

ORDINANCE #68576
Board Bill No. 293
Floor Substitute

An Ordinance pertaining to rooming houses, boarding houses, dormitories or hotels; amending Section 903.1 of Chapter 25.32.480 of the Revised Code of the City of St. Louis pertaining to application and neighborhood consent petition and containing a severability and emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE Section 903.1 of Chapter 25.32.480 of the Revised Code of the City of St. Louis is hereby amended as follows:

903.1 Permit and license required. It shall be unlawful to operate a hotel, dormitory, rooming house or boarding house without first obtaining a permit and license as hereinafter set forth. An applicant for a license to operate a dormitory, rooming house, boarding house or hotel, together with all other requirements of this Chapter, shall also file a plat or drawing showing its location or premises together with the position of the building to be used thereon and a written petition in favor of the issuance of such license signed by a majority of the persons occupying premises or conducting any business on the main or surface floor of such building, the two floors immediately above the main or surface floor, and the floor immediately below the main or surface floor within the prescribed petition circle within the prescribed petition circle drawn by a radius of five hundred feet plus one-half of the width of the front of the premises, from the center of such premises projected to the streets. A neighborhood consent petition shall not be required for successive renewals for the same license on the same premises immediately succeeding the original licensing. No such application shall be approved wherein a church, elementary school or secondary school is located within the radius herein above described. After the filing of an application with the Building Division, the applicant shall be required to send a postcard addressed to "occupant" at each address within the petition circle of the proposed licensed premises, notifying them that an application has been filed and of the applicant's intent to circulate a neighborhood consent petition. The postcard shall be a preprinted form provided by the Board of Public Service and shall read substantially as follows:

" _____ has/have applied to the Board of Public Service for a rooming house, boarding house, dormitory or hotel for the premises at _____. The proposed use for these premises will include: _____. Within the next month, a petition in support of the application will be circulated, which you may either sign or refuse to sign. If a public hearing is scheduled notices will be mailed. You may support or protest the application. For information, please contact the Board of Public Service."

The applicant shall pay an application fee for all administrative costs. The applicant shall be responsible for placing addresses and postage on the pre-printed postcards and returning them to the Board of Public Service, who, if satisfied that the applicant has provided cards addressed to occupant at each address within the petition circle, shall cause the post cards to be mailed immediately by the Board of Public Service. The Board of Public Service shall not provide the applicant with neighborhood consent petition forms, and the applicant may not solicit, or have others solicit, signatures on the neighborhood consent petition, for five days following mailing of the postcards. Upon filing of an application for a rooming house, boarding house, dormitory or hotel license, the Board of Public Service shall have the premises for which a license is sought posted with a sign which contains substantially the same information as the pre-printed post card.

Exceptions:

1. Sheltered workshops and residence facilities authorized by Sections 205.968 to 205.972 of the Revised Statutes of Missouri, 2000, as amended, shall be and are hereby exempted from the plat and petition and the church and school petitions set forth herein.

2. Hotels of sixty (60) or more rooms shall be and are hereby exempted from the plat and petition requirements set forth within the areas defined herewith:

A. Beginning at a point, said point being the intersection of the center lines of the Poplar Street Bridge and Leonor K Sullivan Blvd; thence northwardly along said centerline of Leonor K Sullivan to the point of intersection thereof with the centerline of Biddle Street; thence westwardly along said centerline of Biddle Street to the point of intersection with the centerline of Interstate 70; thence southwardly along said centerline of Interstate 70, to the point of intersection with the centerline of Cole Street; thence westwardly along said centerline of Cole Street to the point of intersection with the center of Tucker Blvd; thence southwardly along said centerline of Tucker Blvd. to the point of intersection with the centerline of Dr. Martin Luther King Blvd.; thence westwardly along said centerline of Dr. Martin

Luther King Blvd. to the point of intersection with the centerline of Jefferson Avenue; thence southwardly along said centerline of Jefferson Avenue to the point of intersection with the centerline of Interstate 64; thence eastwardly along said centerline of Interstate 64, to the point of intersection with Leonor K Sullivan Blvd., said point being the point of beginning; and

B. Any and all areas within two thousand (2,000) feet of an interstate highway measured from the center line of said interstate highway.

