



May 23, 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 an **ON AIRPORT RENTAL CAR 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., CENTRAL STANDARD TIME, AUGUST 1, 2023**. An original and three (3) fully complete copies of your Bid must be submitted

An OPTIONAL Pre-Bid Conference is scheduled for JUNE 16, 2023 at 10:00 AM CST in the Airport Director’s Conference Room, Terminal 1 Mid Level, St. Louis Lambert International Airport®. A Good Faith Efforts Presentation hosted by the Airport’s Business Diversity Development Office will follow immediately thereafter.

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

All inquiries regarding this SFB should be directed to Christina R. Lacey, Airport Properties Division Specialist, at (314) 426-8189 or crlacey@flystl.com.

Sincerely,

Robert C. Salarano

Robert C. Salarano, CM
Airport Properties Division Manager

SOLICITATION FOR BIDS
ON AIRPORT RENTAL CAR CONCESSION
ST. LOUIS LAMBERT INTERNATIONAL AIRPORT
ST. LOUIS, MISSOURI

May 23, 2023

INDEX

INSTRUCTIONS TO BIDDERSPages I-1 through I-24

APPENDIX “A” (“BID”)Pages A-1 through A-13

ATTACHMENT 1 4 Pages
Bid Checklist & ACDBE Bid Checklist

ATTACHMENT 2 6 Pages
ACDBE Joint Venture Documentation Forms

ATTACHMENT 3 3 Pages
ACDBE Utilization Documents

ATTACHMENT 4 5 Pages
ACDBE Good Faith Efforts Procedure and Documentation Forms

ATTACHMENT 5 1 Page
Living Wage Acknowledgement & Acceptance Declaration

APPENDIX “B” (“Agreement”) Pages 1-58 and
attached

Exhibit’s “A” & “B”

SOLICITATION FOR BIDS

INSTRUCTIONS TO BIDDERS

ON AIRPORT RENTAL CAR 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 management and operation of a non-exclusive ON AIRPORT RENTAL CAR CONCESSION for St. Louis Lambert International Airport. This Solicitation For Bids (“SFB”) contains Concession Premises as more fully described in Section 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.

A Pre-Bid Conference is scheduled for JUNE 16, 2023 at 10:00 AM CST in the Airport Director’s Conference Room, Terminal 1 Mid Level, St. Louis Lambert International Airport®.

An original and three (3) fully complete copies of the Bid including ATTACHMENTS 3, 4, and 5 and the items on the Bid Checklist 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

The words "**BID FOR ON AIRPORT RENTAL CAR CONCESSION**" must be plainly written across the left-end face of the envelope. The name and address of the Bidder must also appear on the face of the envelope. Bids must be received by **2:00 PM, LOCAL TIME, AUGUST 1, 2023**.

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 up to **eight (8)** Concessionaires that will provide a high quality ON AIRPORT RENTAL CAR CONCESSION service to the traveling public, Airport employees and other Airport users on a **non-exclusive basis**. To accomplish this goal, the Authority has established the following objectives for this SFB which must be met by the successful Bidder(s):

- Provide a first-class, full-service ON AIRPORT RENTAL CAR CONCESSION that meets Airport user needs and adds value to other Airport and airline services;
- Provide a high level of service at prices that are attractive to Airport users and competitive with non-Airport Rental Car branches;
- Provide excellent customer service by operating the ON AIRPORT RENTAL CAR CONCESSION with well-trained, efficient, courteous and pleasant staff;
- Operate an efficient shuttle system to facilitate customer transportation;
- 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 up to eight (8) ON AIRPORT RENTAL CAR CONCESSION Agreement to qualified and responsive Bidders submitting the highest and best Bids. The Agreement term shall be five (5) years, commencing on January 1, 2024.

The offering consists of Premises at the Airport as shown in EXHIBIT A of the Agreement. The spaces will be delivered to the Concessionaire “**AS-IS**”. Concessionaire, at its own expense, will be responsible for any design, construction and fixtures which may be necessary to conduct an ON AIRPORT RENTAL CAR CONCESSION.

The successful Bidders shall be required to operate shuttle bus service from assigned pick-up/drop-off areas (Premises) near Terminal 1 and Terminal 2 to their off-airport ready/return areas. Shuttle dwell times, weight and height restrictions, etc., shall be defined in the Agreement and/or the Airport’s Ground Transportation Rules and Regulations.

The successful Bidders shall pay Concession Fees to the City as set forth in **Article V of the Agreement**. The Concession Fees shall be a sum equal to the greater of the Minimum Annual Guarantee (“**MAG**”) or the Percentage Fee Rate of Ten Percent (10%), as applied to Gross Receipts per Contract Year. **The MAG bid for any Contract Year may not be less than \$250,000.00 (see Instructions To Bidders Section 12.E).**

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 of **five (5) Contract Years, commencing on January 1, 2024** (see Article IV, Section 401 entitled "Term" of Appendix "B" entitled "Agreement").

B. Concession Fees.

The successful Bidder shall pay to the City for each Contract Year during the Term of the Agreement, a sum equal to the greater of the Minimum Annual Guarantee ("MAG") Payment and/or Percentage Rate of **Ten Percent (10%)**, as applied to Gross Receipts.

Bidders shall bid the following:

- **The Minimum Annual Guarantee (MAG)** for Contract Year One (1), Contract Year Two (2), Contract Year Three (3), Contract Year Four (4), and Contract Year Five (5) of the Agreement, with the Bid Item being the **Total Five Year MAG Amount**.

Note

- **The Minimum Annual Guarantee (MAG) bid for any Contract Year during the Concession Period may not be less than Two Hundred and Fifty Thousand Dollars (\$250,000)** (see Section 11 entitled "Disqualifications Of Bidders" and Section 12 entitled "Basis For Award" of the Instructions To Bidders).

The successful Bidder shall pay the MAG in equal monthly installments beginning on the first day of the Concession Period of the Agreement, as more fully described in Article V, Section 502 and Section 503 of the agreement.

During the Term of the Concession Agreement, the MAG may be reduced under certain circumstances to reflect changes in airport conditions, as more fully described in Article V, Section 513 of the Agreement.

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

A **Three point Five Two Percent (3.52%)** goal for ACDBE participation has been established for the Concession. For more specific information regarding ACDBE participation, refer to **Section 22** of the Instructions To Bidders and **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.

1. Curbside Passenger Pick-Up/Drop-Off Spaces. The Airport Properties Division shall allow qualified and responsive Bidders to choose curbside passenger pick-up/drop-off spaces on the roadways **in order of final Bid ranking**.
 - a. Terminal 1. The highest and second highest ranked Bidder shall each choose two adjacent curbside passenger pick-up/drop-off spaces on the Terminal 1 roadway. The next six ranked Bidders shall each choose one curbside passenger pick-up/drop-off space on the Terminal 1 roadway, in order of final bid rank.
 - b. Terminal 2. Each Bidder shall be allowed to choose one curbside passenger pick-up/drop-off space on the Terminal 2 roadway. See EXHIBIT A of the Agreement for curbside passenger pick-up/drop-off locations.

Bidders acknowledge that curbside assignments are subject to ongoing adjustment and reassignment by the City.

2. Ready/Return Area. The City will not provide a ready/return area to the successful Bidders. The successful Bidders will be solely responsible for securing ready/return areas off-Airport to meet their operational needs.
3. Service Area. The City will not provide a service area to the successful Bidders. The successful Bidders will be solely responsible for securing service areas off-Airport to meet their operational needs.
4. Counter Area. No counter space is included in the Premises.
 - a. Successful Bidders shall receive the Premises "**AS-IS.**"
 - b. 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.
 - c. 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 the Premises any implies or expressed warranty or 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 and/or the use or condition of the Premises. Concessionaire, at its own expense, will be responsible for any and all modifications, including but not limited to design and construction of Improvements and /or Removable Fixtures necessary to meet their operational needs.

5. Employee Parking

All 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.

6. Manager

Each 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”).

7. Storage Space, Counter Space, Closet Space, Break Room Space and Office Space

Storage space, counter 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.

G. 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”.

H. Performance and Payment Bond

The successful Bidder must provide both a Performance and Payment Bond in the **principal amount equal to (30%) of the Contract Year Five (5) MAG** 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** ON AIRPORT RENTAL CAR 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:**

Christina R. Lacey
Airport Properties Division
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 crlacey@flystl.com "ON AIRPORT RENTAL CAR CONCESSION" should be placed in the e-mail subject line.

All requests for revisions must be received by **4:30PM, CENTRAL TIME JUNE 30, 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/business/contract-opportunities>

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 rental car business in an airport environment business of the nature contemplated in this SFB at St. Louis Lambert International Airport or another airport with similar passenger volume.
2. Bidder has successfully managed and operated a full-service rental car business in an airport environment business of the nature contemplated in this SFB at St. Louis Lambert International Airport or another airport with similar passenger volume, for at least the last three (3) consecutive years.

