the second and each succeeding month of each Contract Year hereof, two copies of an accurate statement of Gross Receipts as it pertains to ATM surcharges. Concessionaire shall document in a manner satisfactory to the Director a report listing the ATM Transaction Fee and amount due to the Airport, total number of ATM transactions and number of Foreign ATM Transactions subject to surcharge and amount of surcharge, and be certified as accurate by an officer of the Concessionaire. The final statement of ATM Transaction Fees shall be due 120 days after completion of the fifth Contract Year. The City reserves the right to use these statements as a source of information to bidders in a future Solicitation for Bids or Request for Proposals for this Concession.
- B. Concessionaire shall submit an audited report of Gross Receipts within 120 days following the conclusion of each Contract Year. These audit reports must be prepared by an independent Certified Public Accountant. The audit reports shall, at a minimum, certify the accuracy of reported total accumulated Gross Receipts; and the aggregate amount of Gross Receipts and/or goods and services attributable to ACDBE participants. The audit reports shall also include a schedule showing the total of actual payments to the City during the Contract Year and shall state an opinion as to the correctness of the computation of Gross Receipts without exception.
- C. Delivery of an audit report containing a qualified opinion, an adverse opinion or a disclaimer of opinion as defined in the Statement on Auditing Standards, or as same may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be deemed to be a default pursuant to Article XI herein.
- D. Concessionaire shall keep, and make available to the City, such records (copies of subcontracts, paid invoices, documentation or correspondence) as are necessary for the City to determine compliance with the ACDBE participation requirement. The City

reserves the right to investigate, monitor and/or review records for compliance. Concessionaire shall submit quarterly ACDBE activity reports to the City in a form approved by the Director.

Section 505. Unpaid Fees. All unpaid fee payments due the City hereunder shall bear a service charge of 1½% per month if same is not paid and received by the City on or before the 20th day of the month in which said payments are due, and Concessionaire agrees that it shall pay and discharge all costs and expenses including attorney fees and litigation cost incurred or expended by the City in collection of said delinquent amounts due, including service charges.

Section 506. Performance and Payment Bond. Concessionaire agrees to furnish a Performance and Payment Bond in a form acceptable to City in the principal amount equal to Ten Thousand Dollars (\$10,000) prior to execution of this Agreement. Such bond or other form of security agreed to by the City, shall remain in full force and effect throughout the term of this Agreement and shall extend at least 180 days following the expiration or early termination of this Agreement. In the event that said bond should expire prior to expiration or early termination of this Agreement, Concessionaire warrants, covenants and agrees to provide City a renewal bond 60 days prior to the expiring bond's expiration date. Such bond shall guarantee the payment of all fees and performance of all other terms, covenants and conditions of this Agreement. The Performance and Payment Bond shall be in the form of standard commercial guaranty bond running to City, written by a surety company authorized to do business in Missouri: having a "Best" key rating of not less than A and with a "Best" Financial Size Category of not less than Class VIII; and shown on the most recent U.S. Treasury Circular No. 570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The bond shall be kept in full force and effect during the term hereof. City may agree to another form of deposit which shall provide equal protection of City's interest. If City cashes the bond or other form of deposit agreed to by the City, Concessionaire agrees to furnish a replacement Performance and Payment Bond or other form of deposit in the same principal amount within 15 days.

Section 507. Prompt Payment of Taxes and Fees. Concessionaire warrants, covenants and agrees to pay promptly all lawful general taxes or payments in lieu of taxes; special assessments; excises; license fees; permit fees; and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport or under this Agreement, and further covenants and agrees not to permit any of said taxes, payments, assessments, fees and charges to become delinquent.

Section 508. Accounting Records and Reports. During the term hereof Concessionaire shall make available in the St. Louis area true, accurate, complete and auditable records of all business it conducts at the Airport. Concessionaire shall make same records available in the St. Louis area for three years following the expiration or early termination of this Agreement. These records shall be accessible during usual business hours to the City or its duly appointed agents or auditors. Concessionaire is not required to maintain its records in the St. Louis area, as provided above, if it agrees to pay for all costs associated with conducting audits performed by the City, or its duly appointed agents or auditors, at the Concessionaire's place of records.

Section 509. Audit. City, or its duly appointed agents or auditors, reserves the right to audit Concessionaire's, subcontractor's (or others doing business under this Agreement) books, records and receipts at any time for the purpose of verifying the Gross Receipts hereunder. If the results of the audit(s) reveal a discrepancy of more than 5% between Gross Receipts reported by Concessionaire and Gross Receipts determined by the audit, the cost of the audit shall be borne by Concessionaire.

Section 510. Additional Fees, Charges and Rentals. Concessionaire shall pay additional fees, charges and rentals under the following conditions:

- A. If the City has paid any sum or sums or has incurred any obligations or expenses for which Concessionaire has agreed to pay or reimburse the City for; or
- B. If the City is required or elects to pay any sum or sums or incurs any obligations or expenses because of the failure, neglect or refusal of Concessionaire to perform or fulfill any of the terms, covenants or conditions of this Agreement.

Such payments shall include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of fees, charges and rentals thereafter due hereunder. Each and every part of such payment shall be recoverable by the City in the same manner and with like remedies as if it were originally a part of the basic fees, charges and rentals, as set forth herein.

For all purposes under this paragraph, and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum or sums by the City for any work done or material furnished shall be prima facie evidence against Concessionaire that the amount of such payment was necessary and reasonable.

Section 511. Notice, Place and Manner of Payment. Payments to the City shall be made to the Director of Airports Office, at the Airport, or at such other place as the City may hereafter notify Concessionaire and shall be made in legal tender of the United States.

ARTICLE VI

CONCESSIONAIRE' S OPERATIONS

Section 601. Standards of Service.

- A. The Concessionaire warrants, represents, covenants and agrees to meet the City's objectives as set out in the preamble hereof. The Concessionaire shall furnish a first-class ATM Concession serving the needs of all Airport users. The Concessionaire shall provide new equipment, quality services and products and shall equip, organize, put into service and manage efficiently the ATM Concession to provide service in a clean, attractive and pleasant atmosphere. All ATMs shall be capable of processing withdrawals, fund transfers, cash advances and status inquiry transactions for the users thereof. Further, Concessionaire must subscribe to the following networks and be

capable of accepting at least, but not limited to, one of the following cards: Cirrus, Plus, BankMark, Honor, American Express, Visa, MasterCard and Discover/Novus. As an option, Concessionaire may also offer loan services, deposits and instant loans. Concessionaire shall insure that servicing of ATMs shall be done at such times and in such manner as to minimize disruption of passenger traffic and/or other tenant operations.

- B. Concessionaire shall at all times retain one or more qualified, competent and experienced manager(s) who shall manage and supervise the operations and the facilities and represent and act for Concessionaire. The manager(s) shall ordinarily be available during regular business hours. In addition, the manager or a designated subordinate must be available for emergencies on a 24-hour basis. Concessionaire shall display (clearly visible at all times on the face of the ATM machine) a 24-hour toll-free telephone contact for immediate notification when the machine is out-of-service or for the convenience of customers experiencing problems with the ATM.
- C. Deliveries of supplies, cash and coin to the Concession Premises shall be made at such times, by such routes/modes and at such locations as the City may reasonably approve.
- D. Premises shall be kept clean, neat, businesslike and in an orderly condition at all times and Concessionaire shall provide for timely disposal of trash and debris at locations designated by the City.
- E. Concessionaire shall submit to the City for approval, on or before commencement date, detailed written operating and security procedures in conjunction with the Airport's Security Operations Division.
- F. Concessionaire shall assure that its agents and employees do not engage in solicitation or pressure sales tactics on or about the Airport.
- G. Operations shall fully comply with all **FAA** regulations including security requirements, Airport rules and regulations and Airport security plan. Employees shall be suitably badged in accordance with Airport security procedures and regulations and shall fully comply with the Transportation Security Administration's ("**TSA**") regulation 1542 regarding conduct and access to the Airfield Operations Area ("**AOA**").

Section 602. Hours of Operation. Concessionaire shall operate 24 hours per day; seven days per week, 365/366 days per year, as applicable.

Section 603. Promotion. Concessionaire warrants, covenants and agrees that it shall take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it hereunder. Concessionaire shall not divert or cause or allow any business to be diverted from the Airport by referral or any other method. Any action taken by Concessionaire to diminish the Gross Receipts of Concessionaire under this Agreement shall constitute a material breach hereof and a cause for the termination of this Agreement by the City.

Section 604. Personnel.