903.1.1 Notification of termination. The Director of the Saint Louis Office for Mental Retardation/ Developmental Disabilities Resources shall notify the Director of Public Safety, in writing, within ten days when the operation of any sheltered workshop or residence facility is terminated, voluntarily or otherwise. The exemption herein granted for that location shall be automatically withdrawn.

SECTION TWO. SEVERABILITY CLAUSE.

The Sections of this Ordinance shall be severable. In the event any Section of this Ordinance is found by a Court of competent jurisdiction to be unconstitutional, the remaining Sections of this Ordinance are valid unless the Court finds the valid Sections of this Ordinance so essentially and inseparably connected with, and so dependent upon the void Section, that it cannot presume that the legislature would have enacted the valid Sections without the void ones; or unless the Court finds that the valid Sections, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

SECTION THREE. EMERGENCY CLAUSE.

This being an ordinance for the preservation of public peace, health, and safety, it is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and therefore shall become effective immediately upon its passage and approval by the mayor.

Approved: March 9, 2010

ORDINANCE #68577 Board Bill No. 282

An ordinance recommended by the Board of Public Service to vacate above surface, surface and sub-surface rights for vehicle, equestrian and pedestrian travel in Olive Lane from Skinker eastwardly approximately 230 feet to terminus at Metrolink right-of-way in the City of St. Louis, Missouri, as hereinafter described, in accordance with Charter authority, and in conformity with Section 14 of Article XXI of the Charter and imposing certain conditions on such vacation; and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE: The above surface, surface and sub-surface rights of vehicle, equestrian and pedestrian travel, between the rights-of-way of:

A tract of land being Olive Lane in City Block 4854, City of St. Louis, Missouri, and being more particularly described as follows:

Beginning at the intersection of the south right of way of Olive Lane, 30 feet wide, with the east right-of-way line of Skinker Boulevard, varying width; thence northwardly along said east right-of-way line of Skinker Boulevard, varying width, along a curve to the right whose radius point bears south 69 degrees 28 minutes 34 seconds east 390.00 feet from the last mentioned point, an arc distance of 40.20 feet to the north right-of-way line of said Olive Lane, 30 feet wide; thence eastwardly along said north right-of-way line of Olive Lane, 30 feet wide, south 25 degrees 21 minutes 44 seconds east 10.41 feet and south 82 degrees 06 minutes 56 seconds east 216.54 feet to the west right-of-way line of the Metrolink right-of-way, varying width; thence southwardly along said west right-of-way line of the Metrolink right-of-way, varying width, south 07 degrees 35 minutes 39 seconds west 30.00 feet to said south right-of-way line of Olive Lane, 30 feet wide; thence westwardly along said south right-of-way line of Olive Lane, 30 feet wide, north 82 degrees 06 minutes 56 seconds west 233.30 feet to the point of beginning and containing 0.159 acres according to a survey by EFK Moen, L.L.C. during May, 2009.

are, upon the conditions hereinafter set out, vacated.

SECTION TWO: The petitioners are The Washington University, City of St. Louis and Bi-State Development Agency d/b/a Metro. The vacated area will be used to build a new roadway and provide additional landscaping.

SECTION THREE: All rights of the public in the land bearing rights-of-way traversed by the foregoing conditionally vacated street, are reserved to the City of St. Louis for the public including present and future uses of utilities, governmental service entities and franchise holders, except such rights as are specifically abandoned or released herein.

SECTION FOUR: The owners of the land may, at their election and expense remove the surface pavement of said so vacated street provided however, all utilities within the rights-of-way shall not be disturbed or impaired and such work shall be accomplished upon proper City permits.

SECTION FIVE: The City, utilities, governmental service entities and franchise holders shall have the right and access to go upon the land and occupation hereof within the rights-of-way for purposes associated with the maintenance, construction or planning of existing or future facilities, being careful not to disrupt or disturb the owners interests more than is reasonably required.

