



March 17, 2023

PROSPECTIVE BIDDERS:

Attached is the Solicitation for Bids (“SFB”), including the Instructions to Bidders, APPENDIX "A" (“Bid”), and ATTACHMENTS (“1 - 5”), and APPENDIX "B" (“Agreement”), for a **Banking Concession** at St. Louis Lambert International Airport®.

The attached APPENDIX "B" is a generic agreement. **The Agreement will be modified only to the extent necessary for this Concession; requests for modifications to the Agreement, or any questions must be in writing and timely received prior to the deadline noted in Sections 4 and 8 of the Instructions To Bidders.**

Your fully complete Bid must be submitted on the APPENDIX "A" and ALL REQUIRED ATTACHMENTS by **2:00 P.M., May 9, 2023**. An original and three (3) fully complete copies of your Bid must be submitted

An optional Pre-Bid Conference is scheduled for March 29, 2023 at 1:00 PM Central Time at the Airport (Terminal 1). An ACDBE Networking Session hosted by the Airport’s Business Diversity Development Office will follow immediately thereafter.

Prospective Bidders are strongly encouraged to attend the Pre-Bid Conference.

All inquiries regarding this SFB should be directed to Robert Salarano, at (314) 426-8178 or rcsalarano@flystl.com.

Sincerely,

Robert C. Salarano

Robert C. Salarano, CM
Airport Properties Division Manager

SOLICITATION FOR BIDS

BANKING CONCESSION

ST. LOUIS LAMBERT INTERNATIONAL AIRPORT

ST. LOUIS, MISSOURI

March 17, 2023

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SOLICITATION FOR BIDS

INSTRUCTIONS TO BIDDERS

BANKING CONCESSION AT ST. LOUIS LAMBERT INTERNATIONAL AIRPORT®

1. SOLICITATION

The City of St. Louis (“City”) owns St. Louis Lambert International Airport (“Airport”). The Airport is operated by the City of St. Louis Airport Authority (“Authority”), a department of the City. The Authority invites Bids from experienced and well qualified Bidders for the development, management and operation of a **non-exclusive** Banking Concession for Terminal 1 at St. Louis Lambert International Airport. This Solicitation For Bids (“SFB”) contains Concession Premises as more fully described in Section 3.F of the Instructions To Bidders and Article II entitled “Premises” of Appendix “B” entitled “Agreement”, which are attached hereto and incorporated herein.

This Solicitation for Bids (“SFB”) includes: INSTRUCTIONS TO BIDDERS; APPENDIX "A" (“Bid”); ATTACHMENTS 1 through 5, and APPENDIX "B" (“Agreement”), including Exhibits “A” and “B”. The meaning of words and phrases defined in Article I of the Agreement shall apply throughout this SFB.

An optional Pre-Bid Conference is scheduled for April 4 at 1:00pm Central Time in the Airport Properties Division Conference Room, Terminal 1.

An original and three (3) fully complete copies of the Bid including ATTACHMENTS must be deposited in a sealed envelope, addressed to:

Airport Properties Division
St. Louis Lambert International Airport
Terminal 1, Room MTN-2501
10701 Lambert International Boulevard
St. Louis, Missouri, 63145

OR electronically delivered rcsalarano@flystl.com.

The words "**BID FOR BANKING CONCESSION**" must be plainly written across the left-end face of the envelope, or be placed on the email subject line. The name and address of the Bidder must also appear on the face of the envelope. Bids must be received **by 2:00pm CST TUESDAY May 9, 2023**.

Bidders submitting electronic bids should take care to verify receipt by contacting Robert Salarano at (314) 426-8178.

Bids will be publicly opened and read immediately following the 2:00 P.M. deadline.

Bids received after the due date and time, or not delivered to the designated point, will not be considered and will be returned to the Bidder unopened.

2. AIRPORT OBJECTIVES

The goal of the Authority is to secure one (1) Concessionaire that will provide a high level of banking services to the traveling public, Airport employees, Airport tenants / businesses, 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:

- Provide a first-class, full-service Banking Concession that meets Airport user needs and adds value to other Airport and airline services;
- Provide suitable “value added services” associated with banking, including foreign currency exchange;
- Provide Airport users with access to their accounts via Automatic Teller Machines (**ATM**) at locations throughout the Airport terminals and on the concourses, post security;
- Provide a high level of service at prices that are attractive to Airport users and competitive with non-Airport branches;
- Provide excellent customer service by operating the Banking Concession with well-trained, efficient, courteous and pleasant staff;
- Provide a Banking Concession with state-of-the-art equipment that is reliable, easy to use, well-maintained and visually attractive; and
- 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.

3. GENERAL DESCRIPTION OF THE OFFER

Through this SFB, the City desires to award one (1) banking Concession Agreement to a qualified and responsive Bidder submitting the highest and best Bid, which is determined by the City to be the most advantageous to the City for the development, management and operation of a Banking Concession at St. Louis Lambert International Airport.

EXHIBIT “A” of the Agreement provides a description of the Premises to be occupied upon award the Agreement. The spaces will be delivered to the Concessionaire **AS-IS**. Concessionaire, at its own expense, will be responsible for all design, construction and fixtures necessary to conduct a Banking Concession.

The successful Bidder will pay a Concession Fee to the City as set forth in **Article V** 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 for any cost incurred prior to the execution of a formal contract with the City.

A. Term.

The Agreement's Term will consist a "**Concession Period**" of **Four Years** (see Section 29 of Instructions To Bidders, below, and Article IV, Section 401 entitled "Term" of Appendix "B" entitled "Agreement").

B. Concession Fees.

The successful Bidder will pay to the City for each Contract Year

1. A Concession Fee equal to 100% of the annual square footage rental rate for the Terminal 1 Bank branch (currently \$21.60 per square foot, subject to adjustment July 1 of each year); and
2. A Foreign ATM Transaction Fee consisting of a percentage of the surcharge for all Foreign ATM Transactions originating at Bidder's ATM(s) (**to be determined by the Bid Item and through this SFB**) (see **Article V** of the Agreement).

C. Airport Concession Disadvantaged Business Enterprise ("ACDBE") Participation.

An ACDBE race conscious participation goal has not been established for this concession opportunity. However, Concessionaires are encouraged to utilize ACDBEs in the work of a contract resulting from this agreement. For more specific information regarding ACDBE participation, refer to Section 22 of the Instructions To Bidders and/or Article XII of the Agreement.

D. Bidders Rights.

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 Article II of the Agreement, entitled "Premises."

E. Non-Exclusivity.

The City **will not enter** into an exclusive agreement with the successful Bidder. At any time during the Term of this Agreement, the City may, at its own discretion, enter into other agreements for concepts similar to those in operation at the Airport including those of the successful Bidder. Nothing herein is to be construed to grant or authorize the granting of an exclusive right to the successful Bidder (also see Article III, Section 301 entitled "Rights" of Appendix "B" entitled "Agreement").

F. Premises.

The Premises will be delivered to the Concessionaire “**AS IS**”. Concessionaire, at its own expense, will be responsible for any and all modifications necessary to meet their operational needs (see **Article II**, entitled “Premises” of the Agreement).

The Director shall have the right to add, substitute, relocate or delete portions of the Premises upon reasonable notice to the successful Bidder. The City will not be liable or responsible for any loss whatsoever, including without limitation, any inconvenience or loss by the successful Bidder of work time, profit or business, actual, incidental, consequential or special damages resulting from these changes to the Premises. The City will make reasonable efforts to find replacement space that is of equal size and value as that of reclaimed Premises

G. Employee Parking.

One (1) Terminal 1 short term parking space (Red Level) shall be provided to the successful Bidder. **All other** employee parking shall be at the sole cost and expense of the successful Bidder; parking at loading docks during delivery times shall be at no cost, subject to the loading dock procedures then in place.

H. Manager.

The successful Bidder shall select and appoint a full-time, experienced manager fully authorized to represent and act on behalf of the Concessionaire in all matter pertaining to its business operation (see Article VI, Section 607 entitled “Manager” of Appendix “B” entitled “Agreement”).

I. Storage Space, Closet Space, Break Room Space and Office Space

Storage space, tenant employee break room space and office space are **NOT** included in the Premises under the Agreement. If such space is required by the successful Bidder, the successful Bidder may be required to execute a separate agreement for such space. The successful Bidder will pay to the City, as compensation for the use of any such storage, break room or office space, the applicable square foot rental rate for Terminal 1 or Terminal 2, and all utilities as determined by the Director. The successful Bidder will be responsible for the construction (if applicable) and maintenance of such space.

J. Maintenance

The successful Bidder will, at its own expense, keep all Premises and all furnishing and other personal property neat and clean and in good order and operating condition (see Article VIII, Section 802, entitled “Repairs and Maintenance” of Appendix “B” entitled “Agreement”).

K. Janitorial Services.

The successful Bidder will, at its own expense, provide sufficient janitorial services to ensure that all of the Premises are at all times maintained in a clean, attractive and sanitary manner, including but not limited to equipment, fixtures, and service counters (see Section 802 entitled “Repairs and Maintenance” of the Agreement).

L. Trash Removal.

The successful Bidder will, at its own expense, collect and dispose of trash and garbage at its location(s) and in a manner designated by the City. The successful Bidder shall participate in all recycling programs enacted at the Airport (see Article VIII, entitled “Use of Premises” of Appendix “B” entitled “Agreement”).

M. Insurance.

The successful Bidder will, at its own expense, maintain the insurance types and amounts described in Article IX entitled “Insurance, Damage and Indemnification” of Appendix “B” entitled “Agreement”.

N. Performance and Payment Bond.

The successful Bidder must provide both a Performance and Payment Bond in the **principal amount equal to Fifty Thousand Dollars (\$50,000)** prior to the execution of the Agreement (see Article V, Section 506 entitled “Performance and Payment Bond” of the “Agreement”). The enclosed Proposal to Bond Form must also be completed as part of the Bid (see APPENDIX “A,” entitled “Bid”, Page A-12 entitled “Proposal to Bond”).

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 shall be granted the right to develop, market, manage and operate a **non-exclusive** Banking 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 must be sent in writing to:**

Robert Salarano
Airport Properties Division Manager
St. Louis Lambert International Airport®
10701 Lambert International Blvd.
MTN 2501
St. Louis, MO 63145

E-mail requests are encouraged and must be addressed to rcsalarano@flystl.com “Banking Concession” should be placed in the e-mail subject line.

All requests for revisions must be received by **4:30 P.M., CENTRAL TIME, APRIL 7, 2023**. The Airport Properties Division will issue all decisions pertaining to revisions as written addenda to the SFB. All addendums to this SFB will be posted on the Airport’s website (link provided below) and distributed to all who attended the Pre-Bid Conference (see section 8 entitled “Questions” of the Instructions To Bidders). **BIDDERS ARE ENCOURAGED TO CHECK THE WEBSITE ON A CONSISTENT AND REGULAR BASIS.**

<https://www.flystl.com/civil-rights/business/contract-opportunities>

The City will only consider requested changes and clarifications in accordance with this section.

5. BIDDER’S QUALIFICATIONS

In order to be a qualified Bidder, the Bidder must meet all of the following criteria.

A. Experience:

1. Bidder is currently managing and operating a full-service bank of the nature contemplated in this SFB.
2. Bidder has successfully managed and operated a full-service bank for at least the last five (5) consecutive years, with such operations having generated annual deposits of at least Five Hundred Million Dollars (\$500,000,000) for each of the last three (3) years.

B. Financial Stability:

1. Bidder has been financially responsible in managing and operating a full-service bank for the last five (5) consecutive years.
2. Bidder demonstrates that he/she can raise the capital to design and construct the necessary improvements and infrastructure, staff and stock to operate the Concession.

C. Authority:

Bidder and ACDBE participant (if applicable) is licensed to do business in Missouri, or meets the qualifications for obtaining a license to do business in Missouri and/or can obtain a Fictitious Name Registration, if applicable, before the Commencement Date of the Agreement (see Sections 2(C) and 4(C) entitled “Authority” of the Bid).

D. Airport Concession Disadvantaged Business Enterprise (“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 the Bid. The ACDBE certification must be submitted with the Bid.** (See Section 22 of Instructions To Bidders and Sections 2(D) and 4(D) entitled “Airport Concession Disadvantaged Business Enterprises (ACDBE) Participation and Compliance” of the Bid.)

A link to the MRCC’s list of current certified firms can be found on the St. Louis Airport Authority’s BDD Program Office website: <https://www.flystl.com/business/business-diversity-development-1/business-diversity-development>, under the *Missouri State DBE Directory* link.

Note: The ACDBE certification review process can take several weeks to complete. It is the Bidder’s responsibility to provide adequate lead-time to complete the ACDBE certification process for Bid submittal.

2. ACDBE Utilization Plan documentation (“ATTACHMENT 3”) and the ACDBE Utilization Form and Letter of Intent (“ATTACHMENT 3”) must be submitted with the Bid. Good Faith Efforts documentation (“ATTACHMENT 4”) must be submitted even if the Bidder met the ACDBE goal contained within the ACDBE Utilization Plan (“ATTACHMENT 3”).
3. If applicable, Joint Venture Documentation Forms (“ATTACHMENT 2”) must be received with the Bid **no later than 4:30 P.M., LOCAL TIME, April 21, 2023.**

6. THE BID & BID BOND

The Bid document is attached hereto as **APPENDIX “A”**. An original and three (3) fully complete copies of the Bid and ATTACHMENTS 3, 4, and 5, and all items on the Bid Checklist marked as such, must be delivered in a sealed envelope, addressed to:

Airport Properties Division
St. Louis Lambert International Airport
Terminal 1, Room MTN-2501
10701 Lambert International Boulevard
St. Louis, Missouri 63145

OR electronically delivered to rcsalarano@flystl.com.

The words "**BID FOR BANKING CONCESSION**" must be plainly written across the left-end face of the envelope, or be placed on the email subject line. The name and address of the Bidder must also appear on the face of the envelope. Bids must be received **by 2:00pm TUESDAY MAY 9, 2023**.

Bidders submitting bids should take care to verify receipt by contacting Robert Salarano at (314) 426-8178 prior to the bid due time.

SEE SECTION 28 "SUBMITTING THE BID."

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

Bids may not be conditioned in any manner. Any conditional Bid or any Bid with erasures, alterations or alternatives may be rejected. Incomplete Bids, Bids not submitted on the Bid forms provided herewith, or Bids submitted on altered Bid forms may be rejected (see Section 10 entitled "Right to Reject Bids" of Instructions To Bidders). The Bid will become the property of the City upon receipt. The City has 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-14 as written and ATTACHMENTS 3, 4, and 5; and provide the additional information required in **APPENDIX "A"**, Section 4 entitled "Information To Be Submitted By Bidder" as addenda to the Bid.

The 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 **Ten Thousand Dollars (\$10,000)** 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 (see Section 1 of the Bid).

The Bid Bond must provide as its condition that the principal, as bidder, having been notified of being selected as the successful Bidder, will, within fifteen (15) days of such notification and prior to presentation to the Airport Commission, enter into and execute the Agreement and provide the Performance and Payment Bond and certificate of insurance in the amount and form required by Section 506 and Article IX of the Agreement and any other documents required by the City. **The City will not recommend a Bidder to the Airport Commission without these documents.**

The enclosed Proposal to Bond Form is a separate requirement from the Bid Bond and must also be completed as part of the Bid (see APPENDIX A, entitled “Bid”, Page A-12 entitled “Proposal to Bond” and Article V, Section 506 entitled “Performance and Payment Bond” of the Agreement).

The City reserves the right to thoroughly investigate the financial status, experience and record of the Bidder and the City reserves the right to reject any and/or all Bids.

7. PRE-BID CONFERENCE

The Airport has scheduled an optional Pre-Bid Conference on March 29, 2023 at 1:00pm CST, in the Airport Properties Conference Room, Room MTN-2450, Lower Level Terminal 1 of St Louis Lambert International Airport.

Any addendum to this SFB resulting from the Pre Bid Conference will be posted on the Airports website (link provided below) and distributed to all who attended the Pre-Bid Conference

<https://www.flystl.com/civil-rights/business/contract-opportunities>

The City **will not** be responsible for any oral instructions given or any information supplied with regard to the completion and submission of any Bid that is not contained in this SFB document or any future addenda to this SFB.

Immediately following the Pre Bid Conference, the Airport’s Business Diversity Development Department will host a networking session open to all prospective Bidders and certified ACDBEs. More information is available by contacting the Airport Business Diversity Development Office at (314) 426-8111.

Please RSVP to the optional Pre Bid Meeting by emailing Robert Salarano, rcsalarano@flystl.com.

