

**LAMBERT-ST. LOUIS**  
**INTERNATIONAL AIRPORT®**

**CONCOURSE COMMUNICATIONS GROUP, LLC**

**WI-FI AND DISTRIBUTED ANTENNA SYSTEM  
OPERATING AGREEMENT**

**AL# - 263**

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LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT  
OPERATING AGREEMENT  
(Wi-Fi and Distributed Antenna System)

THIS AGREEMENT, made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the CITY OF ST. LOUIS ("**City**"), a municipal corporation of the State of Missouri and Concourse Communications Group, LLC ("**Operator**"), a limited liability company organized and existing under the laws of the State of Delaware.

WITNESSETH, THAT:

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

WHEREAS, a wireless internet access system ("**Wi-Fi**") and a distributed antenna system ("**DAS**") (collectively, the "**System**") at the Airport are essential for proper accommodation of the traveling public and other users of the Airport;

WHEREAS, the City has determined that it is in the public's best interest for the following objectives to be met in the provision of a Wi-Fi and DAS System:

- Establish open and reliable, seamless wireless telecommunications coverage through the creation of antenna sites with state of the art network access infrastructure at the Airport's Facilities;
- Provide strong revenue to the Airport from both the Wi-Fi and DAS components of the System;
- Utilize and enhance existing Wi-Fi facilities and capabilities to meet the needs of the traveling public and other airport tenants;
- Maintain and enhance the existing comprehensive wireless internet access systems for use by the public;
- Design, finance, construct, manage, and operate a new neutral host DAS with the ability to support a wide variety of cellular providers wishing to enhance their coverage and signal reception at the airport;
- Capitalize on the revenue opportunities that have resulted from proven and emerging technologies and applications in the wireless internet and cellular markets;
- Provide a limited complimentary access component to the Wi-Fi network. This component

shall be structured to minimize the impact on the City's revenue stream, and may include advertising as well as time and capability (VPN and streaming) limitations;

- Leverage the value of the Airport's Facilities, infrastructure and geographic presence, and maximize potential revenue to the Airport;
- Enable equal access to all wireless and cellular service providers on a **non-discriminatory** basis within the constraints of space available for communications equipment within the Airport's Facilities, and the willingness of providers to participate in the business provisions set out by the Operator;
- Maintain existing comprehensive wireless internet infrastructure for use by the public, Airport, the airlines and other tenants at the Airport;
- Provide a management structure that ensures the interoperability of all wireless communications systems while mitigating interference to the maximum extent possible;
- Accommodate the existing technological and capacity requirements for wireless telecommunications services, with the capability to add capacity and support emerging technologies as the need arises;
- Provide an efficient administrative interface for the Airport;
- Be responsive to the ACDBE participation goals of the City; and
- Manage the System to include all current wireless and data telecommunication standards and to accommodate emerging telecommunication technology standards.

WHEREAS, the City has advertised and issued a Request For Proposals with Qualifications ("RFP") dated October 11, 2013 and received proposals for the right to operate and manage the Systems, and by this process the City has determined that the Operator is a qualified operator of this service and has submitted a proposal deemed to be the best proposal and the most advantageous to the public and the City.

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

## ARTICLE I DEFINITIONS AND INTERPRETATIONS

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

**"Agreement" or "Operating Agreement"** means this Operating Agreement for the development, financing, marketing, operating, and management of Wi-Fi and DAS Systems, duly approved by

the parties hereto.

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

**“Airport Concession Disadvantaged Business Enterprise (ACDBE)”** means a concession: (1) 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 (2) 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 City of St. Louis Airport Authority that has as its primary responsibility the administration of all tenant, permittee, Operator and other space at the Airport, and shall be the Operator’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 and operating the Airport.

**“Build-Out Costs”** means costs incurred for the demolition, redevelopment or modification of Existing Improvements and/or the installation or construction of Improvements to the Facilities, including (but not limited to) furnishings, fixtures, equipment and finishes including Removable Fixtures, costs of architectural design and engineering fees, outside project management, installation and preparation of all assets for their intended use, general contractors, sub-contractors, franchise fees, taxes, permits, insurance, construction bonds, and the reasonable costs of Operator’s internal labor; but excluding the costs of interest or financing costs during construction.

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

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

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

**“DAS”** means a distributed antenna system, small cell technology or other technology which may be utilized by carriers to provide services to their customers.

**“DAS Build-Out Period”** means a period of up to three hundred (300) days following the Commencement Date of the Agreement, during which the DAS portion of the System is under construction and not in operation. The DAS Build-Out Period ends upon the Substantial Completion of the DAS portion of the System.

**“DAS Carrier”** means a licensed wireless service provider entering into an agreement with the Operator to provide DAS services, small cell or other carrier technology throughout the Facilities.

**“DAS Carrier Fee”** means an amount equal to the greater of, Forty Thousand Dollars (\$40,000.00), or Twenty Thousand Dollars (\$20,000.00) per DAS Carrier, to be paid annually to the City as provided for in Section 503.C of this Agreement.

**“DBE Program Office”** means the Airport's Disadvantaged Business Enterprise Program Office, which is responsible for administering the City's AC/M/W/DBE Programs.

**“Days” or “days”** means consecutive calendar days unless otherwise expressly provided for in this Agreement.

**“Director”** means the Director of Airports of the City of St. Louis Airport Authority or his/her designee or authorized representative, and incorporates the granting of approval requirements of Section 1515 hereof.

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

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

**“Facilities”** means the sites or locations at the Airport, including Existing Improvements,

designated by the City under this Agreement for installation of Operator's equipment and operation of the System, which includes the Head-End Room, as detailed in **Exhibit A**.

**"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 which, by their scope, intensity and appropriateness to this objective, can reasonably be expected to meet the program's requirement.

**"Gross Receipts"** means the total revenues generated by the operation of the System from all sources and all service categories at the Airport under this Agreement and any derivative thereof performed by Operator, its subcontractors, licensees, subsidiaries, associated companies or otherwise, regardless of the point of origin or delivery of the order. Gross Receipts includes all revenue generated from sponsorship, advertising and other indirect sources of revenue. Only the following sources of revenue may be excluded or deducted, as the case may be, by the Operator from Gross Receipts:

- payments from DAS Carriers to Operator;
- federal, state, county and municipal sales taxes or other sales taxes separately stated and collected from customers;
- cash or credit refunds given to customers for unperformed services purchased at the Airport;
- receipts in the forms of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers;
- the sale or trade-in value of any equipment or fixtures approved for removal by the Director and owned by Operator; and
- capital contributions, loan proceeds, or other revenues, proceeds or receipts of the Operator or its affiliates that do not arise from the charges and fees for use of, connection to, and advertising on the System.

**"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 Operator 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.

**"Head-End Room"** means a room at the Airport provided by the City for installation of DAS

equipment and DAS participating wireless carrier equipment, which is depicted in **Exhibit A**.

**"Improvements"** means without limitation all equipment, fixtures, hardware, cabling, wiring, conduits, antennas, structures and all appurtenances thereto or other property installed, built or erected by the Operator, and forming a part of the Facilities, or is a part of or a component of the System as more fully described in Article VII herein. Improvements do not include Removable Fixtures or Existing Improvements.

**"Initial Minimum Investment Requirement"** means an amount Operator agrees that it will expend or cause to be expended for Improvements in accordance with its Proposal and all the Provisions of this Agreement, as provided for in Section 703 of this Agreement.

**"ISP"** means an internet service provider.

**"Minimum Annual Guarantee" or "MAG"** means the minimum annual portion of the Wi-Fi 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.

**"Operator"** as stated in the preamble hereof.

**"Percentage Fee"** means the product of Gross Receipts multiplied by the Percentage Fee Rate set out in Article V.

**"Percentage Fee Rate"** means the designated portion or percentage of the Operator's Gross Receipts payable to the City as set out in Article V.

**"Proposal"** means the Operator's response to the City's Request For Proposals with Qualifications ("RFP") dated October 11, 2013, which is incorporated herein.

**"Provisions"** means the terms, covenants, conditions, warranties, and specifications of this Agreement.

**"Refurbish" or "Refurbishment"** means to construct, install, refurbish, improve, or upgrade the Facilities or Improvements including modernization/redesign by replacement of furnishings, equipment, and finishes, and the installation or construction of new Improvements.

**"Refurbishment Costs"** means those costs incurred to Refurbish the Facilities or Improvements including costs of architectural design and engineering fees, outside project management, installation and preparation of all assets for their intended use, general contractors, sub-contractors, franchise fees, taxes, permits, insurance and construction bonds; but excluding the costs of interest

or financing costs during construction and the internal costs of Operator's employees or internal administrative overhead costs.

**"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 Environmental Laws or Environmental Permits, and caused by, or arising out of Lessee's operations or activities at the Facilities or the Lessee's use of the City's property. Remediation Costs include investigation and evaluation costs, costs to implement institutional controls or restrictive covenants, sampling and analysis costs, reporting costs, planning and design costs, consultant and contractor costs, labor costs, equipment costs, construction costs, access costs, disposal costs, transportation costs, 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 Facilities.

**"Removable Fixtures"** means all furnishings, equipment, personal property, and proprietary fixtures installed or placed by the Operator within the Facilities that are not permanently affixed to any wall, floor, or ceiling within the Facilities or Existing Improvements, and identified and listed by Operator on its Removable Fixtures list approved by the Director, as provided for in Section 710 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 Airport Director, the Airport Commission, or the City from time to time for the orderly operation of the Airport.

**"Splash Page"** means the first page a customer is directed to when connecting to the Wi-Fi.

**"Substantial Completion"** means the first day after the DAS portion of the System is put into operation or three hundred (300) days after the Commencement Date, whichever event occurs first.

**"System"** means both the Wi-Fi and DAS components more fully described in this Agreement.

**"Term"** means the entire term of this Agreement that begins on the Commencement Date and ends on the Expiration Date as provided for in Article IV.

**“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.

**“VLAN”** means virtual local area network.

**“VPN”** means virtual private network.

**“Wi-Fi Fee”** means the greater of: the product of Gross Receipts multiplied by the Percentage Fee Rate; or the Minimum Annual Guarantee specified in Article V.

**“Wireless Internet Access System” or “Wi-Fi”** means a fully operational enterprise-class, non-proprietary, 802.11 standards based Wireless Local Area Network (**WLAN**) capable of accommodating the needs of multiple users groups within the Airport terminal complex. The System will allow public users to access the Internet on a transaction (per-use) basis or via qualified ISP, with whom the user has a subscription. The System shall be made available to all ISP’s in a nondiscriminatory manner, under established and consistent business terms.

**“WLAN”** means wireless local area network.

**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 FACILITIES

SECTION 201. FACILITIES. City, subject to the Provisions of this Agreement, hereby grants the Operator the right to install, operate, manage, support and maintain the System, including equipment space, cable, conduit and power runs, at the locations within the Facilities at the Airport, as described in **Exhibit A** entitled "Facilities," attached hereto and made part hereof, in accordance with rights granted under Section 301, entitled "Rights."

The Director shall have the right to add, substitute, relocate or delete portions of the Facilities upon reasonable notice to the Operator. The City will not be liable or responsible for any loss whatsoever, including without limitation, any inconvenience or loss by the Operator of work time, profit or business, actual, incidental, consequential or special damages resulting from these changes to the Facilities, except as expressly provided for in Section 204 entitled "Facilities Adjustments".

Operator accepts the Facilities "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 Facilities any implied or expressed warranty for a particular purpose and any expressed or implied warranty with the respect to the Facilities or any portion thereof.

SECTION 202. RESERVATIONS. The rights granted under this Agreement are subject to the following reservations and conditions:

- A. Operator will not exercise the rights granted under this Agreement to Operator 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 and the City, a free and unrestricted right of flight for the passage of aircraft in the airspace above the surface of the Facilities, 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 others over, under, through, across or on the Facilities provided that such use will not substantially or materially interfere with Operator's use of the Facilities, and provided further that such reservation or grant of rights shall not directly result in additional cost or expense to Operator.
- D. The City reserves the right (but shall not be obligated to Operator) 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 Operator 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 Operator, 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 Operator from erecting, or permitting to be erected, any building or other structure on the Facilities 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 will 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 and/or other areas or facilities of the Airport including the Facilities 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 of 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 Operator's use of improvements thereon.

SECTION 203. ACCESS. Subject to the Provisions of this Agreement hereof, Operator has the right of free access, ingress to and egress from the Facilities for Operator's employees, agents, guests, patrons and invitees.

SECTION 204. FACILITIES ADJUSTMENTS. If Facilities 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 Operator from the Director on behalf of the City.

If City requires Operator to relocate all or a portion of Operator's Improvements or Removable Fixtures from the Head-End Room, the City will reimburse Operator for authorized, actual costs reasonably incurred by Operator for relocation of the Improvements and Removable Fixtures both within the Head-End Room and supporting the Head-End Room, including but not limited to cabling, conduit, generators, etc. (the "**Reimbursable Costs**"). In addition, any guaranteed payments to City will abate for such time that Operator is unable to provide its services. Operator must submit to City for review and approval an estimation of all Reimbursable Costs prior to

incurring these costs. The City will reimburse the approved Reimbursable Costs within forty five (45) days of receipt of a request for reimbursement.

It is expressly understood that City may raise any reasonable objection or dispute to a request for reimbursement or payment of Reimbursable Costs, at any time up to ninety (90) days from payment by City of Reimbursable Costs, if City determines that reasonable grounds for objection or dispute exists, including subsequent reasonable objections or disputes of request for reimbursement which have been previously approved, accepted, and paid by City.

### ARTICLE III OPERATOR'S RIGHTS

SECTION 301. RIGHTS. City hereby grants to the Operator, subject to and in accordance with all of the Provisions of this Agreement the **nonexclusive** right, license and privilege to operate, manage, market, support and maintain the Wi-Fi portion of the System, and the **exclusive** right, license and privilege to operate, manage, market, support and maintain the DAS portion of the System. Operator hereby assumes the obligation to design, install, construct, operate, manage, market, support and maintain the System within the Facilities.

SECTION 302. ADVERTISING. City hereby grants the Operator the **nonexclusive** right to sell advertisements and sponsorships on the Wi-Fi **Splash Page**, which is the first page that appears on a user's screen when connecting to the Wi-Fi portion of the System. Operator may use the Airport's logo and trademarks upon written approval of the Director (See Section 1520). Advertising categories must be approved in advance in writing by the Director. Additionally, the Operator shall promptly remove any advertisement or advertisements which the Director, at his/her sole discretion, designates for removal from the splash page.