SECTION SIX: The owner(s) shall not place any improvement upon, over or in the area(s) vacated without: 1) lawful permit from the Building Division or Authorized City agency as governed by the Board of Public Service; 2) obtaining written consent of the utilities, governmental service entities and franchise holders, present or future. The written consent with the terms and conditions thereof shall be filed in writing with the Board of Public Service by each of the above agencies as needed and approved by such Board prior to construction.

SECTION SEVEN: The owners may secure the removal of all or any part of the facilities of a utility, governmental service entity or franchise holder by agreement in writing with such utilities, governmental entity or franchise holder, filed with the Board of Public Service prior to the undertaking of such removal.

SECTION EIGHT: In the event that granite curbing or cobblestones are removed within the vacated area, the Department of Streets of the City of St. Louis must be notified. Owner(s) must have curbing cobblestones returned to the Department of Streets in good condition.

SECTION NINE: This ordinance shall be ineffective unless within three hundred sixty (360) days after its approval, or such longer time as is fixed by the Board of Public Service not to exceed three (3) days prior to the affidavit submittal date as specified in the last section of this ordinance, the owner(s) of the area to be vacated must fulfill the following monetary requirements, if applicable, as specified by the City of St. Louis Agencies listed below. All monies received will be deposited by these agencies with the Comptroller of the City of St. Louis.

- 1) CITY WATER DIVISION to cover the full expenses of removal and/or relocation of Water facilities, if any.
- 2) CITY TRAFFIC AND TRANSPORTATION DIVISION to cover the full expense of removal, relocation and/or purchase of all lighting facilities, if any. All street signs must be returned.
- 3) CITY STREET DEPARTMENT to cover the full expenses required for the adjustments of the City's alley(s), sidewalk(s) and street(s) as affected by the vacated area(s) as specified in Sections Two and Eight of the Ordinance.

SECTION TEN: An affidavit stating that all of the conditions be submitted to the Director of Streets for review of compliance with conditions one year (365 days) from the date of the signing and approval of this ordinance. Once the Director of Streets has verified compliance, the affidavit will be forwarded to the Board of Public Service for acceptance. If this affidavit is not submitted within the prescribed time the ordinance will be null and void.

SECTION ELEVEN: This being an ordinance for the preservation of public peace, health, and safety, it is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and therefore shall become effective immediately upon its passage and approval by the mayor.

Approved: March 9, 2010

ORDINANCE #68578
Board Bill No. 292

An ordinance authorizing and directing the mayor and comptroller of the city of St. Louis to execute a purchase and sale agreement and quit claim deed to the Washington University for certain city-owned property located in city block 4854, which property is known as lot 1, containing .42 acres more or less, upon receipt of and in consideration of the sum of ninety five thousand dollars (\$95,000.00), and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Mayor and Comptroller are hereby authorized and directed to execute, the Purchase and Sale Agreement, in substantially the form as attached hereto as **Exhibit A** and incorporated by reference herein, with The Washington University for certain City-owned property located in City Block 4854, which property is known as Lot 1, containing .42 acres more or less, and which is more fully described in said **Exhibit A**.

SECTION TWO. The Mayor and Comptroller are hereby authorized and directed to execute, upon receipt of, and in consideration of, the sum of Ninety Five Thousand Dollars (\$95,000.00), and other good and valuable consideration, and after satisfaction of all the terms and conditions of the Purchase and Sale Agreement, the Quit Claim Deed attached hereto as **Exhibit B** and incorporated by reference herein, to remise, release and forever quit-claim unto The Washington University certain City-owned property located in City Block 4854, which property is known as Lot 1, containing .42 acres more or less, and which is more fully described in said **Exhibit B**.

SECTION THREE. The Mayor and Comptroller of the City or their designated representatives are hereby authorized and directed to take any and all actions to execute and deliver for and on behalf of the City any and all additional certificates, documents, agreements or other instruments as may be necessary, desirable, convenient or proper in order to carry out the matters herein authorized.

SECTION FOUR. The Mayor and the Comptroller or their designated representatives, upon advice of the City Counselor, are hereby further authorized and directed to make any changes to the documents and instruments approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary, desirable, convenient or proper in order to carry out the matters herein authorized.