- A. Concessionaire shall maintain a sufficient number of trained personnel on duty to insure that Concessionaire's customers receive prompt and efficient service at all times. Concessionaire shall require its employees (except managerial and supervisory employees) to wear appropriate uniforms, if applicable, and badges to indicate the fact and nature of their employment. Concessionaire shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each of whom shall be proficient in the duties to be performed in the operation of this Concession. Concessionaire shall provide proper training of all employees including on-going customer service training and for the certification and/or licensing of employees in all areas of service as their duties might legally require. Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules and regulations. Concessionaire shall prohibit and restrain its agents, servants and employees from loud, noisy, boisterous or otherwise objectionable behavior. Upon objection from the Director concerning the conduct or appearance of any such persons, Concessionaire shall immediately take all steps necessary to remove the cause of the objection.

- B. Concessionaire, at its cost, acknowledges and agrees that it shall conduct employee background checks of each of its personnel if required by the FAA, TSA and/or the Airport. Concessionaire recognizes and agrees that security requirements may change and Concessionaire agrees that it shall comply with all such changes throughout the term of this Agreement.

Concessionaire understands and agrees that fines and/or penalties may be assessed by the FAA or the TSA for Concessionaire's noncompliance with the provisions of the TSA's regulation 1542 as amended or other applicable laws or regulations. Concessionaire shall promptly reimburse the City, within 30 days of the City's request, for any fines or penalties paid by the City due to Concessionaire's noncompliance with said laws or regulations.

- C. Concessionaire's employees shall be trained to have sufficient knowledge of the Airport to be able to give clear and accurate directions to the public.

Section 605. Onset of Service. Concessionaire shall be solely liable and responsible for all costs and expenses pertaining to the design, construction, acquisition, installation, replacement, relocation and maintenance of the Improvements, Removable Fixtures and equipment as is necessary to provide service pursuant to this Agreement. At the time of Bid, Concessionaire submitted a transition plan and development schedule, subject to the approval of the Director, for the efficient transition of service from any previous concessionaire. Concessionaire shall be responsible to coordinate the execution of the transition, in accordance with the approved transition plan and replacement schedule, with the previous concessionaire to assure a smooth transition of service with the minimum amount of disruption of service to the traveling public and other Airport users.

Section 606. Pricing.

- A. Concessionaire shall charge fair, reasonable and nondiscriminatory prices that are attractive to the public and not more than charged at street locations. For purposes of this Agreement, the term “street location” shall mean the regular price of the product or service at a non-Airport location or branch.
- B. The Concessionaire submitted at the time of Bid a complete list of all services proposed to be offered and charges for said services in conjunction with paragraph (A) of this section. The Director reserves the right to independently compare Concessionaire’s prices to off-Airport location or branch prices and require Concessionaire to reduce prices based upon its comparison.
- C. Concessionaire shall have discretionary authority to adjust ATM Transaction Fees proportionate to overhead costs and operating expenses. However, the City will retain the right to review these charges and the Concessionaire will provide us with annual documentation demonstrating that their rates are comparable to those of other local financial institutions.

Section 607. Manager. Concessionaire shall at all times retain one or more qualified, competent and experienced manager(s) who is thoroughly trained to provide and teach excellent customer service and who shall manage and supervise the operations and the facilities and represent and act for Concessionaire. The manager(s) shall ordinarily be available during regular business hours. The manager or a responsible subordinate shall be available at all times for emergency situations.

Section 608. Conflicts. Concessionaire shall monitor the movement of its vehicles or equipment to minimize conflict with other functions and Airport users and shall coordinate its use of the Airport with other users.

Section 609. Record Keeping. Concessionaire agrees to provide a system for the collection of all monies and provision of accounting, audit and statements of Gross Receipts as required by Article V. This system shall be capable of providing comprehensive records, in a format acceptable to the Director, of daily, monthly and annual sales of Concessionaire and ACDBE participant(s) under this Agreement (these records are to be retained by Concessionaire). Concessionaire must also maintain records that document, in a format acceptable to the Director, the portion of Gross Receipts attributable to ACDBE participants.

Section 610. Transition Period. If applicable, during any future transition of the ATM Concession to another concessionaire, the Concessionaire hereby warrants, represents, covenants and agrees that Concessionaire shall use its best efforts to assure a smooth transition and agrees to closely coordinate the planning and execution of the transition with the Director.

Section 611. Operation.

- A. Concessionaire shall be responsible for all aspects of the management and operation of this Concession. Further, Concessionaire shall provide and be responsible for all employees and necessary components of the operation, including inventory, fixtures, equipment and supplies.
- B. The City shall not be responsible for any equipment, Improvements, supplies or fixtures used, maintained or stored on the Premises, nor will it be responsible for damage to such items resulting from flood, fire, explosion, vandalism or other causes outside the control and responsibility of the City.

Section 612. Communication.

- A. Concessionaire's local manager shall be available for regular monthly or quarterly meetings (at the City's discretion) with the appropriate representative of the Airport Properties Department to discuss sales; and the DBE Program Office to discuss ACDBE participation; or any other relevant issues which may affect Concessionaire's operation at the Airport. Concessionaire shall also be available for meetings at other times as necessary.
- B. Concessionaire shall be responsible for notifying the Airport Properties Department of any problem that reduces service or sales levels or in any way impairs Concessionaire's operation. The Airport will make every reasonable effort to assist in eliminating such problems.

Section 613. Customer Complaints. Concessionaire shall establish procedures for handling all customer complaints. Concessionaire shall respond in writing to every written complaint, within seven calendar days of the complaint and shall make good faith efforts to explain, resolve or rectify the cause of the complaint. Concessionaire shall provide the Director with a copy of each such complaint and its written response thereto.

Section 614. Deliveries. Concessionaire shall monitor the movement of deliveries to avoid conflict with other functions and Airport users and shall coordinate its use of the receiving dock with other users. All deliveries are the responsibility of Concessionaire and not the City.

ARTICLE VII

IMPROVEMENTS AND ALTERATIONS

Section 701. Construction by Concessionaire. The design should be sophisticated yet providing a comfortable and inviting atmosphere. Storefronts, if applicable, must be upscale and dynamic while complementing the design of the surrounding terminal space. The materials must provide the highest level of fit and finish yet must be durable enough to survive in the high volume airport environment. Finishes should be easy to maintain and keep clean. Passenger flow must be addressed to eliminate queuing into the concourses. The design must meet the criteria of the

ADA along with all similar state and local requirements. Design of the Concession will be subject to the review and approval of the Airport Properties and Planning and Engineering Departments of the Airport. Drawings must be submitted to the Airport Properties Department along with a completed Tenant Construction or Alteration Application (“TCA”). Building permits will be required from St. Louis County. Fire protection drawings must be sealed by a licensed fire protection contractor and are subject to review and approval by the Airport’s insurance carrier. No work can begin until drawings have been approved by the City, building permits have been submitted to the City and a pre-construction conference has been held.

- A. Concessionaire takes the Premises “**AS IS**” as provided for in Article II hereof, and agrees, at Concessionaire’s sole cost and expense, to design, erect, construct, equip and furnish all necessary Improvements, Removable Fixtures and equipment and make related facility changes as needed to operate an ATM Concession, pursuant to this Agreement, in accordance with plans prepared by Concessionaire and approved by the Director subject to the requirements of this Article VII.
- B. Concessionaire agrees that all such work shall be completed according to the Tenant Design Standards, which are filed of record in the Office of the Director.
 - 1) Concessionaire shall submit a signed TCA including complete sealed construction drawings and specifications, as required by Section 702 hereof, to the Airport Properties Department for its initial as well as future construction. The TCA shall be submitted not more than 30 days following full execution of the Agreement by City. Concessionaire will be asked to submit 30% design drawings for review and comment to expedite the approval of final plans and specifications.
 - 2) Concessionaire shall submit a St. Louis County building permit number not more than 30 days following submission of the TCA to the Airport Properties Department. (A building permit number is required before construction can begin.)
 - 3) Concessionaire shall submit the contractor's liability insurance certificates and performance and payment bonds, required by Sections 704 and 705 hereof, to the Airport Properties Department not more than 45 days following the TCA approval and prior to commencement of work.
 - 4) Concessionaire shall complete all construction and open all Premises fully fixtured and operational no later than 180 days after full execution of the Agreement by the City, subject to the provisions of Article XIII.
 - 5) Failure to open and operate in accordance with this Section 701 will result in Concessionaire being assessed liquidated damages in the amount of **Five Hundred Dollars (\$500) per day** for each day beyond the 180 days after full execution by the City.
 - 6) Concessionaire shall submit a certificate of completion and a certified copy of a St. Louis County occupancy permit, to the Airport Properties Department, as required

by Section 706 hereof.

In the event Concessionaire encounters material believed to be asbestos or polychlorinated biphenyl (**PCB**) which has not been rendered harmless, or specifically identified with method of removal, handling or protection, Concessionaire shall immediately stop work in the affected area and report the condition to the Director in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the Director and Concessionaire if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the Director and Concessionaire. Concessionaire shall not be required to perform, without their consent, any work related to asbestos or PCB.