SECTION 303. LIMITATION OF RIGHTS. Operator is not granted the right to offer for sale any merchandise, products, or services, or engage in any other business or commercial activity on the Airport that is not specifically granted under this Agreement. If any services or products, other than those specifically mentioned in this Agreement and approved by the Director, are offered for sale by Operator, Operator will cease and desist from any further sale or provision thereof immediately and not later than upon receipt of written notice from the Director. The Director's decision shall be final and binding.

The Operator 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 Operator.

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").

This Agreement grants no real or implied rights to any privileges at or on the Airport other than in the Facilities.

ARTICLE IV  
TERM

SECTION 401. TERM. The “**Term**” of this Agreement begins on the Commencement Date and expires ten (10) Contract Years following the date of Substantial Completion, unless terminated earlier as provided for in this Agreement:

“**Commencement Date**”: March 1, 2015

“**Expiration Date**”: December 31, 2025

SECTION 402. SURRENDER OF POSSESSION. No notice to quit possession at the expiration date of the Term of this Agreement shall be necessary. Operator 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 Facilities, in a clean, sanitary, and good condition as that existing at the time of Operator's initial entry upon the Facilities under this Agreement, reasonable wear and tear (taking into account the improvements, repair and maintenance required to be done by Operator), acts of God, and other casualties excepted, and the City shall have the right to take possession of the Facilities with or without due process of law (see Section 201 entitled “Facilities” and Section 710 entitled “Title to Improvements, Equipment and Removable Fixtures”).

SECTION 403. HOLDOVER PROVISION. If Operator shall, with the prior written approval of the Director, holdover after the expiration of the Term of this Agreement, the resulting tenancy shall, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-month basis. During such month-to-month tenancy, Operator shall pay to City the same operator fees as stated for Contract Year Ten (10) and other fees and charges as set forth herein, unless different fees shall be agreed upon in writing by the Director on behalf of the City and the Operator, and both parties shall be bound by all the Provisions of this Agreement.

ARTICLE V  
FEES AND RENTALS

SECTION 501. GENERAL. Operator, for and in consideration of the rights and privileges granted herein, agrees to pay the operator fees and any other fees and charges as set forth in this Agreement including, without limitation, Sections 502, 503, 505, 507, 509 and 510; Article XIII; and the utilities described in Article VIII of this Agreement, without demand, during the Term of this Agreement.

SECTION 502. OPERATOR FEES.

- A. Wi-Fi Fee. During the entire Term of the Agreement, the Operator agrees to pay to City a sum equal to the greater of: the Minimum Annual Guarantee (MAG) of One Hundred Ten Thousand Dollars (\$110,000.00); or the Percentage Fee of 30% of Gross Receipts.
- B. DAS Carrier Fee. Beginning on the date of Substantial Completion and during Contract Year or portion thereof, the Operator agrees to pay to City a sum equal to the greater of: Forty Thousand Dollars (\$40,000.00); or Twenty Thousand Dollars (\$20,000.00) per DAS Carrier.

#### SECTION 503. PAYMENT.

- A. MAG Payments. The “**MAG Payment**” consists of an amount equal to 1/12 of the MAG paid in advance on or before the first (1<sup>st</sup>) day of each month during each Contract Year during the Term of the Agreement.
- B. Percentage Fee Payments. The “**Percentage Fee Payment**” consists of an amount equal to the Percentage Fee Rate of 30% applied to the Gross Receipts for the previous month to be paid on or before the 15<sup>th</sup> day of the second month and each succeeding month during each Contract Year during the Term of the Agreement (see Section 505 entitled “Unpaid Fees” and Article XIII entitled “Liquidated Damages” for the amount of any applicable service charge or liquidated damages.)
- C. DAS Payments. The “**DAS Payment**” consists of an amount equal to 1/12 of the DAS Carrier Fee paid in advance on or before the first (1<sup>st</sup>) day of each month during each Contract Year, beginning on the date of Substantial Completion.

#### SECTION 504. REPORTS

- A. Statement of Receipts. Operator must submit to the City, by the fifteenth (15<sup>th</sup>) day of the second and each succeeding month of each Contract Year hereof, during the Term of the Agreement, two (2) copies of an accurate statement of Gross Receipts and DAS Carrier Fees certified by an officer of the Operator. The statement of Gross Receipts must separately state Gross Receipts by category. Operator must report Gross Receipts and DAS Carrier Fees on a form approved by the Director. The Director reserves the right to request Operator to provide documentation, in a manner satisfactory to the Director, the specifics of all refunds deducted from Gross Receipts. The City reserves the right to use these statements of Gross Receipts as a source of information to bidders in future solicitations for this or similar concessions.
- B. Final Statement of Gross Receipts. The final statement of Gross Receipts is due fifteen (15) days following expiration or early termination of this Agreement. The City reserves the right to use these statements as a source of information to bidders in future solicitations for this or similar concessions.
- C. Certified Audited Report of Gross Receipts. Operator must submit to the Airport Properties Division an audited report of Gross Receipts within one hundred twenty (120) days following the conclusion of each Contract Year, during the Term of the Agreement. This audit report must be prepared by an Independent Certified Public Accountant. The audit report shall, at a

minimum, certify the accuracy of: 1) reported total accumulated Gross Receipts; and 2) the aggregate amount of goods and services attributable to ACDBE participants. The audit report must also include a schedule showing the total of actual Operator Fee Payments to the City during the Contract Year and shall state an opinion as to the correctness of the Operator Fee Payments without exception. Delivery of an audit report containing a qualified opinion, an adverse opinion or a disclaimer of opinion as defined in the Statement on Auditing Standards, or as same may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, will be deemed to be a default pursuant to Article XI herein.

- D. Annual Audit Overpayment/Underpayment. In the event the annual audit indicates there was an underpayment of any rents, fees, charges, or other payments due and payable to the City, Operator must pay the amount of the underpayment to the City within thirty (30) days of receipt of the final audit report. In the event of an overpayment, Operator will, upon City verification and approval, deduct the amount of the overpayment from the next scheduled Operator Fee Payment. If an overpayment occurs during the last Contract Year of the Term of the Agreement, the City will pay the amount of the overpayment to Operator within thirty (30) days of receipt of the final audit report.
- E. Waiver of Audited Report of Gross Receipts Requirement. At the written request of the Operator, the City will waive the annual Certified Audited Report of Gross Receipts requirement if, during the previous Contract Year, Operator paid to the City only the Minimum Annual Guarantee (MAG) as set forth in Section 502 and 503. The City will review Operator's payment history prior to approving the waiver request.
- F. Quarterly ACDBE Activity Reports. Operator will submit to the City by the 15<sup>th</sup> day following each calendar quarter (April 15<sup>th</sup>, July 15<sup>th</sup>, October 15<sup>th</sup>, and January 15<sup>th</sup>) an accurate statement of ACDBE utilization. Operator must document, in a manner satisfactory to the Director, the specifics of all Gross Receipts and DAS Carrier Fees attributable to ACDBEs in addition to purchases from certified ACDBEs. This statement must be certified as accurate by an officer of the Operator. Operator must submit quarterly ACDBE activity reports to the City in a form approved by the Director.
- G. ACDBE Documentation. Operator must 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 505. UNPAID FEES. All unpaid Concession Fees or any other fees, charges or payments due the City under this Agreement will bear a service charge of 1.5% per month if not paid and received by the City on or before the twentieth (20<sup>th</sup>) day of the month in which the payments are due; and Operator agrees that it will pay and discharge all costs and expenses including attorney fees and litigation cost incurred or expended by the City in collection of the delinquent amounts due, including service charges.

**SECTION 506. PERFORMANCE AND PAYMENT BOND.** Operator agrees to furnish a Performance and Payment Bond, letter of credit, or other form of deposit in a form acceptable to City in the principal amount of **\$100,000** prior to execution of this Agreement (the "**Security Deposit**"). The Security Deposit 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 the Security Deposit should expire or be canceled prior to expiration or early termination of this Agreement, Operator warrants, covenants and agrees to promptly and timely provide City a renewed or new Security Deposit sixty (60) days *prior* to the Security Deposit's expiration or termination date. The Security Deposit must guarantee the payment of all fees and performance of all other Provisions of this Agreement. If applicable, the Performance and Payment Bond must be in the form of standard commercial guaranty bond running to City, written by a surety company authorized to do business in Missouri: having a "Best" key rating of not less than A and with a "Best" Financial Size Category of not less than Class VIII; and shown on the most recent U.S. Treasury Circular No. 570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. City may agree to another form of a Security Deposit which must provide equal protection of City's interest. If City cashes all or any portion of the Security Deposit, Operator agrees to furnish a replacement Security Deposit, as the case may be, in the same principal amount within twenty (20) days.

**SECTION 507. PROMPT PAYMENT OF TAXES AND FEES.** Operator warrants, covenants and agrees to pay promptly all lawful general taxes or payments in lieu of taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses (municipal, state or federal) required for the conduct of its business at and upon the Airport or under this Agreement, and further covenants and agrees not to permit any of said taxes, payments, assessments, fees and charges to become delinquent.

**SECTION 508. ACCOUNTING RECORDS AND REPORTS.** During the Term hereof, Operator will make available in the St. Louis area true, accurate, complete and auditable records of all business it conducts at the Airport. Operator shall make same records available in the St. Louis area for seven (7) years following each Contract Year. These records shall be accessible during usual business hours to the City or its duly appointed agents or auditors. Operator is not required to maintain its records in the St. Louis area, as provided above, if it agrees to pay for all costs associated with conducting audits performed by the City, or its duly appointed agents or auditors, at the Operator's place of records.

**SECTION 509. RIGHT TO AUDIT.**

- A. City, or its duly appointed agents or auditors, reserves the right to audit Operator's, subcontractor's, or others doing business under this Agreement, books, records and receipts at any time for the purpose of verifying the fees and payments hereunder. If, by the results of the audit(s), it is established that additional fees are due to the City, the Operator shall pay such fees to the City not later than fifteen (15) days after completion of such audit and written notice by the Director. If the results of the audit(s) reveal a discrepancy of more than five percent (5%) between the fees and payments reported by the Operator and the fees and payments determined by the audit, the cost of the audit will be borne by Operator.

- B. If, as a result of an audit by any governmental entity, Operator is required to restate Gross Receipts as defined herein, Operator 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 Operator owing additional Concession Fee Payments, Operator will, within thirty (30) days, remit to the City the additional Concession Fee Payments.

**SECTION 510. ADDITIONAL FEES, CHARGES AND RENTALS.** Operator must pay to the City within thirty (30) days of written notice additional fees, charges and rentals under the following conditions:

- A. If the City has paid any sum(s) or has incurred any obligations or expenses for which Operator has agreed to pay or reimburse the City for; or
- B. If the City is required or elects to pay any sum(s) or incurs any obligations or expenses because of the failure, neglect or refusal of Operator to perform or fulfill any of the Provisions of this Agreement.

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

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

**SECTION 511. NOTICE, PLACE AND MANNER OF PAYMENT.** Payments to the City required by this Agreement must be made at the Airport Administrative Office at the address as set forth in Section 1501, or at such other place or by whatever payment method that the City may determine as the City may hereafter notify Operator, and must be made in legal tender of the United States of America.

## ARTICLE VI OPERATOR'S OPERATIONS

**SECTION 601. OBLIGATIONS OF OPERATOR.**

Operator has assumed full responsibility for the design, installation, management, operation, ongoing support, maintenance, and marketing of an enterprise class, multi-user, neutral-host Wireless Local Area Network ("WLAN") and Distributed Antenna System ("DAS") providing wireless internet and cellular telecommunications access to airport passengers, tenants, employees, contractors, and visitors throughout the Facilities as provided for in Operator's Proposal, as

amended, which is incorporated herein by reference, and in accordance with the final design approved by the City (see Section 1518 of this Agreement). In addition, the Operator hereby covenants, warrants, stipulates, and agrees that:

- A. All costs for the design, installation, management, operation, maintenance and ongoing support, and possible future expansion of the System will be borne by the Operator, pursuant to its obligations under this Agreement. To the maximum extent reasonably possible the installation and operation of the System must be undertaken to minimize disruption to the Airport's facilities and operations. Operator shall ensure that the System is installed and operated in a manner that complies with applicable building codes and standards and Airport Tenant Design Standards and subject to the terms and conditions of Article VII of this Agreement;
- B. Operator will measure and document System coverage upon completion of installation, and will be responsible for ensuring that coverage does not materially degrade during the Term of this Agreement. A copy of final as-built WLAN and DAS design documentation, including system configuration and coverage patterns, must be provided to the Airport within one hundred eighty (180) days of the Commencement Date;
- C. Operator is solely responsible for the management, operation, maintenance and ongoing support of the System, and will provide high quality, secure, reliable, easy to use, enterprise class service, supporting both the physical network and the various user groups;
- D. Operator will provide all services reasonably necessary to ensure optimal System performance and uptime and a high quality user experience; including free access to an 'airport-branded' welcome and information Splash Page, secure access and authorization, as well as 24 hours per day, 7 days per week, 365 days per year superior customer support and network monitoring;
- E. Operator will provide, on a continual basis, a fully managed WLAN system that provides secure access, authentication and accounting (AAA) mechanisms that accurately measure and identify wireless traffic through the System;
- F. Operator will make the System available to participating Internet Service Providers ("ISPs") and DAS Carriers so that they may provide wireless and cellular services to their subscribers while at the Airport. The System will be designed and managed in a brand neutral, nondiscriminatory manner so that all ISPs and DAS Carriers have equal access to the System, under consistent terms and requirements, and so that their subscribers may access the System via their selected provider. Interested users must be able to access subscription offerings from all participating qualified ISPs;
- G. The Operator will provide wireless service and support to those users who do not have or wish to utilize a subscription internet service, on a transaction basis ("**Transaction Based Users**") without requiring the use of any special software or commitment to an ongoing relationship between the Operator and Transaction Based User;
- H. Operator will make the System available to commercial users at the Airport to serve the

wireless internet access and cellular requirements of these users, enabling support for multiple private networks;

- I. Operator will manage and administer DAS Carrier agreements and access agreements, utilizing fair and reasonable business terms, in substantially the form submitted in Operator's Proposal, as amended, to accommodate commercial and private users of the System;
- J. Operator will make up to one (1) megabyte of bandwidth of the System available to Airport staff for support of Airport operations and wireless internet communications, at no charge. At the City's sole option, this may include a designated VLAN;
- K. At the City's option, the Authority's staff shall be briefed on the components and operation of the on-site network upon completion of the installation. This training is intended to acquaint Airport personnel with the features and performance of the wireless network; however, the Operator accepts full responsibility for the on-going use, operation, care and maintenance of the network and its various components, including all customer service issues;
- L. Operator will develop an Operating and Procedures Manual prior to the start of operations, to address relevant quality assurance, safety, security, system testing, and maintenance issues at initiation of the project as well as periodically during the term of the Agreement. The City shall have a minimum of ten (10) days to review and accept such procedures;
- M. The System must be compliant with all-applicable laws, rules, regulations and license requirements of the Federal Communications Commission, the FAA, and the Airport; and
- N. The Operator will offer the first twenty (20) minutes of wireless internet access at no charge to each user.