B. Financial Stability:

1. Bidder has been financially responsible in managing and operating full-service rental car business in an airport environment business of the nature contemplated in this SFB at

St. Louis Lambert International Airport or another airport with similar passenger volume, for at least the last three (3) consecutive years.

2. Bidder demonstrates that he/she can raise the capital to provide any needed staff and vehicle stock to operate the contemplated 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 PM, LOCAL TIME, JULY 12, 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:

Robert C. Salarano
Airport Properties Division Manager

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

The words "**BID FOR ON AIRPORT RENTAL CAR CONCESSION**" must be plainly written across the left-end face of the envelope. The name and address of the Bidder must also appear on the face of the envelope. Bids must be received by **2:00PM, CENTRAL STANDARD TIME, AUGUST 1, 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.**

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 **Twenty Five Thousand Dollars (\$25,000)** 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 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 a Pre-Bid Conference on JUNE 16, 2023 at 10:00 AM CST, in the Airport Director's Conference Room, Terminal 1 Mid Level, St Louis Lambert International Airport (in the Airport Administrative Offices).

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/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.

Please RSVP to the Pre Bid Meeting by contacting Christina R. Lacey, crlacey@flystl.com.

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.

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:

Christina R. Lacey
Airport Properties Division
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 crlacey@flystl.com.

All questions must be received, **in writing**, prior to **4:30PM CST, JUNE 30, 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.

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 ON AIRPORT RENTAL CAR 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 Minimum Annual Guarantee (MAG) for any Contract Year of less than Two Hundred and Fifty Thousand Dollars (\$250,000.00).**
- F. **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 Agreements to be awarded under this SFB and approval of Bidders' final Bid rankings will be made by the Airport Commission for up to eight (8) Bidders which the Airport Commission determines, at its sole discretion, to be responsive and qualified Bidders that submitted the highest and best Bids, which are determined to be the most advantageous to the City for the development, management and operation of a first-class ON AIRPORT CAR RENTAL CONCESSION at the Airport (see **Section 2** entitled "Airport Objectives" and **Section 5** entitled "Bidder's Qualifications" of the Instructions).

The Airport shall rank all qualified and responsive Bidders based on the above factors and any additional criteria the Airport deems relevant to developing, managing and operating a first-class ON AIRPORT CAR RENTAL CONCESSION. Upon determination of final Bid rankings, the successful Bidders shall be assigned curbside passenger pick-up/drop-off spaces in order of ranking. (See Section 3F, entitled "Premises" of the Instructions.)

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, recommended by the Airport Properties Department, must be approved by the Airport Commission, and the City's Board of Estimate and Apportionment.

The "Bid Item" shall be:

- **The sum of the Minimum Annual Guarantee (MAG) for Contract Year One (1), Contract Year Two (2), Contract Year Three (3), Contract Year Four (4), and Contract Year Five (5).**

Note

- **The Minimum Annual Guarantee (MAG) bid for any Contract Year during the Concession Period may not be less than Two Hundred and Fifty Thousand Dollars (\$250,000) (see Section 11 entitled "Disqualifications Of Bidders" and Section 12 entitled "Basis For Award" of the Instructions To Bidders).**

The successful Bidder shall pay the MAG in equal monthly installments beginning on the first day of the Concession Period of the Agreement, as more fully described in Article V, Section 502 and Section 503 of the agreement.

During the Term of the Concession Agreement, the MAG may be reduced under certain circumstances to reflect changes in airport conditions, as more fully described in Article V, Section 513 of the Agreement.

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

Bidders are hereby informed that the Bid Item (Minimum Annual Guarantee) 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 ON AIRPORT RENTAL CAR 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.

The City, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

13. EQUAL OPPORTUNITY IN EMPLOYMENT

The Bidder(s) shall comply with the City's requirement for an affirmative action program 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

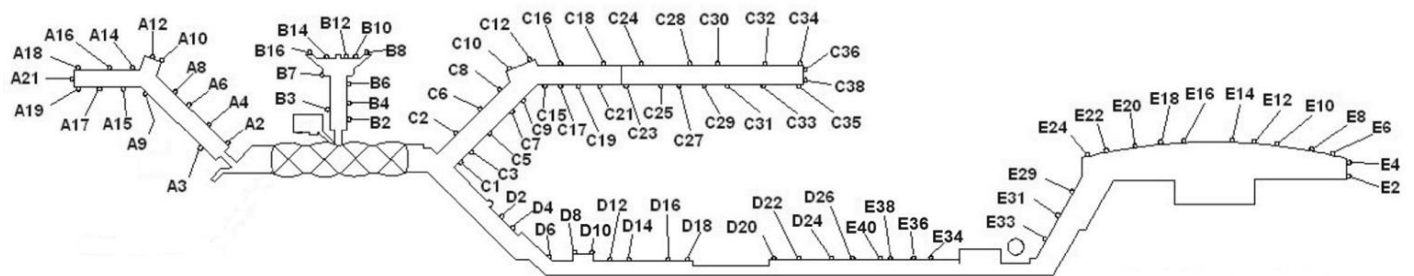
If the successful Bidder refuses or neglects to execute an Agreement or fails to furnish the required certificate of insurance and Performance and Payment Bond or other documents required by the City within fifteen (15) calendar days of the City's notice that the Bidder has been selected as the successful 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

St. Louis Lambert International 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 36th busiest airport in the U.S. by Airport Council International-North America (passenger traffic). Serving over 10.0 million passengers in 2021, the Airport supports eleven (11) 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

17. EXISTING AIRLINE INFORMATION



Terminal 1

A Concourse

<i>Airline</i>	<i>Gate</i>
<i>Air Canada</i>	<i>Gate A 17</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>

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 (ends service July 31, 2023)</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 Air 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>

18. PASSENGER ENPLANEMENT INFORMATION

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

Enplaned Passengers by Terminal

<i>Year</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>2022</i>
<i>Terminal 1 Total</i>	<i>3,158,826</i>	<i>1,137,532</i>	<i>2,166,439</i>	<i>2,678,191</i>
<i>Terminal 2 Total</i>	<i>4,788,160</i>	<i>1,972,289</i>	<i>3,008,755</i>	<i>4,151,260</i>
<i>Grand Total</i>	<i>7,946,986</i>	<i>3,109,821</i>	<i>5,175,194</i>	<i>6,829,451</i>

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

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

19. AIRPORT BUSINESS ENVIRONMENT

Prospective Bidders 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. To accommodate passengers and capture this additional business, concessionaires must be able to monitor flight delays and other irregular operations.
- 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 ON AIRPORT RENTAL CAR 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. **The ACDBE goal for the Agreement is Three point Five Two Percent (3.52%). The goal will be measured as a percentage of total Gross Receipts.** This goal remains in effect throughout the Term of the Agreement. Bidders shall take all necessary and reasonable steps to achieve this goal. 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, WEDNESDAY JULY 12, 2023**, and **should be submitted directly to the Airport's Business Diversity Development Office.**

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

(Bidders should contact the BDD Office for the exact office location)

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 ON AIRPORT RENTAL CAR CONCESSION 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 604.B entitled "Personnel" of Appendix "B" entitled "Agreement").

C. Airport ID Badges. If required, 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 604.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 604.L 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

- A. 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

- B. The Ordinance and Regulations require the following compliance measures, and Proposer hereby agrees to comply with these measures:
1. **Minimum Compensation:** Proposer hereby agrees to pay an initial hourly wage to each employee performing services related to the Agreement in an amount no less than the amount stated on the attached Living Wage Bulletin (See Attachment 5, attached and incorporated herein). The initial rate shall be adjusted each year no later than April 1, and Proposer 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.
 2. **Notification:** Proposer 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 the Consultant’s employees within thirty (30) days of contract execution for existing employees and within thirty (30) days of employment for new employees.
 3. **Posting:** Proposer shall post the Living Wage Bulletin, together with a “Notice of Coverage”, in English, Spanish, and other languages spoken by a significant number of the Proposer’s employees, in a prominent place in a communal area of each worksite covered by the Agreement.

4. Subcontractors – Proposer hereby agrees to require Subcontractors, 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. Proposer shall include these Living Wage Compliance Provisions in any contract with such Subcontractors.
5. Term of Compliance – Proposer hereby agrees to comply with these Living Wage Compliance Provisions and with the Regulations for as long as work related to the Agreement is being performed by Proposer’s employees, and to submit the reports required by the Regulations for each calendar year or portion thereof during which such work is performed.
6. Reporting: Proposer shall provide the Annual Reports and attachments required by the Ordinance and Regulations.
7. Penalties: Proposer acknowledges and agrees that failure to comply with any provision of the Ordinance or Regulations may result in penalties specified in the Ordinance and Regulations, which penalties may include, without limitation, suspension or termination of the Agreement, forfeiture and/or repayment of City funds, disbarment, and/or the payment of liquidated damages, as provided in the Ordinance and Regulations.

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.