SECTION FIVE. Emergency Clause. This Ordinance, being necessary for the immediate preservation of public peace, health, safety, and general welfare, shall be and is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and, as such, this Ordinance shall take effect immediately upon its passage and approval by the Mayor.

EXHIBIT A
PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into as of the latest date of execution hereof (the "Effective Date"), by and between THE WASHINGTON UNIVERSITY, a corporation organized by special act of the General Assembly of the State of Missouri approved February 22, 1853 and acts amendatory thereto ("Buyer"), and THE CITY OF ST. LOUIS, MISSOURI, a body corporate and a political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri ("Seller").

WHEREAS, Seller is the owner of land located at 870 North Skinker and legally described as follows in the City of St. Louis, State of Missouri:

A TRACT OF LAND BEING PART OF LOT 4 OF ROSEDALE SUBDIVISION, PART OF VACATED OLIVE LANE AND PART OF CITY BLOCK 4854, IN CITY BLOCK 4854, CITY OF ST. LOUIS, MISSOURI AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST RIGHT OF WAY LINE OF SKINKER BOULEVARD, VARYING WIDTH, WITH THE CENTERLINE OF VACATED OLIVE LANE, 30 FEET WIDE, THENCE NORTHWARDLY ALONG SAID EAST RIGHT OF WAY LINE OF SKINKER BOULEVARD, VARYING WIDTH, ALONG A CURVE TO THE RIGHT WHOSE RADIUS POINT BEARS SOUTH 67 DEGREES 12 MINUTES 25 SECONDS EAST 390.00 FEET FROM THE LAST MENTIONED POINT A DISTANCE OF 247.77 FEET AND NORTH 59 DEGREES 11 MINUTES 36 SECONDS EAST 54.37

FEET TO THE WEST RIGHT OF WAY LINE OF THE METROLINK RIGHT OF WAY, VARYING WIDTH; THENCE SOUTHWARDLY ALONG SAID WEST RIGHT OF WAY LINE OF THE METROLINK RIGHT OF WAY, VARYING WIDTH THE FOLLOWING COURSES AND DISTANCES: SOUTH 08 DEGREES 27 MINUTES 24 SECONDS EAST 96.27 FEET, SOUTH 11 DEGREES 00 MINUTES 37 SECONDS EAST 117.48 FEET, SOUTH 37 DEGREES 53 MINUTES 01 SECOND WEST 22.55 FEET AND SOUTH 07 DEGREES 35 MINUTES 39 SECONDS WEST 15.00 FEET TO SAID CENTERLINE OF VACATED OLIVE LANE, 30 FEET WIDE; THENCE WESTWARDLY ALONG SAID CENTERLINE OF VACATED OLIVE LANE, 30 FEET WIDE, NORTH 82 DEGREES 06 MINUTES 56 SECONDS WEST 229.44 FEET TO THE POINT OF BEGINNING AND CONTAINING 34,491 SQUARE FEET OR 0.792 ACRES ACCORDING TO A SURVEY BY EFK MOEN, L.L.C. DURING JUNE, 2009.

Together with all improvements thereon, appurtenances thereto and the easements, access rights, and hereditaments thereto (all being hereinafter collectively referred to as the "870 Skinker Parcel").

WHEREAS, Buyer desires to buy and Seller desires to sell a portion of the 870 Skinker Parcel more particularly described as follows (the "Property"):