8. QUESTIONS

Should the Bidder find a discrepancy in or omission from the INSTRUCTIONS TO BIDDERS, APPENDICES "A" or "B" or the Attachments and/or Exhibits to this SFB, or should the Bidder be in doubt as to their meaning, or should the Bidder believe that revisions to the terms and conditions contained herein would be beneficial to the Bidders and the City, the Bidder shall notify:

Robert Salarano
Airport Properties Division Manager
St. Louis Lambert International Airport
10701 Lambert International Boulevard
MTN 2501
St. Louis, Missouri 63145

E-mail inquiries are encouraged and must be addressed to rcsalarano@flystl.com.

“BANKING CONCESSION” must be clearly indicated on the email subject line.

All questions must be received, **in writing**, prior to **4:30pm CST April 7, 2023**. The Airport Properties Division will issue answers as written addenda to the SFB. All addendums to this SFB will be posted on the Airport’s website.

<https://www.flystl.com/business/contract-opportunities>

The City is not responsible for any oral instructions or comments.

Bidders are advised that any questions or requests for revisions must be sent in writing as provided for in Section 4 entitled “The Concession Agreement” and Section 8 entitled “Questions” of this SFB.

9. BIDDERS RESPONSIBLE FOR BID

The Bidder shall carefully examine the entire contents of this SFB including the Agreement, Addenda, Exhibits, Attachments, 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.

10. 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 any or 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 that a Bidder(s) has not submitted the required Bid

documents or information, for the purpose of obtaining complete Bid submittals or correcting other defects in a Bid.

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.

11. 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 (1) Bid under the same or different names. Reasonable grounds for believing that the Bidder is interested in more than one (1) 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 a BANKING 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 (5) 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 Fee Percentage of less than 45% per Contract Year.**

The City will not enter into an Agreement with any Bidder who is found to be delinquent on City of St. Louis Earnings Taxes or is unable to procure a City of St. Louis Business License, if such license is applicable.

12. BASIS FOR AWARD

The Agreement to be awarded under this SFB will be made by the Airport Commission to the successful Bidder that the Airport Commission determines, at its sole discretion, to be a responsive and qualified Bidder that submitted the highest and best Bid, which is determined to be the most advantageous to the City for the development, management and operation of a first-class Banking Concession at the Airport (see **Section 2** entitled "Airport Objectives" and **Section 5** entitled "Bidder's Qualifications" of the Instructions To Bidders).

This SFB is not to be construed or interpreted as a contract or a commitment of any kind; nor does it commit the City to pay for any costs incurred by the Bidder in the submission of a Bid

or any cost incurred prior to the execution of a formal contract with the City. **The award of an Agreement must be approved by the Airport Commission, the City's Board of Estimate, Apportionment and The City's Board of Aldermen.**

The "**Bid Item**" shall be:

The highest Foreign ATM Transaction Fee Percentage per Contract Year, but not less than **45%** per Contract Year (see **Section 11** entitled "Disqualifications Of Bidders" of the Instructions To Bidders).

The City may take up to ninety (90) days to complete its evaluation.

Bidders are hereby informed that the Bid Item (Foreign ATM Transaction Fee Percentage) is not the sole determining factor in award of the Concession Agreement. The Business Plan will also be a determining factor in the award of the Concession Agreement. The City will review each Bid submission in its entirety, and select a qualified and responsive Bidder that the City believes, in its sole and absolute determination and judgment, submitted the highest and best Bid for the development, management and operation of a first-class Banking Concession at the Airport and best meets the Airport's goals and objectives as outlined in Section 2 of this SFB (see also Section 5 entitled "Bidder's Qualifications" of Instructions To Bidders) and the Bidder's Business Plan (see Appendix A entitled "The Bid", Section 4.E entitled "Business Plan").

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

13. EQUAL OPPORTUNITY IN EMPLOYMENT

The Bidder(s) shall comply with the City's requirement for an affirmative action program (see Section 1502 entitled "Non-Discrimination And Affirmative Action Program" of Appendix "B" entitled "Agreement").

14. RELEASE OF BONDS

The City shall return or release all unsuccessful Bidders' Bid Bonds within forty-five (45) days after the successful Bidder has been awarded the Agreement by the Airport Commission.

15. FORFEITURE OF BONDS

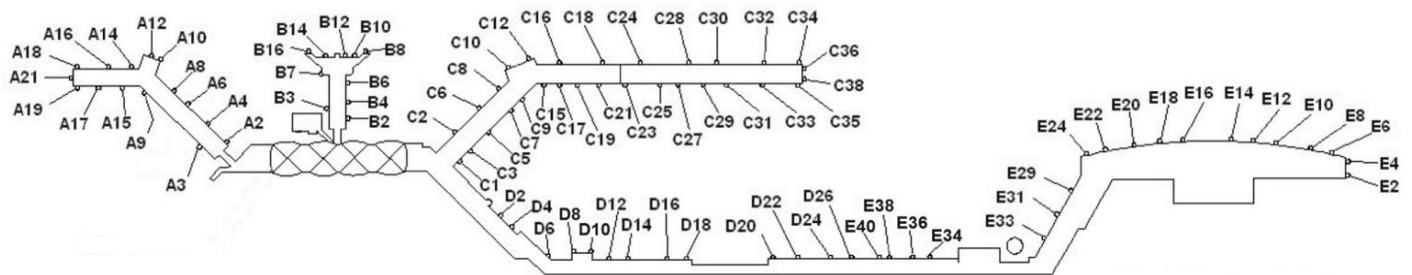
If the successful Bidder refuses or neglects to execute an Agreement or fails to furnish the required certificate of insurance and Performance and Payment Bond or other documents required by the City within fifteen (15) calendar days of the City's notice that the Bidder has been selected as the successful Bidder and 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 responsive and qualified Bidder submitting the next highest and best Bid, who shall be subject to the same procedures, requirements, and timetables as provided herein. If that selected Bidder also refuses to or neglects to execute an Agreement or fails to furnish the required certificates, bonds or other documents required by the City, the City, in its sole and absolute discretion, may award the Bid to the responsive and qualified Bidder submitting the next highest and best Bid, who shall be subject to the foregoing provisions and so on, as determined by the City in its sole and absolute discretion.

16. AIRPORT INFORMATION

The Airport is the major commercial airport for the St. Louis metropolitan area and surrounding communities in Missouri and Illinois. Owned and operated by the City of St. Louis, the Airport is located approximately ten (10) miles northwest of downtown St. Louis and is ranked the 37th busiest airport in the U.S. by Airport Council International-North America (passenger traffic). Serving over 6.3 million passengers in 2020, the Airport supports ten (10) scheduled passenger airlines, averaging approximately 254 daily departures, with service to both domestic and international markets. The Airport’s passenger market is comprised of mostly origin and destination (“O&D”) travelers; a small percentage of travelers connect through the Airport to their destination. The Airport is financially self-sufficient and is wholly supported by airport user charges; no general fund revenues are used for the operation, administration, promotion or maintenance of airport facilities. For more information, visit www.flystl.com

EXISTING AIRLINE INFORMATION



Terminal 1

A Concourse

<i>Airline</i>	<i>Gate</i>
<i>Delta Airlines</i>	<i>Gates A2, A3, A4, A6, A8, A10</i>
<i>United Airlines</i>	<i>Gates A14, A16, A18, A19, A21</i>
<i>Air Canada</i>	<i>Gate A17</i>

C Concourse

<i>Airline</i>	<i>Gate</i>
<i>American Airlines</i>	<i>Gates C6, C8, C10, C12, C16, C18, & C24</i>
<i>Cape Air</i>	<i>Gates C5 & C7</i>
<i>Frontier Airlines</i>	<i>Gates C19 & C23</i>
<i>Alaska Airlines</i>	<i>Gate C15</i>
<i>Southern Airways Express</i>	<i>Gates C1 & C3</i>
<i>Spirit Airlines</i>	<i>Gate C30</i>

Terminal 2

The following is a brief description of the existing airlines in Terminal 2.

Terminal 2

<i>Airline</i>	<i>Gate</i>
<i>Southwest Airlines</i>	<i>Gates E4, E6, E8, E10, E12, E14, E16, E18, E20, E22, E24, E31, E33, E34, E36, E38, E40</i>
<i>Lufthansa Airlines (3x weekly)</i>	<i>Gate E29</i>
<i>International Arrivals (City Gate)</i>	<i>Gate E29</i>

PASSENGER ENPLANEMENT INFORMATION

The following table of enplaned Airport passengers by Terminal is offered for Proposer's use.

Enplaned Passengers by Terminal

<i>Year</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>
<i>Terminal 1 Total</i>	<i>3,086,377</i>	<i>3,158,826</i>	<i>1,137,532</i>	<i>2,,166,439</i>
<i>Terminal 2 Total</i>	<i>4,735,894</i>	<i>4,788,160</i>	<i>1,972,289</i>	<i>3,008755</i>
<i>Grand Total</i>	<i>7,822,271</i>	<i>7,946,986</i>	<i>3,109,821</i>	<i>5,175,194</i>

Note: The Airport does not have passenger traffic projections for future years.

Note: The Airport does not have information on passenger demographics.

AIRPORT BUSINESS ENVIRONMENT

Prospective Proposers should note the airport environment presents concession operators with unique opportunities and challenges; listed below are some key factors:

- Airport customers have a limited amount of time to park and proceed to the terminal. Generally, a passenger's first consideration is to clear security and locate their departure gate.
- Facilities must be available on an as needed basis to support passenger activity at the Airport.
- Flight delays, generally, weather related, are not uncommon.
- Concession and tenant employees are ambassadors for the City of St. Louis, St. Louis Lambert International Airport and the region. Training in both customer service and airport familiarization is essential. The Concessionaire shall participate in the Airport's customer service program.
- The Airport is a non-smoking/smoke-free facility.

20. OPERATION AND MAINTENANCE

The successful Bidder is responsible for all aspects of managing and operating a **non-exclusive** BANKING Concession, and will provide, without limitation, all employees, staff, supervision, vehicles, products, tools, equipment, materials and supplies necessary for safe and efficient operation.

21. MINIMUM SERVICES AND OPERATING REQUIREMENTS

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

22. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE ("ACDBE") PARTICIPATION AND COMPLIANCE

A. Participation

In accordance with U.S. Department of Transportation regulation 49 CFR Part 23, the City has implemented an ACDBE concession plan under which ACDBE firms may have the opportunity to participate in the operation of an Airport business. **An ACDBE race conscious participation goal has not been established for this contracting opportunity.** However, Bidders are encouraged to utilize ACDBE work of a contract resulting from this solicitation. Acceptable methods of ACDBE participation include concession agreements and sub-agreements, joint ventures, partnerships or any other legal arrangements that result in bona fide

ownership and control by the ACDBE participant. If a Bidder is unable to secure ACDBE participation, the Airport will consider other methods of participation towards the ACDBE goal; i.e., purchase of goods and services from certified ACDBEs.

If applicable, Bidders are required to submit information concerning the ACDBE Joint Venture that will operate the Concession by completing the ACDBE Joint Venture Documentation Form, (see **ATTACHMENT 2**), attached hereto and incorporated herein. **ATTACHMENT 2** must be submitted at **4:30pm CST Friday April 21, 2023**, and should be submitted directly to the Airport's Business Diversity Development Office.

Business Diversity Development
St. Louis Lambert International Airport®
P. O. Box 10212
St. Louis, Missouri 63145

Phone: (314) 426-8111

(the office is located on the basement level of Terminal 1, accessible near the A Gates TSA Checkpoint)

All Bidders are required to complete and submit with its Bid an ACDBE Utilization Plan, Good Faith Efforts Documentation Form, and Letter of Intent, which are attached hereto and incorporated herein (see **ATTACHMENTS 3 and 4**).

If a Bidder elects to bid as a Joint Venture, the Joint Venture Documentation Form and Joint Venture Operating Agreement must reflect the business arrangement specific to this BANKING SFB (see Attachment 2).

The ACDBE participant must be certified by an agency who is a certifying partner of the Missouri Unified Certification Program called the Missouri Regional Certification Committee ("MRCC"). This certification process can take up to ninety (90) days. **ACDBE firms must be certified prior to submitting the Bid. The successful Bidder will be responsible for meeting the ACDBE reporting requirements outlined in the Agreement.**

In order to be eligible for an award of the Agreement, the Bidder must make Good Faith Efforts to meet the goal contained within this SFB. Bidders may meet this goal by either obtaining enough ACDBE participation to meet the goal or by submitting documentation that Bidder has made sufficient Good Faith Efforts to meet this goal.

Award of the Agreement will be conditioned upon satisfying the requirements of this SFB. These requirements apply to all firms and suppliers, including those who qualify as an ACDBE. **All ACDBEs must be certified by MRCC prior to submission of the Bid.**

All ACDBEs participating in the concession operations must perform a commercially useful function, as defined in 49 CFR Section 23.55. To determine whether the ACDBE is performing a commercially useful function, the Authority will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the ACDBE credit claimed for its performance of the work, and other relevant factors. Only ACDBE participation that results

from a commercially useful function will be counted toward the ACDBE participation goal.

The following ACDBE-related contractual clause will be applicable and is specifically included as part of the Agreement. Contractors/Operators must also include this clause in each subcontract the prime contractor signs with a subcontractor:

“This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23.

“The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements.”

If a Bidder is awarded a contract, the Bidder must not terminate for convenience an ACDBE subcontractor (or an approved substitute ACDBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without the City's prior written consent. When an ACDBE sub-contractor is terminated, or fails to complete its work on the contract for any reason, the Bidder must notify the City immediately of the ACDBE's inability or unwillingness to perform and provide reasonable documentation. The Bidder will be required to make good faith efforts to find another ACDBE to perform at least the same amount of work under the contract as the ACDBE that was terminated, to the extent needed to meet the contract goal the City has established for this contract. The Bidder will be required to obtain written approval by the Director. The loss of an ACDBE does not relieve the Bidder of its obligation to maintain the minimum participation goal. The airport BDD office will provide Bidder assistance in locating ready, willing, and able ACDBE firms.

B. Compliance and Enforcement Procedures

The City will use the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23:

- The City has available several remedies to enforce the ACDBE requirements contained in its contracts, including but not limited to breach of contract action, pursuant to the terms of the contract.
- In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the ACDBE program, including, but not limited to the remedies of 49 CFR 23, Section 23.11.

The City will implement the following additional monitoring and compliance procedures:

- Concessionaires or contractors will be required to submit monthly Gross Receipts and Gross Receipts earned by ACDBEs.

- Concessionaires or contractors will be required to submit, for review and approval, a written notification of any material change in the duties, functions and responsibilities of ACDBEs prior to implementing the change.
- Concessionaires or contractors will be required to list the specific duties, functions and responsibilities that ACDBEs will perform.

The City will perform periodic reviews, including site visits, each year to confirm ACDBEs are performing listed duties, functions and responsibilities. The City will request from Concessionaire any expenditures made with ACDBEs in performing services and supplying goods. Those expenditures will be reported monthly to the City.

The City will bring to the attention of the Department of Transportation (“DOT”) any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR Part 26, Section 26.107.

The City will consider similar action under its own legal authorities, including responsibility determinations in future contracts. The City will have all remedies available to the City at law or in equity in the event of non-compliance with the ACDBE regulations herein.

23. INTEGRATION WITH CURRENT TERMINAL USERS

If applicable, the successful Bidder shall be responsible for the efficient changeover from the current concessionaire, agent or service provider.

24. PUBLIC ACCOMMODATION LAWS

The successful Bidder 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.

25. 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. Fingerprinting. All persons applying for an Airport ID badge must submit to a fingerprint-based criminal history record check (see Section 605.B entitled “Personnel” of Appendix “B” entitled “Agreement”).
- 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 a restricted area without a valid Airport ID Badge (see Section 605.A entitled “Personnel” of Appendix “B” entitled “Agreement”).
- D. AOA Vehicle Access. Only direct support vehicles and/or equipment will be allowed on the Airport Operations Area (“**AOA**”) (see Section 1526 entitled “Security Plan and Facilities”) of the Agreement). Qualifying vehicles must be approved by the Airport Police Department and all drivers must attend driver training prior to driving on the AOA (see Section 605.J entitled “Personnel” of Appendix “B” entitled “Agreement”).

26. **FRANCHISE**

Franchise Bidders must provide the required information on 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.

27. **LIVING WAGE COMPLIANCE**

The St. Louis Living Wage Ordinance No. 65597 (“**Ordinance**”) and associated “**Regulations**”, as may be amended from time to time, apply to the Agreement for which bids are being sought herein. This Ordinance requires that, **unless specific exemptions apply**, all individuals who perform work pursuant to an Agreement executed between the successful Bidder and the City must be paid a minimum of the applicable Living Wage rates set forth in the attached Living Wage Bulletin (Exhibit “B” of the Agreement). If the rates are adjusted during the Term of the Agreement, pursuant to the ordinance, applicable rates after such adjustment shall apply.