JUNE 16, 2023	Pre-Bid Conference & Good Faith Efforts Presentation Airport Directors Conference Room 10:00 AM, CST
JUNE 30, 2023	Deadline for Requests for Revisions, Questions and Interpretations Airport Properties Division Due by 4:30 PM, CST
JULY 12, 2023	Deadline for ACDBE Joint Venture Information Documentation Submit directly to the Airport Business Diversity Development Office Due by 4:30 PM, CST
AUGUST 1, 2023	Due Date for Bids Airport Properties Division <u>Due by 2:00 P.M., CST</u>

APPENDIX “A”

THE BID

ON AIRPORT RENTAL CAR CONCESSION
AT
ST. LOUIS LAMBERT INTERNATIONAL AIRPORT®

BID FOR A NON-EXCLUSIVE
ON AIRPORT RENTAL CAR 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 May 23, 2023.

1. BID:

The financial consideration for the Bidder’s right and privilege to operate a **non-exclusive** ON AIRPORT RENTAL CAR CONCESSION at the Airport, the Bidder shall pay to the City for each Contract Year during the Term of the Agreement, a sum equal to the *greater of* the Minimum Annual Guarantee (“MAG”) or the aggregate applicable Percentage rate of Ten Percent (10%), as applied to Gross Receipts, whichever is higher (see Article V, Section 503 entitled “Payment” of Appendix “B” entitled “Agreement”).

The “**Bid Item**” shall be:

- **The sum total of the Minimum Annual Guarantee (MAG)** for Contract Year One (1), Contract Year Two (2), Contract Year Three (3), Contract Year Four (4), and Contract Year Five (5) as shown below, with the aggregate for all Five (5) Contract Years being considered the Bid Item.

<u>Contract Year</u>	<u>Minimum Annual Guarantee (MAG) (Bid Item)</u>
1	\$ _____
2	\$ _____
3	\$ _____
4	\$ _____
5	\$ _____

“Bid Item”: Total MAG Amount = \$ _____
(This is the sum of the MAG for Contract Years 1-5)

Note:

- **A bid that contains a Minimum Annual Guarantee (MAG) of less than \$250,000 for any Contract Year will not be considered** (see Section 11E entitled “Disqualification Of Bidders” of the Instructions To Bidders).

Bidders are hereby informed that the Bid Item (Minimum Annual Guarantee) shall 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 ON AIRPORT RENTAL CAR CONCESSION and best meets the Airport’s goals and objectives as outlined in Section 2 of the Instructions To Bidders.

The City reserves the right to thoroughly investigate the financial status, experience, Business Plan, 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/or 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 **Twenty Five Thousand Dollars (\$25,000)**.

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 ON AIRPORT RENTAL CAR CONCESSION** at the Airport.

A. Experience:

1. Bidder is currently managing and operating a full-service rental car business in an airport environment business of the nature contemplated in this SFB at St. Louis Lambert International Airport or another airport with similar passenger volume, and can provide documentation of such experience.
2. Bidder has successfully managed and operated a full-service rental car business in an airport environment business of the nature contemplated in this SFB at St. Louis Lambert International Airport or another airport with similar passenger volume, for at least the last three (3) consecutive years, 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 been financially responsible in a full-service rental car business in an airport environment business of the nature contemplated in this SFB at St. Louis Lambert International Airport or another airport with similar passenger volume 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 contemplated 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 conforming with APPENDIX "A", Section 2.A.(1) entitled "Bid", demonstrating that Bidder is currently managing and operating a full-service rental car business in an airport environment of the nature contemplated in this SFB at St. Louis Lambert International Airport or another airport with similar passenger volume.
2. Documentation of Bidder's experience conforming with APPENDIX "A", Section 2.A.(2) entitled "Bid", demonstrating that Bidder is currently managing and operating a full-service rental car business in an airport environment of the nature contemplated in this SFB at St. Louis Lambert International Airport or another airport with similar passenger volume.
3. Documentation of whether or not Bidder has had an ON AIRPORT RENTAL CONCESSION 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 five (5) 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, JULY 12, 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 forecast of revenues for the first two (2) Contract Years
- 2) 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 V and VI;
- 3) Description or record keeping methods required by the agreement, Article VI; for the purposes of recording receipts and accounting for revenues by Concessionaire and ADCBE participants;

F) Additional Information:

- A. "**ATTACHMENT 5**" - Living Wage Acknowledgement & Acceptance Declaration (see Section 30 of Instructions To Bidders);
- 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 ON AIRPORT RENTAL CAR 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-13.**
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 Twenty Five Thousand Dollars (\$25,000). 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 JULY 12, 2023
- 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 Projected Sales, Net Income and Cash Flow Form.**
Described in Section 4 (E) of the Bid.

- Documentation of Bidder's Business Plan.**
Described in Section 4 (E) of the Bid

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

**ACDBE BID CHECKLIST
ON AIRPORT RENTAL CAR CONCESSION**

ALL BIDDERS INTENDING TO SUBMIT THE FOLLOWING ITEMS ARE REQUIRED TO SUBMIT THE FOLLOWING ITEMS AT, **4:30PM CST, JULY 12, 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

(prospective Bidders wishing to visit the BDD Office should contact the BDD office for the exact location)

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

JULY 12, 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			

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 Lambert-St. Louis International Airport®. The information provided will be evaluated to determine if the Bidder is responsive. All the information provided must be accurate and complete in every detail. Use additional sheets if necessary.

ATTACHMENT #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]

ON AIRPORT RENTAL CAR CONCESSION

CONCESSION AGREEMENT

AL#-XXX

TABLE OF CONTENTS

INTRODUCTION	Page 1
ARTICLE I: DEFINITIONS AND INTERPRETATIONS.....	Page 2
ARTICLE II: PREMISES	Page 6
ARTICLE III: RIGHTS	Page 8
ARTICLE IV: TERM	Page 9
ARTICLE V: FEES AND PAYMENT	Page 10
ARTICLE VI: CONCESSIONAIRE’S OPERATIONS	Page 13
ARTICLE VII: IMPROVEMENTS AND ALTERATIONS	Page 18
ARTICLE VIII: USE OF PREMISES	Page 21
ARTICLE IX: INSURANCE DAMAGES & INDEMNIFICATION	Page 24
ARTICLE X: ASSIGNMENT AND SUBCONTRACTING	Page 32
ARTICLE XI: TERMINATION OF AGREEMENT IN ENTIRETY	Page 33
ARTICLE XII: AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PARTICIPATION	Page 35
ARTICLE XIII: LIQUIDATED DAMAGES	Page 37
ARTICLE XIV: COMPLIANCE WITH ENVIROMENTAL LAWS	Page 38
ARTICLE XV: MISCELLANEOUS PROVISIONS.....	Page 42
SIGNATURES	Page 53
EXHIBIT “A”	Page 54
EXHIBIT “B”	Page 55

**ST. LOUIS LAMBERT INTERNATIONAL AIRPORT®
CONCESSION AGREEMENT
(ON AIRPORT RENTAL CAR CONCESSION)**

THIS AGREEMENT, made and entered into as of the ____ day of _____ 2023, (“**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 XXXX 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, the City has advertised and received bids for the right to manage and operate an ON AIRPORT RENTAL CAR CONCESSION at the Airport, and by this process the City has determined that the Concessionaire is one of the qualified operators of this business and has submitted a responsive bid deemed advantageous to the public and the City.

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 and any amendments thereto, duly approved by City.

“**Airport**” means the St. Louis Lambert International Airport, together with any additions, improvements, or enlargements made from time to time.

“**Airport Operations Area**” or “**AOA**” means those areas of the Airport used for landing, taking-off, movement, and parking of aircraft, as the same now exists or as the same hereafter may be

added to, modified, changed, or developed.

“Airport Concession Disadvantaged Business Enterprise” or “ACDBE” means a concession that is a for-profit small business concern:

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

“Airport Properties 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 shall be the Concessionaire’s point of contact with the Airport on all issues related to this Agreement.

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

“BDD Program Office” means that office of the City of St. Louis Airport Authority that has as its primary responsibility the administration of the federal DBE/ACDBE, local MBE / WBE, and City Living Wage Ordinance programs.

“Bid” means the Concessionaire’s response to the City’s Solicitation for Bids for an ON AIRPORT RENTAL CAR CONCESSION at the Airport dated June 1, 2023, as amended, which is incorporated herein by reference.

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

“Commencement Date” means the first day of the Term of this Agreement, as provided for in Section 401.

“Concession” as stated in the preamble hereof.

“Concession Fee Payments” means the payments due to the City as described in Section 503.

“Concessionaire” as stated in the preamble hereof.

“Customer Service Facility” shall mean any facility operated by Concessionaire at its sole cost and expense for the processing and/or servicing of, or for the delivery of, rental vehicles to its customers located on or off Airport property.

“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”** means 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 1515 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.