A TRACT OF LAND BEING PART OF LOT 4 OF "ROSEDALE SUBDIVISION", PART OF OLIVE LANE, AND PART OF CITY BLOCK 4854, IN CITY BLOCK 4854, CITY OF SAINT LOUIS, MISSOURI AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST RIGHT OF WAY LINE OF SKINKER BOULEVARD, VARYING WIDTH, WITH THE CENTERLINE OF OLIVE LANE, 30 FEET WIDE; THENCE NORTHWARDLY ALONG SAID EAST RIGHT OF WAY LINE OF SKINKER BOULEVARD, VARYING WIDTH, ALONG A CURVE TO THE RIGHT WHOSE RADIUS POINT BEARS SOUTH 67 DEGREES 12 MINUTES 25 SECONDS EAST 390.00 FEET FROM THE LAST MENTIONED POINT A DISTANCE OF 159.93; THENCE LEAVING SAID EAST RIGHT OF WAY LINE OF SKINKER BOULEVARD, VARYING WIDTH, SOUTH 04 DEGREES 12 MINUTES 14 SECONDS EAST 29.93 FEET TO A POINT; THENCE SOUTH 54 DEGREES 05 MINUTES 44 SECONDS EAST 23.03 FEET TO A POINT; THENCE ALONG A CURVE TO THE RIGHT WHOSE RADIUS POINT BEARS SOUTH 35 DEGREES 54 MINUTES 16 SECONDS WEST 214.00 FEET FROM THE LAST MENTIONED POINT A DISTANCE OF 81.99 FEET TO A POINT; THENCE NORTH 79 DEGREES 11 MINUTES 09 SECONDS EAST 69.99 FEET TO THE WEST RIGHT OF WAY LINE OF THE METROLINK RIGHT OF WAY, VARYING WIDTH; THENCE SOUTHWARDLY ALONG SAID WEST RIGHT OF WAY LINE OF THE METROLINK RIGHT OF WAY, VARYING WIDTH THE FOLLOWING COURSES AND DISTANCES: SOUTH 11 DEGREES 00 MINUTES 37 SECONDS EAST 40.67 FEET, SOUTH 37 DEGREES 53 MINUTES 01 SECONDS WEST 22.55 FEET AND SOUTH 07 DEGREES 35 MINUTES 39 SECONDS WEST 15.00 FEET TO THE CENTERLINE OF SAID OLIVE LANE 30 FEET WIDE; THENCE WESTWARDLY ALONG SAID CENTERLINE OF OLIVE LANE, 30 FEET WIDE, NORTH 82 DEGREES 06 MINUTES 56 SECONDS WEST 229.44 FEET TO THE POINT OF BEGINNING AND CONTAINING 18,466 SQUARE FEET OR 0.424 ACRES ACCORDING TO CALCULATIONS BY EFK MOEN, L.L.C. DURING OCTOBER 2009.

WHEREAS, for reference purposes, the Property is also herein referred to as "Lot 1."

WHEREAS, for reference purposes, the portion of the 870 Skinker Parcel referred to herein as "Lot 2" is that portion which Seller will retain after subdividing the 870 Skinker Parcel being more particular described as follows:

A TRACT OF LAND BEING PART OF LOT 4 OF "ROSEDALE SUBDIVISION," AND PART OF CITY BLOCK 4854, IN CITY BLOCK 4854, CITY OF SAINT LOUIS, MISSOURI AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHEAST RIGHT OF WAY LINE OF SKINKER BOULEVARD, VARYING WIDTH, WITH THE WEST RIGHT OF WAY LINE OF METROLINK RIGHT OF WAY, VARYING WIDTH; THENCE SOUTHWARDLY ALONG SAID WEST RIGHT OF WAY LINE OF THE METROLINK RIGHT OF WAY, VARYING WIDTH, SOUTH 08 DEGREES 27 MINUTES 24 SECONDS EAST 96.27 FEET AND SOUTH 11 DEGREES 00 MINUTES 37 SECONDS EAST 76.81 FEET; THENCE LEAVING SAID WEST RIGHT OF WAY LINE OF METROLINK RIGHT OF WAY, VARYING WIDTH, SOUTH 79 DEGREES 11 MINUTES 09 SECONDS WEST 69.99 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT WHOSE RADIUS POINT BEARS SOUTH 57 DEGREES 51 MINUTES

25 SECONDS WEST 214.00 FEET FROM THE LAST MENTIONED POINT A DISTANCE OF 81.99 FEET TO A POINT; THENCE NORTH 54 DEGREES 05 MINUTES 44 SECONDS WEST 23.03 FEET TO A POINT; THENCE NORTH 04 DEGREES 12 MINUTES 14 SECONDS WEST 29.93 FEET TO SAID SOUTHEAST RIGHT OF WAY LINE OF SKINKER BOULEVARD, VARYING WIDTH; THENCE NORTHEASTWARDLY ALONG SAID SOUTHEAST RIGHT OF WAY LINE OF SKINKER BOULEVARD, VARYING WIDTH; ALONG A CURVE TO THE RIGHT WHOSE RADIUS POINT BEARS SOUTH 43 DEGREES 42 MINUTES 43 SECONDS EAST 390.00 FEET FROM THE LAST MENTIONED POINT A DISTANCE OF 87.84 FEET AND NORTH 59 DEGREES 11 MINUTES 36 SECONDS EAST 54.37 FEET TO THE POINT OF BEGINNING AND CONTAINING 16,024 SQUARE FEET OR 0.368 ACRES ACCORDING TO CALCULATIONS BY EFK MOEN, L.L.C. DURING OCTOBER 2009.