Each Bidder must submit the attached “Living Wage Acknowledgement and Acceptance Declaration” (“**ATTACHMENT 5**”) with its Bid. **Failure to submit the Declaration with the Bid will result in rejection of the Bid.** A successful Bidder(s) failure to comply with the Provisions as described in Section 1527 of the Agreement related to the Living Wage Ordinance may result in termination of the Agreement and the imposition of additional penalties as set forth in the Ordinance and Regulations. Copies of Ordinance No. 65597 and associated Regulations, which are incorporated herein by reference, may be obtained by contacting:

Assistant Airport Director
Business Diversity Development

St. Louis Lambert International Airport®
P. O. Box 10212
St. Louis, Missouri 63145
Phone: (314) 426-8111

28. SUBMITTING THE BID

The Bid document is attached hereto as APPENDIX A. An original and three (3) fully complete copies of the Bid and ATTACHMENTS must be submitted. Bids may be submitted using the following methods:

1. Bids and associated documents may be deposited in a sealed envelope, addressed to:

Airport Properties Division
St. Louis Lambert International Airport
Terminal 1, Room MTN-2501
10701 Lambert International Boulevard
St. Louis, Missouri 63145

The words "**BID FOR BANKING 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.

OR

2. Bids (ONE complete) and associate documents may be submitted via email* to:

Robert Salarano rcsalarano@flystl.com (314) 426-8178

*The data size limit for email receipt is 20mb; Bidders may use multiple emails for proper submission, however all Bids must be received in whole by the deadline. Attachments which exceed the size limit may also be submitted in compressed or "zipped" PDF format. Such emailed Bids must contain in their subject line the following: "**BID FOR BANKING CONCESSION**"

BIDDERS SHOULD VERIFY WITH MS. FISHER RECEIPT OF BIDS SUBMITTED ELECTRONICALLY OR VIA USPS.

Bids must be received by **2:00pm CST TUESDAY MAY 9, 2023.**

Bids will be publicly opened and the Bid Item read immediately following the 2:00pm deadline.

Bids received after the due date and time, or not delivered to the designated point, will not be considered and will be returned to the Bidder unopened.

28. BID AND AWARD SCHEDULE

The current schedule for the bid process is provided below. This schedule is subject to

change at the sole discretion of the City. Prospective Bidders should closely monitor the City's website for Bid Addenda, which may include schedule changes.

- | | |
|-----------------------|--|
| March 29, 2023 | Pre-Bid Conference & ACDBE Networking Session
Airport Properties Conference Room (Terminal 1)
1:00pm CST |
| April 7, 2023 | Deadline for Requests for Revisions, Questions and Interpretations
Airport Properties Division
Due by 4:30pm CST |
| April 21, 2023 | Deadline for ACDBE Joint Venture Information Documentation
Submit directly to the Airport Business Diversity Development Office
Due by 4:30pm CST |
| May 9, 2023 | Due Date for Bids
Airport Properties Division
<u>Due by 2:00pm CST</u> |

29. TERM AND TRANSITION

It is intended that the Concession Agreement will begin December 1, 2023. However, the Airport will allow the current Concessionaire a delayed branch closing date that meets the standards and regulations set forth by the United States Office Of The Controller of The Currency, specifically as those standards and regulations relate to notification of bank branch closures.

In the event that the current bank branch closure extends beyond November 30, 2023, the new Concession Agreement will be adjusted to allow a full four (4) year Term.

APPENDIX “A”
BID

BANKING CONCESSION
AT
ST. LOUIS LAMBERT INTERNATIONAL AIRPORT®

BID FOR A NON-EXCLUSIVE

BANKING CONCESSION

ST. LOUIS-LAMBERT INTERNATIONAL AIRPORT®

AFFIDAVIT

STATE OF _____)

) SS.

COUNTY OF _____)

The Undersigned, _____, of lawful age, being first duly sworn, states upon oath that he/she is _____(Title),

_____ (Company), the Bidder, and

being duly authorized and having inspected the Premises and the Airport and being informed as to the terms of the Agreement, bids to enter into and provide certain products and/or services at St. Louis Lambert International Airport, in accordance with the Provisions, reservations and exceptions set forth in the INSTRUCTIONS TO BIDDERS and the AGREEMENT enclosed with the SFB dated **TBD**.

1. BID:

1. BID:

The financial consideration for the Bidder's right and privilege to operate a non-exclusive Banking Concession at the Airport will consist of the following:

- An annual space rental fee of 100% of the non-airline square footage rate for Terminal 1 Bank branch. The current rates is \$21.60 per square foot, subject to adjustment July 1 of each year. Each time the annual Terminal 1 non-airline square footage rental rate is adjusted, the space rental will also be adjusted in like manner (see **Article V** of the Agreement).
- An annual ATM Transaction Fee consisting of a percentage of the surcharge for all Foreign ATM Transactions. All computations of this portion of the Concession Fee will be based on the percentage set out below by the Bidder as the Bid item.

BID ITEM

TO BE COMPLETED BY THE BIDDER:

Foreign ATM Transaction Fee Percentage = _____ % per Contract Year
for Contract Year 1, Contract Year 2, Contract Year 3, and Contract Year 4

Note: The Foreign ATM Transaction Fee Percentage cannot be less than 45% per Contract Year. A Bid containing a Foreign ATM Transaction Fee Percentage of less than 45% per Contract Year will not be considered (see Section 11.E of the Instructions to Bidders).

Bidders are hereby informed that the Bid Item will not be the sole determining factor in award of the Concession Agreement. The City will review each Bid submission in its entirety, and select a qualified and responsive Bidder that the City believes, in its sole and absolute determination and judgment, submitted the highest and best Bid for the development, management and operation of a first-class Banking Concession and best meets the Airport's objectives as outlined in **Section 2** of the Instructions to Bidders.

The City may take up to ninety (90) days to complete its evaluation. The basis for the award includes, but is not limited to:

- The Bid Item;
- Business Plan as defined and provided for in **Section 4(E)** of the Bid.

The City reserves the right to thoroughly investigate the financial status, experience, and record of the Bidder (see **Section 12** entitled "Basis for Award" of Instructions to Bidders). The City reserves the right to reject any and all Bids.

As part of this Bid, the Bidder submits herewith a Bid Bond in the form of a cashier's check or a Standard Commercial Guaranty Bond in the amount of **Ten Thousand Dollars (\$10,000)** (see **Section 6** of the Instruction to Bidders).

A Bidder, if notified they have submitted a successful Bid, agrees to enter into and execute the Agreement and furnish the required Performance and Payment Bond, certificate of insurance and other documents as required by the City within fifteen (15) days of such notice and before presentation to the 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 (5) 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** Banking Concession at the Airport.

A. Experience:

1. Bidder has successfully owned and/or managed and successfully operated a Banking business in a major airport, transportation center, major hotel, or a similar high traffic facility, an ongoing daily business Banking operation for at least the last five (5) calendar years and can provide documentation of such experience with such operations having generated annual deposits of at least Five Hundred Million Dollars (\$500,000,000) for each of the last (3) three years.
2. Bidder is currently managing and/or is successfully operating a Banking business in a major airport, transportation center, major hotel, or a similar high traffic facility, an ongoing daily business Banking operation and can provide documentation of such experience.
3. **ACDBE participant must be ACDBE certified by the Missouri Regional Certification Committee (“MRCC”) prior to submittal of the Bid.**

B. Financial Stability:

- 1) Bidder has had previous financial responsibility and success in managing and operating a full-service banking business during the last (5) calendar years and can demonstrate financial success with the appropriate documentary evidence.
- 2) Bidder demonstrates with appropriate documentation that he/she can raise the necessary capital to design and construct the necessary improvements and staff and operate the concession.

C. Authority:

- 1) 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 the Commencement Date of the Agreement.
- 2) Bidder must furnish a copy of the ACDBE participant’s license to do business in

the State of Missouri; or a statement that ACDBE participant meets qualifications for obtaining all necessary licenses to do business in Missouri; and can obtain the licenses 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 certified by an agency who is a certifying partner of the Missouri Unified Certification Program called the Missouri Regional Certification Committee (“MRCC”) **prior to submittal of the Bid. A copy of the ACDBE certification must be submitted with the Bid.**
- 2) The ACDBE Utilization Plan and Good Faith Efforts documentation must be submitted with the Bid.
- 3) ACDBE participant, if not the primary Bidder, is now licensed to do business in the State of Missouri, or 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 (see Article XV, Section 1502 entitled “Non-Discrimination And Affirmative Action Program” of Appendix “B” entitled “Agreement”).

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 APPENDIX “A”, Section 2(A).1 of APPENDIX “A” entitled “Bid”, this must include a list of businesses, locations, term of contract(s) and a description of ownership, management and operation responsibilities, individual contact with each contract including name, address and telephone number during the last five (5) calendar years.
2. Documentation of Bidder’s experience with Section 2(A).2 of APPENDIX “A” entitled “Bid” documenting Bidder is currently managing and operating a Banking business.

3. Documentation of whether or not Bidder has had an agreement terminated or cancelled within the last five (5) calendar years, and if applicable, a statement defining the reasons for termination or cancellation.

B) Financial Stability:

Financial statements for the last three (3) calendar or fiscal years, 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 City. Bidder is permitted to submit the required financial statements in an electronic format.

C) Authority:

- 1) A copy of Bidder's license (Certificate of Corporate Good Standing; or completed license application submitted to the Secretary of State), dated within the last sixty (60) days to do business in the State of Missouri **or** a statement that Bidder is qualified. LICENSE WILL BE REQUIRED AT TIME OF CONCESSION AGREEMENT EXECUTION.
- 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; or completed license application submitted to the Secretary of State), dated within the last sixty (60) days to do business in the State of Missouri WILL BE REQUIRED AT THE TIME OF CONCESSION AGREEMENT EXECUTION.
- 4) Registration of Fictitious Name if applicable.

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

- A. The ACDBE certification letter from the MRCC if ACDBE participation is included.
- B. If applicable, Joint Venture Documentation Forms (ATTACHMENT 2), including any supplemental information and documentation requested therein, must be submitted at the time of the Bid. **4:30pm CST, Tuesday May 2, 2023.**
- C. ACDBE Utilization Plan, Utilization Commitment Form, and Letter of Intent (ATTACHMENT 3) 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.

D. The documentation of Good Faith Efforts form (ATTACHMENT 4) must be completed and submitted by all Bidders whether or not Bidder meets the ACDBE goal contained in the ACDBE Utilization Plan (ATTACHMENT 3).

E) Business Plan:

A “**Business Plan**” detailing Bidder's ability and plan of operation to meet the standards described in Section 2 entitled “Airport Objectives” of Instructions To Bidders. In addition, the Business Plan must include the following items.

- 1) A list of “value added services” that the Concessionaire plans to provide, including foreign currency exchange, if applicable;
- 2) Personnel information: availability, number, source, job description (both on-site and off-site);
- 3) Description of the types of products and/or services that bidder proposes to offer at the Airport in accordance with the requirements of the Agreement, Article III;

F) Additional Information:

- A. “**ATTACHMENT 5**” - Living Wage Acknowledgement & Acceptance Declaration (see Section 27 of Instructions To Bidders); and
- B. Bid Bond- See Sections 6 and 9 of Instructions To Bidders and Section 1 of the Bid.

BIDDERS BANK REFERENCES:

	<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 and operate the shuttle concession.

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>
_____	_____
_____	_____

BUSINESS ORGANIZATION

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>
_____	_____
_____	_____
_____	_____

BUSINESS ORGANIZATION

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, Section 506 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 _____

PRIMARY CONTACT PERSON FOR SFB

NAME: _____

TITLE: _____

MAILING ADDRESS: _____

E-MAIL ADDRESS: _____

PHONE NUMBER: _____

FAX NUMBER: _____

PLEASE PRINT

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 BANKING CONCESSION

The following bid checklist is provided as a convenience to bidders. Please review the checklist VERY carefully.

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

- Appendix “A” (Bid), Pages A-1 through A-14.**
Bids must be fully completed, signed and notarized (including Proposal to Bond)

- Bid Bond.**
Cashier's check or standard commercial guaranty bond in the amount of Ten Thousand Dollars (\$10,000). See Section 1 of the Bid.

- Documentation of Experience.**
Described in Section 4 (A) of the Bid.

- Documentation of Financial Stability.**
Described in Section 4 (B) of the Bid.

- Documentation of Bidder’s State of Missouri License.**
Described in Section 4 (C) of the Bid.

- Documentation of MRCC certified ACDBE certification.**
Described in Section 4 (D) of the Bid.

- Attachment 2-ACDBE Joint Venture Documentation Forms (ONLY if applicable).**
Described in Section 22 of Instructions To Bidders and Section 4 (D) of the Bid.
DUE 4:30pm CST May 5, 2020

- Attachment 3-ACDBE Utilization Documents.**
Described in Section 22 of Instructions To Bidders and Section 4 (D) of the Bid.

- Attachment 4-Good Faith Efforts Documentation Forms.**
Described in Section 22 of Instructions To Bidders and Section 4 (D) of the Bid.

ATTACHMENT 1 – BID CHECKLIST CONTINUED

- Documentation of Bidder’s Business Plan.**
Described in Section 4 (E) of the Bid (including any value added services, such as a foreign currency exchange service).

- Documentation of “Additional Information”.**
Described in Section 4 (F) of the Bid.

- Attachment 5- Living Wage Acknowledgement & Acceptance Declaration.**
Described in Section 27 of Instructions To Bidders and Section 4 (F) of the Bid.

- Disclosure of any trademark, copyright, licensing and other contractual or property rights.**

- Franchise letter (if applicable).**
Described in Section 26 of Instructions To Bidders.

See ACDBE Document Checklist for required submittals to the Airport BDD Program Office.

**ACDBE DOCUMENT CHECKLIST
BANKING CONCESSION**

ALL BIDDERS INTENDING TO SUBMIT THE FOLLOWING ITEMS ARE REQUIRED TO SUBMIT THE FOLLOWING ITEMS AT, **4:30pm CST Tuesday May 2, 2023**

Note: Bidders are also required to include a copy of this Attachment with the Bid.

- Attachment 2-ACDBE Joint Venture Documentation Forms (if applicable).**
If the Bidder plans to operate as a Joint Venture, Attachment 2 must be submitted to the BDD Office along with the Joint Venture Agreement documentation for review.

Business Diversity Development
St. Louis Lambert International Airport®
P. O. Box 10212
St. Louis, Missouri 63145

Phone: (314) 426-8111
(the office is located on the basement level of Terminal 1, accessible near the A Gates
TSA Checkpoint)

ALL ACDBE RELATED DOCUMENTATION, INCLUDING ATTACHMENTS 2, 3 and 4
SHOULD BE SUBMITTED WITH THE BID.

ATTACHMENT 2

**ACDBE JOINT VENTURE DOCUMENTATION FORMS
(only if applicable)**

TO BE SUBMITTED BY ALL BIDDERS

NO LATER THAN

4:30pm TUESDAY MAY 2, 2023

Model ACDBE Joint Venture Information Documentation Forms
To be submitted with Joint Venture agreement for review.

1. Name of Joint Venture: _____

2. Names, address and phone number of joint venture contact person: _____

3. Firms participating in joint venture (use additional pages if necessary):

Name of firm: _____

Address: _____

Phone Number: _____

Contact Name/phone number: _____

% ownership: _____

ACDBE: Yes No (circle) Certifying agency: _____

Date of Certification: _____

Type of work for which certification was granted: _____

ACDBE Joint Venture Information Continued

Name of firm: _____

Address: _____

Phone Number: _____

Contact Name/phone number: _____

% ownership: _____

ACDBE: Yes No (circle) Certifying agency: _____

Date of Certification: _____

Type of work for which certification was granted: _____

Name of firm: _____

Address: _____

Phone Number: _____

Contact Name/phone number: _____

% ownership: _____

ACDBE: Yes No (circle) Certifying agency: _____

Date of Certification: _____

Type of work for which certification was granted: _____

ACDBE Joint Venture Information Continued

4. ACDBE initial capital contribution: \$ _____

5. Future capital contributions (explain requirements): _____

6. Source of funds for the ACDBE capital contribution: _____

7. Describe the portion of the work or elements of the business controlled by the ACDBE:

8. Describe the portion of the work or elements of the business controlled by the non-ACDBE: _____

9. Describe the ACDBE's involvement in the overall management of the joint venture (e.g., participation on a management committee or managing board, voting rights, etc.): _____

ACDBE Joint Venture Information Continued

10. Describe the ACDBE's share in the profits of the joint venture: _____

11. Describe the ACDBE's share in the risks of the joint venture: _____

12. Describe the roles and responsibilities of each joint venture participant with respect to managing the joint venture (use additional sheets if necessary):

a. ACDBE joint venture participant: _____

b. Non-ACDBE joint venture participant: _____

13. Describe the roles and responsibilities of each joint venture participant with respect to managing the joint venture (use additional sheets if necessary):

a. ACDBE joint venture participant: _____

b. Non-ACDBE joint venture participant: _____

ACDBE Joint Venture Information Continued

14. Which firm will be responsible for accounting functions relative to the joint venture’s business? _____

15. Explain what authority each party will have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors and/or other parties? _____

16. Please provide information relating to the approximate **number** of management, administrative, support and non-management employees that will be required to operate the business and indicate whether they will be employees of the ACDBE, non-ACDBE or joint venture.