“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” shall include, but is not limited to, the following items:

- All time and mileage charges, net of any discounts that may be offered, on vehicles rented within the Airport’s terminal complex or Customer Service Facility or on vehicles taken by customers from the Customer Service Facility regardless of what station or establishment may receive the vehicles or the rent from them, including vehicles taken by customers in exchange for vehicles originally rented or taken by customers at the Customer Service Facility, regardless of whether collected or not collected;
- All monies paid or payable for personal accident insurance coverage;
- Drop charges charged to customers renting vehicles at the Customer Service Facility but delivering them to another location;
- All monies separately stated or collected to recover the Airport’s Concession Fee, Airport rent, or any other Airport fee or charge;
- All monies charged or collected as surcharges or other miscellaneous fees (e.g., recovery of automobile property taxes, vehicle title and registration fees and sales tax on purchase of rental vehicle);
- All other monies charged or collected from customers for associated services and equipment (e.g. child restraint devices and telecommunications devices), except those specifically excluded below;
- All receipts charged or derived from or in connection with extension or renewal of any automobile rental agreement entered into with any customer transported by any means from the Airport to a Customer Service Facility, regardless of the location at which that rental agreement is renewed or extended;
- Amounts paid or payable to the Concessionaire in exchange for coupons or vouchers which are redeemed at another facility operated by the Concessionaire; and
- All monies stated on the rental agreement as a single package price for a variety of rental car services (including, but not limited to, time and mileage charges, refueling of vehicles, personal accident insurance coverage, collision damage waivers; and loss and damage waivers), even if some of the included services may be excluded from Gross Receipts if stated separately on the rental agreement. The Concessionaire shall not exchange vehicles, modify the accounting treatment of receipts, nor rename or redefine rentals, services, or products in any manner that would deprive the City of amounts that would otherwise be payable to the City.

Only the following may be excluded from Gross Receipts:

- Monies collected from non-PVR related items sold off Airport (e.g., vending machines);

- Monies separately stated and collected from customers for collision damage waivers and loss damage waivers;
- Monies recovered from insurance or otherwise for damage to or for loss, conversion or abandonment of vehicles or other property;
- Any taxes or payments in lieu of taxes levied by competent governmental authority which is required by law to be separately stated and collected from customers. Such payments shall not include the Airport fees, rents, or charges paid to the City under this Agreement;
- Monies separately stated and collected from customers for refueling of vehicles;
- Proceeds from the disposal of the Concessionaire's owned equipment, vehicles sold wholesale or fixtures approved for removal by the Director;
- Monies collected from customers for vehicles dropped at the Customer Service Facility and originally rented at another airport to which the Concessionaire pays a Concession Fee;
- Credits for refunds to customers for sales made at the Customer Service Facility; and
- Rental of any vehicle to local residents whose place of residence is in the Metropolitan St. Louis Region as determined by the zip code on the customer's Missouri or Illinois driver's license. The customer's zip code must be recorded on the rental agreement. The list of zip codes that currently make up the Metropolitan St. Louis Region is attached as EXHIBIT C and incorporated herein (note that the exhibit is subject to the discretion of the Director for addition of zip codes).
- Monies collected as payment for traffic, parking, and other law enforcement violations.”

“Ground Transportation Rules and Regulations” means the Airport's Ground Transportation Rules and Regulations as adopted by the City and as may be amended from time to time in the future.

“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.

“Improvements” means, without limitation, all improvements, modifications, installations, construction, equipment, and fixtures built, installed, constructed, or erected during the Term of this Agreement by the Concessionaire or sublessees, and forming a part of and which are permanently affixed or attached to any portion of Airport's real property or Existing Improvements within the Premises.

“Insured Parties” means St. Charles County, Missouri; St. Clair County, Illinois; St. Louis County, Missouri; the City of St. Louis, Missouri, and its Board of Aldermen and Airport Commission; and their respective officers, officials, representatives, employees, and agents.

“Indemnified Parties” means St. Charles County, Missouri; St. Clair County, Illinois; St. Louis County, Missouri; the City of St. Louis, Missouri, and its Board of Aldermen and Airport Commission; and their respective officers, officials, representatives, employees, and agents.

“Metropolitan St. Louis Region” means the metropolitan St. Louis area as defined by the East-West Gateway Council of Governments—St. Louis, Missouri. A partial list of zip codes that currently make up the Metropolitan St. Louis Region is attached as EXHIBIT C and incorporated herein to this agreement. The parties acknowledge that the EXHIBIT C is not a comprehensive list of zip codes within the metropolitan St. Louis Region; the Concessionaire may request that additional zip codes be recognized. Such request shall be presented to the Director, whose decision shall be final and binding.

“Minimum Annual Guarantee” or **“MAG”** means the minimum annual portion of the Concession Fee amount set out in Article V.

“Missouri Regional Certification Committee” or **“MRCC”** means 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.

“On-Airport Car Rental Concession” shall mean a concession that serves the public through the provision of an On-Airport Passenger Vehicle Rental Service.

“Percentage Fee Payment” means the product of (i) Gross Receipts for the appropriate period multiplied by (ii) Percentage Fee Rates set out in Article V, Section 503 hereof.

“Percentage Fee Rate” means the 10 percent of Concessionaire’s Gross Receipts, as set out in Article V, Section 503 hereof.

“PCB” or **“PCBs”** means polychlorinated biphenyls as defined under 40 CFR Part 761.

“PFC” or **“PFCs”** means Passenger Facility Charges as defined by 49 U.S.C. § 40117.

“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.

“SFB” means the Solicitation for Bids for an ON AIRPORT RENTAL CAR CONCESSION at the Airport dated June 1, 2023, including attachments and exhibits thereto, as amended, which is incorporated herein by reference.

“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 use of and requires the Concessionaire to use at the Airport the Curbside Passenger Pick-Up/Drop-Off Spaces as described in EXHIBIT A attached hereto and made a part hereof in the Concessionaire’s operation of its On-Airport PVR Concession (the “**Premises**”). The rights granted in Article III hereof must only be exercised within the Premises and at the Concessionaire’s Customer Service Facility.

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

The City will not provide a ready/return or service area for the Concessionaire’s use during any part of the Term of this Agreement.

Concessionaire accepts the Premises “**AS IS**” with no warranties or representations of any kind, expressed or implied, either oral or written, made by the City or any of its agents or representatives.

City without limitation expressly disclaims and negates as to the Premises any implied or expressed warranty for a particular purpose and any expressed or implied warranty with the respect to the Premises or any portion thereof.

SECTION 202. ACCESS. Subject to the 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. TERMINAL SPACE. Customer service counter space, storage space, closet space, Concessionaire employee break room space and 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 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, subject to and in accordance with all of the terms, covenants, warrants and conditions of this Agreement the non-exclusive right, license and privilege to the use of and requires the Concessionaire to use at the Airport, the Premises designated for passenger pick-up /drop-off as described in Exhibit A, in the exercise of the Concessionaire's rights and obligation to operate and manage its On Airport Passenger Rental Car operations at the Airport. The following activities are inclusive of these rights:

The right to transact rental services only by shuttle transportation from the Premises and at the Customer Service Facility, including the sale of loss and collision damage waivers and personal accident insurance, and other customer services including infant car seats and telecommunications devices used only for rental vehicles.

The Concessionaire, at its sole cost and expense, is required to operate shuttle vehicles for the purpose of transporting customers from the airport terminal complex to the Concessionaire's Customer Service Facility. The Concessionaire shall comply with, and all shuttle vehicles of the Concessionaire are governed by and subject to, the Airport's Ground Transportation Rules and Regulations, as may be amended from time to time.

SECTION 302. LIMITATION OF RIGHTS. Concessionaire is not granted the right to offer for sale any merchandise, products, or services, or engage in any other business or commercial activity on the Airport that is not specially granted under this Agreement. If any services or products, other than those specifically mentioned in this Agreement and/or approved by the Director, 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. The Directors' decision shall be final and binding.

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 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 1515 entitled "Required Approvals").

ARTICLE IV CONCESSION TERM

SECTION 401. TERM. The "**Term**" of this Agreement shall consist of **Five (5) Contract Years**, unless sooner terminated in accordance with other Provisions of this Agreement.

"Commencement Date": January 1, 2024

"Expiration Date": December 31, 2028

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, 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 Five (5) 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 FEES.

Concession Fees. During each Contract Year or portion thereof, the Concessionaire agrees to pay to City a sum equal to the greater of: the Minimum Annual Guarantee (MAG) as set out below in equal monthly payments; or the Percentage Fee (the “**Concession Fee**”).

<u>Contract Year</u>	<u>MAG</u>
1	<u>\$TBD</u>
2	\$
3	\$
4	\$
5	\$

SECTION 503. PAYMENT. Payments for each month of each Contract Year shall consist of the following:

Concession Fee Payments. The Concession Fee payment shall be the greater of the “**MAG Payment**” (consisting of an amount equal to 1/12 of the MAG for the applicable Contract Year) or the “**Percentage Fee Payment**” (consisting of an amount equal to the Percentage Fee Rate of **10%** applied to the Gross Receipts for each month), and shall be due on or before the 20th day of the second month of the Term and each succeeding month during each Contract Year.