SECTION 602. SERVICE LEVELS. Operator shall comply with service levels for the System's operation at the Airport as described in this Section 602:

- A. The Operator must provide, or cause to be provided, customer service via a dedicated toll-free number on a twenty-four (24) hours per day, each and every day of the year, basis for the Term of this Agreement. This customer service will answer and respond to all calls related to billing support, information regarding the System services and technical support. Customer service must be staffed by knowledgeable employees of the Operator and/or subcontractors capable of providing assistance relating to the System.
- B. The Wi-Fi portion of the System will have an "**Uptime**" rate of no less than ninety-eight percent (98%) and "**Connection Rate**" of ninety-eight percent (98%), on an annual basis for the Term of this Agreement, assuming that all users connect with the appropriate hardware and software. **Uptime** means the absence of "**Downtime**," which is defined as any interruption in the availability of the System services due to issues with Operator's, or any of its subcontractor's, provided equipment and notwithstanding the foregoing includes unavailability associated with System maintenance. Downtime does not include interruptions based on outages due to force majeure (see Section 1504). Any planned maintenance activities

will be scheduled between 11:00 p.m. and 6:00 a.m. local time. Any maintenance to be performed other than the hours listed above shall require the Director's approval in writing.

- C. The Operator must have a network operations center to support the Wi-Fi portion of the System available twenty-four (24) hours per day, each and every day of the year, for the Term of this Agreement. This network operations center will provide monitoring and surveillance of the Wi-Fi portion of the System. This center will provide technical support on Wi-Fi network design issues, equipment issues and outages, and will provide communications directly to the Operator's designated technical group. Each Wi-Fi network link, down to each access point shall be polled a minimum of every five (5) minutes to ensure connectivity. The network operations center shall immediately answer all calls by the Interactive Voice Response ("IVR") system. Eighty percent (80%) of all calls must be answered within forty-five (45) seconds of the conclusion of the IVR recording.
- D. Operator will provide on-site repair and maintenance of Operator's System equipment and equipment of its contractors and subcontractors at the Airport and use its reasonable efforts to resolve all such repair and maintenance issues within seventy-two (72) hours of the time the Operator or its contractors and /or subcontractors becomes aware from any source that an outage condition or problem is caused by or related to such System equipment.

SECTION 603. HOURS OF OPERATION. Operator must operate the System 24-hours per day; seven days per week, 365/366 days per year, as applicable.

SECTION 604. PROMOTION. Operator warrants, covenants and agrees that it will take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it hereunder. Operator will not divert, cause or allow any business to be diverted from the Airport by referral or any other method. Any action taken by Operator to diminish the revenue of the Operator under this Agreement will constitute a material breach hereof and a cause for the termination of this Agreement by the City.

SECTION 605. MAINTENANCE PERSONNEL.

- A. Operator will have available qualified maintenance personnel in adequate numbers to provide routine maintenance of the System and to respond to any emergency outages of the System. The Operator will require its employees (except managerial and supervisory employees) to wear appropriate badges to indicate the fact and nature of their employment. The Operator will 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 the System.
- B. Operator will 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 must fully comply with TSA regulation 1542 regarding conduct and access to the AOA.
- C. Operator, *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.

- D. Operator, *at its cost*, acknowledges and agrees that it must conduct employee background checks of each of its personnel if required by the FAA, TSA and/or the City. Operator recognizes and agrees that security requirements may change and Operator agrees that it will comply with all such changes throughout the Term of this Agreement.
- E. Operator understands and agrees that fines and/or penalties may be assessed by the FAA or the TSA for Operator's noncompliance with the provisions of TSA regulation 1542 as amended or other applicable laws or regulations. Operator will promptly reimburse the City, within thirty (30) days of the City's request, for any fines or penalties paid by the City due to Operator's noncompliance with said laws or regulations.
- F. Operator 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.
- G. Operator 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.
- H. Operator acknowledges and agrees that no parking privileges are included in this Agreement.
- I. Operator acknowledges that the Airport is a smoke-free facility. Smoking is permitted only in designated smoking areas.

SECTION 606. MANAGER. The Operator will at all times retain one or more qualified, competent and experienced manager(s) who shall manage and supervise the operations and the facilities and represent and act for the Operator. The manager(s) will ordinarily be available during regular business hours. A responsible subordinate will be in charge and available at all times during the manager's absence.

SECTION 607. LOCAL REPRESENTATIVE. The Operator will at all times retain one or more qualified, competent and experienced local technician(s) (i.e. a person having a place of residence within the St. Louis metropolitan region) to assist (in such matter as the Operator and such local technician may agree) Operator in fulfilling its obligations with respect to System maintenance, response to outages, and emergency repairs.

SECTION 608. PRICING.

- A. The Operator will charge fair, reasonable and nondiscriminatory retail prices that are attractive to the public and substantially similar to the prices charged at comparable locations for comparable transaction based, retail usage. Initial pricing is detailed in **Exhibit C**, entitled "Initial Wi-Fi Pricing Structure," which is attached hereto and incorporated herein, provided,

however, that the Operator may amend such pricing as it deems appropriate, subject to the requirements set forth in this Section 608(A).

- B. The Operator will charge fair, reasonable, and nondiscriminatory wholesale prices to all ISPs seeking to offer service to their subscribers via the Wi-Fi. Initial pricing is detailed in **Exhibit C**. Operator may amend such pricing as it deems appropriate, subject to the requirements set forth in the first sentence of this Section 608(B).
- C. The Operator will charge private side users fair, reasonable and nondiscriminatory prices that are comparable for similar services at similar facilities. Pricing must be structured to encourage use of the Wi-Fi by tenants and other private-side users at the Airport. Initial pricing is detailed in **Exhibit C**. Operator may amend such pricing as it deems appropriate, subject to the requirements set forth in the first sentence of this Section 608(C).
- D. The Operator must not increase any prices in excess of those set forth in **Exhibit C** without the prior written approval of the Director. The Operator's prices shall be subject to review for increases only once per year unless agreed to the contrary in writing by the Director.
- E. The Operator will charge fair, reasonable, and nondiscriminatory prices that are substantially similar to the prices charged at comparable locations for comparable usage to all DAS Carriers seeking use of the DAS.

**SECTION 609. ONSET OF SERVICE.** Operator will receive the Facilities "AS IS". Operator is solely liable and responsible for all costs and expenses pertaining to the design, construction, acquisition, installation, replacement, relocation and maintenance of the Existing Improvements, Improvements, Removable Fixtures and equipment as is necessary to provide service pursuant to this Agreement.

At the time of the award of this Agreement, Operator 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 Operator. Operator will be responsible to coordinate the execution of the transition, in accordance with the approved transition plan with the previous Operator to assure a smooth transition of service with the minimum amount of disruption of service to the traveling public and other Airport users.

**SECTION 610. CONFLICTS.** Operator 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 611. RECORD KEEPING.** Operator 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 must be capable of providing comprehensive records, in a format acceptable to the Director, of daily, monthly and annual sales of Operator and ACDBE participant(s) under this Agreement (these records are to be retained by Operator). Operator must also maintain records that document, in a format acceptable to the Director, the portion of revenue attributable to ACDBE participants.

SECTION 612. TRANSITION PERIOD. If applicable, during any future transition of the Concession to another Operator, the incumbent Operator hereby warrants, represents, covenants and agrees that Operator will 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, Operator shall provide to the Director its Transition Plan in writing, upon fifteen (15) days written notice.

SECTION 613. OPERATION.

- A. The Operator will be responsible for all aspects of the management and operation of the System and services as required herein. Further, the Operator shall provide and be responsible for all employees and necessary components of the operation, including inventory, fixtures, equipment and supplies.
- B. The City is not responsible for any equipment, Improvements, supplies or fixtures of Operator that are used, maintained or stored on the Facilities, nor is it responsible for damage to such items resulting from flood, fire, theft, explosion, vandalism, acts of God, casualty, or other causes outside the direct control and responsibility of the City.

SECTION 614. COMMUNICATION.

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

SECTION 615. CUSTOMER COMPLAINTS. Operator must establish procedures for handling all customer complaints. Operator will respond to every complaint, written or oral, within seven calendar days of the complaint and will make good faith efforts to explain, resolve or rectify the cause of the complaint. Operator must provide the Director with a copy of each such complaint and its response thereto.

SECTION 616. DELIVERIES. Operator will monitor the movement of deliveries to avoid conflict with other functions and users of the Airport and will coordinate its use of the receiving dock with other users. All deliveries are the responsibility of Operator and not the City.

SECTION 617. OPERATIONAL AUDIT. During the Term of this Agreement, Operator shall be subject to regular operational facilities inspections by the City of Operator's operations at the Airport.

SECTION 618. ENTERTAINMENT SYSTEMS/WIRELESS DATA. No radio or television or other similar device will be installed without first obtaining, in each instance, the Director's written consent which will not be unreasonably withheld, as provided for in Article VII below. No antenna or aerial will be erected on the roof, interior walls or exterior walls of the Facilities or on the Airport without, in each instance, first obtaining the prior written consent of the Director, as provided for in Article VII of this Agreement. 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 will be used in a manner so as to be heard outside the Facilities without the prior written consent of the Director. Surveillance equipment is permitted within the Facilities for surveillance within the Facilities only. Operator will 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 Facilities without obtaining the prior written consent of the Director, whose consent may be withheld for any reason whatsoever, or for no reason. The costs for the removal of any of the foregoing equipment or devices will be borne by the Operator. 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 Operators 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 OPERATOR.

- A. Operator takes the Facilities "AS IS" as provided for in Section 201 above and agrees, at Operator's sole cost and expense, to design, construct, equip and furnish all necessary Improvements and Removable Fixtures and make related facility changes as needed to provide a fully operational and properly functioning System, pursuant to this Agreement, and in accordance with plans prepared by Operator and approved by the Director subject to the requirements of this Article VII.
- B. Operator agrees that all such work shall be completed according to the Tenant Design Standards, which are filed of record in the Office of the Director of Airports.
  1. Operator must submit a signed Tenant Construction or Alteration Application ("TCA") including complete construction drawings and specifications, as required by Section 704, to the Airport Properties Division. The TCA will be submitted for each location in accordance with the construction drawings and specifications. Operator also understands and agrees that certain work elements described in its TCA may require separate or additional approval from the City before proceeding with the specific work element. As such, ongoing coordination with the City at all times is crucial.
  2. Operator must submit a St. Louis County building permit number not more than thirty (30) days following submission of the TCA to the Airport Properties Division. (A building

permit number is required before the TCA can be approved.)

3. Operator will submit the contractor's liability insurance certificates, performance bonds, and payment bonds, required by Sections 706 and 707, to the Airport Properties Division not more than forty-five (45) days following the TCA approval by the Airport Properties Division and prior to beginning of work.
4. Operator will use only City-approved contractors or subcontractors for Improvements affecting control and/or programming of Airport systems including, but not limited to, security access control, fire alarm and detection, HVAC control, closed circuit televisions (CCTVs) and elevators.
5. Operator will 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 708 hereof.

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

**SECTION 702. DESIGN CRITERIA AND TECHNICAL SPECIFICATIONS.** Operator will design and construct the System in accordance with the plans and specifications as provided in its Proposal, as amended, and the final System design approved by the City. Any deviations from the aforementioned plans and specifications must be approved by the Director in writing as provided for in Article VII.

**SECTION 703. INITIAL MINIMUM INVESTMENT.** In connection with Operator's performance under Section 701 of this Agreement, Operator warrants, represents, stipulates and agrees that it will expend or cause to be expended for Improvements an initial minimum investment amount of not less than **Three Million Dollars (\$3,000,000.00)** in accordance with its Proposal (the "**Initial Minimum Investment Requirement**"). Operator must complete or cause to be completed these Improvements in accordance with all requirements of this Agreement including Article VII. Operator also warrants, represents, stipulates and agrees to timely complete these Improvements satisfying the Initial Minimum Investment Requirement **no later than nine (9) years from the Commencement Date**, unless delayed further at the City's direction.

Operator will furnish the Director with satisfactory proof of Build-Out Costs for the Improvements satisfying the Initial Minimum Investment Requirement within one hundred eighty (180) days following completion of Improvements to the Facilities. This proof of the Build-Out Costs must include, at a minimum, an itemized account of all included costs, supported by paid invoices (copies to be provided only if specifically requested by the Director) and certified as accurate by

an officer of Operator. Upon completion of the Improvements that satisfy the Initial Minimum Investment Requirement, the Operator will have the total Build-Out Costs for these Improvements certified by an Independent Certified Public Accountant and will supply the resulting audit report to the Director. Operator will provide to the Director any other proof requested by the Director.

Operator is encouraged by City to productively expend the entire amount obligated to Build-Out Costs for Improvements necessary to satisfy the Initial Minimum Investment Requirement, but in the event Operator's actual expenditures for these Build-Out Costs are less than the total of **Three Million Dollars (\$3,000,000.00)**, the difference or short-fall will be an item of additional payment due and payable by the Operator to City within thirty (30) days after the receipt of an invoice for the difference from City.

**SECTION 704. PREPARATION OF PLANS AND SPECIFICATIONS.** Operator shall submit detailed drawings, plans and specifications sealed by an appropriate Missouri registered professional for improving and equipping the Facilities. *Operator shall begin work on proposed construction only after it has received the written approval of its plans and specifications from the Director in accordance with the Provisions of this Agreement.*

**SECTION 705. CONTRACTOR'S LIABILITY INSURANCE.** In any contract appertaining to improving, constructing, maintenance, repair, and/or equipping of the Facilities, Operator must require the contractor to cause the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, with bodily injury limits of not less than Three Million Dollars (\$3,000,000) as to any one person, and Three Million Dollars (\$3,000,000) as to any one occurrence, and with property damage limits of not less than Three Million Dollars (\$3,000,000) as to any one occurrence. Said insurance shall be in a form acceptable to the City.