	Non-ACDBE Firm	ACDBE Firm	Joint Venture
Management			
Administrative			
Support			
Hourly Employees			

ACDBE Joint Venture Information Continued

17. Please provide the name of the person who will be responsible for hiring employees for the joint venture. _____

a. Who will they be employed by? _____

18. Are any of the proposed joint venture employees currently employees of any of the joint venture partners? Yes No (circle)

a. If yes, please list the number and position and indicate which firm currently employs the individual(s). _____

19. Attach a copy of the proposed joint venture agreement, promissory note or loan agreement (if applicable), and any and all written agreements between the joint venture partners.

20. List all other business relationships between the joint venture participants, including other joint venture agreements in which the parties are jointly involved. _____

ATTACHMENT 3

ACDBE UTILIZATION DOCUMENTS

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

TOTAL PROJECTED GROSS RECEIPTS: \$ _____

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

 BIDDER AUTHORIZED SIGNATURE

 DATE

ST. LOUIS AIRPORT AUTHORITY

**AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE
UTILIZATION COMMITMENT FORM**

The undersigned bidder/proposer has satisfied the requirements of the bid/proposal specification in the following manner (please check the appropriate space):

The bidder/proposer is committed to a minimum of _____ % ACDBE utilization on this contract.

The bidder/proposer (if unable to meet the ACDBE goal of _____ %) is committed to a minimum of _____ % ACDBE utilization on this contract and has submitted documentation demonstrating good faith efforts.

Name of bidder's/proposer's firm: _____

State Registration No. _____

By _____
(Signature)

(Title)

**ST. LOUIS AIRPORT AUTHORITY
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE
LETTER OF INTENT**

Name of bidder's/proposer's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of ACDBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by ACDBE firm:

The bidder/proposer is committed to utilizing the above-named ACDBE firm for the work described above. The estimated dollar value of this work is \$

Affirmation

The above-named ACDBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____
(Signature) (Title)

If the bidder/proposer does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each ACDBE subcontractor.)

ATTACHMENT 4

**GOOD FAITH EFFORTS PROCEDURE
AND
DOCUMENTATION FORMS**

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 BDD 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 St. Louis Lambert 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 5

**LIVING WAGE ACKNOWLEDGEMENT
&
ACCEPTANCE DECLARATION**

**ST. LOUIS LIVING WAGE ORDINANCE
LIVING WAGE ACKNOWLEDGMENT AND ACCEPTANCE
DECLARATION**

CONTRACTING AGENCY: **AIRPORT AUTHORITY**

BIDDER'S/PROPOSER'S NAME: _____

DATE PREPARED: _____

PREPARED BY: _____

PREPARER'S TELEPHONE NUMBER: _____

PREPARER'S ADDRESS AND ZIP CODE:

As the authorized representative of the above-referenced bidder or proponent, I hereby acknowledge that the bidder/proponent understands that the contract or agreement that will be executed with a successful bidder/proponent pursuant to this solicitation is subject to the St. Louis Living Wage Ordinance and the Regulations associated therewith. The bidder/proponent hereby agrees to comply with the Ordinance and the associated Regulations if awarded a contract pursuant to this solicitation. I am authorized to make the above representations on behalf of the bidder or proponent.

**AUTHORIZED REPRESENTATIVE
CERTIFICATION:**

(Signature)

NAME: _____

TITLE: _____

DATE: _____

APPENDIX “B”

SAMPLE AGREEMENT

[COMPANY NAME]

BANKING

CONCESSION AGREEMENT

AL#-XXX

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**ST. LOUIS LAMBERT INTERNATIONAL AIRPORT®
CONCESSION AGREEMENT
(BANKING)**

THIS AGREEMENT, made and entered into as of the ____ day of _____ 2021, (“**Agreement**”) by and between the CITY OF ST. LOUIS (“**City**”), a municipal corporation of the State of Missouri and **COMPANY NAME** (“**Concessionaire**”), a corporation organized and existing under the laws of the State of _____ qualified to do business in the State of Missouri.

WITNESSETH, That:

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

WHEREAS, a “Concession,” as that term is defined in 49 C.F.R Part 23.3, at the Airport is a valuable accommodation of the public;

WHEREAS, City has determined that it is in the public interest for the following objectives to be met in the provision of a Banking Concession:

- To provide a first-class, Banking Concession that meets Airport user needs and adds value to other Airport and Airline services;
- To provide passengers with access to their accounts via Automated Teller Machines (ATM) at assigned locations throughout the Airport terminals and concourses;
- To provide excellent customer service by operating the Banking Concession with well-trained, efficient, courteous and pleasant staff;
- To provide a Banking Concession with equipment that is reliable, easy to use and well maintained; and
- To be responsive to the Federal Aviation Administration (“**FAA**”) and City goals for Airport Concession Disadvantaged Business Enterprise (“**ACDBE**”) participation in concessions.

WHEREAS, the City has advertised and received bids for the right to develop, manage and operate a Banking Concession at the Airport, and by this process the City has determined that the Concessionaire is a qualified and responsive bidder that submitted the highest and best bid deemed most advantageous to the City for the development, management, and operation of a Banking Concession (“**Concession**”) at the Airport and best meets the City objectives.

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

ARTICLE I
DEFINITIONS AND INTERPRETATIONS

SECTION 101. DEFINITIONS. The following words and phrases have the following meanings:

“**Agreement**” means this document, the contract to be awarded to the Successful Bidder that the City of St. Louis and the Contractor will execute for a Banking Concession.

“**Airport**” means St. Louis Lambert International Airport, together with any additions, improvements, or enlargements made from time to time, which is owned by the City and is operated for the City by the Airport Authority of the City of St. Louis, a department of the City.

“**Aircraft Operations Area**” or “**AOA**” means those areas of the Airport used for the landing, taking-off, movement, and parking of aircraft, as the same now exist or as the same hereafter may be added to, modified, changed, or developed.

“**Airport Concession Disadvantaged Business Enterprise**” or “**ACDBE**” means a concession as defined by 49 CFR Part 23, Subpart A.

“**Airport Properties Division**” means that division of the St. Louis Airport Authority that has as its primary responsibility the administration of all tenants, permittees, concessionaire and other space at the Airport, and is the Concessionaire’s point of contact with the Airport on all issues related to this Agreement.

“**ATM Transaction Fee**” means a fixed percentage of the surcharge for each Foreign ATM Transaction.

“**Authority**” means the City of St. Louis Airport Authority, the City department responsible for managing the Airport.

“**Business Diversity Development**” shall mean the Airport department responsible for administering the ACDBE Program.

“**City**” means The City of St. Louis, Missouri, a constitutional charter city of the State of Missouri and owner and operator of St. Louis Lambert International Airport.

“**Commencement Date**” shall mean the first date of the Term of this Agreement, December 1, 2021.

“**Concessionaire**” as stated in the preamble hereof.

“**Concession Fees**” means a space rental fee of 100% of the annual, square footage rental rate for the Terminal 1 Bank branch **plus** the “ATM Foreign Transaction Fee”.

“**Contract Year**” means a twelve (12) consecutive month period beginning on the Commencement Date, and each twelve (12) month period thereafter during the Term of the Agreement (see Article IV).

“**Days**” or “**days**” shall mean consecutive calendar days unless otherwise expressly provided herein.

“**Director**” means the Director of Airports of the City or the person performing the functions of that office, as authorized by the City’s Mayor, or that person authorized by the Director to act for

or on behalf of the Director with respect to any particular matter under this Permit, and incorporates the granting of approval requirements of Section 1212 hereof.

“Environmental Laws” mean all applicable federal, state, and local statutes, ordinances, regulations, rules, laws, permits, Environmental Permits, permit conditions, and orders relating to the generation, emission, discharge, release, use, storage, transportation, or disposal of pollutants, contaminants, Hazardous Materials, wastes, hazardous substances, or chemicals or the preservation or regulation of the environment or natural resources including, without limitation, the Clean Air Act, 42 U.S.C. §7401 *et seq.*; the Clean Water Act, 33 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. §5101 *et seq.*; the Endangered Species Act, 16 U.S.C. §1531 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §4321 *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. §10101 *et seq.*, as such statutes and laws may be amended from time to time, all regulations, rules, executive orders, policies and instructions pertaining to and lawfully promulgated pursuant to such statute or law as they now exist or may be amended from time to time.

“Environmental Permits” means any and all permits, licenses, approvals, authorizations, consents, or registrations required by Environmental Laws, whether federal, state or local, and any duly filed environmental covenants or land use restrictions applicable to the Airport or the Premises.

“Existing Improvements,” means, without limitation all equipment, fixtures and related installations, and improvements including all appurtenances thereto existing within the Premises as of the Commencement Date and owned by the City.

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

“Expiration Date” means the last day of the Term of the Agreement, as provided for in Section 401 herein.

“Federal Aviation Administration” or **“FAA”** means the Federal Aviation Administration created under the Federal Aviation Act of 1958, as amended, or any successor agency thereto.

“Good Faith Efforts” means 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 requirements.

“Gross Receipts” means the total revenues from all sources and all types at this Airport under the Agreement performed by Concessionaire, its subcontractors, sublessors, 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 services purchased at the Airport;
- Receipts in the form of refunds from or for the value of merchandise, supplies, or equipment returned to shippers, suppliers, or manufacturers;
- Sale or trade-in value of any equipment or fixtures that were sold or transferred from the premises provided the sale or transfer was approved for removal by the Director and equipment or fixture was owned by Concessionaire.
- revenues derived from payments received by Concessionaire for loans made to sublessees, fees charged for services provided sublessees, or other fees assessed by the Concessionaire for the use of Airport facilities for which Concessionaire has a direct lease, so long as the charge is assessed in accordance with this Agreement; and

“Hazardous Materials” means friable asbestos or asbestos-containing materials, polychlorinated biphenyls (“PCB’s”), petroleum, or crude oil or any fraction or derivative thereof, natural gas, source material, special nuclear material, byproducts, pesticides, hazardous waste, toxic substance, or any material defined or treated as hazardous substance, regulated special waste, pollutant or contaminant (or comparable term) under any of the Environmental Laws. The City and Concessionaire stipulate and agree the existence and definition of Hazardous materials shall be construed herein in accordance with all applicable federal, state, City or local laws, statutes or regulations relating to the protection of human health or the environment.

“Insured Parties” means St. Charles County, Missouri; St. Clair County, Illinois; St. Louis County, Missouri; The City of St. Louis; and their respective officers, employees, representatives, and agents.

“Indemnified Parties” means St. Charles County, Missouri; St. Clair County, Illinois; St. Louis County, Missouri; The City of St. Louis; and their respective officers, employees, representatives, and agents.

“Missouri Regional Certification Committee” or **“MRCC”** shall mean the Unified Certification Program established by U.S. Department of Transportation to oversee the Unified Certification Process for the state of Missouri. Principal agencies are: Missouri Department of Transportation, City of Kansas City, Missouri, Kansas City Area Transportation Authority, City of St. Louis - Lambert Airport Authority and Metro Transit - St. Louis.

“New Improvements” means all construction and fixtures built or erected by the Concessionaire during the Term of this Agreement, and forming a part of, and which are permanently affixed or attached to any portion of the City’s real property or Existing Improvements at the Airport.

“Notice” means a communication between parties to this Agreement performed in accordance with the requirements of Article XIV.

“Passenger Facility Charge” or **“PFCs”** means Passenger Facility Charges under 14 CFR Part 158.

“Premises” means a location or locations, including Existing Improvements, described in Section 201, that has or have been designated by City for the sale of Concessionaire’s services and for other uses herein specifically provided for.

“Provisions” means the terms, covenants, conditions, warranties, and specifications of this Agreement.

“Remediation Costs” means any losses, expenses, or costs incurred by the City in connection with environmental remediation: (i) required by the appropriate governmental agency responsible for enforcing applicable Environmental Laws or Environmental Permits, or (ii) attributable to Hazardous Materials left on City property in excess of applicable remediation standards derived by the U.S. Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, the Missouri Department of Natural Resources or other governmental health agency as appropriate for commercial property, safe for occupational exposure or Airport use or which are in violation of applicable Environmental Laws or Environmental Permits, and caused by, or arising out of Lessee’s operations or activities at the Premises or the Lessee’s use of the City’s property. Remediation Costs include without limitation investigation and evaluation costs, costs to implement and administer institutional controls, restrictive covenants, soil management plans or other related reports or studies, 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, 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 caused by or arising out of Lessee’s handling, use, storage, release, disposal, generation, emission or discharge of Hazardous Materials at the Airport including the Premises.

“Removable Fixtures” means all furnishings, equipment, personal property, and proprietary fixtures installed or placed by the Concessionaire within the Premises that are not permanently affixed to any wall, floor or ceiling within the Premises or Existing Improvement, and identified and listed by Concessionaire on its Removable Fixtures list approved by the Director, as provided for in Section 708 of this Agreement.

“Rules and Regulations” means those lawful, reasonable, and not unjustly discriminatory rules and regulations, including ordinances and operating directives, promulgated by the Director, the Airport Commission, or the City from time to time for the orderly operation of the Airport.

“St. Louis Metropolitan Area” means St. Louis City, St. Louis and St. Charles Counties in Missouri and the Illinois Counties of Madison and St. Clair.

“Term” means the entire term of this Agreement, as defined and provided for in Article IV,

Section 401 herein.

“Transportation Security Administration” or **“TSA”** means the Transportation Security Administration created under the Aviation and Transportation Security Act of 2001, as amended, or any successor agency thereto.

SECTION 102. INTERPRETATIONS. References in the text of this Agreement to articles, sections, paragraphs, or exhibits pertain to articles, sections, paragraphs, or exhibits of this Agreement, unless otherwise specified.

1. The terms “hereby,” “herein,” “hereof,” “hereto,” “hereunder,” and any similar terms used in this Agreement refer to this Agreement.
2. Words importing persons shall include firms, associations, partnerships, trusts, corporations, and other legal entities, including public bodies, as well as natural persons.
3. Any headings preceding the text of the articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect.
4. Words importing the singular shall include the plural and vice versa. Words of any gender shall be deemed to include correlative words of the other gender.
5. The term **“including”** shall be construed to mean “including without limitation,” unless otherwise expressly indicated.
6. All references to number of days shall mean calendar days.
7. Words used in the present tense include the future.

ARTICLE II

PREMISES

SECTION 201. PREMISES. City hereby permits the Concessionaire to install, maintain and operate a Banking Concession at locations on Airport property in Terminal 1 (currently 1,083 square feet of branch space and two additional ATM locations) and Terminal 2 (two ATM locations), in accordance with rights granted under Section 301 entitled “Rights”, and as described in **Exhibit “A”** entitled “Premises”, which is attached hereto and made a part hereof. The rights granted in Section 301 hereof must only be exercised within the Premises.

The Director has 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 officers, employees, agents, or representatives. The City without limitation expressly disclaims and negates as to the Premises any implied or expressed warranty of merchantability, 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 or the use or condition of the Premises.

SECTION 202. ACCESS. Subject to the Provisions 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, licensees and invitees.

SECTION 203. RESERVATIONS. The grant of use hereunder is subject to the following reservations and conditions:

- A. Concessionaire shall not exercise the rights granted by this Agreement to Concessionaire in such a way as to interfere with or adversely affect the use, operation, maintenance, expansion or development of the Airport, or with the operation of other tenants or users of the Airport.
- B. The City reserves for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause or allow in said airspace such noise, vibration, fumes, dust, fuel particles, illuminations, interference with television, radio or any other type of transmission and other effects as may be caused in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on or about the Airport.
- C. The City reserves the right to grant utility and maintenance rights-of-way to itself and other over, under, through, across or on the Premises provided that such use will not substantially or materially interfere with Concessionaire’s use of the Premises, and provided further that such reservation or grant of rights shall not directly result in additional cost or expense to Concessionaire.
- D. The City reserves the right (but shall not be obligated to Concessionaire) to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Concessionaire in this regard.
- E. The City reserves the right to further develop or improve the landing area and all publicly-owned air navigation facilities of the Airport as City in its sole and absolute discretion as it sees fit, regardless of the desires or views of the Concessionaire, and without interference or hindrance of any kind.
- F. The City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Concessionaire from erecting, or permitting to be erected, any building or other structure on the Premises or the Airport which sole and absolute opinion of the City would limit the usefulness of the Airport, adversely effects the operations of the Airport or constitute a hazard to aircraft or air navigation.
- G. During the time of war or national emergency the City shall have the right to enter into an agreement with the Government of the United States of America (“**U.S. Government**”) for

use of part of all of the landing area, the publicly-owned air navigation facilities or other areas or facilities of the Airport including the Premises and the rights granted herein. If any such agreement is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the agreement with the U.S. Government, shall be suspended immediately upon receipt written notice from the City.