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 Gross Receipts. This statement shall separately state Gross Receipts for each type of service provided and be certified as accurate by an officer of the Concessionaire. The final statement of Gross Receipts will be due by the 15th day of the month following expiration of this Agreement. Concessionaire shall report Gross Receipts on a form approved by the Director. The City reserves the right to use these statements of Gross Receipts as a source of information to bidders in a future solicitation for bids or request for proposals for this concession.

As part of the monthly report of Gross Receipts, Concessionaire will provide the following passenger, financial and operational information:

- Total number of passengers transported
 - Other passenger, financial and operational information that may be required by the Director
- B. Concessionaire shall submit an audit report of Gross Receipts within one hundred twenty (120) days following the conclusion of each Contract Year. At the request of the City, an independent Certified Public Accountant must prepare these audit reports. The audit reports shall at a minimum certify the accuracy of (i) reported total accumulated Gross Receipts, and (ii) the aggregate amount of Gross Receipts and/or goods and services attributable to ACDBE participants. The audit reports shall also include a schedule showing the total of actual payments to the City during the Contract Year and shall state an opinion as to the correctness of the computation of Gross Receipts without exception.
- C. Within thirty (30) days after the close of each Contract Year, except the last Contract Year, Concessionaire shall provide the City with an estimate of projected monthly Gross Receipts for the subsequent Contract Year.
- D. Delivery of an audit report containing a qualified opinion, an adverse opinion or a disclaimer of opinion as defined in the Statement on Auditing Standards, or as same may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be deemed to be a default pursuant to Section 1101 (B) (10) herein.
- E. Concessionaire shall keep such records (copies of subcontracts, paid invoices, documentation of correspondence) as are necessary for the City to determine compliance with the ACDBE participation goals. These records must be retained for a minimum of three years after the termination or expiration of this Agreement. The City reserves the

right to investigate, monitor and/or review records for compliance. The Concessionaire shall submit quarterly ACDBE activity reports to the City.

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.

- A. 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:
1. 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;
 2. An advance schedule of management committee meetings (including subcommittees) and minutes of such management committee meetings;
 3. 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.;
 4. 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;
 5. Any proposed amendments to the Joint Venture Agreement to the Business Diversity Development office for review and approval prior to its effective date;
 6. Reconciliation of Administrative or Management Fees by the Joint Venture partners annually;
 7. Federal tax returns filed by the Joint Venture, including all supporting schedules and K1s within thirty (30) days of filing the return;
 8. An equity statement for each partner in the Joint Venture within thirty (30) days of the Joint Venture's fiscal year end; and

9. 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.
- B. 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 **(TBD)** 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 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 Gross Receipts hereunder. If the audit reveals a change in Gross Receipts 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 Gross Receipts reported by Concessionaire and Gross Receipts determined by the audit, the cost of the audit shall be borne by Concessionaire.
- B. If, as a result of an audit by any governmental entity, Concessionaire is required to restate Gross Receipts as defined herein, Concessionaire will, within thirty (30) days of finalization of the audit, report the change in Gross Receipts to the Airport. If the change in Gross Receipts 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.

SECTION 513. ABATEMENT OF MINIMUM ANNUAL GUARANTEE (MAG)

Should the number of passengers deplaning on scheduled airline flights at the Airport during any given calendar month decline by **more than** twenty (20) percent from the same calendar month of 2022 (an “**Abatement Triggering Event**”), the obligation of the Concessionaire to pay the MAG Payment (1/12 of the MAG) for that calendar month **only** will be abated in its entirety. After any Abatement Triggering Event, the MAG Payment will be abated in the following increments, until such time that the number of passengers deplaning on scheduled airline flights at the Airport during any given calendar month is equal to or greater than the same calendar month of 2021:

- 1) A decline in deplanements from the same calendar month of 2022 greater than 15% but less than or equal to 20% will cause the MAG Payment to be abated by 15% for that calendar month;
- 2) A decline in deplanements from the same calendar month of 2022 greater than 10% but less than or equal to 15% will cause the MAG Payment to be abated by 10% for that calendar month;
- 3) A decline in deplanements from the same calendar month of 2022 greater than 5% but less than or equal to 10% will cause the MAG Payment to be abated by 5% for that calendar month; and
- 4) A decline in deplanements from the same calendar month of 2022 of 5% or less will cause the MAG Payment obligation to be abated by 0% for that calendar month.

An example of the Abatement of Minimum Annual Guarantee outlined in this Section, wherein the Airport deplaned the following passengers, and the total unabated MAG Payment due from the Concessionaire is \$375,000 (\$31,250 monthly):

January 2022 100,000 deplanements

January 2024 70,000 deplanements

For the month of January 2024, deplanements are down 30% (an Abatement Triggering Event) the MAG Payment will be abated in its entirety. Concessionaire pays the greater of the abated MAG Payment (\$0) or the Percentage Fee Payment (10% of Gross Receipts), which is due on March 15, 2024.

An example of the Abatement of Minimum Annual Guarantee outlined in this Section, wherein after an Abatement Triggering Event, the Airport deplaned eighteen percent (18%) fewer passengers compared to the same calendar month of 2022, and the total unabated MAG Payment due from the Concessionaire is \$375,000 (\$31,250 monthly):

February 2022 100,000 deplanements

February 2024 82,000 deplanements

For the month of February 2024, deplanements are down 18%, the MAG Payment for February of \$31,250 is abated by 15% to \$26,563. The Concessionaire pays the greater of the abated MAG Payment or the Percentage Fee Payment (10% of Gross Receipts), which is due on April 15, 2024.

An example of the Abatement of Minimum Annual Guarantee outlined in this Section, wherein after an Abatement Triggering Event, the Airport deplaned six percent (6%) fewer passengers compared to the same calendar month of 2022, and the total unabated MAG Payment due from the Concessionaire is \$375,000 (\$31,250 monthly):

March 2022 100,000 deplanements

March 2024 94,000 deplanements

For the month of March 2024, deplanements are down 6%, the MAG Payment for February of \$31,250 is abated by 5% to \$29,688. The Concessionaire pays the greater of the abated MAG Payment or the Percentage Fee Payment (10% of Gross Receipts), which is due May 15, 2024.

An example of the Abatement of Minimum Annual Guarantee outlined in this Section, wherein after an Abatement Triggering Event, the Airport deplaned three percent (3%) fewer passengers compared to the same calendar month of 2022, and the total MAG Payment due from the Concessionaire is \$375,000 (\$31,250 monthly):

April 2022 100,000 deplanements

April 2024 97,000 deplanements

For the month of April 2024, deplanements are down 3%, the unabated MAG Payment for March of \$31,250 is abated by 0% and is \$31,250. The Concessionaire pays the greater of the unabated MAG Payment or the Percentage Fee Payment (10% of Gross Receipts), which is due June 15, 2024.

An example of the Abatement of Minimum Annual Guarantee outlined in this Section, wherein after an Abatement Triggering Event, the Airport deplaned an equal number of passengers compared to the same calendar month of 2022, and the total unabated MAG Payment due from the Concessionaire is \$375,000 (\$31,250 monthly):

December 2022 100,000 deplanements

December 2024 100,000 deplanements

For the month of December 2024, deplanements are flat, the MAG Payment for December 2024 of \$31,250 is unabated and is \$31,250. The Concessionaire pays the greater of the unabated MAG

Payment or the Percentage Fee Payment (10% of Gross Receipts), which is due February 15, 2025. Beginning January 2025, the MAG Payment owed the City will be unabated until another Abatement Triggering Event occurs.

Nothing in an Abatement Triggering Event will be construed to relieve the obligation of the Concessionaire to pay the greater of the MAG Payment or the Percentage Fee Payment (10% of Gross Receipts), which will be due on the 15th day of the second succeeding month and each month thereafter.

ARTICLE VI

CONCESSIONAIRE'S OPERATIONS

SECTION 601. STANDARDS OF SERVICE.

- A. The Concessionaire warrants, represents, covenants and agrees to meet the City's objectives as set out in the preamble hereof. The Concessionaire shall furnish a first-class On-Airport PVR Concession serving the needs of all users of the Airport. The Concessionaire shall provide new equipment, quality services and products and shall equip, organize, put into service and manage efficiently the On-Airport PVR Concession to provide service in a clean, attractive and pleasant atmosphere. All categories of renters shall be treated in a fair, equal and nondiscriminatory manner that shall reflect credit upon the Concessionaire and the City.
- B. Concessionaire shall offer for rent vehicles not more than three model years old consisting of full-size, mid-size, compact and subcompact models in such numbers as to reasonably meet foreseeable demands of the traveling public. All vehicles shall be maintained, at Concessionaire's expense, in good and safe operating order, free from any known mechanical defects, and be in clean, neat and attractive condition, inside and out.
- C. Concessionaire may offer for rent antique, vintage, classic or other luxury or prestige automobiles or handicapped-operated vehicles that are more than three years old, provided they are of good quality, free from any known defect, clean and attractive, inside and out. The City shall have the right to prohibit Concessionaire from offering for rent any vehicle which City reasonably determines not to meet the standards set out in this Article VI.
- D. Concessionaire shall provide the following services for its customers at the Airport: (i) accept at least three nationally recognized credit cards for payment of automobile rental; (ii) provide for a national reservation system readily available to customers who reside in any state; (iii) provide for one-way rentals to or from any location within a 750-mile radius of the Airport; and (iv) make available bodily injury and property damage liability as primary coverage and not as excess of customers' personal liability coverage.
- E. Premises and Concessionaire shuttles shall be kept clean, neat, and business-like and in an orderly condition **at all times** and if applicable Concessionaire shall provide for timely disposal of trash and debris at locations designated by the City.