Section 702. Preparation of Plans and Specifications. Concessionaire shall submit detailed drawings, plans and specifications sealed by an appropriate Missouri registered professional for improving and equipping the Premises. Concessionaire shall begin work on proposed construction only after it has received the written approval of its plans and specifications from the Director.

Section 703. Contractor's Liability Insurance. In any contract appertaining to improving and equipping the Premises, Concessionaire shall require the contractor to cause the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, with bodily injury limits of not less than Two Million Dollars (\$2,000,000) as to any one person, and Two Million Dollars (\$2,000,000) as to any one occurrence, and with property damage limits of not less than Two Million Dollars (\$2,000,000) as to any one occurrence. Said insurance shall be in a form acceptable to the City.

Section 704. Performance and Payment Bonds. Concessionaire shall require each of its contractors and suppliers of construction materials to furnish a Performance Bond and Payment Bond each in the full amount of any contract in a form acceptable to the City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo (Revised Statutes State of Missouri). Copies of the bonds shall be given to the City for approval before work begins. Any sum or sums derived from said Performance and Payment Bonds shall be used for the completion of said construction and the payment of laborers and material suppliers, as the case may be.

Section 705. Mechanics' and Materialmen's Liens. Concessionaire agrees not to permit any mechanics' or materialmen's or any other lien to be foreclosed upon the Premises or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

Section 706. Certificates of Completion. Upon the completion of the improvements hereunder, Concessionaire shall submit to the Director a copy of its acceptance letter certifying completion and a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by

Concessionaire. Concessionaire will provide the City with sealed as-built drawings within 90 days of opening.

Section 707. Signs.

- A. Concessionaire shall not erect, maintain or display any signs on the Premises without the prior written approval of the Director. The term "sign" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, Concessionaire shall have the right to install such advertising and identification signs as may be necessary for the proper conduct of an ATM Concession as contemplated hereunder. Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Premises. A blade sign, installed in accordance with the Airport's blade sign specification must be installed as part of Concessionaires initial construction, if applicable to the Premises.
- B. Concessionaire shall be responsible for the cost of any new signs or modifications to Airport directories and other existing signs, including sign systems required by the Director. All modifications to these signs must be approved by the Director and are subject to all applicable requirements of this Section 707 hereof and the Tenant Design Standards.
- C. Prior to the erection, construction or placement of any sign, Concessionaire shall submit to the Director for approval, all drawings, electrical details, sketches, designs, elevations, mounting details and dimensions of such signs. Any conditions, restrictions or limitations with respect to the use thereof as stated by the Director in writing shall become conditions of the Agreement.
- D. Concessionaire shall not place any advertising matter, displays or other literature not directly pertaining to an ATM Concession or place any signs outside of the Premises.

Section 708. Title to Improvements and Fixtures. All Improvements constructed or placed in the Premises by Concessionaire that are not Removable Fixtures, as well as all alterations, modifications and enlargements thereof shall become part of the Premises with title vesting to the City upon expiration or earlier termination of this Agreement. This vesting of title is subject to Concessionaire's obligation to operate, repair, maintain and replace, and its right of possession, use and occupancy during the term and in accordance with this Agreement.

All Removable Fixtures shall remain the property of Concessionaire, and shall be removed by Concessionaire at date of expiration or early termination of this Agreement. Within 60 days of the commencement of the operation in the Premises, a list of such Removable Fixtures shall be submitted in writing to the Director by Concessionaire for the Director's approval, and such list shall be periodically updated by Concessionaire.

The City reserves the right and Concessionaire agrees that the Director may require Concessionaire to promptly and timely remove any or all Improvements and structures and

restore the Premises to their original condition at the time Concessionaire took possession of the Premises. Concessionaire agrees to bear all costs of such removals and restorations.

ARTICLE VIII

USE OF PREMISES

Section 801. Compliance with Laws and Regulations. Concessionaire shall comply with all rules and regulations which the Director may establish from time to time. In addition, Concessionaire shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, City, local and other governmental authorities, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways.

Section 802. USE. Concessionaire shall provide and pay for all repairs and maintenance of the Premises, except the following which shall be the responsibility of the City:

- The structural components of the building.
- The utility system to the point of Concessionaire's connection to the utility system, except where the utility systems are owned or controlled by the utility companies.
- The washing of the exterior of windows in the terminal building.

Concessionaire shall perform the following functions as part of its responsibilities in the repair and maintenance of the Premises. The following list includes certain functions but Concessionaire's responsibilities are not limited to those functions:

- Perform custodial services daily.
- Keep all its equipment and fixtures in good repair and appearance.
- Keep the Premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.
- Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of Concessionaire or its agents or employees.
- Provide for complete, sanitary handling and disposal of all trash, garbage and refuse (liquid or solid) in accordance with standards established by the Director applicable to all Airport tenants. Such standards may require the use of special devices including, but not limited to, special containers, compactors and disposal systems. Concessionaire agrees to promptly provide and install same and to abide by such standards.
- Confine all handling and holding of Concessionaire's property to the Premises.
- Keep all papers and debris picked up daily from the Premises.
- Keep the Premises free of all pests, providing such pest control services as required.
- No storage will be permitted on the exterior areas of the Premises.

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and Concessionaire hereby releases and discharges the City from any and all inconvenience

claims, liability or causes of action arising out of or incidental to the closing of any right-of-way, including without limitation loss of profit or business, incidental, consequential or special damages.

Section 803. Right to Enter, Inspect and Make Repairs. The City and its authorized officers, agents, employees, contractors, subcontractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Concessionaire's operations as is practicable) to enter upon and in the Premises for the following purposes:

- A. To inspect such Premises to determine whether Concessionaire has complied and is complying, with the terms, covenants and conditions of this Agreement.
- B. To perform maintenance and make repairs Concessionaire is obligated, but has failed to do so after the City has given Concessionaire notice to do so, in which event, Concessionaire shall reimburse the City for the cost thereof, plus a charge of 15% for overhead, promptly upon demand.
- C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems.
- D. To perform inspections, testing, reporting, surveys, environmental inspections, studies and assessments during normal business hours.

Section 804. Utilities. City shall provide electricity for the ATM(s). Concessionaire shall provide and pay for other utilities it requires, including telephone and/or data line connections. If dedicated circuits are required, the installation will be the Concessionaire's responsibility.

If service outlets are not available where needed, Concessionaire shall be responsible for bringing electrical service to the Premises. Concessionaire shall be responsible for any needed modification or upgrade in electrical supply caused by increased lighting or other changes to the Premises made by Concessionaire.

Concessionaire shall pay for all costs of other utilities, including but not limited to deposits, installation costs, connection charges, meter deposits and all service charges for telephone and other utility services metered directly to the Premises, regardless of whether or not such utility services are furnished by the City or a utility service company.

If required by building codes or other regulations, Concessionaire shall pay for the cost of installation of fire detection and suppression distribution equipment in the Premises. Concessionaire shall pay for the connection of fire detection equipment up to City provided z-tie boxes. Concessionaire shall pay for the connection of fire suppression equipment up to City provided sprinkler mains and tamper switches.

The City shall not be liable to Concessionaire for damages or any losses for the interruption of any utility service, or for any delay in the supplying or furnishing of any utility service.

Concessionaire does hereby release and discharge the City from any and all inconvenience, claims or cause of actions arising out of or incidental to such interruption, including, without limitation, loss of profit or business, actual or incidental, consequential or special damages.

Section 805. Interference to Air Navigation. Concessionaire warrants, represents and agrees that no obstruction to air navigation, as such are defined from time to time by application of the criteria of Part 77 of the Federal Aviation Regulations or subsequent and additional regulations of the FAA, will be constructed or permitted to remain in or on the Premises. Any obstructions will be immediately removed by Concessionaire at its expense. Concessionaire warrants, represents and agrees not to increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight of the control tower and its operations. Concessionaire further warrants, represents and agrees not to install any structures, objects, machinery or equipment that would interfere with the operation of navigation aides or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport.

ARTICLE IX

INSURANCE, DAMAGE, AND INDEMNIFICATION

Section 901. Insurance.

- A. General. Concessionaire at all times during the term hereof, shall cause St. Charles County, Missouri; St. Clair County, Illinois; St. Louis County, Missouri; the City; their officers, agents and employees to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities or omissions of Concessionaire, its officers, agents, and employees pursuant to this Agreement both on the Premises and the Airport.
- B. Risks and Minimum Limits of Coverage. Concessionaire shall procure and maintain the following policies of insurance:
 - 1) Commercial General Liability in an amount not less than Two Million Dollars (\$2,000,000). Such coverage shall be single limit liability with no annual aggregate.
 - 2) Automobile Liability Insurance. Concessionaire shall provide in an amount not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence (for automobiles used by Concessionaire in the course of its performance hereunder, including Concessionaire's non-owned and hired autos). In addition, Concessionaire shall carry excess coverage in the amount of Two Million Dollars (\$2,000,000) to Concessionaire automobile liability insurance.
 - 3) Workers' Compensation and Employer's Liability Insurance, in accordance with Missouri laws and regulations. With respect to Workers' Compensation

Insurance, if Concessionaire elects to be self-insured, Concessionaire shall comply with the applicable requirements of law. Concessionaire shall require that all its subcontractors or licensees similarly provide such coverage (or qualify as a self-insured) for their respective employees. City, its officers, employees, or agents shall not be liable or responsible for any claims or actions occasioned by Concessionaire's failure to comply with the provisions of this subparagraph and that the indemnification provisions hereof shall apply to this section. It is expressly agreed that the employees of Concessionaire are not employees of the City for any purpose, and that employees of the City are not employees of Concessionaire.