- H. This Agreement shall become subordinate to provisions of any existing or future agreement between the City and the United States of America or any agency thereof relative to the operation, expansion, improvement, development, or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the operation, expansion, improvement, development or maintenance of the Airport.
- I. The City reserves all gas, oil and mineral rights in and under the soil; provided, however, that the City, in the exercise of such rights, shall not substantially or materially interfere with the surface of the soil or with Concessionaire's use of improvements thereon.

SECTION 204. PREMISES ADJUSTMENTS. If Premises are increased, reduced or changed as provided for in Section 201 of this Agreement, revised exhibits may be substituted for those herein without the necessity to amend this Agreement, which substitution shall be made by notice to Concessionaire from the Director on behalf of the City.

SECTION 205. STORAGE, CLOSET, OFFICE & EMPLOYEE BREAKROOM SPACE. Storage space, closet space, Concessionaire employee break room space or office space are **NOT** included in or provided for as part of this Agreement. If such space is required by the Concessionaire, the Concessionaire will be required to execute a separate agreement for any such space. The Concessionaire shall pay to the City, as compensation for the use of any such storage, closet, break room or office space, the applicable square foot rental rate for Terminal 1 or Terminal 2, and all utilities as determined by the Director. The Concessionaire shall be responsible for the construction (if applicable) and maintenance of such space.

ARTICLE III RIGHTS

SECTION 301. RIGHTS. City hereby grants to Concessionaire, the **Non-Exclusive Right**, license and privilege to operate a Banking Concession at the Airport subject to the Provisions of this Agreement during the Term of this Agreement. The Concessionaire hereby assumes the obligation to design, construct, and to operate, manage, and maintain a Banking Concession and provide the minimum services described in Article VI within the Premises.

SECTION 302. LIMITATION OF RIGHTS. Concessionaire has no right to perform any services or offer for sale any products, or engage in any other business or commercial activity on the Airport except in locations approved under this Agreement. If any services or products, other than those specifically mentioned in Section 301 are offered for sale by Concessionaire, Concessionaire will cease and desist from any further sale thereof immediately and not later than upon receipt of written notice from the Director. This Agreement grants no real or implied rights to any concession privileges at or on the Airport other than in the Premises.

Concessionaire shall not engage in advertising or provide an area for the distribution of

advertisements on behalf of any company other than itself (or the brands which it operates under certain license or franchise agreements). City will be the sole judge 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. Notwithstanding, Concessionaire may advertise and promote its offerings (including special promotions) in an attempt to maximize Foreign ATM Transactions and provide the highest customer satisfaction for Airport passengers (see Section 707 entitled "Signs").

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

The Concessionaire acknowledges, stipulates and agrees that the City reserves the right, at any time during the Term of the Agreement, to enter into other agreements for concepts similar to those in operation at the Airport including those of the Concessionaire.

The use of areas not specifically included in Exhibit "A" must be approved in advance and in writing by the Director (see Section 1430 entitled "Required Approvals").

ARTICLE IV

CONCESSION TERM

SECTION 401. TERM. The "**Term**" of this Agreement will be for four years unless sooner terminated in accordance with other Provisions of this Agreement. The Commencement Date and the Expiration Date shall be:

"Commencement Date": December 1, 2023

"Expiration Date": November 30, 2027

SECTION 402. SURRENDER OF POSSESSION. No notice to quit possession at the expiration date of the Term of this Agreement will 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 a clean, sanitary, and good condition as that existing at the time of Concessionaire's initial entry upon the Premises under this Agreement, reasonable wear and tear (taking into account the improvements, repair and maintenance required to be done by Concessionaire), acts of God, and other casualties excepted, and the City will have the right to take possession of the Premises with or without due process of law (see Section 201 entitled "Premises" and Section 708 entitled "Title to Improvements, equipment and Removable Fixtures").

SECTION 403. HOLDOVER PROVISION. If Concessionaire does, with the prior written approval of the Director, holdover after the expiration of the Term of this Agreement, the resulting tenancy will, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-

month basis. During such month-to-month tenancy, Concessionaire shall pay to City the same Concession Fees as stated for Contract Year Four (4) and other fees and charges as set forth herein, unless different fees are agreed upon in writing by the Director on behalf of the City and the Concessionaire, and both parties will be bound by all the Provisions of this Agreement.

ARTICLE V
FEES AND PAYMENTS

SECTION 501. GENERAL. Concessionaire, for and in consideration of the rights and privileges granted herein, agrees to pay the concession and other fees set forth below in Sections 502, 503, 504, 505, 506, 507, 508, 509, 510, and 511 and the utilities described in Section 804 of this Agreement, without demand during the Term of the Agreement.

SECTION 502. CONCESSION FEE PAYMENTS. Concessionaire warrants, represents, stipulates, and agrees to pay to City a sum as set out below.

- A. The Concessionaire agrees to pay to City a space rental fee of 100% of the annual, Terminal 1 rental rate for the Terminal 1 bank branch for the Premises described in Exhibit “A” (currently 1,083 square feet) x Terminal 1 rental rate (currently \$21.60 per square foot).

Each time the annual Terminal 1 Rental Rate is adjusted by the City, the space rental fee for the Premises will also be adjusted in like manner;

and

- B. An “**ATM Transaction Fee**” consisting of [**TBD BY BID**] % of the surcharge for all Foreign ATM Transactions.

SECTION 503. PAYMENTS. Payments for Section 502, Part A of the Concession fee will consist of a payment as billed, in advance, on or before the first day of each month. Payments for Section 502, Part B consist of the Foreign ATM Transaction Fee applied to the preceding month’s Foreign ATM Transactions to be paid on or before the 15th day of the second month and each succeeding month. See Article V and Article XIII for the amount of any applicable service charge or liquidated damages.

SECTION 504. UNPAID FEES. All unpaid fee payments due the City hereunder will 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 will pay and discharge all costs and expenses including attorney’s fees and litigation costs incurred or expended by the City in collection of said delinquent amounts due, including service charges.

Section 505. REPORTS.

- A. Concessionaire shall submit to the City by the 15th day of the second and each succeeding month of each Contract Year hereof, an accurate statement of Foreign ATM Transaction surcharges. Concessionaire shall document in a manner satisfactory to the Director a report

listing the Foreign ATM Transactions and the 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 Foreign ATM Transaction Fees are due 120 days after completion of the third Contract Year. The City reserves the right to use these statements as a source of information to Bidders in a future Solicitations for Bids or Request for Proposals for this or similar Concessions.

- B. Concessionaire shall submit an audited report of Foreign ATM Transaction Fees within one hundred twenty (120) days following the conclusion of each Contract Year. An independent Certified Public Accountant must prepare these audit reports. The audit reports must at a minimum certify the accuracy of (i) reported total accumulated ATM transactions; and, (ii) the calculation of the total amount payable to the City based upon Foreign ATM Transaction Fees; and (iii) the aggregate amount of goods and services attributable to ACDBE participants. The audit reports must also include a schedule showing the total of actual payments to the City during the Contract Year and must state an opinion as to the correctness of the computation of Foreign ATM Transaction Fees 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, will be deemed to be a default pursuant to Section 1101 (B) (10) herein.
- D. Monthly ACDBE Activity Reports. Concessionaire shall submit to the City by the 15th day following each calendar month an accurate statement of ACDBE utilization. Concessionaire shall document, in a manner satisfactory to the Director, the specifics of all Gross Receipts attributable to ACDBEs in addition to purchases from certified ACDBEs. This statement must be certified as accurate by an officer of the Concessionaire. Concessionaire shall submit monthly ACDBE activity reports to the City in a form approved by the Director.
- E. Joint Venture Activity Reports. If Concessionaire operates as a Joint Venture, Concessionaire is required to submit the following documents, as applicable, to the City in a form approved by the Director by the 15th day following each calendar quarter (April 16th, July 15th, October 15th, and January 15th) or as indicated below:
 - I. A copy of the fully executed Joint Venture agreement in the form submitted to the Airport for approval within thirty (30) days of execution of the Joint Venture agreement or by the Commencement Date of this Agreement, whichever is earlier;
 - II. An advance schedule of management committee meetings (including subcommittees) and minutes of such management committee meetings;
 - III. Joint Venture activity reports by the ACDBE partner(s) and acknowledged by the non-ACDBE partner detailing the activity of the ACDBE partner in relation to its assigned role in the operation and a detailed summary of its activities for the preceding quarter.

Concessionaire must include in the activity reports any activity with regard to capital contributions, loans, loan repayments, etc.;

- IV. Documentation of all capital contributions made by the Joint Venture partners (ACDBE and non-ACDBE), including any promissory notes, within thirty (30) days of occurrence;
 - V. Any proposed amendments to the Joint Venture Agreement to the Business Diversity Development office for review and approval prior to its effective date;
 - VI. Reconciliation of Administrative or Management Fees by the Joint Venture partners annually;
 - VII. Federal tax returns filed by the Joint Venture, including all supporting schedules and K1s within thirty (30) days of filing the return;
 - VIII. An equity statement for each partner in the Joint Venture within thirty (30) days of the Joint Venture's fiscal year end; and
 - IX. Additional information related to the above in order to demonstrate compliance with 49 CFR Part 23 and the FAA's Joint Venture Guidance as may be requested by the City from time to time.
- F. ACDBE Documentation. 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 goal. These records must be retained for a minimum of three (3) years after the termination of this agreement. The City reserves the right to investigate, monitor and/or review records for compliance.”

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 **Fifty thousand dollars (\$50,000.00)** prior to execution of this Agreement. Such bond or other form of security agreed to by the City, must remain in full force and effect throughout the Term of this Agreement and **must extend at least one hundred eighty (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 sixty (60) days prior to expiration date of the expiring bond. Such bond will guarantee the payment of all fees and performance of all other terms, covenants and conditions of this Agreement. The Performance and Payment Bond will be in the form of a standard commercial guaranty bond running to City, written by a surety company authorized to do business in Missouri and (i) having a “Best” key rating of not less than A and with a “Best” Financial Size Category of not less than Class VIII, and (ii) 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 will be kept in full force and effect during the term hereof. City may agree to another form of deposit, which will 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 fifteen (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 FEES. Concessionaire will during the Term hereof make available in the St. Louis area true, accurate, complete and auditable records of all business related to the Foreign ATM transactions conducted by it at the Airport. Concessionaire will make same records available in the St. Louis area for at least three (3) years following the expiration or termination of this Agreement. These records will be accessible during usual business hours to City or its duly appointed agents or auditors. The 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 at the Concessionaire's place of records.

SECTION 509. ADDITIONAL FEES AND CHARGES. Concessionaire will pay additional fees and charges to the City within thirty (30) days of written notice under the following conditions:

- If City has paid any sum or sums or has incurred any obligation or expense for which Concessionaire has agreed to pay or reimburse City, or
- If City is required or elects to pay any sum or sums or incur any obligations or expense because of the failure, neglect or refusal of Concessionaire to perform or fulfill any of the conditions of this Agreement.

Such payments will 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 and charges thereafter due hereunder. Each and every part of such payment will be recoverable by City in the same manner and with like remedies as if it were originally a part of the basic fees and charges as set forth herein.

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

SECTION 510. RIGHT TO AUDIT.

- A. 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 Foreign ATM Transaction Fees hereunder. If the audit reveals a change in Foreign ATM Transaction Fees that results in Concessionaire owing additional Concession Fee Payments, Concessionaire will, within thirty (30) days, remit to the City the additional Concession Fee Payments. If the results of the audit(s) reveal a discrepancy of more than five

percent (5%) between Foreign ATM Transaction Fees reported by Concessionaire and Foreign ATM Transaction Fees determined by the audit, the cost of the audit will be borne by Concessionaire.

- B. If, as a result of an audit by any governmental entity, Concessionaire is required to restate Foreign ATM Transaction Fees as defined herein, Concessionaire will, within thirty (30) days of finalization of the audit, report the change in Foreign ATM Transaction Fees to the Airport. If the change in Foreign ATM Transaction Fees results in Concessionaire owing additional Concession Fee Payments, Concessionaire will, within thirty (30) days, remit to the City the additional Concession Fee Payments.

SECTION 511. NOTICE PLACE AND MANNER OF PAYMENT. Payments will be made at the Office of the Director at the Airport, or at such other place in the City of St. Louis, Missouri as City may hereafter notify Concessionaire and will be made in legal tender of the United States.

SECTION 512. CONDITIONS OF DEFAULT. This Agreement will be considered in default when Concessionaire fails to fulfill any Provision of this Agreement and such default is considered a material breach of this Agreement for which the City at its sole option may terminate this Agreement as provided for in Article XI of this Agreement and such other remedies at law or in equity.

ARTICLE VI

CONCESSIONAIRE'S OPERATIONS

SECTION 601. STANDARDS OF SERVICE. Concessionaire covenants and agrees to meet City's objectives as set out in the preamble hereof. Concessionaire shall furnish a first-class Banking Concession serving the needs of all users of the Airport, and offer prompt and efficient services that are adequate to meet all reasonable demands thereof at the Airport on a fair, equal and nondiscriminatory basis to all categories of users and in a manner that will reflect credit upon Concessionaire and City. Concessionaire shall provide quality services and products and shall equip, organize, put into service and manage efficiently the Banking Concession to provide service with a clean, attractive and pleasant atmosphere.

The Concessionaire will provide, at a minimum, the following Banking services at the Airport:

- i. Full Service bank branch in Terminal 1;
- ii. Loan services (personal and commercial);
- iii. Mortgage services
- iv. ATM services, through ATM locations as described; and
- v. Such other related services as may be agreed upon by Concessionaire and Director.

- A. The concessionaire warrants, represents, covenants and agrees that each customer receives prompt, efficient and courteous service. In conjunction with this requirement, Concessionaire shall ensure that adequate staff is available to provide such service. Concessionaire shall use reasonable efforts to employ an adequate number of bilingual personnel to serve non-English speaking patrons as demand may warrant.

- B. Concessionaire shall provide, as a minimum, the following services at the bank at all times during which the branch is open: savings accounts; checking accounts; loans; change for tenants and the public; night depository; business services; foreign currency; wire transfer; universal gift cards; and ATMs to be filled and operational at all time. (see Exhibit “A” for locations)
- C. Deliveries of supplies, cash, and coin to the Premises must 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, business like and in orderly condition at all times and Concessionaire shall provide for timely disposal of trash and debris at locations designated by the City.
- E. If required by the City, 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 for products offered on or about the Airport.

SECTION 602. HOURS OF OPERATION. Concessionaire agrees to provide banking services to the public 5 days per week, excluding normal banking holidays. The minimum hours of operation for servicing the public are 9:00 a.m. to 4:30 p.m., Monday through Friday. Concessionaire may not change the hours of operation without written request to and written approval of the Director. The Director may require Concessionaire to change its hours of operation to reflect changing operational circumstances at the Airport. The banking facility must be physically secured by Concessionaire during non-banking operation.

SECTION 603. PRICING

- A. The Concessionaire shall charge fair, reasonable and nondiscriminatory prices that are attractive to the public and substantially similar to the prices charged at street locations. For purposes of this Agreement, the term “**Street Location**” means the regular price of the product or service at a non-Airport branch.
- B. The Concessionaire will submit a complete list of all proposed services proposed to be offered and fees 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 branches and require concessionaire to reduce prices based upon its comparison.
- C. Concessionaire has the 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 the Airport with the annual documentation demonstrating that their rates are comparable to those of other local financial institutions.

SECTION 604. PROMOTION AND MARKETING. Concessionaire covenants that it will take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it hereunder. Concessionaire shall not divert, cause, or allow any business to be diverted from the Airport by referral or any other method.

SECTION 605. PERSONNEL.