**SECTION 706. PERFORMANCE AND PAYMENT BONDS.** Operator must require each of its contractors and suppliers of construction materials to furnish both a Performance Bond **and** a Payment Bond **each** in the full amount of any contract in a form acceptable to the City. The Payment Bond must comply with the coverage requirements and conditions of Section 107.170 RSMo (Revised Statutes State of Missouri). Copies of the bonds are to be given to the City for approval before work begins. Any sum or sums derived from the Performance Bond and Payment Bond will be used for the completion of the construction and the payment of laborers and material suppliers, as the case may be.

**SECTION 707. MECHANICS' AND MATERIALMEN'S LIENS.** Operator agrees not to permit any mechanics' or materialmen's or any other lien or encumbrance to be attached or foreclosed upon the Facilities or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

**SECTION 708. CERTIFICATE OF COMPLETION.** Upon the completion of the Improvements hereunder, Operator 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 Operator. Operator will provide the City with sealed as-built drawings, preferably in an electronic format, within ninety (90) days of opening of each retail location.

#### SECTION 709. SIGNS.

- A. Operator will not erect, maintain or display any signs on the Facilities without the prior written approval of the Director. The term "sign" as used herein, shall mean advertising signs, billboards, banners, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the Provisions of this Article VII, Operator has the right to install such advertising and identification signs as may be necessary for the proper conduct the System's services as contemplated hereunder. Operator must comply with all rules promulgated by the Director regarding the placement of signs and advertising on the Facilities.
- B. Operator is responsible for the cost of any new signs or modifications to Airport directories and other existing signs, including sign systems required by the Director. All modifications to these signs must be approved by the Director and are subject to all applicable requirements of this Section 709 hereof and the Tenant Design Standards.
- C. Prior to the erection, construction or placement of any sign, Operator must submit to the Director for approval, all drawings, electrical details, sketches, designs, elevations, mounting details and dimensions of such signs. Any conditions, restrictions or limitations with respect to the use thereof as stated by the Director in writing must be strictly followed.
- D. Operator will not place any advertising matter, displays or other literature not directly pertaining to the System's services or place any signs in the Facilities without the prior written approval of the Director.
- E. Handwritten signs are strictly prohibited.
- F. The Director reserves the right to require the removal of any signs or advertising in, on or within the Facilities deemed unacceptable or improper and the Director's decision is final and binding.

#### SECTION 710. TITLE TO IMPROVEMENTS, EQUIPMENT AND REMOVABLE FIXTURES.

At the City's sole discretion, all Improvements constructed, installed, or placed in or on the Facilities by the Operator and/or comprising a part of or a component of the System, including without limitation all conduits, cabling, hardware, and other associated equipment, as well as all alterations, modifications and enlargements thereof shall become part of the Facilities with title vesting in the City upon expiration or earlier termination of this Agreement. This vesting of title is subject, however, to the Operator's obligation to operate, repair, maintain and replace, and its right of possession, use and occupancy in accordance with this Agreement.

All installation and construction information, hardware, software, manuals, user names, maps,

passwords, network diagrams, and other information necessary for the efficient, proper and safe operation and the maintenance of the System must be provided to the City immediately upon the expiration or early termination of the Agreement, or for any reason, as requested by the City.

All Removable Fixtures shall remain the property of Operator, and must be promptly removed by Operator at date of expiration or early termination of this Agreement. Within sixty (60) days of the commencement of the operation in the Facilities, a list of such Removable Fixtures must be submitted in writing to the Director by Operator for the Director's approval, and the Removable Fixtures list shall be updated by Operator no less than one (1) time per Contract Year, thirty (30) days after the Contract Year anniversary date or as may be necessary or as requested by the City.

Operator agrees to bear all costs for the removal of its Removable Fixtures and restoration of the Facilities (see Section 402 entitled "Surrender of Possession"). If after thirty (30) days following the expiration or early termination of this Agreement, Operator fails to remove its Removable Fixtures from the Facilities, these Removable Fixtures may be deemed abandoned by the City. In addition to whatever other rights are available to the City, with prior notification of Operator, the City may: (i) remove and store all or any portion of the Removable Fixtures at Operator's costs, 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 shall be entitled to all proceeds of sale of any Removable Fixtures as liquidated damages for the Operator's breach of its covenant to promptly and timely remove its Removable Fixtures.

## ARTICLE VIII USE OF FACILITIES

SECTION 801. COMPLIANCE WITH LAWS AND REGULATIONS. Operator must 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, Operator must 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 Facilities and its operations within the Facilities or to any adjoining public ways, as to the manner of use or the condition of the Facilities or of adjoining public ways.

SECTION 802. REPAIRS AND MAINTENANCE. Operator must provide and pay for all repairs and maintenance of the System and the Facilities, *except* the following which will be the responsibility of the City:

- A. The structural components of the building.
- B. The utility system to the point of Operator's connection to the utility system, except where the utility systems are owned or controlled by the utility companies.

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

- A. Keep all its equipment and fixtures within the Facilities in good repair and appearance including, without limitation, all Improvements, Existing Improvements and Removable Fixtures.
- B. Keep the Facilities free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.
- C. Repair all damage to the Facilities and the Airport when such damage results from the careless or negligent acts of Operator or its agents or employees.
- D. Keep the Facilities secured at all times.
- E. Provide, at Operator's sole cost and expense, a functional mailing address or other means of receiving mail, and shall ensure all mail is directed to that address. The City is not responsible for the Operator's mail or the subsequent delivery thereof.

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Facilities, so long as another means of access is provided. Operator understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and Operator hereby releases and discharges the City from any and all inconvenience claims, liability or causes of action arising out of or incidental to the closing of any right-of-way, including, without limitation, loss of profit or business, actual, incidental, consequential or special damages. Notwithstanding, if Operator is negatively impacted the City will make reasonable efforts to work with Operator to provide a solution that will offset the negative impact.

**SECTION 803. RIGHT TO ENTER, INSPECT AND MAKE REPAIRS.** The City and its authorized officers, agents, employees, contractors, subcontractors and other representatives will have the right (at such times as may be reasonable under the circumstances and with as little interruption of Operator's operations as is practicable) to enter upon and in the Facilities for the following purposes:

- A. To inspect such Facilities to determine whether Operator has complied and is complying, with the Provisions of this Agreement.
- B. To perform maintenance and make repairs Operator is obligated, but has failed to do after the City have given Operator notice to do so, in which event, Operator will reimburse the City for the costs thereof, plus a charge of fifteen percent (15%) for overhead, within thirty (30) days of the City's written request or demand.
- C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems.

- A. To perform inspections, testing, reporting, surveys, environmental inspections and remediations, studies and assessments during normal business hours.

**SECTION 804. UTILITIES.** The City shall provide a main electric panel from which Operator shall obtain electricity at a cost based upon metered usage for Operator's Head-End Room. Operator shall be responsible for the cost of electric meters and sockets and all connections to and within the Head-End Room. If service outlets are not available where needed, Operator will be responsible for bringing electrical service to the Head-End Room. Operator will be responsible for any needed modification or upgrade in electrical supply caused by changes to the Head-End Room made by Operator.

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

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

The City will not be liable to Operator 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. Operator 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.

**SECTION 805. INTERFERENCE WITH AIRPORT UTILITIES.** Operator will not interfere with the Airport's utilities systems including but not limited to drainage or sewage systems, plumbing, heating, cooling and air condition systems, electrical systems, communications systems, domestic hot or cold water, gas, fire suppressions systems, fire alarm systems, and fire hydrants on the Airport, without prior notification to, and written approval from the Director.

**SECTION 806. INTERFERENCE TO AIR NAVIGATION.** Operator warrants, represents and agrees that no obstruction to air navigation, as such are defined from time to time by application of the criteria of Part 77 of the Federal Aviation Regulations or subsequent and additional regulations of the FAA, will be constructed or permitted to remain in or on the Facilities. Any obstructions will be immediately removed by Operator at its expense. Operator warrants, represents and agrees not to increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight of the Air Traffic Control Tower and its operations. Operator further warrants, represents and agrees not to install any structures, objects, machinery or equipment that would interfere with the operation of navigation aids or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport.

ARTICLE IX  
INSURANCE, DAMAGE, AND INDEMNIFICATION

SECTION 901. INSURANCE.

- A. General. Operator at all times during the term hereof, will cause St. Charles County, Missouri; St. Clair County, Illinois; St. Louis County, Missouri; the City; their officers, agents and employees to be insured **on an occurrence basis** against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities or omissions of Operator, its officers, agents, and employees pursuant to this Agreement both within the Facilities and at the Airport.
- B. Risks and Minimum Limits of Coverage. Operator must 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 in aggregate.
  - 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 Operator in the course of its performance hereunder, including Operator's non-owned and hired autos).
  - 3) Workers' Compensation and Employer's Liability Insurance in accordance with Missouri laws and regulations. With respect to Workers' Compensation Insurance, if Operator elects to be self-insured, Operator will comply with the applicable requirements of law. Operator will 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 will not be liable or responsible for any claims or actions occasioned by Operator'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 Operator are not employees of the City for any purpose, and that employees of the City are not employees of Operator.
  - 4) Contents Insurance. Operator is solely responsible for obtaining insurance policies that provide coverage for losses of Operator owned property including, without limitation, Operator's personal property and Removable Fixtures. The City is not required to provide such insurance coverage or be responsible for payment of Operator's cost for such insurance.
  - 5) Builders Risk Insurance. During any period of construction or reconstruction for which Operator contracts, Operator will carry, or will 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 Operator's equipment and personal property). Operator 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. Operator must 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 Operator's improvements to the Facilities including, without limitation, Improvements, Removable Fixtures, trade fixtures, and equipment. The City must be named Loss Payee on such coverage to the extent of the City's interest therein (except to the extent coverage relates to Operator's Removable Fixtures or other personal property).

C. Issuers of Policies. The issuer of each policy required herein must 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 will relieve Operator from its duties to provide the required coverage hereunder, and the City's actions or inactions will 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, must name the City, its officers, agents, and employees as "additional insured" on the certificate of insurance, including all renewal certificates, to the extent of Operator's indemnification obligations hereunder. Inclusion as an "additional insured" is not intended to and will not make the City a partner or joint venturer with Operator in its operations.

**The "additional insured" language must read exactly as follows: "St. Charles County, Missouri, St. Clair County, Illinois, St. Louis County, Missouri, the City 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, Lambert-St. Louis International Airport, P.O. Box 10212, St. Louis, Missouri 63145."**

4. Deductibles. Operator will 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 will diminish Operator's rights or increase Operator's obligations in respect to its undertakings or hold harmless defense and indemnification set forth in Section 904 hereof.
5. Cancellation. Each policy must 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 Operator.

6. Subrogation. Each policy must contain an endorsement by which the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents, or employees.
  7. Endorsement of Primary Insurance. Each policy hereunder except Workers' Compensation 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. Operator is solely responsible for payment of all insurance premiums required pursuant to this Agreement, and the City will not be obligated to pay any premiums; provided, however, that if Operator 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 Operator's behalf and, after notice to Operator, 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 Operator.
  9. Proof of Insurance. Within thirty (30) days of the effective date of this Agreement and at any time during the term hereof, Operator must furnish the City with certificates of insurance. At least fifteen (15) days prior to the expiration of any such policy, Operator will submit to the City a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Operator must, 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 Operator, the City will have the right to examine Operator'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 Operator, 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 Operator, and, based on the written recommendations of such consultant, and in consultation with Operator, to reasonably adjust the insurance coverages and limits required herein but not more often than every twenty-four (24) months.

SECTION 902. OPERATOR ACTIONS AFFECTING INSURANCE. Operator will 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 Operator's act, or failure to act, causes cancellation of any policy, then Operator must immediately, upon notification by the City, do whatever is necessary to cause reinstatement of said insurance. Furthermore, if Operator does or permits to be done any act or fails to do any act which causes an increase in the City's insurance premiums, Operator will immediately remedy such actions and/or pay the increase in premiums, upon notice from the City to do so; but in any event, Operator will hold the City harmless for any expenses and/or damage resulting from any such action.

#### SECTION 903. DAMAGE TO HEAD-END ROOM.

- A. Minor Damage. If any part of the Head-End Room, or adjacent facilities directly and substantially affecting the use of the Head-End Room, is partially damaged by fire or other casualty, but said circumstances do not render the Head-End Room untenable as determined by the City, the affected space will be repaired to usable condition with due diligence by the City as provided in this Section.
- B. Substantial Damage. If any part of the Head-End Room, or adjacent facilities directly and substantially affecting the use of the Head-End Room, is so extensively damaged by fire, or other casualty, as to render any portion of said Head-End Room untenable but capable of being repaired, as determined by the City, the affected space must be repaired to usable condition with due diligence by the City as provided in this Section. The City shall use its reasonable efforts to provide alternate Head-End Room to continue Operator's operations while repair, reconstruction, or replacement is being completed, at no charge to the Operator.
- C. Total Damage.
1. If any part of the Head-End Room, or adjacent facilities directly and substantially affecting the use of the Head-End Room, is damaged by fire or other casualty, and is so extensively damaged as to render any portion of said Head-End Room incapable of being repaired, as determined by the City, the City shall notify Operator as soon as practicable under the circumstances after the date of such damage of its decision whether to reconstruct or replace said Head-End Room. However, the City shall be under no obligation to replace or reconstruct such Head-End Room.
  2. If the City elects to reconstruct or replace affected Head-End Room, the City shall use reasonable efforts to provide an alternate Head-End Room to continue Operator's operation while repair, reconstruction, or replacement is being completed, at no charge to the Operator.
  3. If the City elects not to reconstruct or replace affected Head-End Room, the City shall meet and, after consultation with Operator on adequate replacement space, designate such replacement space by giving the Operator written notice. The City shall also provide Operator written notice regarding the deletion by the City of the affected Head-End Room.
- D. Scope of Restoration of Head-End Room.
1. The City's obligations to repair, reconstruct, or replace affected Head-End Room under the

Provisions of this section shall in any event be limited to using due diligence and reasonable efforts to restore affected Head-End Room to substantially the same condition that existed prior to any such damage and shall further be limited by the provisions of Section 903 A-C. If the City elects to repair, reconstruct, or replace affected Head-End Room as provided in this section, then Operator shall proceed with due diligence and at its sole cost and expense to repair, install, reconstruct, or replace its Removable Fixtures and Improvements provided, constructed, or installed by Operator in or about the Head-End Room 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 Head-End Room, as provided in this section, if Operator requests to perform said function with respect to damage under Section 903 A and B, the City may, in its sole discretion, allow Operator to do so. Any such work by Operator must be done in accordance with the requirements of this Agreement, including without limitation, Article VII (entitled "Improvements and Alterations"). The City shall reimburse Operator for the cost of such authorized work performed by Operator as agreed to in writing by the City and the Operator. Operator will be considered to be doing such work on its own behalf and not as an Operator or contractor of the City.
- E. Damage From Operator Negligence. Notwithstanding the provisions of this Section, if damage to or destruction of the Head-End Room is due to the negligent or willful acts of Operator, its agents, servants, or employees, or those under its control, there will be no abatement of fees during the restoration or replacement of said Head-End Room. In addition, Operator will have no option to delete the affected Head-End Room 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, Operator must promptly pay the amount of such additional costs to the City.