- 4) Contents Insurance. Concessionaire shall be solely responsible for obtaining insurance policies that provide coverage for losses of Concessionaire owned property. The City shall not be required to provide such insurance coverage or be responsible for payment of Concessionaire's cost for such insurance.
 - 5) Builders Risk Insurance. During any period of construction or reconstruction for which Concessionaire contracts, Concessionaire shall carry, or shall require its contractor or contractors to carry, a policy of Builders Risk Insurance in an amount sufficient to insure the value of the work. The City shall be named Loss Payee on Builders Risk coverage to the extent of the City's interest therein (except to the extent coverage relates to Concessionaire's equipment and personal property). Concessionaire may elect to self-insure for individual projects with a total cost of Fifty Thousand Dollars (\$50,000) or less.
 - 6) Other Property Coverage. Concessionaire shall provide an "All Risk" insurance policy providing protection from direct loss arising out of any fortuitous cause other than those perils or causes specifically excluded by norm and which covers Concessionaire's improvements to the Premises, trade fixtures, and equipment. The City shall be named Loss Payee on such coverage to the extent of the City's interest therein (except to the extent coverage relates to Concessionaire's equipment and personal property).
- C. Issuers of Policies. The issuer of each policy required herein shall be a financially sound insurance company authorized to issue insurance policies in the State of Missouri. Acceptable insurers include insurance companies with an "A.M. Best Company" rating of at least an "A," or other insurers or insurance syndicates of similar recognized responsibility.
- 1) Form of Policies. The insurance may be in one or more policies of insurance.
 - 2) Non-waiver. Nothing the City does or fails to do shall relieve Concessionaire from its duties to provide the required coverage hereunder, and the City's actions or inactions shall not be construed as waiving the City's rights hereunder.

- 3) Insured Parties. Each policy by endorsement, except those for Workers' Compensation and Employer's Liability, shall name the City, its officers, agents, and employees as "additional insured" on the certificate of insurance, including all renewal certificates, to the extent of Concessionaire's indemnification obligations hereunder. Inclusion as an "additional insured" is not intended to, and shall not, make the City a partner or joint venturer with Concessionaire in its operations.
- 4) Deductibles. Concessionaire shall assume and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for the same against the City, its officers, agents, or employees; provided, however, that nothing herein stated shall diminish Concessionaire's rights or increase Concessionaire's obligations in respect to its undertakings or hold harmless defense and indemnification set forth in Section 904 hereof.
- 5) Cancellation. Each policy shall expressly state that it may not be cancelled, materially modified or non-renewed unless a 30-day advance notice is given in writing to the City by the insurance company, or authorized representative of Concessionaire.
- 6) Subrogation. Each policy shall contain an endorsement by which the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents, or employees.
- 7) Endorsement of Primary Insurance. Each policy hereunder except Workers' Compensation shall be primary insurance to any other insurance available to the Additional Insured and Loss Payee with respect to claims arising hereunder.
- 8) Liability for Premium. Concessionaire shall be solely responsible for payment of all insurance premiums required pursuant to this Agreement, and the City shall not be obligated to pay any premiums; provided, however, that if Concessionaire fails to obtain the insurance as required herein or make premium payments, the City may, without further notification, effect such insurance or make such payments on Concessionaire's behalf and, after notice to Concessionaire, the City may recover the cost of those payments with the installment of Fees and Charges next due, plus 15% administrative charge, from Concessionaire.
- 9) Proof of Insurance. Within 30 days of the effective date of this Agreement and at any time during the term hereof, Concessionaire shall furnish the City with certificates of insurance. At least five days prior to the expiration of any such policy, Concessionaire shall submit to the City a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Concessionaire shall, within 15 days after the date of such notice from the insurer of such cancellation or reduction in coverage, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon reasonable notification by the

City to Concessionaire, the City shall have the right to examine Concessionaire's insurance policies.

- D. Maintenance of Coverage. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that Concessionaire, continuously and without interruption, maintain in force the required insurance coverages set forth above.
- E. City Right to Review and Adjust Coverage Limits. The City reserves the right at reasonable intervals during the term of this Agreement to cause the insurance requirements of this Article to be reviewed, at its sole cost, by an independent insurance consultant experienced in insurance for public airports, taking into consideration changes in statutory law, court decisions, or the claims history of the airline industry as well as that of Concessionaire, and, based on the written recommendations of such consultant, and in consultation with Concessionaire, to reasonably adjust the insurance coverages and limits required herein but not more often than every 24 months.

Section 902. Concessionaire Actions Affecting Insurance. Concessionaire shall not knowingly do or permit to be done anything, either by act or failure to act, that may cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport, or that may cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If such Concessionaire's act, or failure to act, causes cancellation of any policy, then Concessionaire shall immediately, upon notification by the City, do whatever is necessary to cause reinstatement of said insurance. Furthermore, if Concessionaire does or permits to be done any act or fails to do any act which causes an increase in the City's insurance premiums, Concessionaire shall immediately remedy such actions and/or pay the increase in premiums, upon notice from the City to do so; but in any event, Concessionaire will hold the City harmless for any expenses and/or damage resulting from any such action.

Section 903. Damage to Premises.

- A. Minor Damage. If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is partially damaged by fire or other casualty, but said circumstances do not render the Premises untenable as determined by the City, the same shall be repaired to usable condition with due diligence by the City as provided in this Section.
- B. Substantial Damage. If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is so extensively damaged by fire, or other casualty, as to render any portion of said Premises untenable but capable of being repaired, as determined by the City, the same shall be repaired to usable condition with due diligence by the City as provided in this section. In such case, the fees payable hereunder with respect to affected Premises shall be paid up to the time of such damage and shall thereafter be abated ratably in the proportion that the untenable area bears to the total Premises of the same category or type of space. Such abatement in fees will continue until the affected Premises are restored adequately for Concessionaire's use.

The City shall use its best efforts to provide alternate facilities to continue Concessionaire's operation while repair, reconstruction, or replacement is being completed, at a rental rate not to exceed that provided herein for comparable space, provided that Concessionaire's rental costs shall not increase as a result of any such alternate facilities unless Concessionaire requests additional space and/or space replacement of a classification at higher rental rates concurrent with such reassignment to alternate facilities.

C. Total Damage.

- 1) If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is damaged by fire or other casualty, and is so extensively damaged as to render any portion of said Premises incapable of being repaired, as determined by the City, the City shall notify Concessionaire as soon as practicable under the circumstances after the date of such damage of its decision whether to reconstruct or replace said space. However, the City shall be under no obligation to replace or reconstruct such premises. The fees payable hereunder with respect to affected Premises shall be paid up to the time of such damage and thereafter shall cease until such time as replacement or reconstructed space shall be available for use by Concessionaire.
- 2) If the City elects to reconstruct or replace affected Premises, the City shall use its best efforts to provide alternate facilities to continue Concessionaire's operation while repair, reconstruction, or replacement is being completed, at a rental rate not to exceed that provided herein for comparable space. However, if such damaged space shall not have been replaced or reconstructed, or the City is not diligently pursuing such replacement or reconstruction, within six months after the date of such damage or destruction, Concessionaire shall have the right, upon giving the City a 30-day advance notice, to delete the affected Premises from this Agreement, but this Agreement shall remain in effect with respect to the remainder of said Premises, unless such damaged or destroyed premises prevent Concessionaire from operating its ATM Concession at the Airport.
- 3) If the City elects not to reconstruct or replace affected Premises, the City shall meet and consult with Concessionaire on ways to permanently provide Concessionaire with adequate replacement space for affected Premises. Concessionaire shall have the right, upon giving the City a 30-day advance notice, to delete the affected Premises from this Agreement, but this Agreement shall remain in full force and effect with respect to the remainder of said Premises, unless the loss of such premises prevents Concessionaire from operating its ATM Concession at the Airport.

B. Scope of Restoration of Premises.

- 1) The City's obligations to repair, reconstruct, or replace affected Premises under the provisions of this Section shall in any event be limited to using due diligence

and best efforts to restore affected Premises to substantially the same condition that existed prior to any such damage and shall further be limited by the provisions of Sections 903 A-C herein. If the City elects to repair, reconstruct, or replace affected premises as provided in this section, then Concessionaire shall proceed with due diligence and at its sole cost and expense to repair, reconstruct, or replace its signs, fixtures, furnishings, equipment, and other items provided or installed by Concessionaire in or about the Premises in a manner and in a condition at least equal to that which existed prior to said damage or destruction.