- A. Concessionaire shall ensure, *at its sole cost and expense*, all employees obtain an Airport-issued ID badge from the Airport Police Department and shall ensure all employees wear and display in an acceptable manner their Airport ID at all times while on Airport property. Employees shall fully comply with all applicable TSA regulations, including Regulation 1542 regarding conduct and access to the AOA.
- B. Concessionaire, *at its cost*, acknowledges and agrees that all employees applying for an Airport ID badge must submit to a fingerprint-based criminal history record check.
- C. 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 or the City. 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.
- D. Concessionaire understands and agrees that fines and penalties may be assessed by the FAA or the TSA for Concessionaire's noncompliance with the Provisions of TSA regulation 1542 as amended or other applicable laws or regulations. Concessionaire shall promptly reimburse the City, within thirty (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.
- E. Concessionaire shall require its employees (except managerial and supervisory employees) to wear company-issued name tags so they may be identified by the public and indicates the fact and nature of their employment. Uniforms will be clean, neat, and worn according to company standards during the entire time the employee is on Airport property.
- F. Concessionaire shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each of whom must be proficient in the duties to be performed in the operation of this Concession.
- G. Concessionaire shall ensure staff and cashiers demonstrate customer service and product knowledge by presenting a pleasant greeting and smile upon customer's arrival, having excellent product knowledge and providing prompt service.
- H. All employees must act in a courteous and helpful manner at all times with customers and fellow employees. Employees are expected to behave in businesslike and professional manner at all times while in uniform and on Airport property.
- I. Concessionaire shall provide proper training of all employees including on-going customer service training and for the certification or licensing of employees in all areas of service as their duties might legally require. The Concessionaire shall participate in the Airport's customer service program.
- J. Concessionaire acknowledges only direct support vehicles and equipment will be allowed on the AOA. Qualifying, direct support vehicles and equipment must be approved by the Airport

Police Department and all drivers must attend Airport-sponsored driver training prior to driving on the AOA, and attend any recurrent driver training required by the Airport.

- K. Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable federal, state, City, and local laws, rules and regulations including, without limitation, the Airport's Rules and Regulations, the Airport's Security Plan and all applicable FAA, TSA, & City security rules, regulations, plans orders, directives, requirements, and procedures.
- L. 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.
- M. City shall provide **One** (1) Short Term Parking Space free of charge on the Red Level of Terminal 1. Additional employee parking will be at *the sole cost and expense* of the Concessionaire.
- N. St. Louis Lambert International Airport is a smoke-free facility. Smoking is permitted only in designated smoking areas.
- O. Concessionaire understands and agrees that fines and penalties may be assessed by the Federal Aviation Administration for Concessionaires noncompliance with the Provisions of 14 CFR 107 (1988) or other applicable law or regulation and agrees to promptly reimburse the City within ten (10) days of the City's written request for any such fines and penalties paid by the City.

SECTION 606. KNOWLEDGE OF AIRPORT. Employees of Concessionaire are expected to be able to assist Airport users with way-finding within the Airport. Concessionaire shall ensure that each of its employees (i) have information regarding the locations of other concessions, restrooms, elevators, airlines, gates, information desks and other facilities within the Airport and provide such information upon request, with courtesy and accuracy, and (ii) have a list of emergency and other important telephone numbers as well as other means through which such employees can respond to customers' requests for information.

SECTION 607. MANAGER. Concessionaire shall at all times retain one or more qualified, competent and experienced managers who will manage and supervise the operations and the facilities and represent and act for Concessionaire. The manager shall ordinarily be available during regular business hours. A responsible subordinate must be in charge and available at all times during the manager's absence.

SECTION 608. CONFLICTS. The Concessionaire shall monitor the movement of its vehicles to minimize conflict with other functions and users of the Airport and shall coordinate its use of the Airport with other users. The Director's decision is final and binding in any conflict between Airport 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 (ATM Transaction Fees) as required by Article V of this Agreement. This system must 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 and / or purchase of goods and services attributable to ACDBE participants.

SECTION 610. TRANSITION PERIOD. During any future transition of the Banking Concession to another concessionaire, if applicable, Concessionaire shall use its best efforts to assure a smooth transition. Concessionaire agrees to closely coordinate the planning and execution of the transition with the Director. Concessionaire shall provide the Director a written "Transition Plan" including any updates or revisions for the Director's review and approval within ten (10) calendar days of the City's request.

SECTION 611. SOLICITING. Except at the ticket counters provided to the Concessionaire at each terminal under this Agreement, Concessionaire may not solicit, in any manner, anywhere on the Airport, except through authorized advertising arranged through the Airport's advertising agent. Concessionaire may not hire or contract with others to solicit for Concessionaire at the Airport. Oral solicitation of business at the ticket counters provided to the Concessionaire under this Agreement will be limited to passenger initiated inquiries for banking services only and Concessionaire shall prohibit and restrain its employees and agents from any loud, boisterous or otherwise objectionable solicitation of business.

SECTION 612. CUSTOMER COMPLAINTS. Concessionaire will establish procedures for handling customer complaints. Concessionaire will respond promptly to every complaint (written, online, or oral) within seven (7) calendar days in writing to the complainant and make a good faith attempt to explain, resolve, or rectify the cause of the complaint. Concessionaire will provide the Director a summary of complaints and responses upon request.

SECTION 613. OPERATION.

- A. Concessionaire shall be responsible for all aspects of the management and operation of this concession. Further, Concessionaire will provide and is 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 Removable Fixtures, New Improvements, or supplies 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 614. COMMUNICATION.

- A. At the Airport Properties Department's discretion, Concessionaire's local manager shall schedule monthly or quarterly meetings with the appropriate representative of the Airport Properties Division and the Business Diversity Office to discuss sales, ACDBE participation and any other relevant issues which may affect Concessionaire's operation at the City. Concessionaire must also be available for meetings at other times as necessary.
- B. Concessionaire is responsible for notifying the Airport Properties Division 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 615. INTERFERENCE TO AIR NAVIGATION. Concessionaire 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 Federal Aviation Administration, will be constructed or permitted to remain on the Premises. Concessionaire will immediately remove any obstructions at its expense. Concessionaire 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 agrees not to install any structures, objects, machinery or equipment that would interfere with operation of navigation aids 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.

SECTION 616. ONSET OF SERVICE. Concessionaire is solely liable and responsible for all costs and expenses pertaining to the design, construction, acquisition, installation, replacement, relocation and maintenance of the New Improvements and Removable Fixtures 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 is 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 users at the Airport.

SECTION 617. PROMOTION. Concessionaire warrants, covenants and agrees that it will 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 Foreign ATM Transactions of Concessionaire under this Agreement will constitute a material breach hereof and cause for the termination of this Agreement by the City.

SECTION 618. 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.

SECTION 619. ENHANCED MEASURES. Concessionaire will timely and promptly comply with any orders and directives (“**Enhanced Measures**”) related to the health and safety of airport users that may be instituted, in any form (directives, Executive Orders, St. Louis County orders, ordinances, etc.). Examples of Enhanced Measures include, but are not necessarily limited to:

1. Enhanced security procedures. Concessionaire acknowledges that it will comply with any enhanced security procedures instituted by the Transportation Security Administration, the FAA, and / or other state and local officials. Examples of these enhances procedures include, but are not necessarily limited to, employee screening procedures, security badging changes, and access control adjustments;
2. Enhanced cleaning procedures. Concessionaire acknowledges that it will comply with any enhanced cleaning procedures instituted by the City, St. Louis County, the state of Missouri, health officials (including the Centers For Disease Control, the City Health Department, the St. Louis County Department of Health, and other federal, state, and

local authorities). Examples of enhanced cleaning procedures include, but are not necessarily limited to, disinfectant cleaning and fogging, pest control, use of approved and recommended cleaning materials and supplies, laundry requirements, and staff health screening / hygiene / personal protective equipment requirements;

3. Enhanced administrative procedures. Concessionaire acknowledges that it will comply with any advanced administrative procedures that may be instituted by the City or federal, state, or local authorities. Examples of enhanced administrative procedures include, but are not necessarily limited to, compliance recordkeeping, work logs, cleaning logs, and other records that the City may deem useful in complying with rules and regulations.
4. Enhanced capacity standards. Concessionaire shall immediately comply with Enhanced Measures related to any reduced or adjusted passenger capacity within its Premises.

ARTICLE VII

IMPROVEMENTS AND ALTERATIONS

SECTION 701. CONSTRUCTION BY CONCESSIONAIRE.

- A. Concessionaire takes the Premises “**AS IS**” as provided for in Article II, Section 201 hereof, and agrees, at Concessionaire’s sole cost and expense, to design, erect, construct, install, replace, Refurbish, equip and furnish all necessary Improvements, Removable Fixtures, equipment, fixtures, and make related facility changes as needed to operate a Banking Concession, pursuant to this Agreement, subject to the Provisions of this Agreement.
- 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 Tenant Construction or Alteration Application (“**TCA**”) including complete construction drawings and specifications, as required by Section 703, to the Airport Properties Department. The TCA shall be submitted along with any future phasing and construction schedules as agreed to between the Concessionaire and the City. Concessionaire also understands and agrees that certain work elements described in its TCA may require separate or additional approval from the City before proceeding with a specific work element. As such, Concessionaire’s ongoing coordination with the City, at all times, is crucial.
 2. Concessionaire shall submit a St. Louis County building permit number not more than thirty (30) days following submission of the TCA to the Airport Properties Department. (A building permit number is required before the TCA can be approved.)
 3. Concessionaire shall submit the contractor’s liability insurance certificates, performance bonds, and payment bonds as required by Sections 704 and 706, to the Airport Properties Department not more than forty-five (45) days following the TCA approval by the Airport Properties Department *and* prior to beginning of work.

4. Concessionaire shall use only City-approved contractors or subcontractors for improvements affecting control and/or programming of Airport systems including but not limited to security access control, fire alarm and detection, HVAC control, closed circuit televisions (CCTVs) and elevators.
5. 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 will 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 will 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, schedules 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, schedules 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 Three Million Dollars (\$3,000,000) as to any one person, and Three Million Dollars (\$3,000,000) as to any one occurrence, and with property damage limits of not less than Three Million Dollars (\$3,000,000) 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 both a Performance Bond **and** a 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 (Missouri Revised Statutes). Copies of the bonds shall be given to the City for approval before work begins. Any sum or sums derived from the Performance Bond and Payment Bond shall be used for the completion of said construction and/or 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 or encumbrance to be attached or 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. CERTIFICATE 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, preferably in an electronic format, within ninety (90) days of completion of any construction project.

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 a Food and Beverage Concession as contemplated hereunder. Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising on 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 the food & beverage concession or place any signs (excluding the facility name – e.g., Burger King) outside of the Premises without the prior written approval of the Director.
- E. As part of the development of any facility, Concessionaire will be required to install an approved blade sign as part of the initial construction.
- F. Handwritten signs are strictly prohibited.
- G. The Director reserves the right to require the removal of any signs or advertising in, on or within the Premises deemed unacceptable or improper, and the Director's decision shall be

final and binding.

SECTION 708. Title to New Improvements and Removable Fixtures. All New Improvements constructed or placed in the Premises by Concessionaire that are not Removable Fixtures, and all alterations, modifications and enlargements thereof will become part of the Premises with title vesting in City upon expiration or earlier termination of this Agreement; subject, however, to Concessionaires obligation to operate, repair, maintain and replace, and its right of possession, use and occupancy during the term and in accordance with the Agreement.

All Removable Fixtures will remain the property of Concessionaire, and will be removed by Concessionaire at date of expiration or termination of this Agreement. Within sixty (60) days of the commencement of the operation in the Premises, Concessionaire shall submit a list of such Removable Fixtures in writing to the Director for the Director of Airports approval, and Concessionaire shall periodically update such list as required.

The City reserves the right, and Concessionaire agrees that the Director may require Concessionaire to promptly and timely remove any or all Removable Fixtures and restore the Premises to an acceptable condition as approved by the Director. Concessionaire agrees to bear all costs of such removals and restorations (see Section 402 entitled "Surrender of Possession"). If after fifteen (15) days following the expiration or early termination of this Agreement, Concessionaire fails to remove its Removable Fixtures from the Premises, the Removable Fixtures may be deemed abandoned. In addition to whatever other rights are available to the City, with prior notification of Concessionaire, the City may: (i) remove and store all or any portion of the Removable Fixtures at Concessionaire's expense, or (ii) take title to, use, sell or otherwise dispose of all or any portion of the Removable Fixtures. If the City takes title to any Removable fixtures or otherwise disposes of the property, the City will be entitled to all proceeds of sale of any Removable Fixtures as liquidated damages for the Concessionaire's breach of its covenant to timely remove its Removable Fixtures.

ARTICLE VIII USE OF PREMISES

SECTION 801. Compliance with Laws and Regulations. Concessionaire shall comply with all applicable Rules and Regulations, the Airport Certification Manual, Airport Security Plans and procedures, and operating directives, environmental plans or program, promulgated or established by the Airport Authority, the Airport Commission, the Director, or the City, as they may be amended from time to time. In addition, Concessionaire shall comply with all statutes, laws, ordinances, orders, judgments, decrees, permits, regulations, environmental plans and programs, Environmental Permits, Environmental Laws, 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. Repairs and Maintenance. Concessionaire will provide and pay for all repairs and maintenance of the Premises, except the following, which will be the responsibility of City:

- A. The structural components of the building.
- B. The utility system to, and within, the Premises, except where the utility systems are owned or controlled by the utility companies.
- C. The washing of the exterior of windows in the terminal building.

Concessionaire will 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:

- A. Perform custodial services daily.
- B. Perform all needed maintenance and repair of the equipment and fixtures provided by Concessionaire, including all Removable Fixtures, as well as New Improvements.
- C. Keep Premises free from all fire and other hazards to persons and property, furnish, and maintain adequate portable fire protection equipment.
- D. Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of Concessionaire or Concessionaire's employees, contractors or agents.
- E. Provide for complete, sanitary handling and disposal of all trash, garbage and refuse (liquid or solid). Concessionaire may not dispose of any such items in the public areas. This 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 at its costs and to abide by these requirements. Concessionaire will inform the Airport Properties Division of its methods of handling and disposal of trash, garbage and refuse.
- F. Confine all handling and holding of Concessionaire's property to the Premises.
- G. Keep all papers and debris picked up daily from the Premises.
- H. Keep Premises free of all pests and provide pest control services as needed.
- I. No storage will be permitted on the exterior areas of the Premises. If the City provides or designates a service for picking up refuse and garbage, Concessionaire will be required to use said service.
- J. If the City establishes a recycling program, the Concessionaire will fully participate in said recycling program. Concessionaire must comply with all applicable City, county, state and federal regulations regarding recycling.
- K. Concessionaire shall break down or cause to break down all cardboard boxes prior to their disposal.
- L. Provide waste receptacles inside the Premises for customer and passenger use.

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 City from any and all claims, losses, damages, or causes of action arising out of the closing of any right-of-way, including, without limitation, any actual, consequential, incidental, or special damages.

SECTION 803. Right to Enter, Inspect and Make Repairs. City and its authorized officers, employees, agents, contractors, subcontractors and other representative have the right (at such times as may be reasonable under the circumstances and with as little interruption of Concessionaire's operations as is reasonably 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 and conditions of this Agreement.
- B. To perform maintenance and make repairs in any case where Concessionaire is obligated, but has failed to do so, after City has given Concessionaire notice so to do, in which event Concessionaire shall reimburse City for the cost thereof plus a charge of 15% for overhead within thirty (30) days of the City's written request.
- 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 and remediation studies and assessments.

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

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

Concessionaire shall pay for all costs of other utilities, including but not limited to deposits; installation costs; connection charges; telephone and data lines it requires; 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.

City is not liable to Concessionaire in damages or losses of any kind whatsoever for the interruption of any utility service, or for any delay in the supplying or furnishing of any utility service, including, without limitation, loss of profit or business, any actual, consequential, incidental, or special damages.

The properties comprising the Airport, including the Concessionaire Premises, are managed by the City and, as such, have been made subject to City Ordinance 66777 by policy directive of the Airport Authority. As applied to the Airport, this policy prohibits the installation of groundwater extraction wells for domestic or agricultural use. The installation of groundwater extraction wells of any kind is subject to pre-approval by the Director, or their designee, including the installation of wells used for groundwater investigation and remedial activities.

ARTICLE IX
INSURANCE, DAMAGE, & INDEMNIFICATION

SECTION 901. INSURANCE.

General. Concessionaire at all times during the term hereof, shall cause the Insured Parties 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 or any prior Agreement both on the Premises and at the Airport.

- A. Risks and Minimum Limits of Coverage. Concessionaire shall procure and maintain the following policies of insurance:
1. Commercial General Liability Commercial General Liability Insurance in an amount not less than Three Million Dollars (\$3,000,000.00) per occurrence, with an annual aggregate limit of not less than Six Million Dollars (\$6,000,000.00).
 2. Automobile Liability Insurance in an amount not less than three million dollars (\$3,000,000.00) 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 seven million dollars (\$7,000,000.00), 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. The Insured Parties 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 Insured Parties for any purpose, and that employees of the Insured Parties 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 including, without limitation, Concessionaire's personal property and Removable Fixtures. 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 (\$50,000.00) 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 form and which covers Concessionaire’s improvements to the Premises including, without limitation, all Improvements, Removable Fixtures, 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 Removable Fixtures and personal property).