WHEREAS, Seller is authorized by Ordinance No. _____ to enter into this Purchase and Sale Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants of the parties hereinafter expressed, it is hereby agreed as follows:

ARTICLE I - PURCHASE AND SALE

1.1 Agreement to Sell and Purchase. In accordance with and subject to the terms and conditions hereof, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Property.

1.2 Purchase Price. The purchase price (the "Purchase Price") for the Property shall be Ninety Five Thousand and 00/100 Dollars (\$95,000.00) subject to adjustments on the basis of an actual year of 365 days, Seller to have the last day, as follows:

(a) Unless an exemption applies, general property taxes (state, county, municipal, school and fire district, and other local real estate taxes and personal property taxes) accrued for the current tax fiscal year shall be adjusted. If not fully paid prior to Closing, all taxes for prior years shall be charged to Seller as a credit against the Purchase Price. Special taxes or assessments, if any, upon the Property, assessed or becoming a lien on or prior to the date of Closing, including deferred payments or installment payments therefor payable after the date of Closing, shall be charged to Seller as a credit against the Purchase Price.

(b) Electricity, water, sewer, gas, electric and other utility charges shall be prorated between the parties so that Buyer shall be charged with any prepaid charges (as to the portion of such charges attributable to the period subsequent to Closing) as a debit to the Purchase Price, and Seller shall be charged with any accrued but unpaid, past due or delinquent charges (as to the portion of such charges attributable to the period prior to Closing) as a credit against the Purchase Price.

(c) Buyer shall pay all recording fees for the conveyance instruments. Seller shall pay all fees for releases of liens, if any. Buyer shall pay all title commitment and title insurance premiums.

(d) Buyer and Seller shall pay their own respective costs and expenses, including attorneys' fees, incidental to this Agreement and the transactions contemplated hereby.

1.3 Closing and Possession. The closing (herein referred to as the "Closing") of the transactions contemplated hereby shall take place at the offices of the Title Company on the first business day ten (10) days following the later to occur of (a) the execution of this Agreement, and (b) satisfaction of the contingencies set forth in Sections 1.6. and 1.7. Seller shall deliver possession of the Property to Buyer at Closing. Both Buyer and Seller shall close their respective portions of the transactions contemplated hereby at the offices of the Title Company (First American Title Insurance Company, 1600 South Brentwood, Suite 400, St. Louis, Missouri 63144), and not at any other title insurance company.

1.4 Deed. On the date of Closing, and as a condition thereto, Seller shall convey the Property to Buyer by quitclaim deed.

1.5 No Leases, Occupancies. On the date of Closing, and as a condition thereto, Seller shall deliver possession of the Property to Buyer free and clear of any leases, tenancies or occupancies.

1.6 Buyer Contingencies. The obligations of Buyer under this Agreement shall be subject to the satisfaction of each of the following contingencies:

(a) Buyer shall have obtained, at Buyer's expense, and reviewed and approved (as satisfactory to Buyer, in its discretion), a commitment in favor of Buyer for an ALTA Form B owner's policy of title insurance from the Title Company with respect to the Property. Buyer agrees to review and approve the commitment, and the title exceptions therein (or disapprove the same and thereby terminate this Agreement) on or before the Due Diligence Completion Date (and upon such approval, the exceptions disclosed thereon shall constitute "Permitted Exceptions" hereunder, other than the standard preprinted exceptions and any deeds of trust, mortgages, security agreements or other liens, all of which Seller shall cause to be removed and deleted at or prior to Closing).