#### SECTION 904. INDEMNIFICATION.

- A. Operator will defend, indemnify, and hold harmless St. Charles County, Missouri, St. Clair County, Illinois, St. Louis County, Missouri, the City, their respective officers, agents and employees (the "**Indemnified Parties**") from and against any and all loss, liability, penalties, damages of whatever nature, causes of action, suits, claims, demands, judgments, injunctive relief, awards, settlements, costs, and expenses, including payments of claims of liability resulting from any injury or death of any person or damage to or destruction of any property including all reasonable costs for investigation and defense thereof (including but not limited to attorneys' fees, court costs and expert fees) of any nature, arising out of and in connection with this Agreement, the conduct of the Operator or Operator's use of the Facilities or other areas at the Airport by Operator, its agents, officers, employees, contractors, independent contractors, subcontractors, licensees, invitees, and sublessees, including, but not limited to:
- 1) the acts or omissions of Operator, its agents, officers, employees, contractors, independent contractors, subcontractors, licensees, invitees, sublessees, or suppliers;
  - 2) Operator's use or occupancy of the Airport, including but not limited to the Facilities; and

- 3) any violation by Operator in the conduct of Operator's Concession or its use of its Facilities or other areas or facilities at the Airport of any Provision of this Agreement.

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

- B. Operator will 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 Operator, or which arise out of the operations of Operator or by reason of Operator's use of the Facilities 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 Operator-related receipts. However, Operator 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 Operator to contest or appeal the same. Operator 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 Operator. Operator shall, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not.
- C. Operator will 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 Operator, its agents, employees, contractors, or suppliers, in conjunction with Operator's use and/or occupancy of the Facilities or its operations at the Airport. Operator will, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not. Operator shall include the substance of this Subsection (C) in every sublease, contract or other agreement which Operator 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. Operator will defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature arising from or based in whole or part upon the presence in, or the release into, the environment or the Airport of any Hazardous Materials to the extent caused by, or resulting from, the acts or omissions of Operator or its agents, officers, employees, contractors, independent contractors, sublessees, invitees, licensees, or suppliers at the Airport whether resulting from negligent conduct or otherwise.
- 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 Operator'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, Operator will 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 Operator 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. Operator's obligation to defend and indemnify past officers, employees, and agents of the City will apply to such persons only for claims, suits, demands, actions, liability, loss, damages, judgments, or fines arising from events, occurrences, and circumstances during which said officers, employees, and agents held their office or position with the City.
- G. The City shall promptly notify Operator of each claim, action, proceeding, or suit in respect of which indemnity may be sought by the City against Operator hereunder, setting forth the particulars of such claim, action, proceeding or suit; shall furnish Operator 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 Operator.
- H. The duty to defend, indemnify, hold harmless, and reimburse will apply to any claim, demands, or suits made against the City for which Operator is responsible pursuant to this Section. Provided, however, that upon the filing by anyone of a claim with the City for damages arising out of incidents for which Operator herein agrees to indemnify and hold the City harmless, the City shall promptly notify Operator of such claim and, if Operator does not settle or compromise such claim, then Operator shall undertake the legal defense of such claim both on behalf of Operator and on behalf of the City, at Operator's expense; provided, however, that Operator shall immediately notify City if a conflict between the interests of Operator and City arises during the course of such representation. Operator will use counsel reasonably acceptable to the City Counselor of the City or his or her designee, after consultation with the Airport Director, in carrying out its obligations hereunder.

The provisions of this Section will 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 Operator in accordance with this Section. Any final judgment rendered against the City for any cause for which Operator is liable hereunder shall be conclusive against Operator 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, will 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, Operator will 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 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 contributory negligence.
- K. This Section shall survive the expiration or early termination of this Agreement. Operator understands and agrees that any insurance protection furnished by Operator pursuant to Section 901 will in no way limit Operator'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 will not in any event be liable to Operator for:

- A. Any acts or omissions of Operator, its officers, directors, employees, agents, contractors, independent contractors, licensees, sublessees, invitees, or suppliers, or for any conditions resulting from the operations or activities of Operator's directors, officers, employees, agents, contractors, independent contractors, licensees, invitees, sublessees, or suppliers;
- B. Operator'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 Operator's business or other operations or activities, or which might otherwise cause damages to Operator through loss of business, destruction of property, or injury to Operator, 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. Operator will 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, shall include but not be limited to the vesting of Operator's right, title and interest in the Operator's furnishings, Removable Fixtures, or Operator'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 Facilities or any of the Removable Fixtures, except subject to the City's right to terminate this Agreement.

- B. Operator will not sublet the Facilities or subcontract or transfer any part of the services to be performed hereunder, except as may be necessary to comply with the ACDBE participation goal in Article XII of this Agreement, to perform construction services, or as expressly authorized in writing by the Director. At least sixty (60) days prior to any contemplated subletting of the Facilities or subcontracting of this Agreement, Operator must submit a written request to the Director. This request must include a copy of the proposed subcontract or sublease. Any sublease for space or subcontract or granting of rights acquired hereunder shall be subject to the review and written approval of the Director. Such sublease or subcontract, however, must require at a minimum: (i) strict compliance with all applicable Provisions of this Agreement; (ii) a provision that the sublessee or subcontractor will use the facilities solely for the purposes identified in this Agreement; (iii) a provision ensuring that all concession services are available during the hours of operation required in Section 603 of this Agreement; (iv) a provision providing that all terms of the sublease are subject to and subordinate to the Provisions of this Agreement; and (v) a provision that the term of the sublease shall expire immediately at the expiration or early termination of this Agreement.

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

- C. No subcontract, sublease, or other agreement will be effective as it pertains to the City until such time as the City receives a fully executed copy of the approved subcontract, sublease or agreement as provided for above. Any such assignment or transfer or subcontract of services or the subletting of the Facilities without the consent of the City, as provided for above, will constitute a default on the part of Operator under this Agreement, and the City may terminate this Agreement as provided for in Article XI. No action or failure to act on the part of any officer, agent or employee of the City 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 will constitute a material breach thereby justifying the termination of this Agreement in its entirety:

- A. If any fee, charge, or other money payment which Operator has agreed to pay under this Agreement, or any part thereof, shall be of a material amount (defined for this Section as an amount in excess of \$1,000.00) and remains unpaid after the date the fee, charge, or money payment shall become due and Operator does not satisfy the obligation after written notice and a reasonable cure period as provided for in Section 1103 below.
- B. If during the term of this Agreement, Operator shall:
  - 1) Apply for, or consent to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets;
  - 2) File a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;
  - 3) Make a general assignment for the benefit of creditors;
  - 4) File a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;
  - 5) File an answer admitting the material allegations of a petition filed against any said assignee or sublessee in any bankruptcy, reorganization or insolvency proceedings; or if during the Term of this Agreement, an order, judgment or decree shall be entered by any court of competent jurisdiction; or the application of a creditor, adjudicating Operator as bankrupt or insolvent; or approving a petition seeking a reorganization of Operator, and such order, judgment or decree, shall continue unstayed and in effect for any period of ninety (90) consecutive days;
  - 6) Fail to maintain the quality of services and prices to the satisfaction of the Director as required hereunder;
  - 7) Fail to prevent cessation or deterioration of service for a period which, in the opinion of the Director, materially and adversely affects the overall performance of Operator under this Agreement;
  - 8) Allow a lien to be filed against Operator or any of the equipment or furnishings therein because of or resulting from any act or omission of Operator that is not removed or enjoined within thirty (30) days;
  - 9) Desert, vacate or discontinue all or a portion of its operation of the Facilities that in the opinion of the Director results in a failure to provide the public and others the service contemplated hereunder; or

- 10) Fail in the performance of any Provision herein required to be performed by Operator when not cured upon written notice and a reasonable cure period.

On the date set forth in the notice of termination, the Term of this Agreement and all right, title and interest of Operator will expire, except as otherwise provided in Section 1103 hereof. Failure of the City to take any authorized action upon default of any Provision required to be performed, kept and observed by Operator will not be construed to be or act as a waiver of default or in any subsequent default of any Provision herein contained to be performed, kept and observed by Operator. The acceptance of monies by the City from Operator for any period or periods after a default by Operator of any Provision herein required to be performed, kept and observed by Operator will not be deemed a waiver or estopping of any right on the part of the City to terminate this Agreement for failure by Operator to so perform, keep or observe any said Provision.

**SECTION 1102. OPERATOR'S RIGHT TO TERMINATE.** Operator, 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 sixty (60) 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 forty-five (45) days have elapsed after written notice by either party to the other specifying the date and cause of termination. No such termination will be effective if the party at default (i) cannot by the nature of the default cure it within such forty-five (45) day period; (ii) commences to diligently correct such default within such forty-five (45) 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 Operator 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 thirty (30) days after written notice by City to Operator.

**SECTION 1104. RIGHTS CUMULATIVE.** It is understood and agreed that the rights and remedies of the City and Operator specified in this Article are not intended to be and will not be exclusive of one another or exclusive of any common law right of either of the parties hereto or any other remedies otherwise available to the parties at law or in equity.

ARTICLE XII  
AIRPORT CONCESSION DISADVANTAGED  
BUSINESS ENTERPRISE (ACDBE) PARTICIPATION

SECTION 1201. COMPLIANCE.

- A. Operator agrees to continue to make good faith efforts throughout the life of the contract. ACDBE participation shall be measured as a percentage of total Gross Receipts and DAS Carrier Fees for each Contract Year. Credit toward the ACDBE goal will only be given for the use of Missouri Regional Certification Committee ("MRCC") certified ACDBEs.
- B. If Good Faith Efforts resulted in the fulfillment of the ACDBE goal, Operator will not be required to perform additional Good Faith Efforts, except in the event that Operator's ACDBE participation fails to continue to meet the goal or comply with the applicable federal regulations. In the event Operator's ACDBE participation fails to continue to meet the goal or comply with applicable federal regulations, Operator 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 Operator.
- C. If Good Faith Efforts did not result in fulfillment of the ACDBE goal, Operator 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 Operator.
- D. In the event that any ACDBE Sublessee defaults, Operator agrees to immediately take steps to obtain a replacement certified ACDBE through Good Faith Efforts. Notwithstanding, if ACDBE goes over the Personal Net Worth limitation, their participation will still count until the end of the lease term as per FAA/DOT regulations. It is the intent of City to have a certified ACDBE Sublessee replace any ACDBE Sublessee that has defaulted. Replacement ACDBE's must be approved in writing by the Director. If a replacement ACDBE cannot be located, Operator must make good faith efforts to sublease other rights of Operator to secure ACDBE participation. The Director will determine if Operator has made acceptable Good Faith Efforts. Operator must immediately operate in lieu of an ACDBE that has failed to perform due to default of its sublease until such time as a replacement ACDBE sublessee begins operation. The loss of an ACDBE does not relieve Operator of its obligation to maintain the minimum participation goal. The Airport DBE Office will provide Operator assistance in locating ready, willing, able ACDBE firms.
- E. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23. Operator or contractor agrees that it will not discriminate against any business owner because of the owner's race, creed, color, religion, sex, national origin or ancestry in connection with the award or performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered

by 49 CFR Part 23. Operator or contractor agrees to include the above statements in any subsequent concession agreement or contract that it enters and cause those businesses to similarly include the statements in further agreements.

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

### ARTICLE XIII LIQUIDATED DAMAGES

SECTION 1301. LIQUIDATED DAMAGES. Operator 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 Operator defaults or breaches any of the Provisions enumerated below.

Therefore, the Operator agrees and stipulates that the Director, on behalf of the City, may elect after written notice to the Operator of 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 Operator to pay liquidated damages in the amount listed below. For the third default or breach in the same category, Operator will pay City liquidated damages in the amount listed below. For the fourth and each subsequent cumulative default or breach, Operator will pay to City the third default or breach amount plus an additional 100%. These liquidated damages will be due and payable by the Operator within 30 days of the City's request or notice. The stated defaults or breaches in this Section 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 immediate written notice via facsimile and overnight courier of any default or breach and the amount of liquidated damages due and payable to the City.

<b>BREACH OR DEFAULT</b>	<b>SECOND BREACH</b>	<b>THIRD BREACH</b>
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 week	\$50.00 per week
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 Operator.	\$200.00	\$300.00
F. Late annual financial reporting in violation of Article V.	\$50.00 per week	\$100.00 per week

**SECTION 1302. CONTINUING OPERATIONS.** Operator acknowledges, stipulates, and agrees that the continuous operation of the System is essential to the provision of excellent customer service to the traveling public. If Operator fails to operate any portion of the Facilities set forth in **Exhibit A** for more than five (5) consecutive days, except in the case of damage or destruction of the Facilities or if Operator is making Improvements as provided for in Article VII, Operator will either immediately return the Facilities to the City without cost to the City or pay to the City an amount equal to the non-airline square footage rental rate then applicable as Liquidated Damages to compensate the City for the failure.

#### ARTICLE XIV COMPLIANCE WITH ENVIRONMENTAL LAWS

**SECTION 1401. COMPLIANCE WITH ENVIRONMENTAL LAWS.** Operator 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 Facilities, Operator will comply with any and all applicable Environmental Laws including any plans, monitoring, recordkeeping or programs prepared in conformance with Environmental Laws.

Operator further covenants and warrants as follows:

A. Environmental Permits.

1. Operator shall obtain and maintain any and all Environmental Permits required by applicable Environmental Laws to conduct the activities in which Operator engages on the Facilities.
2. Operator shall comply with any requirement imposed by an Environmental Permit obtained by the City that is or are applicable to Operator or Operator's activities on the Facilities, 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 Operator of such Environmental Permit and associated requirements, including all applicable deadlines for compliances.
3. The City and Operator 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 Operator, 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 Operator, whether as a result of negligent conduct or otherwise, at, on, about, or under the Facilities, or in the event any written claim, demand, complaint or action is made or taken against Operator that pertains to Operator's failure or alleged failure to comply with Environmental Laws or Environmental Permits at the Facilities or which pertains to the release of Hazardous Materials by Operator at the Facilities or the Airport, Operator will 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 Operator 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 Facilities, Operator will simultaneously provide a copy of such notice or report to the City.