B. 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, except those for Workers' Compensation and Employer's Liability shall name St. Charles County, Missouri; St. Clair County, Illinois; St. Louis County, Missouri; The City of St. Louis, Missouri; and their respective officers, employees, representatives, and agents as “additional insureds” on the certificate of insurance, including all renewal certificates, to the extent of Concessionaire’s indemnification obligations hereunder. Inclusion as “additional insureds” is not intended to and shall not make the Insured Parties a partner or joint venturer with Concessionaire in its operations.

The endorsement shall read exactly as follows: “St. Charles County, Missouri; St. Clair County, Illinois; St. Louis County, Missouri; The City of St. Louis, Missouri; and their respective officers, employees, representatives, and agents are additional insured on the General Comprehensive and Automobile Liability portions of the insurance.

The “Certificate Holder” portion should read exactly: “City of St. Louis, Missouri, St. Louis Lambert International Airport, P.O. Box 10212, St. Louis, Missouri 63145.”

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 thirty (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 fifteen percent (15%) administrative charge, from Concessionaire.
 9. Proof of Insurance. Within thirty (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 fifteen (15) 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 fifteen (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.
- C. 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.
- D. 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 twenty-four (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. 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.
- 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 reasonable 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 reasonable 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 (6) months after the date of such damage or destruction, Concessionaire shall have the right, upon giving the City thirty (30) days 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 Local Concept Restaurant Concession at the Airport. In the event certain Premises are deleted from the Agreement, the MAG and any other rental payments will be proportionally reduced, based upon the percentage of Gross Receipts of the deleted Premises compared to total Gross Receipts generated throughout the Airport during the prior twelve (12) month period, to reflect the loss of the Premises.
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 thirty (30) days 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 Local Concept Restaurant Concession at the Airport. In the event certain Premises are deleted from the Agreement, the MAG will be proportionally reduced, based upon the percentage of Gross Receipts of the deleted Premises compared to total Gross Receipt generated throughout the Airport during the prior twelve (12) month period, to reflect the loss of the Premises.

D. 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 reasonable 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. 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, install, reconstruct, or replace its signs, fixtures, equipment, furnishings, Removable Fixtures, New Improvements, and other items provided, constructed, 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 authorized work performed by Concessionaire as agreed to in writing by the City and the Concessionaire. Concessionaire shall be considered to be doing such work on its own behalf and not as a Concessionaire 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 promptly pay the amount of such additional costs to the City.

SECTION 904. Indemnification.

- A. Concessionaire shall defend, indemnify, and hold harmless 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 the Premises or other areas or facilities at the Airport under this or any prior agreement, by Concessionaire its agents, officers, employees, contractors, independent contractors, subconcessionaires, subcontractors, licensees, invitees, and sublessees, including, but not limited to:
- i. the acts or omissions of Concessionaire, its agents, officers, employees, contractors, independent contractors, subcontractors, licensees, invitees, sublessees, or suppliers;
 - ii. Concessionaire's use or occupancy of the Airport, including the Premises; and

- iii. any violation of any Provision of this Agreement by Concessionaire in the conduct of Concessionaire's Food and Beverage Concession, or in its use of its Premises or other areas or facilities at the Airport.

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

- B. 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, under this or any prior agreement, 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 Concessionaire-related receipts. However, 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 reasonably 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.
- C. 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 under this or any prior agreement. 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 Indemnified Parties are 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.
- D. 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 arising from or based in whole or part upon the presence in, or the release into, the environment or the Airport of any Hazardous Materials to the extent caused by, or resulting from, the acts or omissions of Concessionaire or its agents, officers, employees, contractors, independent contractors, sublessees,

invitees, licensees, or suppliers at the Airport whether resulting from negligent conduct or otherwise under this or any prior agreement.

- E. If a prohibited incursion into the Airport Operations Area (AOA) 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, officers, agents, contractors, independent contractors, sublessees, invitees, licensees, 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.
- F. Concessionaire's obligation to defend and indemnify past officers, employees, and agents of the Indemnified Parties 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 Indemnified Parties.
- G. 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.
- H. The duty to defend, indemnify, hold harmless, and reimburse applies to any claim, demands, or suits made against the Indemnified Parties 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 Indemnified Parties harmless, the City shall promptly notify Permittee of such claim and, if Concessionaire does not settle or compromise such claim, then Permittee shall undertake the legal defense of such claim both on behalf of Permittee and on behalf of the Indemnified Parties at Concessionaire's expense; provided, however, that Permittee shall immediately notify City if a conflict between the interests of Concessionaire and City arises during the course of such representation. Permittee 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 therefrom. Nothing in this Article 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.

- I. 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 Section.
- J. Notwithstanding the provisions of this Section, Concessionaire shall have no obligation to defend, indemnify, or hold harmless the Indemnified Parties 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 because, and to the extent, of the gross negligence or willful misconduct of the Indemnified Parties, but only if the Indemnified Parties are conclusively determined to be more than ten percent (10%) liable due to contributory negligence.
- K. 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 is not in any event liable to Concessionaire for:

- A. Any acts or omissions of Concessionaire, its officers, directors, employees, agents, contractors, independent contractors, licensees, sublessees, invitees, or suppliers, or for any conditions resulting from the operations or activities of Concessionaire's directors, officers, employees, agents, contractors, independent contractors, licensees, invitees, sublessees, 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 gross 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 will be entitled within ninety (90) days after written notice thereof to exercise the City's option hereby given to terminate this Agreement no sooner than thirty (30) days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, includes but is not 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 without the express written consent of the City. At least sixty (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 will be subject to the review and written approval of the Director. Such applicable sublease or subcontract, however, must require at a minimum: (i) strict compliance with all Provisions of this Agreement; (ii) a provision that the sublessee or subcontractor will use the facilities solely for the purposes identified in this Agreement; and (iii) a provision ensuring that all concession services are available during the hours of operation required in Section 602 of this Agreement. 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 any fees or payments payable to the City under this Agreement during any such period of change-out or vacancy of a subcontractor or sublessee.

C. No subcontract, sublease or other agreement will be effective as it pertains to the City until such time as the City receives a fully executed copy of its approved, subcontract, sublease or agreement as provided for above. Any such assignment, transfer, or subcontract of services or the subletting of the Premises without the consent of the City, as provided for above, will constitute a default on the part of Concessionaire under this Agreement, and the City may terminate this Agreement as provided for in Section 1103. No action or failure to act on the part of any officer, agent or employee of the City will 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 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, are unpaid after the date the same become due.
- B. If, during the term of this Agreement Concessionaire:
 - 1. Applies for, or consents to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its assets;
 - 2. Files a voluntary petition in bankruptcy, or admits in writing its inability to pay its debts as they come due;
 - 3. Makes a general assignment for the benefit of creditors;
 - 4. Files a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;
 - 5. Files 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 is 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, continues unstayed and in effect for any period of ninety (90) consecutive days;
 - 6. Fails to maintain the quality of services and prices to the satisfaction of the Director as required hereunder;
 - 7. Fails 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. Allows 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 thirty (30) days;
 - 9. Deserts, vacates or discontinues 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. Fails in the performance of any Provision 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 will 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 will 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 will not be deemed a waiver 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 Provisions.

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 has abandoned the Airport for a period of at least ninety (90) days and has 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 has 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 will be effective unless and until not less than thirty (30) days have elapsed after written notice by either party to the other specifying the date and cause of termination. No such termination is effective if the party at default (i) cannot by the nature of the default cure it within such thirty (30) day period, (ii) commences to diligently correct such default within such thirty (30) day period and (iii) corrects such default as is reasonably practicable. Notwithstanding the foregoing, the effective date for termination will be thirty (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 thirty (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 Agreement are not intended to be and are not 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. An ACDBE race conscious participation goal has not been established for this concession opportunity. However, Concessionaires are encouraged to utilize ACDBEs in the work of a contract resulting from this agreement. Credit toward ACDBE participation will only be given for the use of Missouri Regional Certification Committee certified ACDBEs.

- B. If 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 (3) months following the loss of ACDBE participation and continue at intervals of not less than twelve (12) months, or until the ACDBE goal is reached by Concessionaire.

- C. If 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 (3) months following commencement of the Term of this Agreement and continue at intervals of not less than twelve (12) months, or until the ACDBE goal is reached by Concessionaire.

- D. In the event that any ACDBE Sublessee defaults, Concessionaire agrees to immediately take steps to obtain a replacement certified ACDBE through Good Faith Efforts. Notwithstanding, if ACDBE goes over the Personal Net Worth limitation, their participation will still count until the end of the lease term as per FAA/DOT regulations. It is the intent of City to have a certified ACDBE Sublessee replace any ACDBE Sublessee that has defaulted. Replacement ACDBE's must be approved in writing by the Director. If a replacement ACDBE cannot be located, Concessionaire must make good faith efforts to sublease other rights of Concessionaire to secure ACDBE participation. The Director will determine if Concessionaire has made acceptable Good Faith Efforts. Concessionaire must immediately operate in lieu of an ACDBE that has failed to perform due to default of its sublease until such time as a replacement ACDBE sublessee begins operation. The loss of an ACDBE does not relieve Concessionaire of its obligation to maintain the minimum participation goal. The Airport DBE Office will provide Concessionaire assistance in locating ready, willing, able ACDBE firms.

- E. 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.

- F. Concessionaire shall operate its 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 and seek other remedies at law or inequity.
- G. The City will use the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23. The City has available several remedies to enforce the ACDBE requirements contained in its contracts, including but not limited to breach of contract action, pursuant to the terms of the contract. In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the ACDBE program, including, but not limited to the remedies of 49 CFR Part 23, Section 23.11. The City will implement the following additional monitoring and compliance procedures. Operators or contractors will be required to submit quarterly gross receipts earned by ACDBEs. Operators or contractors will be required to submit, for review and approval, a written notification of any material change in the duties, functions and responsibilities of ACDBEs prior to implementing the change. Operators or contractors will be required to list the specific duties, functions and responsibilities that ACDBEs will perform.
- H. The City will perform periodic reviews, including site visits, each year to confirm ACDBEs are performing listed duties, functions and responsibilities. The City will request from Operator any expenditures made with ACDBEs in performing services and supplying goods. Those expenditures will be reported quarterly to the City. The City will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR Part 26, Section 26.107. The City will consider similar action under its own legal authorities, including responsibility determinations in future contracts. The City shall have all remedies available to the City at law or in equity in the event of non-compliance with the ACDBE regulations herein, including but not limited to breach of contract action, pursuant to the term of the contract.

ARTICLE XIII

LIQUIDATED DAMAGES

SECTION 1301. Liquidated Damages. Concessionaire recognizes and hereby agrees and stipulates that the City will lose revenue and 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 one hundred percent (100%). Such liquidated damages will be due and payable by the Concessionaire within thirty (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 in equity. For any defaults or breaches specified in this section with associated liquidated damages, the City agrees to provide 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.

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 Foreign ATM Transactions 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 (e.g. late opening Premises).	\$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 breach of Article V.	\$50.00 per day	\$100.00 per day

If Concessionaire fails to take possession or to open or to reopen the Premises for business, fully fixtured, stocked and staffed within the times herein provided, the City is entitled to (a) collect in addition to the Concession Fee, five hundred dollars (\$500.00) for each and every day or partial day Concessionaire fails to commence to do or carry on business as herein provided; and (b) avail itself of any other remedies for such breach by Concessionaire hereunder as may be available under law or in equity including, without limitation, specific performance.

**ARTICLE XIV
COMPLIANCE WITH ENVIRONMENTAL LAWS**

SECTION 1401. COMPLIANCE WITH ENVIRONMENTAL LAWS. Concessionaire warrants and covenants that in conducting any activities or business on Airport property, including any activities directly related or incidental to its use and occupancy of Premises, Concessionaire shall comply with any and all applicable Environmental Laws including any plans, monitoring, recordkeeping or programs prepared in conformance with Environmental Laws.

Concessionaire further covenants and warrants as follows:

A. Environmental Permits.

1. Concessionaire shall obtain and maintain any and all Environmental Permits required by applicable Environmental Laws to conduct the activities in which Concessionaire engages on the Premises.
2. Concessionaire shall comply with any requirement imposed by an Environmental Permit obtained by the City that is or are applicable to Concessionaire or Concessionaire's activities on the Premises, including any plans, monitoring, recordkeeping or programs prepared in conformance with such Environmental Permits or Environmental Laws; provided however, that the City shall adequately notify Concessionaire of such Environmental Permit and associated requirements, including all applicable deadlines for compliances.
3. The City and Concessionaire shall cooperate to ensure compliance with the terms and conditions of any Environmental Permit, Environmental Law and any associated requirements to ensure safety and to minimize cost of compliance.

B. Duty to Notify City. In the event of any release or threatened release of Hazardous Materials caused, handled, or owned by Concessionaire, its employees, agents, contractors, suppliers, licensees, sublessees, guests or invitees, and which is required by applicable Environmental Laws, Environmental Permits, Rules and Regulations, or any plan or program prepared in response to Environmental Laws, or Environmental Permits to be reported by Concessionaire, whether as a result of negligent conduct or otherwise, at, on, about, or under the Premises under this Agreement or any prior agreement, 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 Environmental Laws or Environmental Permits at the Premises under this Agreement or any prior agreement or which pertains to the release of Hazardous Materials by Concessionaire at the Premises or the Airport under this Agreement or any prior agreement, 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 on or under the Premises, Concessionaire shall simultaneously provide a copy of such notice or report to the City.

- C. Environmental Remediation. Concessionaire shall promptly and timely undertake all necessary steps to remedy and remove at its cost any Hazardous Material, or environmental condition or damage to the extent caused by, or resulting from, the activities, conduct, or presence of Concessionaire or its agents, employees, contractors, independent contractors, sublessees, invitees, licensees, or suppliers at the Premises or Airport, under this or any prior agreement, whether resulting from negligent conduct or otherwise (“**Remediation Work**”). Such Remediation Work must be consistent with remediation standards established by or derived from the appropriated government agency responsible for enforcing Environmental Laws or Environmental Permits. 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, taking into consideration the circumstances, timely and promptly 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 (see Section 403 entitled “Surrender Of Possession”). The City expressly reserves the right to review and approve any proposed: remedial investigations, remedial work plans, interim and final remedies, institutional controls, including environmental covenants, or other associated documents prior to submittal to the relevant governmental agencies responsible for enforcing Environmental Laws or Environmental Permits and prior to recording any instrument on the land title. 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 and be consistent with the commercial use of the Airport, as determined by the governmental agency responsible for enforcing Environmental Laws and Environmental Permits or for establishing cleanup levels. Neither Remediation Work or 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 current and/or future use and enjoyment of its property including the Premises, or that of current and future tenants as defined by the City in its sole determination. The City shall have the right to conduct a reasonable review and inspect all such Remediation Work at any time using consultants and representative of its choice.
- D. 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 this Section 1401. 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 the 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; non-privileged 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 the Subsection to the extent consistent with the City’s legal obligations.

- E. Corrective Action by City. If Concessionaire fails to comply with any applicable Environmental Laws or Environmental Permits governing its activities on the Premises under this or any prior agreement, or if Concessionaire fails to conduct necessary Remediation Work in a timely manner as required under the Provisions of this Agreement or any prior agreement, the City, as may be necessary or required by applicable Environmental Laws, Environmental Permits, and/or Rules or Regulations 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, Environmental Permits, and Rules or Regulations in accordance with this Agreement. All Remediation Costs incurred by the City shall be timely paid or reimbursed by Concessionaire within thirty (30) calendar days of the City's written notice. Subsequent to receipt of the City's notice to perform the Remediation Work, the Concessionaire shall not undertake performance of such Remediation Work without the specific prior authorization from the City. Remediation Work, if necessary, shall be performed in accordance with the provisions of Section 1401.C, but only after first having provided notice to Concessionaire of such failure to comply, and thirty (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 thirty (30) calendar days to complete, the City may enter the Premises and take such reasonable and necessary measures to achieve compliance only upon the Concessionaire's failing to timely begin curing such noncompliance within such thirty (30) day period and to continue diligently working to achieve compliance thereafter.
- F. 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 pertains to the Airport or the Premises under this Agreement or any prior agreement, and which would be discoverable in litigation.
- G. 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 for in this Article XIV shall survive the expiration or early termination of this Agreement.