(b) Buyer shall have obtained at Closing, at Buyer's expense (for the applicable premium), an owner's policy of title insurance from the Title Company in the amount of the Purchase Price, insuring the title and interest of Buyer in and to the Property, with exception only for the lien of general real estate taxes for the current tax fiscal year, and the Permitted Exceptions.

In the event that any one or more of the foregoing contingencies has not been satisfied or waived in writing by Buyer on or before the date of Closing (or, if earlier, the date of satisfaction thereof), then such condition precedent shall be deemed unsatisfied and this Agreement thereby terminated, and neither party shall have any further liability or obligation hereunder.

1.7 Mutual Contingencies. The obligations of each of Buyer and Seller under this Agreement shall be subject to the satisfaction of each of the following contingencies:

(a) Vacation of Olive Lane as a public street on or before the date that is Ninety days (90) following the Effective Date of this Agreement.

(b) Subdivision of the 870 Skinker Parcel into Lot 1 and Lot 2 on or before the date that is Ninety days (90) following the Effective Date of this Agreement.

Buyer acknowledges and agrees that vacation of Olive Lane as aforesaid, subdivision of the 870 Skinker Parcel as aforesaid, or both, may require approval of Seller acting through one or more of its executive and legislative functions, that Seller, acting through its legislative functions, is controlled by a Board of Aldermen as a legislative and deliberative body, and that nothing in this Agreement shall operate or be construed to bind Seller as to action by its executive functions with oversight responsibility for vacation and subdivision matters or as to action by its Board of Aldermen on any matter.

Buyer further agrees to assume responsibility for the cost and expense of preparing, submitting and recording all necessary petitions, plats and associated documentation for the vacation of Olive Lane as aforesaid and the subdivision of the 870 Skinker Parcel as aforesaid, including without limitation payment of all applicable fees to the City of St. Louis or any department or office thereof and payment of all surveyor costs and expenses.

In the event that any one or more of the foregoing contingencies has not been satisfied or mutually waived in writing by Buyer and Seller on or before the date of satisfaction thereof, then such condition precedent shall be deemed unsatisfied, and this Agreement thereby terminated, and neither party shall have any further liability or obligation hereunder.

1.8 AS-IS SALE. BUYER ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES, RENOUNCES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, OF, AS TO, CONCERNING, OR WITH RESPECT TO, (I) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (II) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH MAY BE CONDUCTED THEREON, (III) THE COMPLIANCE OF OR BY THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (IV) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, OR (V) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND SPECIFICALLY, THAT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES, RENOUNCES AND DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES REGARDING COMPLIANCE OF THE PROPERTY WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING WITHOUT LIMITATION, THOSE PERTAINING TO SOLID WASTE, AS DEFINED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, OR THE DISPOSAL OR EXISTENCE, IN OR ON THE PROPERTY, OF ANY HAZARDOUS SUBSTANCES, AS DEFINED BY THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, AND THE REGULATIONS PROMULGATED THEREUNDER. BUYER SHALL RELY SOLELY ON ITS OWN

INVESTIGATION OF THE PROPERTY AND NOT ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER, ITS AGENTS OR CONTRACTORS. SELLER SHALL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR THE OPERATION THEREOF, FURNISHED BY ANY PARTY PURPORTING TO ACT ON BEHALF OF SELLER. THIS PROVISION SHALL SURVIVE CLOSING HEREUNDER OR ANY OTHER TERMINATION OR CANCELLATION OF THIS AGREEMENT.

ARTICLE II – REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER

2.1 Representations and Warranties. In order to induce Buyer to purchase the Property, Seller makes the following representations and warranties, each of which shall survive the Closing and the sale of the Property contemplated hereby:

(a) Seller hereby represents and warrants that it has full constitutional and lawful right, power and authority to execute and deliver and perform the terms and obligations of this Agreement and that this Agreement has been duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City enforceable in accordance with its terms.

(b) Seller has full power and authority to enter into and perform its obligations under this Agreement and shall deliver to the Title Company at closing all affidavits and documents required by the Title Company to evidence such authority and such condition of title to the Property as the Title Company may require in order to issue an owner's policy of title insurance in a form acceptable to Buyer.