- 2) In lieu of the City's repair, reconstruction, or replacement of the affected premises, as provided in this Section, if Concessionaire requests to perform said function with respect to damage under Sections 903 A and B, the City may, in its sole discretion, allow Concessionaire to do so. Any such work by Concessionaire must be done in accordance with the requirements of Article VII. The City shall reimburse Concessionaire for the cost of such work performed by Concessionaire. Concessionaire shall be considered to be doing such work on its own behalf and not as an agent or contractor of the City.
- E. Damage From Concessionaire Negligence. Notwithstanding the provisions of this Section, if damage to or destruction of the Premises is due to the negligent or willful acts of Concessionaire, its agents, servants, or employees, or those under its control, there shall be no abatement of fees during the restoration or replacement of said Premises. In addition, Concessionaire shall have no option to delete the affected Premises from this Agreement. To the extent that the costs of repairs pursuant to this section shall exceed the amount of any insurance proceeds payable to the City by reason of such damage or destruction, Concessionaire shall pay the amount of such additional costs to the City.

Section 904. Indemnification. Concessionaire shall defend, indemnify, and hold harmless St. Charles County, Missouri; St. Clair County, Illinois; St. Louis County, Missouri; the City; their respective officers, agents and employees (the “**Indemnified Parties**”) from and against any and all loss, liability, penalties, damages of whatever nature, causes of action, suits, claims, demands, judgments, injunctive relief, awards, settlements, costs, and expenses, including payments of claims of liability resulting from any injury or death of any person or damage to or destruction of any property including all reasonable costs for investigation and defense thereof (including but not limited to attorneys’ fees, court costs and expert fees) of any nature, arising out of and in connection with this Agreement, the conduct of the Concessionaire, or Concessionaire's use of its Premises or other areas or facilities at the Airport by Concessionaire, its agents, employees, contractors, or subcontractors, including, but not limited to:

- A. The acts or omissions of Concessionaire, its agents, employees, contractors, or suppliers;
- B. Concessionaire's use or occupancy of the Airport and the Premises; and

- C. Any violation by Concessionaire in the conduct of Concessionaire's ATM Concession or use of its Premises or other areas or facilities at the Airport of any provision, warranty, covenant, or condition of this Agreement.

Concessionaire shall, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not.

Concessionaire shall defend, indemnify, pay, and hold harmless the Indemnified Parties from and against all applicable taxes and assessments for which the City may become liable and which by law may be levied or assessed on the Premises, or which arise out of the operations of Concessionaire or by reason of Concessionaire's occupancy of its Premises except for any taxes or assessments based on the gross or net income or gross or net receipts of the City that are not allocable to Concession-related receipts. Concessionaire may, at its own risk, cost, and expense, and at no cost to the City, contest, by appropriate judicial or administrative proceedings, the applicability or the legal or constitutional validity of any such tax or assessment, and the City will, to the extent permitted by law, execute such documents as are necessary to permit Concessionaire to contest or appeal the same. Concessionaire shall be responsible for obtaining bills for all of said taxes and assessments directly from the taxing authority and shall promptly deliver to the City, upon request by the City, copies of receipts of payment. If the City receives any tax billings falling within the scope of this paragraph, it will forward said billings to Concessionaire. Concessionaire shall, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not.

Concessionaire shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature associated therewith in any way arising from or based in whole or substantial part upon claim or allegation of a violation of any federal, state, or local laws, statutes, resolutions, regulations, ordinance, or court order affecting the Airport, by Concessionaire, its agents, employees, contractors, or suppliers, in conjunction with Concessionaire's use and/or occupancy of the Premises or its operations at the Airport. Concessionaire will, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not. Concessionaire shall include the substance of this Subsection (C) in every sublease, contract or other agreement which Concessionaire may enter into related to its activities at the Airport, and any such sublease, contract or other agreement shall specifically provide that the City is a third-party beneficiary of this and related provisions. This provision does not constitute a waiver of any other condition of this Agreement prohibiting or limiting assignments, subletting or subcontracting.

If a prohibited incursion into the air operations area occurs, or if the AOA or sterile area security is breached, by or due to the negligence or willful act or omission of any of Concessionaire's employees, agents, contractors, or suppliers, and such incursion or breach results in a civil penalty action against the City, Concessionaire shall assume the defense of any such action and be responsible for any civil penalty or settlement amount required to be paid by the City as a result of such incursion or breach. The City shall notify Concessionaire of any allegation, investigation, or proposed or actual civil penalty sought for such incursion or breach. Civil penalties and settlement and associated expenses reimbursable under this paragraph include but

are not limited to those paid or incurred as a result of violation of FAA or TSA regulations or security directives.

Concessionaire's obligation to defend and indemnify past officers, employees, and agents of the City shall apply to such persons only for claims, suits, demands, actions, liability, loss, damages, judgments, or fines arising from events, occurrences, and circumstances during which said officers, employees, and agents held their office or position with the City.

The City shall promptly notify Concessionaire of each claim, action, proceeding, or suit in respect of which indemnity may be sought by the City against Concessionaire hereunder, setting forth the particulars of such claim, action, proceeding or suit; shall furnish Concessionaire with a copy of all judicial filings and legal process and any correspondence received by the City related thereto; and shall tender the defense of same to Concessionaire.

The duty to defend, indemnify, hold harmless, and reimburse shall apply to any claim, demands, or suits made against the City for which Concessionaire is responsible pursuant to this Section. Provided, however, that upon the filing by anyone of a claim with the City for damages arising out of incidents for which Concessionaire herein agrees to indemnify and hold the City harmless, the City shall promptly notify Concessionaire of such claim and, if Concessionaire does not settle or compromise such claim, then Concessionaire shall undertake the legal defense of such claim both on behalf of Concessionaire and on behalf of the City, at Concessionaire's expense; provided, however, that Concessionaire shall immediately notify City if a conflict between the interests of Concessionaire and City arises during the course of such representation. Concessionaire shall use counsel reasonably acceptable to the City Counselor of the City or his or her designee, after consultation with the Director, in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement. It is specifically agreed, however, that the City, at its option and at its own expense, may participate in the legal defense of any claim defended by Concessionaire in accordance with this Section. Any final judgment rendered against the City for any cause for which Concessionaire is liable hereunder shall be conclusive against Concessionaire as to amount upon the expiration of the time for appeal there from. Nothing in this Article IX shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim of legal liability against the City. This Section shall not be construed as a waiver of the City's sovereign or other immunity.

The City, at its own expense except as otherwise provided herein, shall be invited to attend and participate in all meetings (including those related to settlement) and to appear and participate in all judicial proceedings and to the extent of its interests, approve, in writing, the terms of any settlement related to any claim, action, proceeding or suit set forth in this s\Section.

Notwithstanding the provisions of this Section, Concessionaire shall have no obligation to defend, indemnify, or hold harmless the City for any consequential damages or for any amounts to be paid in connection with losses, liabilities, penalties, damages of whatever nature, causes of action, suits, claims, demands, injunctive relief, judgments, awards and settlements if the City is conclusively determined to be more than 50% liable due to contributory negligence.

This Section shall survive the expiration or early termination of this Agreement. Concessionaire understands and agrees that any insurance protection furnished by Concessionaire pursuant to Section 901 shall in no way limit Concessionaire's responsibility to indemnify and hold harmless the City under the provisions of this Agreement.

Section 905. City Not Liable. Unless otherwise expressly provided for in this Agreement, the City shall not in any event be liable to Concessionaire for:

- A. Any acts or omissions of Concessionaire, its officers, directors, employees, agents, contractors, or suppliers, or for any conditions resulting from the operations or activities of Concessionaire's directors, officers, employees, agents, contractors, or suppliers;
- B. Concessionaire's failure to perform any of the obligations hereunder or for any delay in the performance thereof;
- C. Any environmental condition in existence at the Airport, or any part thereof, which condition may interfere with Concessionaire's business or other operations or activities, or which might otherwise cause damages to Concessionaire through loss of business, destruction of property, or injury to Concessionaire, its officers, directors, employees, agents, contractors, suppliers, passengers, invitees, or licensees except to the extent such conditions are caused by the City, its employees or agents; or
- D. Bodily injury or any loss or damage to real or personal property or business income occasioned by flood, fire, smoke, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil commotion, vandalism, malicious mischief, or acts of war or terrorism, or for any injury, loss or damage not caused by the negligence, willful misconduct, or bad faith of the City.

ARTICLE X

ASSIGNMENT AND SUBCONTRACTING

Section 1001. Assignment and Subcontracting.