- H. Pollution Control. In addition to all other requirements of this Agreement, Concessionaire, at its cost, shall manage all its operations at the Premises in compliance with all applicable Environmental Laws, Environmental Permits, and with applicable best management practices outlined and delineated in the Airport's Storm Water Pollution Prevention Plan and Storm Water Management Plan, which shall be provided to Concessionaire at Concessionaire's written request.
- I. Environmental Covenants. So long as they do not materially impact Concessionaire's day-to-day operations at the Premises, Concessionaire will not object to and, if requested by the City, will subordinate any rights it has under this Agreement to an environmental covenant or environmental land use restriction which (i) restricts the use of groundwater underlying the Premises or the Airport; (ii) limits the use of the Premises to nonresidential uses; (iii) reasonably restricts access to soil underlying the Premises or the Airport and/or (iv) any other restrictions required by the City to address the presence of Hazardous Materials at the Premises regardless of when such Hazardous Materials became present at the Premises.

**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 Lambert International Airport
P.O. Box 10212
10701 Lambert International Blvd.
St. Louis, Missouri 63145

With a copy to:

Airport Properties Division Manager
St. Louis Lambert International Airport
P.O. Box 10212
10701 Lambert International Blvd.
St. Louis, Missouri 63145

All notices, demands and requests by the City to Concessionaire shall be sent by certified mail, return receipt requested addressed to:

XXXXXX
XXXXXX
XXXXXX
XXXXXX

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 City in operation and use of St. Louis Lambert International Airport® will not on the grounds of race, creed, color, religion, sex, age, national origin, ancestry or disability, discriminate or Agreement discrimination against any person or group of persons in a manner prohibited by 49 C.F.R. Part 21. Concessionaire agrees that in performing under this Agreement, neither it nor its personal representatives, successors in interest, and assigns, and anyone under its control will permit discrimination against any employee, worker, or applicant for employment because of race, creed, color, religion, sex, age, national origin, ancestry or disability. 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, age, national origin, ancestry or disability. Such action must include, but shall not be limited to action 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.
- B. Concessionaire agrees that in performing under this Agreement, neither it nor anyone under its control will permit discrimination against any employee, worker, or applicant for employment because of race, creed, color, religion, sex, age, national origin, ancestry, or disability. 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, age, national origin, ancestry or disability. Such action must include, but shall not be limited to action 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 Concessionaire state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, age, national origin, ancestry or disability. 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, age, national origin, ancestry or disability.

- D. Concessionaire agrees that should it be determined by Concessionaire or City that it will be unable to conform to its approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, it will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (“CREA”) within ten (10) days of such determination, as to the steps to be taken by Concessionaire to achieve the provisions of its program.
- E. Concessionaire will permit reasonable access by City to such persons, reports, and records as are necessary for the purpose of ascertaining compliance with fair employment practices.
- F. Concessionaire further agrees that these clauses (B through E) 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 it enters into with suppliers of materials or services, contractors and subcontractors, and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.
- G. Whenever Concessionaire is sued by a subcontractor, vendor, individual, group, or association as a result of non-compliance with the clauses (A through F) of these provisions relating to fair employment practices, Concessionaire shall notify the City Counselor in writing of such suit or threatened suit within ten (10) days.
- H. In event of Concessionaire’s noncompliance with nondiscrimination clauses of this Agreement, or to furnish information or permit its books, records and account to be inspected within twenty (20) days from date requested, this Agreement may be canceled, terminated or suspended, in whole or in part, and Concessionaire may be declared ineligible for further City contracts for a period of one (1) year by option of City, provided, further, if this Agreement is canceled, terminated or suspended for failure to comply with fair employment practices, Concessionaire shall have no claims for any damages or loss of any kind whatsoever against City.
- I. Concessionaire will establish and maintain during the Term of this Agreement an affirmative action program, and 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.
- J. 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, national origin, sex, religion, age or disability 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 suborganizations provide assurances to the City that they similarly will undertake

affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

- K. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulation, 49 CFR Part 23. Concessionaire hereby agrees that its Premises shall be posted to such effect as required by such regulation. The Concessionaire or contractor agrees that it will not discriminate against any business owner because of owner's race, creed, color, religion, national origin, ancestry, sex, age or disability 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.
- L. 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 causes those businesses to similarly include the statement in further agreements.
- M. Concessionaire shall comply with all applicable nondiscriminatory requirements that may be imposed pursuant to the Federal Aviation Act of 1958, as amended; Title VI of the Civil Rights Act of 1964, as amended; 49 C.F.R. Parts 21, 23, and 26, as said regulations may be amended; and state and local laws.

SECTION 1503. NO PERSONAL LIABILITY. No alderman, commissioner, director, officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any Provision of this Agreement or because of any breach hereof or because of its or their execution of this Agreement. Any administrative complaint brought against the City relating to any aspect of this agreement shall be brought against the City and not against named individual respondents.

SECTION 1504. FORCE MAJEURE. Neither party hereto shall be liable to the other for any failure, delay, or interruption in performing its obligations hereunder due to acts, events or conditions beyond its control, including acts of God, weather conditions, shortages of energy or materials, embargoes, riots, rebellions, sabotage, acts of a public enemy, war, terrorism, insurrection, strikes, boycotts, picketing, slow-downs, work stoppages or other labor actions affecting the rights or obligations of the City or Concessionaire hereunder, their respective licensees, contractors or subcontractors, except to the extent that such failure, delay or interruption directly or indirectly results from failure on the part of the City or Concessionaire to use reasonable care to prevent, or make reasonable efforts to cure, such failure, delay or interruption; provided, however, that, except as herein specifically provided, nothing in this Section is intended or shall be construed to abate, postpone or in any respect diminish Concessionaire's obligations to make any payments due to the City pursuant to this Agreement. The City shall be under no obligation to supply any service if and to the extent and during any period that the supplying of any such service or the use of any component necessary therefore shall be prohibited or rationed by any law, ordinance, rule, regulation, requirement, order or directive of any federal, state, county or municipal government having jurisdiction.

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. This provision shall not constitute a waiver of any conditions regarding the assignment or subletting contained in this Agreement. Notwithstanding any other term or provision of this Agreement, the City may assign this Agreement at its sole discretion by providing Notice to Concessionaire as described in Section 1501 herein.

SECTION 1506. QUIET ENJOYMENT. Subject to the Provisions of this Agreement, the City covenants that Concessionaire, on paying the fees and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable use of the Premises.

SECTION 1507. OPERATIONS 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 OF AMERICA. This Agreement shall be subordinate to the provisions of any existing or future agreements between the City and the United States Government or governmental authority, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the granting of federal funds or the approval to impose or use Passenger Facility Charges (“PFCs”) for the improvement or development of the Airport. Concessionaire shall not cause the City to violate any assurance made by the City to the United States Government in connection with the granting of such federal funds or the approval of such PFC’s. All Provisions of this Agreement shall be subordinate to the rights of the United States of America to operate all of the Airport or any part thereof during time of war or national emergency. Such rights shall supersede and Provisions of this Agreement inconsistent with the operation of the Airport by the United States of America.

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 Agreement, Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the Provisions 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 AND FORUM SELECTION. This Agreement is made and entered into in the State of Missouri, and Missouri law shall govern and apply to this Agreement. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall be brought only in a federal or state court in the City of St. Louis, Missouri. Concessionaire and the City hereby admit and consent to the jurisdiction and venue of such courts. The Provisions of this section shall survive the expiration or termination of this Agreement.

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 Provisions hereof or the interpretation or construction thereof.

SECTION 1513. AMENDMENTS. Unless otherwise expressly provided herein, this Agreement may not be changed, modified, or amended except by written amendment duly executed by the parties hereto.

SECTION 1514. PREVIOUS AGREEMENTS. It is expressly understood that the Provisions of this Agreement shall in no way affect or impair the Provisions or obligations or rights of any existing or prior agreements 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. In taking such actions, the Director shall act reasonably, and take into consideration the best interest of the City, the Airport, and travel public. The City and Concessionaire agree that extensions of time for performance may be made by the written mutual consent of the Director, on behalf of the City, 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, conditioned, or withheld.

SECTION 1516. WAIVERS. No Provision of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor shall any custom or practice that may evolve between the parties in the administration of the Provisions of this Agreement be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the Provisions of this Agreement.

SECTION 1517. INVALID PROVISIONS. If any Provision in this Agreement is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, or conclusively determined to be inconsistent with federal law or FAA grant assurances, such Provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other Provisions of this Agreement shall remain in full force and effect provided that

the striking of such Provision does not materially prejudice either the City or Concessionaire in its respective rights and obligations contained in the valid Provisions of this Agreement.

SECTION 1518. ENTIRE AGREEMENT. This Agreement, together with all exhibits attached hereto and/or incorporated by reference herein, constitutes or embodies the entire Agreement between the parties hereto relating to the subject matter hereof, and supersedes all prior agreements and understandings, written or oral, express or implied, between the City and the Concessionaire.

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 expressly 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, sublessee 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 subject to and shall be in accordance with City Ordinance No. 62124, as may be amended from time to time.

SECTION 1523. AMERICANS WITH DISABILITIES ACT (“ADA”). Concessionaire shall be responsible for compliance with the federal ADA, and any federal, state, or local laws or regulations and City Ordinances pertaining to the disabled individual having access to Concessionaire’s services.

SECTION 1524. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement. The parties expressly agree that time shall be of the essence in the performance of each and every obligation and condition of this Agreement. Failure by a party to complete performance within the time specified, or within a reasonable time if not time is specified herein, shall relieve the other party, without liability, of any obligation to accept such performance.

SECTION 1525. ACKNOWLEDGEMENT OF TERMS AND CONDITIONS. The parties affirm each has full knowledge of the Provisions contained in this Agreement. As such, the Provisions 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 1526. 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 thirty (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 1527. LIVING WAGE COMPLIANCE PROVISIONS. This Agreement is subject to the St. Louis Living Wage Ordinance No. 65597 ("**Ordinance**") and the "**Regulations**" associated therewith, as may be amended from time to time. Copies of Ordinance and Regulations may be obtained by contacting Assistant Airport Director, Business Diversity Development Office, P. O. Box 10212, St. Louis, Missouri, 63145-0212 and are incorporated herein by reference. The Ordinance and Regulations require the following compliance measures, and Concessionaire hereby warrants, represents, stipulates and agrees to comply with these measures (unless expressly exempt as provided for in the Ordinance and Regulations):

- A. **Minimum Compensation:** Concessionaire hereby agrees to pay an initial hourly wage to each employee performing services related to this Agreement in an amount no less than the amount stated on the attached Living Wage Bulletin (**Exhibit "B"**), which is incorporated herein. The initial rate shall be adjusted each year no later than April 1, and Concessionaire hereby agrees to adjust the initial hourly rate to the adjusted rate specified in the Living Wage Bulletin at the time the Living Wage Bulletin is issued.
- B. **Notification:** Concessionaire shall provide the Living Wage Bulletin to all employees, together with a "Notice of Coverage", in English, Spanish and other languages spoken by a significant number of Concessionaire's employees within thirty (30) days of Agreement execution for existing employees and within thirty (30) days of employment for new employees.
- C. **Posting:** Concessionaire shall post the Living Wage Bulletin, together with a "Notice of Coverage", in English, Spanish and other languages spoken by a significant number of Concessionaire's employees, in a prominent place in a communal area of each worksite covered by the Agreement.
- D. **Subcontractors and Sublessees:** Concessionaire hereby agrees to require Subcontractors and Sublessees, as defined in the Regulations, to comply with the requirements of the Living Wage Regulations, and hereby agrees to be responsible for the compliance of such Subcontractors and Sublessees. Concessionaire shall include these Living Wage Compliance Provisions in any contract with such Subcontractors and Sublessees.

- E. Term of Compliance: Concessionaire hereby agrees to comply with these Living Wage Compliance Provisions and with the Regulations for the entire term of the Agreement, and to submit the reports required by the Regulations for each calendar year or portion thereof during which such Agreement is in effect.
- F. Reporting: Concessionaire shall provide the annual reports and attachments required by the Ordinance and Regulations.
- G. Penalties: Concessionaire acknowledges and agrees that failure to comply with any provision of the Ordinance and/or Regulations and/or providing false information may result in the imposition of penalties specified in the Ordinance and/or Regulations. These penalties, as provided in the Ordinance and Regulations, may include, without limitation, suspension or termination of the Agreement, disbarment, and/or the payment of liquidated damages, as provided in the Ordinance and Regulations.
- H. Concessionaire hereby acknowledges receipt of a copy of the Ordinance and Regulations.

SECTION 1528. SURVIVAL OF WARRANTIES. All warranties and covenants set forth in this Agreement shall survive the execution and performance of this Agreement.

SECTION 1529. CITY'S RIGHT AND REMEDIES ARE CUMMULATIVE. All rights and remedies of the City as provided for herein and under law are cumulative in nature.

SECTION 1530. FAA NON-DISCRIMINATION. The Concessionaire for itself, personal representatives, successor in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

- A. in the event facilities, structures or improvements are constructed, maintained, or otherwise operated on the Premises for a purpose for which a FAA activity, facility or program is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations such that no person on the grounds of race, color, or national origin, will be excluded from participating in, denied the benefits of, or otherwise subjected to discrimination in the use of the Premises;
- B. no person on the ground of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of the Premises or the facilities, structures or improvements within the Premises;
- C. in the construction of any improvements on, over, or under the Premises, and the furnishing of services thereon, no person on the ground of race, color, or national origin will be excluded from participation, denied the benefits of, or otherwise be subject to discrimination,
- D. the Concessionaire will use the Premises or facilities, structures, or improvements within the Premises in compliance with the Acts and Regulations; and

E. for purposes of this Section 1503, references to “Acts or Regulations” will mean or include the following statutory and regulatory cites, as may be amended from time to time:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 - 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38; (also see 49 CFR Part 27 and 28 CFR Parts 35 and 36);
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination

includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

SECTION 1531. BINDING CONTRACT; COUNTERPARTS; FACSIMILE SIGNATURES.

This Agreement will become effective and binding only upon the execution and delivery hereof by the City and Concessionaire. This Agreement and any companion document or instruments referred to herein, may be executed in any number of counterparts, each of which will be original, but all of which together will constitute one document or instrument, and it will constitute sufficient proof of this Agreement to present any copy, electronic copies or facsimiles signed by the parties hereto.

SECTION 1532. EXHIBITS. Amended or adjusted exhibits may be substituted for the exhibits herein without the necessity to amend this Agreement, which substitution will be made by Notice provided for in Section 1501.

(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 ST. LOUIS LAMBERT INTERNATIONAL AIRPORT pursuant to City Ordinance # _____ approved the _____ day of _____, 2023:

The foregoing Agreement was approved by the Airport Commission at its meeting on the _____ day of _____, 2023.

BY:

Director of Airports

Date

The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on the _____ day of _____, 2023.

BY:

Secretary,
Board of Estimate and Apportionment

Date

APPROVED AS TO FORM ONLY BY:

COUNTERSIGNED BY:

City Counselor

Date

Comptroller

Date

ATTESTED TO BY:

Register

Date

EXHIBIT “A”

PREMISES

EXHIBIT “B”

LIVING WAGE BULLETIN

ST. LOUIS LIVING WAGE ORDINANCE

LIVING WAGE ADJUSTMENT BULLETIN

NOTICE OF ST. LOUIS LIVING WAGE RATES
EFFECTIVE APRIL 1, 2022

In accordance with Ordinance No. 65597, the St. Louis Living Wage Ordinance (“Ordinance”) and the Regulations associated therewith, the City Compliance Official for the City of St. Louis has determined that the following living wage rates are now in effect for employees of covered contracts:

- 1) Where health benefits as defined in the Ordinance are provided to the employee, the living wage rate is **\$14.39** per hour (130% of the federal poverty level income guideline for a family of three); and
- 2) Where health benefits as defined in the Ordinance are **not** provided to the employee, the living wage rate is **\$18.99** per hour (130% of the federal poverty level income guideline for a family of three, plus fringe benefit rates as defined in the Ordinance).
- 3) Wages required under Chapter 6.20 of the Revised Code of the City of St. Louis: **\$4.60** per hour.

These rates are based upon federal poverty level income guidelines as defined in the Ordinance and these rates are effective as of APRIL 1, 2022. These rates will be further adjusted periodically when the federal poverty level income guideline is adjusted by the U.S. Department of Health and Human Services or pursuant to Chapter 6.20 of the Revised Code of the City of St. Louis.

The Ordinance applies to employers who are covered by the Ordinance as defined in the Ordinance, where the contract or grant is entered into or renewed after the effective date of the Ordinance, which is November 3, 2002. A copy of the Ordinance may be viewed online at <https://www.flystl.com/business/business-diversity-development-1/living-wage> or obtained from:

City Compliance Official
c/o St. Louis Airport Authority
St. Louis, Missouri
(314) 426-8111