- F. Concessionaire shall ensure that each customer receives prompt, efficient and courteous service from pleasant and well trained employees. Concessionaire shall use reasonable efforts to employ an adequate number of bilingual personnel to serve non-English-speaking patrons as market demand may warrant.
- G. Operations shall fully comply with all Federal Aviation Administration (“**FAA**”) regulations including security requirements, Airport rules and regulations and Airport security plan. Employees shall be suitably badged in accordance with Airport security procedures and regulations and shall fully comply with the Transportation Security Administration’s (“**TSA**”) regulation 1542 regarding conduct and access to the Airfield Operations Area (“**AOA**”).

SECTION 602. HOURS OF OPERATION. Concessionaire shall operate 24-hours per day; seven days per week, 365/366 days per year, as applicable. Concessionaire may not change the hours-of-operation without written application to and written approval of the Director. The City may require the Concessionaire to change its hours of operation to reflect changing operational circumstances at the Airport.

SECTION 603. PROMOTION. Concessionaire warrants, covenants and agrees that it shall take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it hereunder. Concessionaire shall not divert, 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 revenue of the Concessionaire under this Agreement shall constitute a material breach hereof and a cause for the termination of this Agreement by the City.

SECTION 604. PERSONNEL.

- A. Concessionaire shall 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 TSA 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 and/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/or 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 appropriate uniforms and 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 shall be proficient in the duties to be performed in the operation of this Concession.
- G. Concessionaire shall ensure staff demonstrates customer service by presenting a pleasant greeting and smile upon interaction with any customer.
- H. All employees shall 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. Employees shall provide a friendly and professional greeting to customers whenever and wherever contact is made; employees shall display a positive attitude toward passengers and fellow employees; English shall be spoken by staff, except when necessary to accommodate customer; the use of foul or inappropriate language in public areas at any time is prohibited; employees shall smile and use a pleasant tone of voice when conversing with the customers; employees shall be actively working while on duty and refrain from gathering and “chatting” in groups while on duty, unless necessary; employees shall refrain from the use of cell phones while on duty; employees shall not nap or sleep in public areas while in uniform; and employees shall be attentive to customers.
- J. Employees are not permitted to utilize public seating, boarding areas, gate areas and/or lounge areas within the Terminal and Concourses. The above areas are intended for use by the traveling public and not as rest or lounge facilities for employees.
- K. Concessionaire shall provide proper training of all employees including on-going customer service training and for the certification and/or licensing of employees in all areas of service as their duties might legally require. The Concessionaire shall participate in the Airport’s customer service program.
- L. Concessionaire acknowledges only direct support vehicles and/or equipment will be allowed on the AOA. Qualifying, direct support vehicles and/or 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.
- M. 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.

- N. 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.
- O. No parking privileges are included in this Agreement.
- P. St. Louis Lambert International Airport is a smoke-free facility. Smoking is permitted only in designated smoking areas.

SECTION 605. ONSET OF SERVICE. Concessionaire shall be solely liable and responsible for all costs and expenses pertaining to any design, construction, acquisition, installation, replacement, relocation and maintenance of the Improvements, Removable Fixtures and equipment as may be necessary to provide service pursuant to this Agreement.

Concessionaire acknowledges, stipulates and agrees that the City shall not be responsible or liable for any relocation costs associated with Concessionaires' personal property or Removable Fixtures including, without limitation, any loss of income or profit.

Concessionaire shall receive the Premises "**AS IS**". Concessionaire shall be solely liable and responsible for all costs and expenses pertaining to any design, construction, acquisition, installation, replacement, relocation, and maintenance of Removable Fixtures, equipment, and fixtures as may be necessary to provide service pursuant to this Agreement. At the time of the award of this Agreement, Concessionaire submitted with its bid a transition plan and development schedule, subject to the approval of the Director, for the efficient transition of service from any previous concessionaire. Concessionaire shall be responsible to coordinate the execution of the transition, in accordance with the approved transition plan with the previous concessionaire to assure a smooth transition of service with the minimum amount of disruption of service to the traveling public and other Airport users.

SECTION 606. PRICING. Concessionaire shall charge prices that are reasonable, nondiscriminatory, and attractive to the public. Concessionaire shall comply with all applicable rules and regulations of the Federal Trade Commission and other government agencies.

SECTION 607. MANAGER. Concessionaire shall at all times retain one (1) or more qualified, competent and experienced manager(s) who shall manage and supervise the operations and the facilities and fully represent and act on behalf of the Concessionaire in all matters pertaining to its business operation. The manager(s) shall be available by phone during regular business hours. A responsible subordinate shall be in charge and available by phone at all times during the manager's absence. The manager and/or subordinate shall be available after hours by phone to resolve any issues pertaining to the Concession operations.

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

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

SECTION 610. TRANSITION PERIOD. If applicable, during any future transition of the Concession to another Concessionaire, the incumbent Concessionaire hereby warrants, represents, covenants and agrees that Concessionaire shall use its best efforts to assure a smooth transition and agrees to closely coordinate the planning and execution of the transition with the Director. If agreeable to the Director, Concessionaire shall provide to the Director its Transition Plan in writing, upon fifteen (15) days written notice.

SECTION 611. OPERATION.

- A. Concessionaire shall be responsible for all aspects of the management and operation of this concession. Further, Concessionaire shall provide and be responsible for all employees and necessary components of the operation, including inventory, fixtures, equipment and supplies. Concessionaire shall provide and maintain rental vehicles, made available hereunder, at the Concessionaire's sole expense, in good operating order, free from known mechanical defects and in a clean, neat and attractive condition inside and outside.
- B. The City shall not be responsible or liable for any vehicles, supplies, fixtures or equipment used, maintained or stored on the Premises or at the Customer Service Facility; nor shall it be responsible for any damage or loss to such items resulting from flood, fire, explosion, vandalism or other causes outside the direct control and responsibility of the City.
- C. Concessionaire shall be responsible for removing its vehicles from the parking facilities owned by the City on a daily basis and shall pay all applicable parking fees.

SECTION 612. COMMUNICATION.

- A. If requested, Concessionaire's local manager shall schedule monthly or quarterly meetings (at the Airport's discretion) with the appropriate representative of the Airport Properties Division to discuss sales and the Airport BDD Program Office to discuss ACDBE participation, or any other relevant issues which may affect Concessionaire's operation at the Airport. Concessionaire shall also be available for meetings at other times as necessary.

B. Concessionaire shall be responsible for notifying the Airport Properties 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 613. CUSTOMER COMPLAINTS. Concessionaire shall establish procedures for handling all customer complaints. Concessionaire shall respond in writing to every complaint, written or oral, within seven calendar days of the complaint and shall make good faith efforts to explain, resolve or rectify the cause of the complaint. Upon request, Concessionaire shall provide the Director with a copy of each such complaint and its written response thereto.

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

SECTION 615. OPERATIONAL AUDIT. During the Term of this Agreement, Concessionaire shall be subject to regular operational facilities inspections of Concessionaire's operations at the Airport.

SECTION 616. ENTERTAINMENT SYSTEMS/WIRELESS DATA. No radio or television or other similar device shall be installed without first obtaining, in each instance, the Director's written consent which will not be unreasonably withheld. No antenna or aerial shall be erected on the roof, interior walls or exterior walls of the Premises or on the Airport without, in each instance, first obtaining the prior written consent of the Director. Any radio, television, or other similar device, antenna or aerial so installed without such prior written consent shall be subject to removal and/or forfeiture without notice at any time. No loudspeakers, televisions, phonographs, radios, or other devices shall be used in a manner so as to be heard outside the Premises without the prior written consent of the Director. Surveillance equipment shall be permitted within the Premises for surveillance within the Premises only. Concessionaire shall not be permitted, nor permit others to use, establish, purchase, sell, or maintain any type of wireless data transmission service or antennae in, on or from the Premises without obtaining the prior written consent of the Director, whose consent may be withheld for any reason whatsoever, or for no reason. The cost removal of any of the foregoing shall be borne by the Concessionaire. It is agreed that all television, radio, antenna, wireless data transmission service, and other similar devices installed and in place prior to the Commencement Date are considered approved by the Director. In addition, wireless transmission of data from Concessionaires point of sales systems, if applicable, to its accounting and other systems will be reasonably permitted.

ARTICLE VII

IMPROVEMENTS AND ALTERATIONS

SECTION 701. Construction by Concessionaire.