- A. Concessionaire shall not assign or transfer this Agreement. In the event there is an assignment of this Agreement by operation of law, the City shall be entitled within 90 days after written notice thereof to exercise the City's option hereby given to terminate this Agreement no sooner than 30 days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, shall include but not be limited to the vesting of Concessionaire's right, title and interest in the Concessionaire's furnishings, Removable Fixtures, or Concessionaire's interest in this Agreement, as a trustee in bankruptcy or as an assignee for the benefit of creditors or in a purchase thereof at a judicial sale or other involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee, or assignee, any rights, title or interest in the City premises or any of the Removable Fixtures, except subject to the City's right to terminate this Agreement.

- B. Concessionaire shall not sublet the Premises and/or subcontract or transfer any part of the services to be performed hereunder, except as may be necessary to comply with the ACDBE participation goal in Article XII of this Agreement. At least 60 days prior to any contemplated subletting of the Premises or subcontracting of this Agreement, Concessionaire must submit a written request to the Director. This request must include a copy of the proposed subcontract or sublease. Any sublease for space or subcontract or granting of rights acquired hereunder shall be subject to the review and written approval of the Director. Such sublease or subcontract, however, must require at a minimum: strict compliance with all provisions of this Agreement; a provision that the sublessee or subcontractor will use the facilities solely for the purposes identified in this Agreement; and a provision ensuring that all Concession services are available during the hours of operation required by Article VI.

The parties understand and agree that Concessionaire is responsible for the performance of its assignees, sublessees, and subcontractors under this Agreement. Concessionaire agrees to initiate and take all corrective action should a subcontractor or sublessee fail to comply with its contract with the Concessionaire or any provision of this Agreement. There will be no reduction of the Concession Fees payable to the City during any such period of change-out or vacancy of a subcontractor or sublessee.

- C. No subcontract, sublease, or other agreement shall be effective as it pertains to the City until such time as the City receives a fully executed copy of the approval, subcontract, sublease or agreement as provided for above. Any such assignment or transfer or subcontract of services or the subletting of the Premises without the consent of the City, as provided for above, shall constitute a default on the part of Concessionaire under this Agreement, and the City may terminate this Agreement as provided for in Article XI. No action or failure to act on the part of any officer, agent or employee of the City shall constitute a waiver by the City of this provision.

ARTICLE XI

TERMINATION OF AGREEMENT IN ENTIRETY

Section 1101. City's Right to Terminate. The City, acting by and through its Director, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof, upon the happening of any one or more of the following events. By example, but not by way of limitation, the following acts or omissions shall constitute a material breach thereby justifying the termination of this Agreement in its entirety.

- A. If the fees, charges, or other money payments which Concessionaire herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due.
- B. If during the term of this Agreement, Concessionaire shall:

- 1) Apply for, or consent to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets;
- 2) File a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;
- 3) Make a general assignment for the benefit of creditors;
- 4) File a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;
- 5) File an answer admitting the material allegations of a petition filed against any said assignee or sublessee in any bankruptcy, reorganization or insolvency proceedings; or if during the term of this Agreement, an order, judgment or decree shall be entered by any court of competent jurisdiction; or the application of a creditor, adjudicating Concessionaire as bankrupt or insolvent; or approving a petition seeking a reorganization of Concessionaire, and such order, judgment or decree, shall continue unstayed and in effect for any period of 90 consecutive days;
- 6) Fail to maintain the quality of services and prices to the satisfaction of the Director as required hereunder;
- 7) Fail to prevent cessation or deterioration of service for a period which, in the opinion of the Director, materially and adversely affects the overall performance of Concessionaire under this Agreement;
- 8) Allow a lien to be filed against Concessionaire or any of the equipment or furnishings therein because of or resulting from any act or omission of Concessionaire that is not removed or enjoined within 30 days;
- 9) Desert, vacate or discontinue all or a portion of its operation of the Premises that in the opinion of the Director results in a failure to provide the public and others the service contemplated hereunder;
- 10) Fail in the performance of any term, covenant or condition herein required to be performed by Concessionaire.

On the date set forth in the notice of termination, the term of this Agreement and all right, title and interest of Concessionaire shall expire, except as otherwise provided in Section 1103 hereof.

Failure of the City to take any authorized action upon default of any term, covenant or condition required to be performed, kept and observed by Concessionaire shall not be construed to be or act as a waiver of default or in any subsequent default of any term, covenant or condition herein contained to be performed, kept and observed by Concessionaire. The acceptance of monies by the City from Concessionaire for any period or periods after a default by Concessionaire of any

term, covenant or condition herein required to be performed, kept and observed by Concessionaire shall not be deemed a waiver or estopping of any right on the part of the City to terminate this Agreement for failure by Concessionaire to so perform, keep or observe any said term, covenant or condition.

Section 1102. Concessionaire's Right to Terminate. Concessionaire, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof for the following causes:

- A. If a court of competent jurisdiction issues an injunction or restraining order against the City preventing or restraining the use of the Airport for Airport purposes in its entirety or in substantial entirety.
- B. If the City shall have abandoned the Airport for a period of at least 60 days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers.
- C. If the City shall have failed in the performance of any specific covenant constituting a material breach within the control of the City and required by this Agreement to be performed by the City.

Section 1103. Procedures for Termination. No termination declared by either party shall be effective unless and until not less than 45 days have elapsed after written notice by either party to the other specifying the date and cause of termination. No such termination shall be effective if the party at default: cannot by the nature of the default cure it within such 45-day period; commences to diligently correct such default within such 45-day period; and corrects such default as is reasonably practicable. Notwithstanding the foregoing, the effective date for termination shall be 30 days after written notice by City to Concessionaire for failure to make any payment when due, or for failure to provide the security for performance as specified in Article V or for failure to provide any insurance coverage as specified in Article IX unless cured in such 30 days after written notice by City to Concessionaire.

Section 1104. Rights Cumulative. It is understood and agreed that the rights and remedies of the City and Concessionaire specified in this Article XI are not intended to be and shall not be exclusive of one another or exclusive of any common law right of either of the parties hereto or any other remedies otherwise available to the parties at law or in equity.

ARTICLE XII

AIRPORT CONCESSIONAIRE DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PARTICIPATION

Section 1201. Compliance.

- A. Concessionaire agrees as a condition hereunder to meet a minimum ACDBE participation goal of not less than 15% participation in the ownership, management and control of the

business by the methods of participation allowed by DOT 49 CFR Part 23. The goal shall be measured as a percentage of total Gross Receipts. The goal remains in effect throughout the term of this Agreement and credit toward the ACDBE goal will only be given for the use of Missouri Regional Certification Committee (MRCC) certified ACDBEs.

Concessionaire submitted at the time of Bid, evidence that it completed the applicable Good Faith Efforts procedure specified in the SFB for this ATM Concession.

- B. If these Good Faith Efforts resulted in the fulfillment of the ACDBE goal, Concessionaire will not be required to perform additional Good Faith Efforts, except in the event that Concessionaire's ACDBE participation fails to continue to meet the goal or comply with the applicable federal regulations. In the event Concessionaire's ACDBE participation fails to continue to meet the goal or comply with applicable federal regulations, Concessionaire will be required to perform the Good Faith Efforts procedure specified in the applicable federal regulations for the type of participation sought within three months following the loss of ACDBE participation and continue at intervals of not less than 12 months, or until the ACDBE goal is reached by Concessionaire.
- C. If these Good Faith Efforts did not result in fulfillment of the ACDBE goal, Concessionaire must again complete the Good Faith Efforts procedure specified in the applicable federal regulations for the type of participation sought within three months following commencement of the term of this Agreement and continue at intervals of not less than 12 months, or until the ACDBE goal is reached by Concessionaire.
- D. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23. Concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, creed, color, religion, sex, national origin or ancestry 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 or contractor agrees to include the above statements in any subsequent concession agreement or contract that it enters and cause those businesses to similarly include the statements in further agreements.
- E. Concessionaire shall operate its ATM Concession in compliance with all other requirements imposed by or pursuant to 49 CFR Part 23, as applicable, and as said regulations may be amended or new regulations promulgated. Concessionaire shall also comply with any City of St. Louis executive orders, resolutions or ordinances enacted, now or in the future, to implement the foregoing federal regulations, as applicable. In the event of breach of any of the above covenants, the City shall have the right to terminate this Agreement.