C. Environmental Remediation. Operator will promptly and timely undertake all necessary steps to promptly 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 Operator or its agents, employees, contractors, independent contractors, sublessees, invitees, licenses, or suppliers at the Facilities 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 will be performed at Operator's expense. Except in the event of an emergency, such Remediation Work will be performed after Operator, 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 402 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 Operator shall be designed to meet and satisfy the requirements of all applicable Environmental Laws and Environmental Permits and be consistent with the commercial use of the Airport, as determined by the governmental agency responsible for enforcing Environmental Laws and Environmental Permits or for establishing cleanup levels. Neither Remediation Work or an ongoing remediation, including any testing or monitoring, nor the use of institutional controls, will either unreasonably or materially impair or interfere with the City's current and/or future use and enjoyment of its property including the Facilities, or that of current and future tenants. The City will have the right to conduct a reasonable review and inspect all such Remediation Work at any time using consultants and representative of its choice.

- D. Access for Environmental Inspection. Upon reasonable notification to Operator, the City will have reasonable access to the Facilities to inspect the same in order to confirm that Operator is using the Facilities in accordance with this Section 1401. Operator shall cooperate fully with any such inspections provided that such inspections shall not unreasonably interfere with Operator's operations. If the City's inspection results in any type of written report, the City will provide Operator a reasonable opportunity to timely review and comment on a draft of the report. Operator 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, Operator responding to such alleged non-compliance; and any and all consent orders or administrative determinations, whether preliminary or finals, 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 Operator fails to comply with any applicable Environmental Laws or Environmental Permits governing its activities on the Facilities, or if Operator fails to conduct necessary Remediation Work in a timely manner as required under the Provisions of this Agreement, the City, as required by applicable Environmental Laws and Environmental Permits, in addition to the rights and remedies described elsewhere herein and any other rights and remedies otherwise available to the City, may enter the Facilities and take all reasonable and necessary actions to conduct Remediation Work to remove Hazardous Materials or other contaminants and insure such compliance with such Environmental Laws and Environmental

Permits. All Remediation Costs incurred by the City must be timely paid or reimbursed by Operator 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 Operator will 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 Operator of such failure to comply, and thirty (30) days within which Operator may demonstrate why no such alleged failure is present, or to timely remedy such alleged failure that may be present. If Operator's compliance reasonably requires more than thirty (30) calendar days to complete, the City may enter the Facilities and take such reasonable and necessary measures to achieve compliance only upon the Operator'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, Operator shall make available for inspection and copying, at reasonable times, any and all non-privileged documents and materials Operator 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 Facilities, 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 will survive the expiration or early termination of this Agreement.
- H. Pollution Control. In addition to all other requirements of this Agreement, Operator, at its cost, shall manage all its operations at the Facilities 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 Operator at Operator's written request.
- I. Environmental Covenants. Operator 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 Facilities or the Airport; (ii) limits the use of the Facilities to nonresidential uses; and/or (iii) reasonably restricts access to soil and/or disturbance of soil underlying the Facilities or the Airport.

ARTICLE XV  
MISCELLANEOUS PROVISIONS

SECTION 1501. NOTICE. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder must be in writing and must be sent by certified mail, return receipt requested, to:

The Director of Airports  
Lambert-St. Louis International Airport  
P.O. Box 10212  
10701 Lambert International Blvd.  
St. Louis, Missouri 63145

With a copy to:

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

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

Concourse Communications Group LLC  
c/o Boingo Wireless, Inc.  
10960 Wilshire Blvd. Suite 800  
Los Angeles, CA 90024  
Attn: VP – Business Development

With a copy to:

Concourse Communications Group LLC  
c/o Boingo Wireless, Inc.  
10960 Wilshire Blvd. Suite 800  
Los Angeles, CA 90024  
Attn: Legal Department

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 will be the date such notice is mailed to Operator or said Director.**

SECTION 1502. NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM.

- A. Operator hereto understands and agrees that City in operation and use of Lambert-St. Louis International Airport will not on the grounds of race, creed, color, religion, sex, age, national origin, ancestry or disability, discriminate or permit discrimination against any person or group of persons in a manner prohibited by 49 C.F.R. Part 21. Operator agrees that in performing under this Agreement, neither it nor its personal representatives, successors in interest, and assigns, and anyone under its control will permit discrimination against any employee, worker, or applicant for employment because of race, creed, color, religion, sex, age, national origin, ancestry or disability. Operator 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. Operator 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. Operator 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 will not be limited to action to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. Operator will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of Operator 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". Operator shall not make inquiry in connection with prospective employment, which expresses directly or indirectly any limitation, specification, or discrimination because of race, creed, color, religion, sex, age, national origin, ancestry or disability.
- D. Operator agrees that should it be determined by Operator 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 Operator to achieve the provisions of it program.
- E. Operator will permit reasonable access by City to such persons, reports, and records as are necessary for the purpose of ascertaining compliance with fair employment practices.

- F. Operator further agrees that these clauses (B through E) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Operator in all contracts or agreements it enters into with suppliers of materials or services, contractors and subcontractors, and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.
- G. Whenever Operator is sued by a subcontractor, vendor, individual, group, or association as a result of non-compliance with the clauses (A through F) of these provisions relating to fair employment practices, Operator must notify the City Counselor in writing of such suit or threatened suit within ten (10) days.
- H. In event of Operator'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 Operator 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, Operator will have no claims for any damages or loss of any kind whatsoever against City.
- I. Operator will establish and maintain for the term of this Agreement an affirmative action program, and City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.
- J. Operator assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, sex, religion, age or disability be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Operator assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Operator assures that it will require that its covered suborganizations provide assurances to the City that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.
- K. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulation, 49 CFR Part 23. Operator hereby agrees that its Facilities shall be posted to such effect as required by such regulation. The Operator or contractor agrees that it will not discriminate against any business owner because of owner's race, creed, color, religion, national origin, ancestry, sex, age or disability in connection with the performance of any concession agreement, management contract, or subcontract, purchase or lease agreement or other agreement covered by 49 CFR 23.
- L. The Operator or contractor agrees to include the above statement in any subsequent concession agreement or contract covered by 49 CFR 23 that it enters into, and causes those businesses to similarly include the statement in further agreements.

M. Operator must comply with all applicable nondiscriminatory requirements that may be imposed pursuant to the Federal Aviation Act of 1958, as amended; Title VI of the Civil Rights Act of 1964, as amended; 49 C.F.R. Parts 21, 23, and 26, as said regulations may be amended; and state and local laws.

SECTION 1503. NO PERSONAL LIABILITY. No alderman, commissioner, director, officer, agent or employee of either party will 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 will 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 Operator 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 Operator 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 will be construed to abate, postpone or in any respect diminish Operator's obligations to make any payments due to the City pursuant to this Agreement. The City is 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 Provisions of this Agreement will 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.

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

SECTION 1507. OPERATION AND MAINTENANCE OF AIRPORT. The City shall at all times operate the Airport properly and in a sound and economical manner; and the City will 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 Facilities 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. Operator will 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 will 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, Operator 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 Operator hereunder.

SECTION 1511. GOVERNING LAW AND FORUM SELECTION. This Agreement is made and entered into in the State of Missouri, and Missouri law will 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 must be brought only in a federal or state court in the City of St. Louis, Missouri. Operator and the City hereby admit and consent to the jurisdiction and venue of such courts. The Provisions of this section will 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 will 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. It being understood that any amendment to this Agreement must be approved by the City Airport Commission, and its Board of Estimate & Apportionment, and its Board of Aldermen.

SECTION 1514. PREVIOUS AGREEMENTS. It is expressly understood that the Provisions of this Agreement will in no way affect or impair the Provisions or obligations or rights of any existing or prior agreements between Operator 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 Operator agree that extensions of time for performance may be made by the written mutual consent of the Director, on behalf of the City, and Operator or its designee. Whenever the Approval of the City, or the Director, or Operator is required herein, no such Approval will be unreasonably requested, conditioned, or withheld.

SECTION 1516. WAIVERS. No Provision of this Agreement will 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 will 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 will 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 will remain in full force and effect provided that the striking of such Provision does not materially prejudice either the City or Operator 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 incorporated by reference herein, and the Proposal incorporated by reference, constitute or embody 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 Operator. If a conflict arises in the interpretation of any Provision of this Agreement, the conflict or ambiguity will be interpreted or construed giving priority to the Provision in conflict as follows;

1. Agreement;
2. Exhibits and Attachments to the Agreement; and
3. Proposal.

SECTION 1519. NOT A LEASE. This Agreement is not a lease, and the right to use the Facilities is entirely dependent upon the rights and privileges expressly granted hereunder. Operator will in no instance be deemed to have acquired any possessory rights against the City or the Facilities or be deemed to be a tenant of the City.

SECTION 1520. ADVERTISING. Operator has no right to use the trademarks, symbols, trade names or name of the Airport or Facilities, 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 Operator, and any other tenant, licensee, sublessee or Operator, as to the respective rights of the others, the Director will review the applicable agreements and by reasonable interpretation thereof determine the rights of each party, and Operator agrees to be bound by such decision. All determinations by the Director are final and binding.

SECTION 1522. PREVAILING WAGE. Operator will, as a condition of the Agreement, include in all service contracts pertaining to the Facilities, 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 in accordance with City Ordinance No. 62124, as may be amended from time to time.

SECTION 1523. AMERICANS WITH DISABILITIES ACT ("ADA"). Operator is 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 Operator's services.

SECTION 1524. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement. The parties expressly agree that time is 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, will 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 will 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, will not be employed in the interpretation of this Agreement or any amendments, modifications or exhibits thereto.

SECTION 1526. SECURITY PLAN AND FACILITIES. Operator 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 Operator covenants and agrees to be fully bound by and immediately responsive to the requirements of the plan in connection with Operator's exercise of the privileges granted to Operator hereunder. Operator 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 Operator'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 Operator 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: Operator 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 Operator 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: Operator 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 Operator's employees within thirty (30) days of Agreement execution for existing employees and within thirty (30) days of employment for new employees.
- C. Posting: Operator shall post the Living Wage Bulletin, together with a "Notice of Coverage", in English, Spanish and other languages spoken by a significant number of Operator's employees, in a prominent place in a communal area of each worksite covered by the Agreement.
- D. Subcontractors and Sublessees: Operator 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. Operator shall include these Living Wage Compliance Provisions in any contract with such Subcontractors and Sublessees.
- E. Term of Compliance: Operator 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: Operator shall provide the annual reports and attachments required by the Ordinance and Regulations.
- G. Penalties: Operator 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. Operator 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 will 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. EXHIBITS. All exhibits or attachments attached hereto are fully incorporated into this Agreement by this reference as if fully set out herein. The City and Operator will reasonably and in good faith finalize and attach all exhibits and attachments to this Agreement which have not been in final form as of the effective date of this Agreement.

SECTION 1531. FAA NON-DISCRIMINATION. Operator for itself, personal representatives, successor in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

- i. in the event facilities, structures or improvements are constructed, maintained, or otherwise operated on the Facilities for a purpose for which a FAA activity, facility or program is extended or for another purpose involving the provision of similar services or benefits, the Operator will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations such that no person on the grounds of race, color, or national origin, will be excluded from participating in, denied the benefits of, or otherwise subjected to discrimination in the use of the Facilities;
- ii. no person on the ground of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of the Facilities or the facilities, structures or improvements within the Facilities;
- iii. in the construction of any improvements on, over, or under the Facilities, and the furnishing of services thereon, no person on the ground of race, color, or national origin will be excluded from participation, denied the benefits of, or otherwise be subject to discrimination;
- iv. the Lessee will use the Facilities or facilities, structures, or improvements within the Facilities in compliance with the Acts and Regulations; and
- v. for purposes of this Section 1104, references to "Acts or Regulations" will mean or include the following statutory and regulatory cities, as may be amended from time to time:
  - Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR part 21;
  - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 - 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

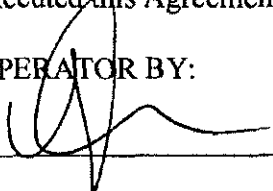
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Confidential  
garvinm@stlouis-mo.gov  
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IN WITNESS WHEREOF, the parties hereto for themselves, their successors and assigns, have executed this Agreement the day and year last written below.

OPERATOR BY:

  
\_\_\_\_\_

Title: VICE PRESIDENT

Date: 11/4/14

ATTESTED TO BY:

  
\_\_\_\_\_

Title: VP

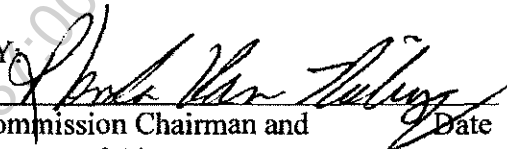
Date: 11/4/14

FEDERAL TAX ID# 95-485-6877

THE CITY OF ST. LOUIS, MISSOURI, OPERATING LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT pursuant to City Ordinance # 69919 approved the 20 day of JANUARY, 2015.

The foregoing Agreement was approved by the Airport Commission at its meeting on the 3 day of DECEMBER, 2014.

BY:

  
Commission Chairman and  
Director of Airports


Date

1/28/15

The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on the 17th day of November, 2015.