A. Concessionaire agrees if necessary, at Concessionaire's sole cost and expense, to design, erect, construct, install, replace, refurbish, equip and furnish all necessary New Improvements, Removable Fixtures, equipment, fixtures, and make related facility changes as needed to operate

a ON AIRPORT RENTAL CAR CONCESSION, pursuant to this Agreement, subject to the Provisions of this Agreement.

- B. Concessionaire agrees that any construction work will be completed according to the Tenant Design Standards, which are filed of record in the Office of the Director.
- C. Concessionaire shall submit a signed Tenant Construction or Alteration Application (TCA) including complete construction drawings and specifications, as required by Section 702, to the Airport Properties Division.
- D. Concessionaire shall submit a St. Louis County building permit number not more than thirty (30) days following approval of the TCA by the Airport Properties Division.
- E. Concessionaire shall submit the contractors' liability insurance certificates, Performance Bonds, and Payment Bonds, required by Sections 703 and 704, to the Airport Properties Division not more than 45 days following the TCA approval by the Airport Properties Division prior to commencement of work.
- F. Concessionaire shall use only City-approved contractors or subcontractors for improvements affecting control 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.
- G. Concessionaire shall submit a certificate of completion and a certified copy of a St. Louis County occupancy permit to the Airport Properties Division, as required by Section 706, prior to occupancy of premises.
- H. Concessionaire shall complete all construction and open all Premises fully fixtures and operational no later than 180 days after full execution of the Agreement by the City, subject to the provisions of Article XIII.
- I. Failure to open and operate in accordance with this Section 701 will result in Concessionaire being assessed liquidated damages in the amount of Five Hundred Dollars (\$500) per day for each day beyond the 180 days after full execution by the City.

In the event Concessionaire encounters material believed to be asbestos or polychlorinatedbiphenyl (PCB) which has not been rendered harmless, or specifically identified with method of removal, handling or protection, Concessionaire must 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 is not required to perform, without their consent, any work related to asbestos or PCB.

SECTION 702. Preparation of Plans and Specifications. Concessionaire shall submit detailed drawings, plans and specifications for any construction for improving and equipping the Premises. Concessionaire will begin work on proposed construction only after it has received the written approval of its plans and specifications from the Director.

SECTION 703. Contractor's Liability Insurance. In any contract appertaining to improving and equipping the Premises, Concessionaire shall require the contractor to cause St. Charles County Missouri; St. Clair County, Illinois; St. Louis County, Missouri; the City of St. Louis, Missouri

and its Board of Aldermen and Airport Commission; and their respective officers, employees, and agents, to be insured against the risk of claims and demands, just or unjust, by third persons against City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, a combined single limit of not less than \$3,000,000 for bodily injury and property damage and include St. Charles County Missouri; St. Clair County, Illinois; St. Louis County, Missouri; the City of St. Louis, Missouri and its Board of Aldermen and Airport Commission; and their respective officers, employees, and agents as “Additional Insured”. Said insurance must be in a form agreeable to City, and certificates showing proof of coverage must be delivered to the Director.

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

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

SECTION 706. Certificates of Completion. Upon the completion of New 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.

SECTION 707. Signs.

- A. Concessionaire shall not, without the prior written approval of the Director erect, maintain or display any signs on the Premises. The term “**sign**” as used herein, means advertising signs, billboards, banners, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, Concessionaire has the right to install such identification signs as may be necessary for the proper conduct of an ON AIRPORT RENTAL CAR CONCESSION services as contemplated hereunder. Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Premises.
- B. Concessionaire is responsible for the cost of any modifications to the Airport directories and other signs. All modifications to these signs must be approved by the Director and are subject to all applicable requirements of this Section 708.
- C. Prior to the erection, construction or placing of any sign, Concessionaire shall submit to the Director for approval, 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 will become conditions of the Agreement.

- D. Concessionaire shall not obstruct its counter space with advertising matter, displays or other literature not directly pertaining to its ON AIRPORT RENTAL CAR CONCESSION services. Concessionaire will not place any signs outside of the Premises.
- E. 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 is 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.

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 purposes of maintenance and improvement.

SECTION 804. Utilities

The City shall not be liable to Concessionaire for damages or any losses for the interruption of any utility service, or for any delay in the supplying or furnishing of any utility service. Concessionaire does hereby release and discharge the City from any and all inconvenience, losses, claims, or cause of actions arising out of or incidental to such interruption, including, without limitation, loss of profit or business, actual or incidental, consequential or special damages.

ARTICLE IX INSURANCE, DAMAGE, & INDEMNIFICATION

SECTION 901. INSURANCE.

- A. 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 both on the Premises and at the Airport.
- B. Risks and Minimum Limits of Coverage. Concessionaire shall procure and maintain the following policies of insurance:

1. Commercial General Liability in an amount not less than five million dollars (\$5,000,000.00), per occurrence and an annual aggregate limit of not less than ten million dollars (\$10,000,000)..
2. Automobile Liability Insurance in an amount not less than five million dollars (\$5,000,000.00) 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. City, its officers, employees, or agents shall not be liable or responsible for any claims or actions occasioned by Concessionaire's failure to comply with the provisions of this subparagraph and that the indemnification provisions hereof shall apply to this Section. It is expressly agreed that the employees of Concessionaire are not employees of the City for any purpose, and that employees of the City are not employees of Concessionaire.
4. Contents Insurance. Concessionaire shall be solely responsible for obtaining insurance policies that provide coverage for losses of Concessionaire owned property 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, New Improvement, 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).

C. **Issuers of Policies.** The issuer of each policy required herein shall be a financially sound insurance company authorized to issue insurance policies in the State of Missouri. Acceptable insurers include insurance companies with an "A.M. Best Company" rating of at least an "A," or other insurers or insurance syndicates of similar recognized responsibility.

1. **Form of Policies.** The insurance may be in one or more policies of insurance.
2. **Non-waiver.** Nothing the City does or fails to do shall relieve Concessionaire from its duties to provide the required coverage hereunder, and the City's actions or inactions shall not be construed as waiving the City's rights hereunder.
3. **Insured Parties.** Each policy by endorsement, except those for Workers' Compensation and Employer's Liability, shall name the Insured Parties as "additional insured" on the certificate of insurance, including all renewal certificates, to the extent of Concessionaire's indemnification obligations hereunder. Inclusion as an "additional insured" is not intended to and shall not, make the City a partner or joint venturer with Concessionaire in its operations.

The "additional insured" language shall read exactly as follows: "St. Charles County, Missouri, St. Clair County, Illinois, St. Louis County, Missouri, the City of St. Louis, Missouri and its Board of Aldermen and Airport Commission; and their respective officers, employees, 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 must 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.
- D. Maintenance of Coverage. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that Concessionaire, continuously and without interruption, maintain in force the required insurance coverages set forth above.
- E. City Right to Review and Adjust Coverage Limits. The City reserves the right at reasonable intervals during the term of this Agreement to cause the insurance requirements of this Article to be reviewed, at its sole cost, by an independent insurance consultant experienced in insurance for public airports, taking into consideration changes in statutory law, court decisions, or the claims history of the airline industry as well as that of Concessionaire, and, based on the written recommendations of such consultant, and in consultation with Concessionaire, to reasonably adjust the insurance coverages and limits required herein but not more often than every 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 ON AIRPORT RENTAL CAR CONCESSION at the Airport. In the event certain Premises are deleted from the Agreement, the MAG Payment, the Percentage Fee Payment and any other rental payments will NOT be proportionally reduced or adjusted, 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 ON AIRPORT RENTAL CAR CONCESSION at the Airport. In the event certain Premises are deleted from the Agreement, the MAG Payment, and the Percentage Fee Payment will NOT be proportionally reduced or adjusted, 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, 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 by Concessionaire in the conduct of On Airport Passenger Rental Vehicle Concession or its use of its Premises or other areas or facilities at the Airport of any Provision of this Agreement.

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 Concession-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 City is a third-party beneficiary of this and related provisions. This provision does not constitute a waiver of any other condition of this Agreement prohibiting or limiting assignments, subletting or subcontracting.
- 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 in violation of Environmental Law 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 shall apply to any claim, demands, or suits made against the City for which Concessionaire is responsible pursuant to this Section under this or any prior agreement. Provided, however, that upon the filing by anyone of a claim with the City for damages arising out of incidents for which Concessionaire herein agrees to indemnify and hold the City harmless, the City shall promptly notify Concessionaire of such claim and, if Concessionaire does not settle or compromise such claim, then Concessionaire shall undertake the legal defense of such claim both on behalf of Concessionaire and on behalf of the City, at Concessionaire's expense; provided, however, that Concessionaire shall immediately notify City if a conflict between the interests of Concessionaire and City arises during the course of such representation. Concessionaire shall use counsel reasonably acceptable to the City Counselor of the City or his or her designee, after consultation with the Director, in carrying out its obligations hereunder.