ARTICLE XIII

LIQUIDATED DAMAGES

Section 1301. Liquidated Damages. Concessionaire recognizes and hereby agrees and stipulates that the City will lose revenue and/or incur certain cost or expense, the amounts of which are difficult to ascertain, if Concessionaire defaults or breaches any of the terms, covenants or conditions enumerated below. Therefore, the Concessionaire agrees and stipulates that the Director, on behalf of the City, may elect after written notice to the Concessionaire of said default or breach to impose the charges set forth below as liquidated damages on the basis of each default or breach. The first default or breach in any category will result in a warning letter. The second default or breach will require Concessionaire to pay liquidated damages in the amount listed below. For the third default or breach in the same category, Concessionaire will pay City liquidated damages in the amount listed below. For the fourth and each subsequent cumulative default or breach, Concessionaire shall pay to City the third default or breach amount plus an additional 100%. Such liquidated damages shall be due and payable by the Concessionaire within 30 days of the City's request or notice. The stated defaults or breaches in this Section 1301 are cumulative over the term of this Agreement and are in addition to any other remedies City may have under this Agreement or at law or inequity. For any defaults or breaches specified in this section with associated liquidated damages, the City agrees to provide immediate written notice via facsimile and overnight courier of any such default or breach and the amount of liquidated damages due and payable to the City.

BREACH OR DEFAULT	SECOND BREACH	THIRD BREACH
A. Unapproved equipment or placement of equipment in areas not authorized by City.	\$500.00	\$750.00
B. Late monthly reporting of gross receipts in breach of Article V.	\$25.00 per day	\$50.00 per day
C. Failure to deliver on-time required items such as reports, schedules, manuals or other materials as specified in this Agreement.	\$200.00	\$300.00
D. Other non-monetary defaults that disrupt operations, traffic in terminal or customer service.	\$500.00	\$750.00
E. Inoperable equipment or equipment not repaired within 15 days of notice to Concessionaire.	\$200.00	\$300.00
F. Late annual financial reporting in violation of Article V.	\$50.00 per day	\$100.00 per day

ARTICLE XIV

ENVIRONMENTAL REQUIREMENTS

Section 1401. Environmental Laws. Concessionaire warrants and covenants that in conducting any activities or business at the Airport, including any activities directly related or incidental to this Agreement, Concessionaire shall comply with any and all applicable Environmental Laws.

Section 1402. Environmental Permits. Concessionaire shall obtain and maintain any and all Environmental Permits required by applicable Environmental Laws to conduct the activities in which Concessionaire engages at the Airport.

Concessionaire shall comply with any requirement imposed by an Environmental Permit obtained by the City that is applicable to Concessionaire or Concessionaire's activities at the Airport; provided, however that the City shall adequately notify Concessionaire of such Environmental Permit and associated requirements, including all applicable deadlines for compliance.

The City and Concessionaire shall cooperate to ensure compliance with the terms and conditions of any Environmental Permit to insure safety and to minimize cost of compliance.

Section 1403. Duty to Notify City. In the event of any release or threatened release of Hazardous Materials caused by Concessionaire, its employees, agents, contractors, suppliers, guests, or invitees, and which is required by applicable Environmental Laws or Rules and Regulations to be reported by Concessionaire, whether as a result of negligent conduct or otherwise, at, on, under or about the Airport, or any portion thereof, or in the event any written claim, demand, complaint or action is made or taken against Concessionaire that pertains to Concessionaire's failure or alleged failure to comply with any Environmental Laws or Environmental Permits at the Airport, Concessionaire shall notify the City as soon as reasonably practical of all known facts pertinent to such release, threatened release, claim, demand, complaint, action, or notice, and shall provide the City with copies of any and all such claims, demands, complaints, notices, or actions so made. If Concessionaire is required, by any Environmental Laws, Environmental Permits, or governmental agency, to file any written notice or report of a release or threatened release of Hazardous Materials at, on, under or about the Airport, or any part thereof, Concessionaire shall simultaneously provide a copy of such notice or report to the City.

Section 1404. Environmental Remediation. Concessionaire shall undertake all necessary steps required under applicable Environmental Laws and Environmental Permits to remedy and remove at its cost any Hazardous Material, or environmental condition or damage to the extent caused by, or resulting solely from, the activities, conduct of Concessionaire or its agents, employees, contractors, or suppliers at the Airport, whether resulting from negligent conduct or otherwise ("**Remediation Work**"). Such Remediation Work shall be performed at Concessionaire's expense. Except in the event of an emergency, such Remediation Work shall be performed after Concessionaire submits to the City a written plan for completing such Remediation Work and receives the prior approval of the City through Notice; provided,

however, that the City's approval shall not be unreasonably withheld or delayed. The City expressly reserves the right to review and approve any proposed: remedial investigations; remedial work plans; interim and final remedies; institutional controls; or other associated documents prior to submittal to the relevant governmental agencies responsible for enforcing Environmental Laws or Environmental Permits. Specific cleanup levels for any Remediation Work by Concessionaire shall be designed to meet and satisfy the requirements of all applicable Environmental Laws and Environmental Permits, as determined by the governmental agency responsible for enforcing Environmental Laws or Environmental Permits. Neither an ongoing remediation, including any testing or monitoring, nor the use of institutional controls, shall either unreasonably or materially impair or interfere with the City's use and enjoyment of its property or the Airport, or that of current and future tenants. The City shall have the right to conduct a reasonable review and inspect all such Remediation Work at any time using consultants and representatives of its choice.

Section 1405. Access for Environmental Inspection. Upon reasonable notification to Concessionaire, the City shall have reasonable access to the Premises to inspect the same in order to confirm that Concessionaire is using the Premises in accordance with all applicable Environmental Laws and Environmental Permits. Concessionaire shall cooperate fully with any such inspections provided that such inspections shall not unreasonably interfere with Concessionaire's operations. If the City's inspection results in any type of written report, the City shall provide Concessionaire a reasonable opportunity to timely review and comment on a draft of the report. Concessionaire shall provide to City, for its review and comment, copies of: any and all notices of alleged non-compliance issued by governmental agencies responsible for enforcing Environmental Laws or Environmental Permits; draft official submittals (proposed final drafts) prepared by, or on behalf of, Concessionaire responding to such alleged non-compliance; and any and all consent orders or administrative determinations, whether preliminary or final, issued by such governmental agencies. The City agrees to maintain the confidentiality of the documents produced in accordance with this subsection to the extent consistent with the City's legal obligations.

Section 1406. Corrective Action by City. If Concessionaire fails to comply with any applicable Environmental Laws or Environmental Permits governing its activities at the Airport, or if Concessionaire fails to conduct necessary Remediation Work in a timely manner as required under this Section, the City, as required by applicable Environmental Laws and Environmental Permits, in addition to the rights and remedies described elsewhere herein and any other rights and remedies otherwise available to the City, may enter the Premises and take all reasonable and necessary actions to conduct Remediation Work to remove Hazardous Materials or other contaminants and insure such compliance with such Environmental Laws and Environmental Permits. All Remediation Costs incurred by the City shall be paid or reimbursed by Concessionaire. Remediation Work, if necessary, shall be performed in accordance with the provisions of Section 1404, but only after first having provided Notice to Concessionaire of such failure to comply, and 30 days within which Concessionaire may demonstrate why no such alleged failure is present, or to timely remedy such alleged failure that may be present. If Concessionaire's compliance reasonably requires more than 30 days to complete the City may enter the Premises and take such reasonable and necessary measures to achieve compliance only upon Concessionaire's failing to timely begin curing such noncompliance within such 30-day

period and to continue diligently working to achieve compliance thereafter.

Section 1407. Review of Environmental Documents. At the reasonable request of the City, Concessionaire shall make available for inspection and copying, at reasonable times, any and all non-privileged documents and materials Concessionaire has prepared pursuant to any applicable Environmental Laws or Environmental Permits, or submitted to any governmental agency, which documents and materials relate to environmental issues, Environmental Laws or Environmental Permits and which pertain to the Airport or the Premises, and which would be discoverable in litigation.

Section 1408. Cumulative Remedies. All remedies of the City as provided herein with regard to environmental pollution, contamination, damage, or any actual or threatened violations of any Environmental Laws or Environmental Permits are deemed to be cumulative in nature. The City's right to indemnification as provided under this Section shall survive the expiration or early termination of this Agreement.

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 1501. Notice. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, to the Director of Airports, St. Louis Airport Authority, 10701 Lambert International Boulevard, P.O. Box 10212 Lambert Station, St. Louis, MO 63145. **A copy of all notices shall also be mailed to the Airport Properties Division Manager at the same address.** All notices, demands and requests by the City to Concessionaire shall be sent by certified mail, return receipt requested addressed to:

Either or both parties may designate in writing from time to time any changes in addresses or any addresses of substitute or supplementary persons in connection with said notices. The effective date of service of any such notice shall be the date such notice is mailed to Concessionaire or said Director.

Section 1502. Non-Discrimination and Affirmative Action Program.

- A. Concessionaire hereto understands and agrees that the City in the operation and use of the Airport will not on the grounds of race, creed, color, religion, sex, national origin or ancestry, discriminate or permit discrimination against any person or group of persons in a manner prohibited by Part 21 of the Federal Aviation Regulations of the Office of the Secretary of Transportation. Concessionaire hereby agrees that his premises shall be posted to such effect as required by said regulations.