Approved as BBT#205

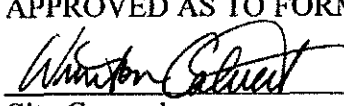
BY:

  
Secretary,  
Board of Estimate and Apportionment

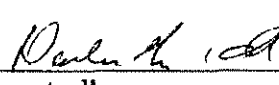
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COUNTERSIGNED BY:

APPROVED AS TO FORM ONLY BY:

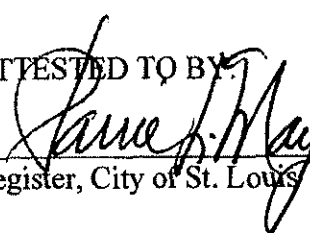
  
City Counselor  
City of St. Louis

Date

  
Comptroller  
City of St. Louis

Date

ATTESTED TO BY:

  
Register, City of St. Louis

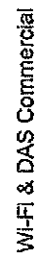
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COMPTROLLER'S OFFICE  
DOCUMENT NUMBER 68052

# **EXHIBIT A**

## **FACILITIES**

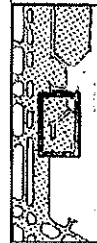
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**Concourse Level**



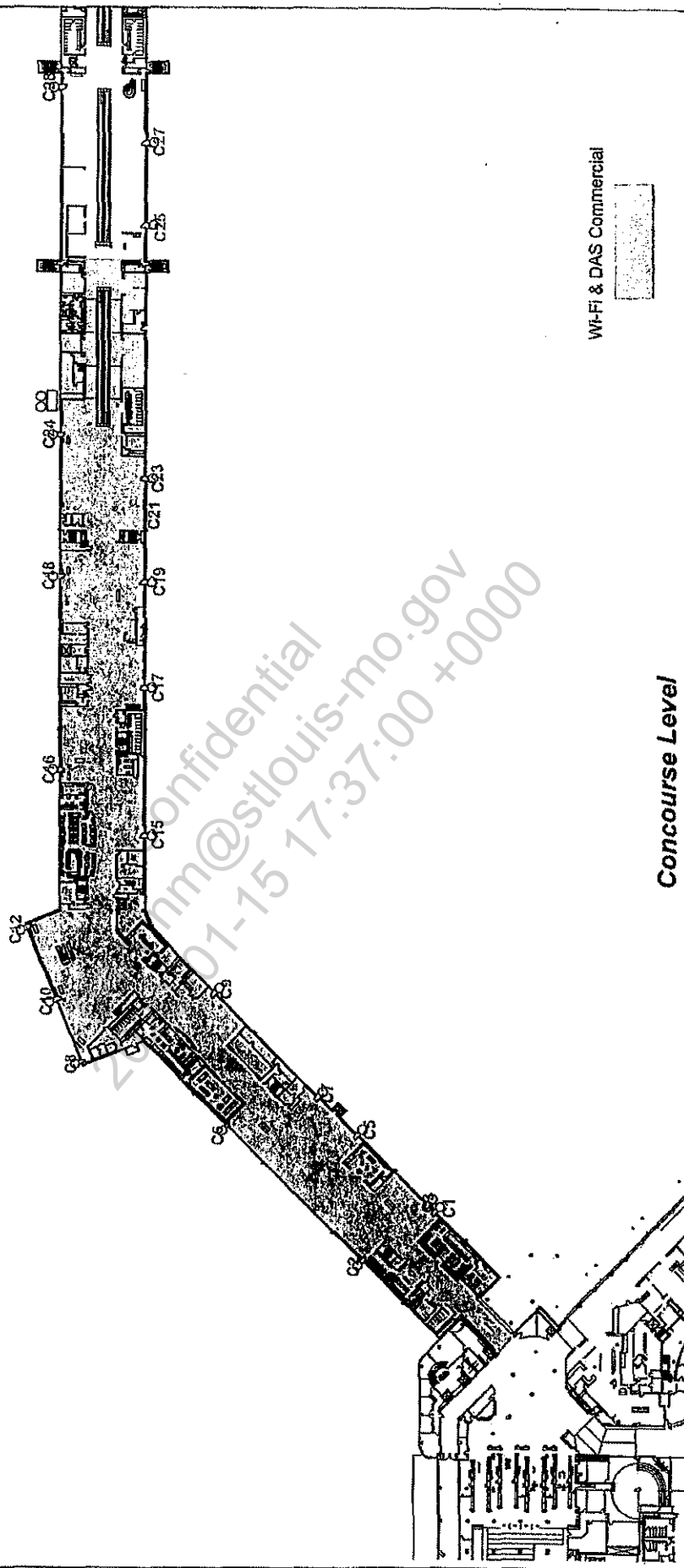
## A Concourse



The treatment of *in de* is supported here as indicated by Lombardi 82; Lombardi (personal communication) has reported on the distribution of this treatment, as just postulated, for any given amount. The representation of *in de* is not a simple matter, and the present study is a first attempt. The following are tabulated as they appear in the text, with any possible morphological changes indicated. The Lombardi 82 results are entered in all of the above, but only in the representation of *in de* in the Lombardi 82 results. The Lombardi 82 results are given in the Lombardi 82 results of the Lombardi 82 results. Lombardi 82 results are given in the Lombardi 82 results.

Prepared By: \_\_\_\_\_  
Date: 8/14/2013

Reviewed and Approved By: \_\_\_\_\_  
Date: \_\_\_\_\_



Wi-Fi &amp; DAS Commercial

**Concourse Level**



LAMBERT-ST. LOUIS  
INTERNATIONAL AIRPORT®

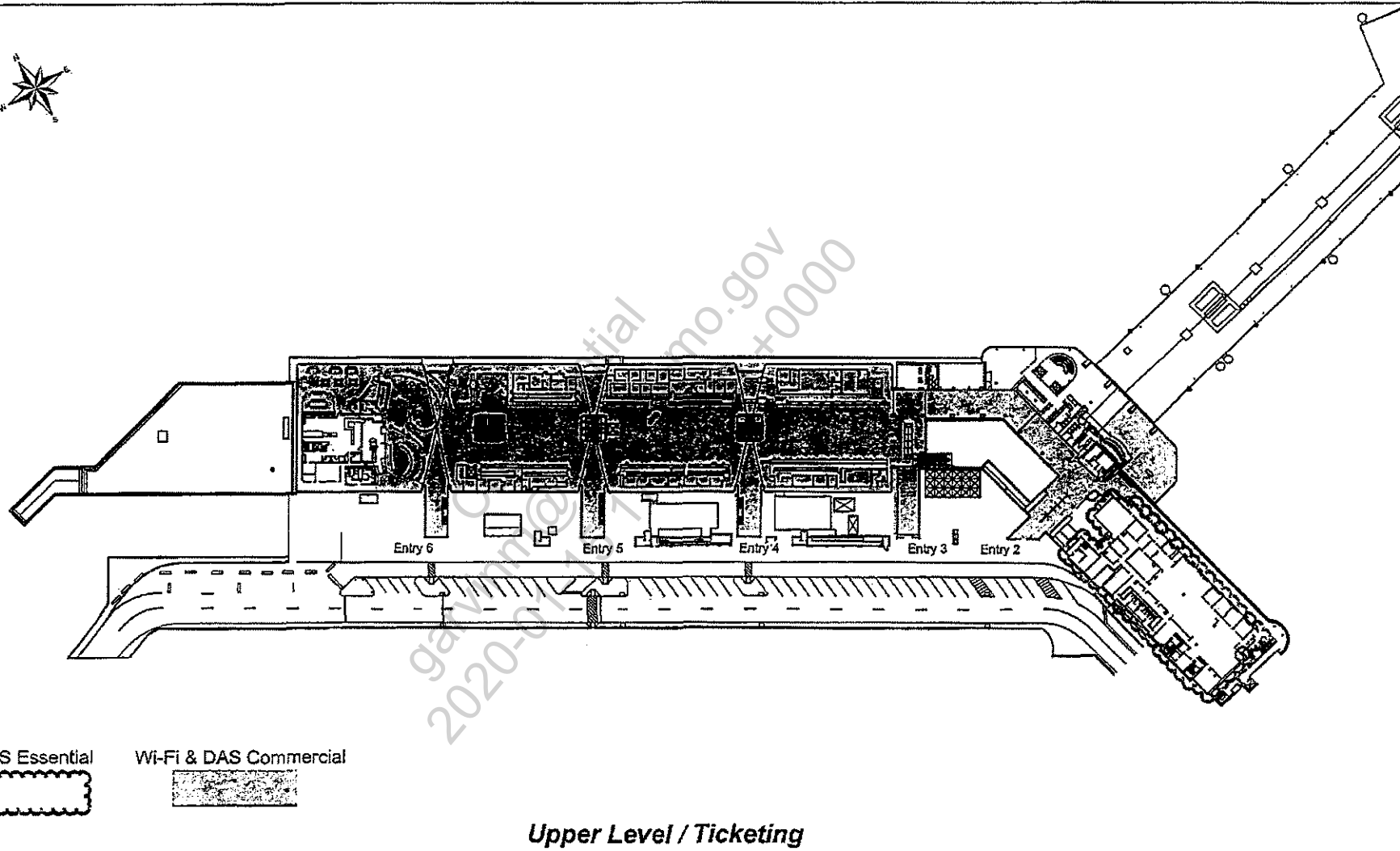
## C Concourse

[illegible]

Prepared By:                       
Date: 01/10/2013

Date: 01/20/18  
Prepared by: JRP

**Review and Approval By:**  
**Date:**



DAS Essential



Wi-Fi & DAS Commercial



Upper Level / Ticketing



LAMBERT-ST. LOUIS  
INTERNATIONAL AIRPORT®

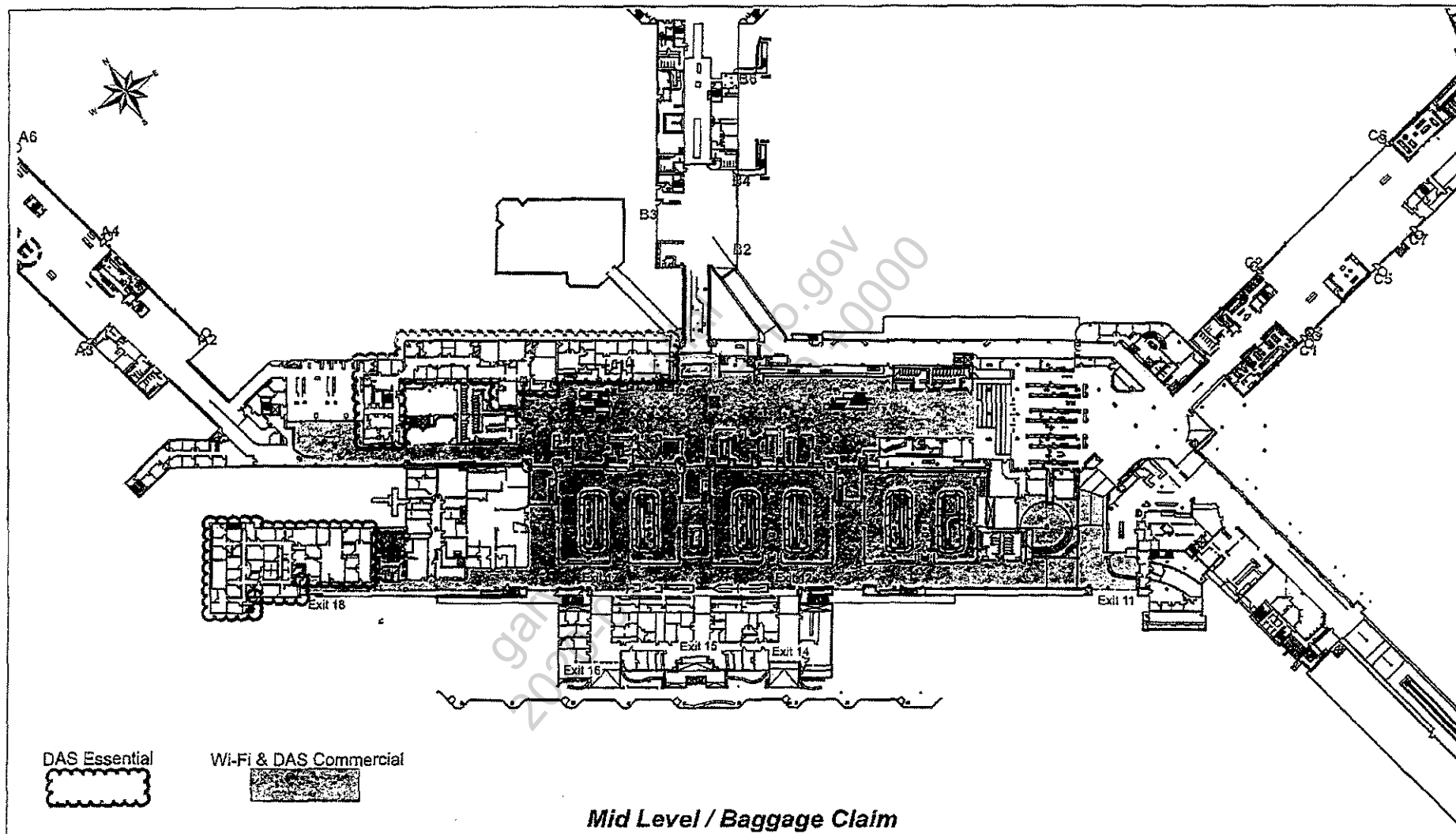
Terminal 1



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Prepared By:  
Date: 4/16/2015

Review and Approval By:  
Date:



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Prepared By:  
Date: 8/14/2013  
Reviewed By: Approval By:  
Date:



LAMBERT-ST. LOUIS  
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Terminal 1