The provisions of this Section shall survive the expiration or early termination of this Agreement. It is specifically agreed, however, that the City, at its option and at its own expense, may participate in the legal defense of any claim defended by Concessionaire in accordance with this Section. Any final judgment rendered against the City for any cause for which Concessionaire is liable hereunder shall be conclusive against Concessionaire as to amount upon the expiration of the time for appeal there from. Nothing in this Article 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 City for any consequential damages or for any amounts to be paid in connection with losses, liabilities, penalties, damages of whatever nature, causes of action, suits, claims, demands, injunctive relief, judgments, awards and settlements because, and to the extent, of the gross negligence or willful misconduct of the City, but only if the City is conclusively determined to be more than ten percent (10%) liable due to comparative 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 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. 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.

- B. Concessionaire agrees as a condition hereunder to meet a minimum ACDBE participation goal of not less than **Three point Five Two Percent (3.52%)** participation in the ownership, management, and control of the business by the methods of participation allowed by DOT 49 CFR Part 23. The goal will be measured as a percentage based on the Gross Receipts. The goal remains in effect throughout the Term of the Agreement and credit toward the ACDBE goal will only be given for the use of Missouri Regional Certification Committee (“MRCC”) certified ACDBEs.
- C. 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.
- D. 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.
- E. When an ACDBE subcontractor is terminated or fails to complete its work on the contract for any reason, **Concessionaire** is required to make Good Faith Efforts to find another ACDBE subcontractor to substitute for the original ACDBE. The Airport DBE Office will provide Concessionaire assistance in locating ready, willing, and able ACDBE firms. Concessionaire will be required to obtain written approval from the City for the replacement of the ACDBE or the substitute ACDBE and to provide copies of all new or amended subcontracts or documentation of Good Faith Efforts. The Good Faith Efforts shall be directed at finding 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 program goal under the Agreement. The Good Faith Efforts shall be documented by Concessionaire. If the City requests documentation under this provision, Concessionaire shall submit the documentation within seven (7) days. The City shall provide a written determination to Concessionaire stating whether or not Good Faith Efforts have been demonstrated.
- F.

- G. 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/or seek other remedies at law and/or inequity.
- H. Concessionaire will be required to submit monthly gross receipts earned by ACDBEs. Concessionaire will further 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. Concessionaire will be required to list the specific duties, functions and responsibilities that ACDBEs will perform.
- I. 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 monthly 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/or incur certain cost or expense, the amounts of which are difficult to ascertain, if Concessionaire defaults or breaches any of the terms, covenants or conditions enumerated below. Therefore, the Concessionaire agrees and stipulates that the Director, on behalf of the City, may elect after written notice to the Concessionaire of said default or breach to impose the charges set forth below as liquidated damages on the basis of each default or breach. The first default or breach in any category will result in a warning letter. The second default or breach will require Concessionaire to pay liquidated damages in the amount listed below. For the third default or breach in the same category, Concessionaire will pay City liquidated damages in the amount listed below. For the fourth and each subsequent cumulative default or breach, Concessionaire shall pay to City the third default or breach amount plus an additional one hundred percent (100%). Such liquidated damages shall 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.

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

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 shall be entitled to (a) collect in addition to the Percentage Fee Payment, 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 XV
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, 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 or which pertains to the release of Hazardous Materials by Concessionaire at the Premises or the Airport, Concessionaire shall notify the City as soon as reasonably practical of all known facts pertinent to such release, threatened release, claim, demand, complaint, action, or notice, and shall provide the City with copies of any and all such claims, demands, complaints, notices, or actions so made. If Concessionaire is required, by any Environmental Laws, Environmental Permits, or governmental agency, to file any written notice or report of a release or threatened release of Hazardous Materials 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, 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 the 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 will 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 will 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. Concessionaire agrees that neither Remediation Work or an ongoing remediation, including any testing or monitoring, nor the use of institutional controls, will either unreasonably or materially impair or interfere with the City's current or future use and enjoyment of its property including the Premises, or that of current and future tenants. The City has 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 is entitled to 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 do 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, or if Concessionaire fails to conduct necessary Remediation Work in a timely manner as required under the Provisions of this Agreement, the City, as may be necessary or required by applicable Environmental Laws, Environmental Permits, 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, or Rules or Regulations. All Remediation Costs incurred by the City must 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 must not undertake performance of such Remediation Work without the specific prior authorization from the City, Remediation

Work, if necessary, must 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, 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 will be provided to Concessionaire at Concessionaire's written request.
- H. 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:

Director
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 IN EMPLOYEMENT.

- A. 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.
- B. 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.

- C. 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 it program.
- D. 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.
- E. Concessionaire further agrees that these clauses (A through D) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Concessionaire in all contracts or agreements 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.
- F. Whenever Concessionaire is sued by a subcontractor, vendor, individual, group, or association as a result of non-compliance with the clauses (A through E) of these provisions relating to fair employment practices, Concessionaire shall notify the City Counselor in writing of such suit or threatened suit within ten (10) days.
- G. 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.

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 Permit, the City may assign this Permit at its sole discretion by providing Notice to Permittee 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, M/W/DBE Certification and Compliance 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.

- A. Concessionaire agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Concessionaire transfers its

obligation to another, the transferee is obligated in the same manner as Concessionaire. This provision obligates Concessionaire for the period during which the Assigned Locations is used or possessed by Concessionaire and the Airport remains obligated to the FAA. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

- B. During the performance of this Agreement, Concessionaire for itself, its assignees, and successors in interest, agrees to comply with the following non-discrimination statutes and authorities:
1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
 2. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
 3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 4. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
 5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
 6. 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);
 7. 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);
 8. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
 9. The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by

discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

11. 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);
 12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq.).
- C. Concessionaire, including personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Concessionaire will use the Assigned Locations in compliance with all other requirements imposed by or pursuant to the list of non-discrimination acts and authorities, as enumerated in the preceding subsection. In the event of breach of any of the above nondiscrimination covenants, City will have the right to terminate this Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if the Agreement had never been made or issued.
- D. During the performance of this Agreement, Concessionaire, for itself, its assignees, and successors in interest, agrees as follows:
- 1) Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
 - 2) Nondiscrimination: Concessionaire, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and Agreements of equipment. Concessionaire will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
 - 3) Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by Concessionaire for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Concessionaire of contractor's obligations under this Agreement and the Nondiscrimination Acts and Authorities.

- 4) Information and Reports: Concessionaire will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Concessionaire will so certify to the City or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5) Sanctions for Noncompliance: In the event of Concessionaire's noncompliance with the non-discrimination provisions of this Agreement, City will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to, cancelling, terminating, or suspending this Agreement, in whole or in part.
- 6) Incorporation of Provisions: Concessionaire will include the provisions of this subsection in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Concessionaire will take action with respect to any subcontract or procurement as the City or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Concessionaire may request the City to enter into any litigation to protect the interests of the City. In addition, Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

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.)

EXHIBIT “A”

PREMISES

**(to be completed based upon ranking of submitted bids – SFB documents
posted in separate files)**

EXHIBIT “B”

LIVING WAGE BULLETIN

ST. LOUIS LIVING WAGE ORDINANCE
LIVING WAGE ADJUSTMENT BULLETIN

**NOTICE OF ST. LOUIS LIVING WAGE
RATES EFFECTIVE APRIL 1, 2023**

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 **\$15.54** 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 **\$20.34** 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) The prevailing fringe benefits rate, as required under the Ordinance and defined by section 6.20.010 of the Revised Code of the City of St. Louis, is **\$4.80** 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, 2023**. 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 [Living Wage - St. Louis Lambert International Airport \(flystl.com\)](http://flystl.com) or obtained from:

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

EXHIBIT “C”

METROPOLITAN ST. LOUIS REGION ZIP CODES

(See Section 101, definition of “Metropolitan St. Louis Region”)

ZIP CODES IN METROPOLITAN ST. LOUIS REGION

62001	62240	63033	63109	63304
62002	62243	63034	63110	63332
62010	62244	63037	63111	63341
62012	62248	63038	63112	63348
62018	62249	63039	63113	63367
62021	62254	63040	63114	63368
62024	62255	63041	63115	63373
62025	62257	63042	63116	63376
62026	62258	63043	63117	63385
62034	62260	63044	63118	63386
62035	62264	63045	63119	63369
62040	62265	63048	63120	63091
62048	62269	63049	63121	63627
62060	62275	63050	63122	65441
62061	62277	63051	63123	63357
62062	62278	63052	63124	
62067	62281	63055	63125	
62074	62285	63056	63126	
62084	62293	63060	63127	
62087	62294	63061	63128	
62088	62295	63068	63129	
62090	62298	63069	63130	
62095	63005	63070	63131	
62097	63010	63072	63132	
62201	63011	63074	63133	
62203	63012	63077	63134	
62204	63013	63080	63135	
62205	63014	63084	63136	
62206	63015	63087	63137	
62207	63016	63088	63138	
62208	63017	63089	63139	
62220	63019	63090	63140	
62221	63020	63101	63141	
62223	63021	63102	63143	
62225	63023	63103	63144	
62226	63025	63104	63145	
62232	63026	63105	63146	
62234	63028	63106	63147	
62236	63030	63107	63301	
62239	63031	63108	63303	