- B. Concessionaire agrees that in performing under this Agreement, neither he nor anyone under his control will permit discrimination against any employee, worker or applicant for employment because of race, creed, color, religion, sex, national origin or ancestry. Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to the following: actions to bar, employ, upgrade or recruit, expel, discharge, demote or transfer, layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- C. Concessionaire will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of the Concessionaire state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". Concessionaire shall not make inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination because of race, creed, color, religion, sex, national origin or ancestry.
- D. Concessionaire will permit reasonable access by the City to such persons, reports and records as are necessary for the purpose of ascertaining compliance with fair employment practices.
- E. Concessionaire further agrees that these clauses (B through D) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Concessionaire in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, including all labor organizations who may furnish skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.
- F. Whenever Concessionaire is sued by a subcontractor, vendor, individual, group or association as a result of compliance with the clauses (A through E) of these provisions relating to fair employment practices, Concessionaire shall notify the City Counselor in writing of such suit or threatened suit within ten days.
- G. Concessionaire shall establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment. The City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.
- H. 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, creed, color, religion, sex, national origin or ancestry be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Concessionaire assures

that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Concessionaire assures that it will require that its covered sub organizations provide assurances to the City that they similarly will undertake affirmative action programs and that they will require assurances from their sub organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

- I. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulation, 49 CFR Part 23. The Concessionaire or contractor agrees that it will not discriminate against any business owner because of owner's race, color, national origin or sex in connection with the performance of any concession agreement, management contract, or subcontract, purchase or lease agreement or other agreement covered by 49 CFR 23.
- J. The Concessionaire or contractor agrees to include the above statement in any subsequent concession agreement or contract covered by 49 CFR 23 that it enters into, and cause those businesses to similarly include the statement in further agreements.

Section 1503. No Personal Liability. No Alderman, Commissioner, Director, officer, agent or employee of either party shall be personally liable under or in connection with this Agreement.

Section 1504. Force Majeure. Neither the City nor Concessionaire shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, act of superior governmental authority, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible and which is not within its control.

Section 1505. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, sublessees and assigns of the respective parties hereto.

Section 1506. Quiet Enjoyment. Subject to the terms, covenants and conditions of the Agreement, the City covenants that Concessionaire, on paying the fees and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable possession of the Premises.

Section 1507. Operation and Maintenance of the Airport. The City shall at all times operate the Airport properly and in a sound and economical manner; and the City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

Section 1508. Title to the Site. The Premises from the date hereof until the expiration or early termination of this Agreement shall be owned in fee simple title by the City or in such lesser estate as in the opinion of the City Counselor is sufficient to permit the letting thereof by the City as herein provided for the full term provided in this Agreement.

Section 1509. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any agreements heretofore made between the City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to the City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act as it has been amended from time to time.

Section 1510. Modifications for Granting FAA Funds. In the event that the FAA requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this document, Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the terms, conditions, or requirements of this Agreement, as may be reasonably required to enable the City to obtain said FAA funds, provided that in no event shall such changes substantially impair the rights of Concessionaire hereunder.

Section 1511. Governing Law. This Agreement shall be deemed to have been made in and be construed in accordance with the laws of the State of Missouri, and is subject to the City's Charter and ordinances, as they may be amended from time to time.

Section 1512. Headings. The headings of the Articles and Sections of this Agreement are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 1513. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by representatives of all the parties hereto.

Section 1514. Previous Agreements. It is expressly understood that the terms and provisions of this Agreement shall in no way affect or impair the terms, obligations or conditions of any existing or prior agreement between Concessionaire and the City.

Section 1515. Required Approvals. When the consent, approval, waiver, or certification (“**Approval**”) of other party is required under the terms of this Agreement, such Approval must be in writing and signed by the party approving. Whenever the Approval of the City or the Director is required, the Approval must be from the Director or his/her authorized or designated representative. The City and Concessionaire agree that extensions of time for performance may be made by the written mutual consent of the Director and Concessionaire or its designee. Whenever the Approval of the City, or the Director, or Concessionaire is required herein, no such Approval shall be unreasonably requested or withheld.

Section 1516. Waivers. No waiver of default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party. Any waiver must be in writing and signed by the waiving party.

Section 1517. Invalid Provisions. In the event any term, covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such term, covenant, condition or provision does not materially prejudice either the City or Concessionaire in its respective rights and obligations contained in the valid terms, covenants, conditions and provisions of this Agreement.

Section 1518. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire Agreement between the parties hereto and all other representations or statements heretofore made, verbal or written, are merged herein and this Agreement may be amended only in writing and executed by duly authorized representatives of the parties hereto.

Section 1519. Not a Lease. This Agreement is not a lease, and the right to use the Premises is entirely dependent upon the rights and privileges granted hereunder. Concessionaire will in no instance be deemed to have acquired any possessory rights against the City or the Premises or be deemed to be a tenant of the City.

Section 1520. Advertising. Concessionaire shall have no right to use the trademarks, symbols, trade names or name of the Airport or Premises, either directly or indirectly, in connection with any production, promotional service or publication without the prior written consent of the Director.

Section 1521. Conflicts Between Tenants. In the event of a conflict between Concessionaire, and any other tenant, licensee or concessionaire, as to the respective rights of the others, the Director shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each party, and Concessionaire agrees to be bound by such decision. All determinations by the Director are final and binding.

Section 1522. Prevailing Wage. Concessionaire shall, as a condition of the Agreement, include in all service contracts pertaining to the Premises, language specifying the minimum prevailing wages to be paid and fringe benefits to be provided by the service contractor to employees of said service contractor. This section is in accordance with and is subject to City Ordinance No. 62124.

Section 1523. Solicitation for Bids (SFB). Concessionaire's Bid, including all exhibits, schedules, addenda, attachments, policies, bonds, letters of credit and the SFB for an ATM Concession at the Airport dated **September 28, 2009** is hereby made a part of this Agreement and is incorporated herein by reference. If an express provision of this Agreement or the

Exhibits attached hereto is in conflict with any provision of Concessionaire's Bid or the SFB referred to above, the provisions of this Agreement shall prevail.

Section 1524. Americans with Disabilities Act ("ADA"). Concessionaire shall be responsible for compliance with the federal ADA, plus any federal, state, or local laws or regulations and City Ordinances pertaining to the disabled individual having access to Concessionaire's services.

Section 1525. Time is of the Essence. Time is of the essence in this Agreement. The parties agree that time shall be of the essence in the performance of each and every obligation and condition of this Agreement.

Section 1526. Acknowledgment of Terms and Conditions. The parties affirm each has full knowledge of the terms, covenants, conditions and requirements contained in this Agreement. As such, the terms of this Agreement shall be fairly construed and the usual rule of construction, if applicable, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed in the interpretation of this Agreement or any amendments, modifications or exhibits thereto.

Section 1527. Security Plan and Facilities. Concessionaire hereby acknowledges that the City is required by the TSA regulation 1542 to adopt and put into use facilities and procedures designed to prevent and deter persons and vehicles from unauthorized access to the AOA. The City has met said requirements by developing a master security plan for the Airport, and Concessionaire covenants and agrees to be fully bound by and immediately responsive to the requirements of the plan in connection with Concessionaire's exercise of the privileges granted to Concessionaire hereunder. Concessionaire will, within 30 days of the City's request, reimburse the City for all fines or penalties imposed upon City by the TSA or the FAA resulting from Concessionaire's negligence or failure to act in relation to TSA regulation 1542 or any other applicable Airport security regulations.

Section 1528. Environmental Notice. Concessionaire shall promptly notify the Director of any change in the nature of the Concessionaire's operations on the Premises that will materially and/or substantially change the Concessionaire's or City's potential obligations or liabilities under the environmental laws; or the commencement by any governmental entity of a formal administrative proceeding before an administrative law judge or a civil or criminal action before a judicial tribunal alleging a violation of any environmental law in connection with Concessionaire's operations on the Premises.

(The balance of this page is intentionally blank.)

IN WITNESS WHEREOF, the parties hereto for themselves, their successors and assigns, have executed this Agreement the day and year last written below.

CONCESSIONAIRE BY:

ATTESTED TO BY:

Title: _____

Title: _____

Date: _____

Date: _____

FEDERAL TAX ID# _____

THE CITY OF ST. LOUIS, MISSOURI, OPERATING LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT® pursuant to City Ordinance # _____ approved the _____ day of _____, 20__:

The foregoing Agreement was approved by the Airport Commission at its meeting on the _____ day of _____, 20__.

BY:

Commission Chairman and Date
Director of Airports

The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on the _____ day of _____, 20__.

BY:

Secretary, Date
Board of Estimate and Apportionment

APPROVED AS TO FORM ONLY BY:

COUNTERSIGNED BY:

City Counselor Date
City of St. Louis

Comptroller Date
City of St. Louis

ATTESTED TO BY:

Register, City of St. Louis Date

EXHIBIT “A”

**PREMISES
(to follow)**