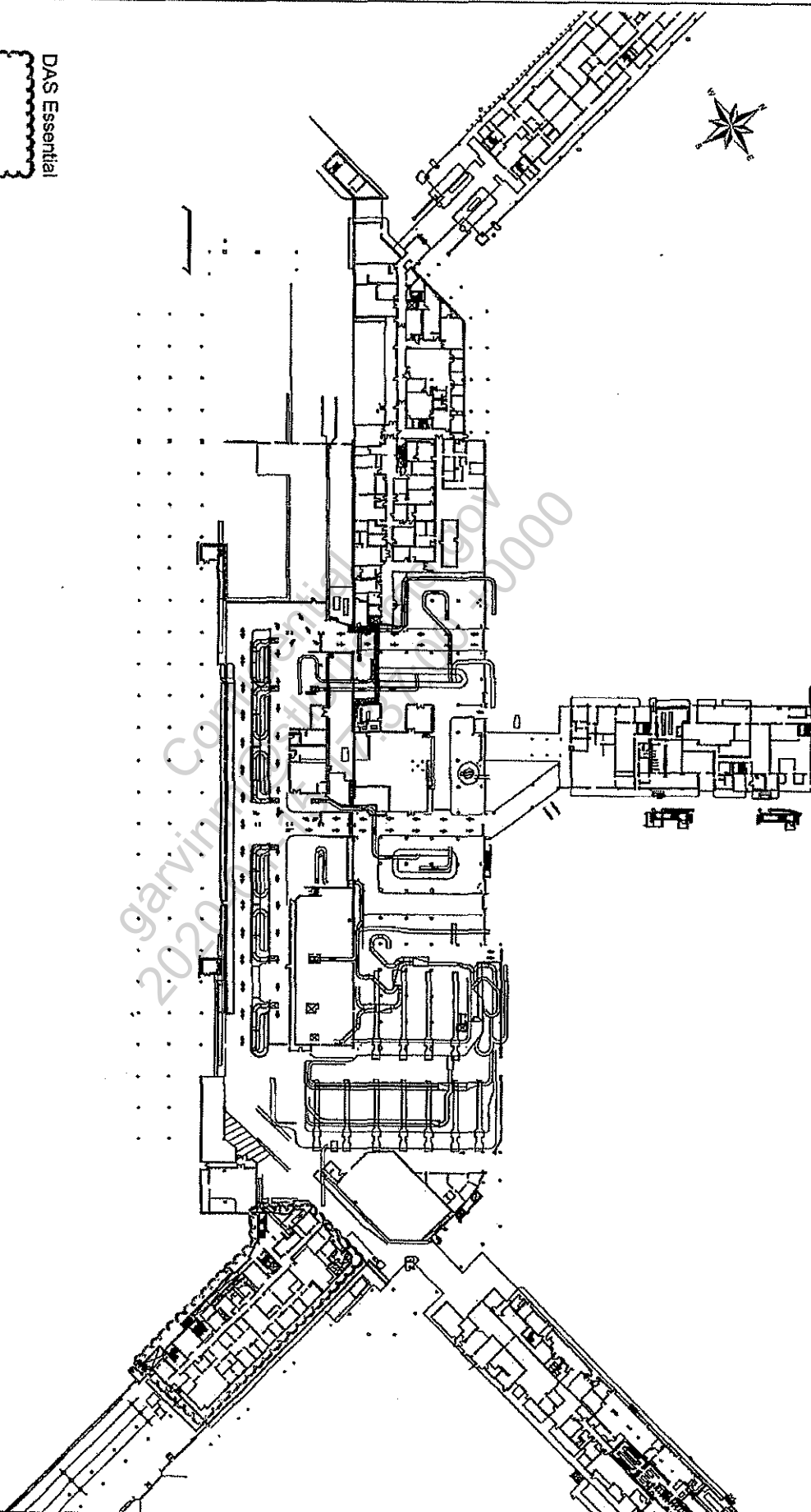


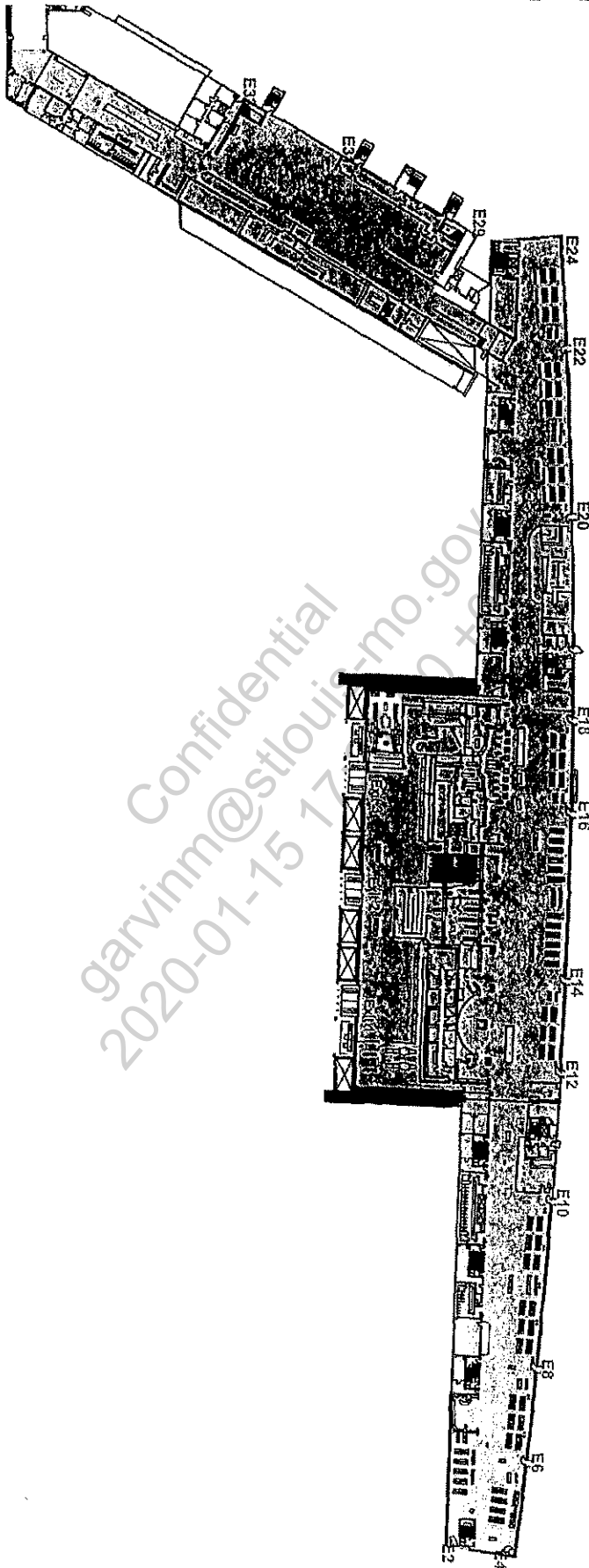
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Prepared by: \_\_\_\_\_  
Date: 06/09/11  
Reviewed and Approved By: \_\_\_\_\_  
Title: \_\_\_\_\_

DAS Essential

Lower Level / Baggage Make-up





Concourse Level / Ticketing

Wi-Fi & DAS Commercial



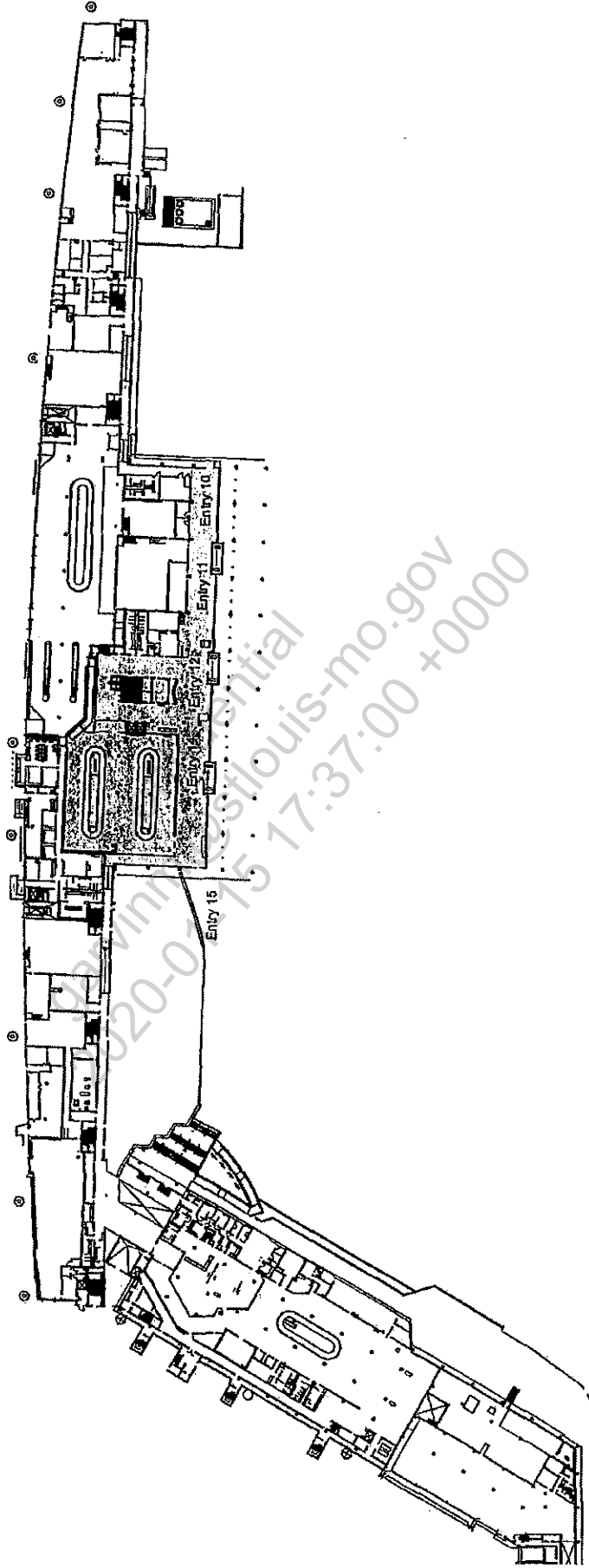
LAMBERT-ST. LOUIS  
INTERNATIONAL AIRPORT

Terminal 2



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Prepared By: [Redacted]  
Date: 8/2/2013  
Reviewed and Approved By: [Redacted]  
Date: [Redacted]



WI-FI & DAS Commercial

## Lower Level / Baggage Claim

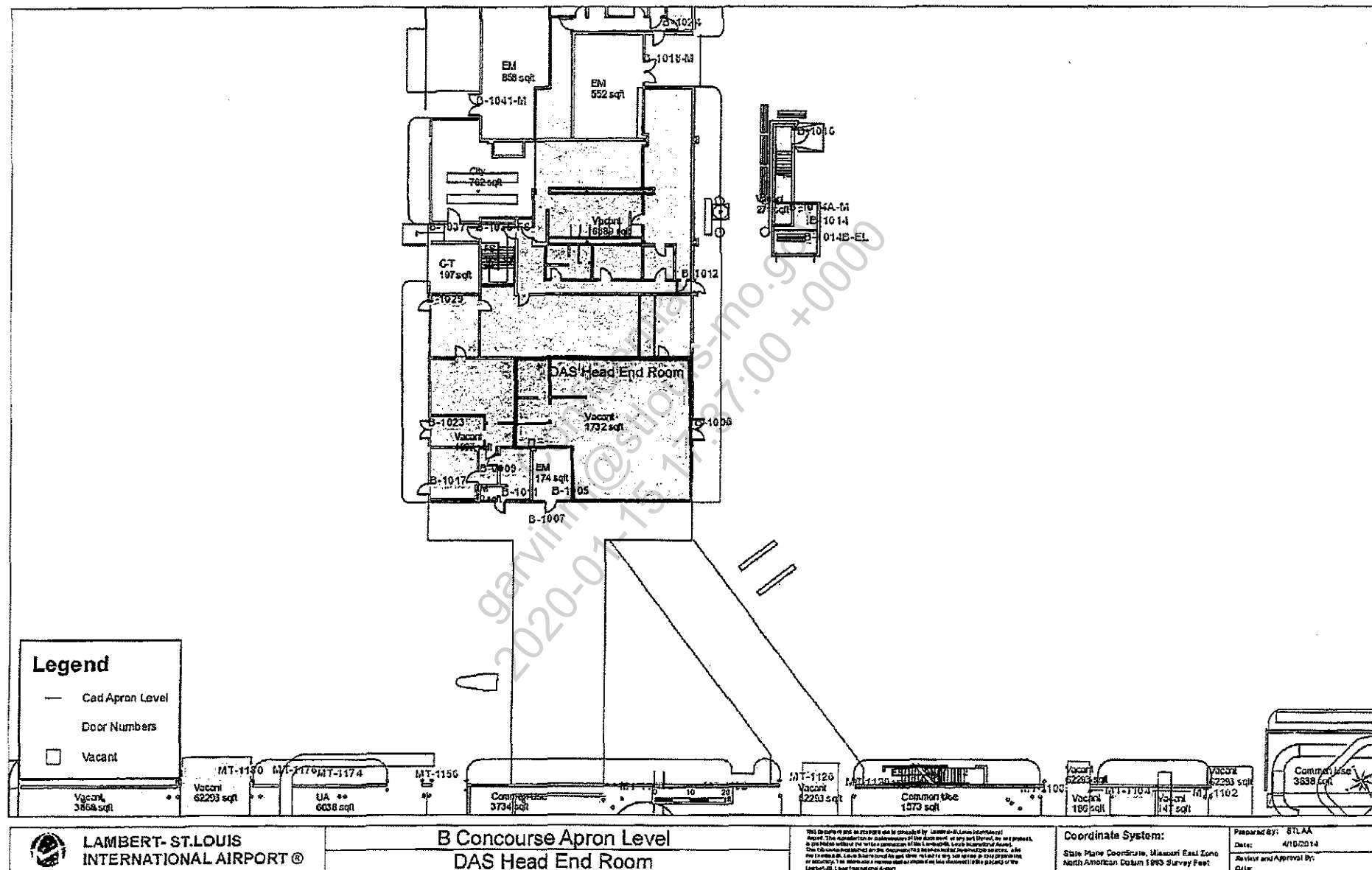
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Terminal 2



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Prepared By:  
Date: 06/06/03  
Reviewed and Approved By:  
Date:



## **EXHIBIT B**

# **LIVING WAGE ADJUSTMENT BULLETIN**

Confidential  
garvinm@stlouis-mo.gov  
2020-01-15 17:37:00 +0000

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## ST. LOUIS LIVING WAGE ORDINANCE

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### LIVING WAGE ADJUSTMENT BULLETIN

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#### NOTICE OF ST. LOUIS LIVING WAGE RATES EFFECTIVE APRIL 1, 2014

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 **\$12.37** 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 **\$16.18** per hour (130% of the federal poverty level income guideline for a family of three, plus fringe benefit rates as defined in the Ordinance).
- 3) Wages required under Chapter 6.20 of the Revised Code of the City of St. Louis: **\$3.81** 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, 2014**. 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 <http://www.mwdbe.org> or obtained from:

City Compliance Official  
Lambert-St. Louis International Airport  
Certification and Compliance Office  
P.O. Box 10212  
St. Louis, Mo 63145  
(314) 426-8111

Dated: March 11, 2014

## **EXHIBIT C**

### **INITIAL WI-FI PRICING STRUCTURE**

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2020-01-15 17:37:00 +0000

## INITIAL WI-FI PRICING STRUCTURE

<b>Transaction Based Users</b>	<b>\$7.95</b> Per 24 hour period of unlimited access (First 20 minutes FREE)
<b>WISP Roaming Access</b>	<b>Varies by Provider</b>
<b>Airport Authority Administrative &amp; Operational Use</b>	<b>No Charge</b> See Section 601(J)
<b>Private Side Users High Speed Wireless Service</b>	<b>Set Up Fee: \$499.00</b> <b>Monthly Fee: \$79.00</b>
<b>Private Side Users Customer Managed VLAN</b> (Interconnect of multiple devices to corporate network)	<b>Set Up Fee: \$1,000.00</b> <b>Monthly Fee: Varies per device</b>