(c) Seller is not a foreign person or entity under the Foreign Investment in Real Property Tax Act of 1980, as amended.

(d) There are no tenancies or leases affecting the Property or any part thereof except as shall expire or be cancelled prior to Closing.

(e) There are no service, supply, maintenance, or management agreements affecting the Property or the operation of any part thereof except as shall expire or be cancelled prior to Closing.

(f) To the best knowledge of Seller, there is no litigation, claim, audit, action or proceeding pending or threatened before or by any court, public board or body or governmental or administrative agency or instrumentality by Seller or by any other person or entity in any manner affecting the Property, and there is no unpaid property tax, levy or assessment against the Property, nor does Seller have any knowledge of any pending or threatened condemnation proceeding against the Property or any portion thereof or of any public request, plans or proposals for changes in road grade, access or other municipal improvements that may affect the Property or result in a tax, levy or assessment against the Property.

(g) Seller has not dealt with any broker, finder or other person in connection with the offering, sale or negotiation of the sale of the Property in any manner that might give rise to any claim for commission against Buyer or any lien against the Property.

2.2 Covenants. Prior to Closing, Seller shall not (a) enter into any leases for the Property or any portion thereof, (b) enter into any service, supply, maintenance or other contracts pertaining to the Property or the operation of the Property, (c) purchase, lease or contract to purchase or lease new items of equipment or inventory with respect to the Property, or (d) alter or contract for the alteration of any existing improvements or construct or install or contract for the construction or installation of any improvements; without, in each instance, obtaining the prior written consent of Buyer.

ARTICLE III – REPRESENTATIONS AND COVENANTS OF BUYER

3.1 Representations and Warranties. In order to induce Seller to sell the Property, Buyer makes the following representations and warranties, each of which shall survive the Closing and the sale contemplated hereby:

(a) Buyer is a corporation organized, validly existing and in good standing under the laws of the State of Missouri.

(b) Buyer has all necessary power and authority to enter into this Agreement, to execute and deliver the documents and instruments required of Buyer herein, and to perform its obligations hereunder.

(c) Buyer has dealt with no broker, finder or any other person, in connection with the purchase of or the negotiation of the purchase of the Property that might give rise to any claim for commission against Seller.

ARTICLE IV - CASUALTY; CONDEMNATION

4.1 Casualty. In the event of the damage or destruction of all or any part of the Property prior to Closing, Buyer at its option, exercisable by written notice to Seller, may either (i) terminate this Agreement, whereupon neither party will have any further obligations hereunder (and the Deposit shall be returned to Buyer), or (ii) continue under this Agreement, whereupon Seller will assign to Buyer all its interest in and to any insurance policies and proceeds thereof payable as a result of such damage or destruction.

4.2 Condemnation. In the event of the taking of all or any part of the Property prior to Closing, by eminent domain or condemnation, then Buyer at its option, exercisable by written notice to Seller, may either (i) terminate this Agreement, whereupon neither party will have any further obligation hereunder (and the Deposit shall be returned to Buyer), or (ii) continue under this Agreement, whereupon Seller will assign to Buyer all its interest in and to any award and proceeds thereof payable as a result of such taking.

ARTICLE V - MISCELLANEOUS

5.1 Easements.

(a) Temporary Construction Easement in Favor of Buyer: Seller shall grant to Buyer a nonexclusive right of entry and temporary construction easement (the "Buyer's Temporary Construction Easement") in, upon, through, over, under and across a certain portion of Seller's Property to be mutually agreed upon at a later date (the "Seller's Temporary Easement Property") subject to the terms of a Temporary Construction Easement Agreement which shall contain at least the following terms:

The purpose of Buyer's Temporary Construction Easement shall be construction of a re-aligned Olive Boulevard and other roadway improvements east of Skinker Boulevard (the "University Improvements").

Buyer shall have the right to enter and occupy the Seller's Temporary Easement Property for the purpose of doing any and all matters that may be necessary or desirable in connection with the construction of such University Improvements including, but not limited to, the right to place in, upon, through, over, under and across the Seller's Temporary Easement Property all equipment, structures, fixtures and other materials and items incidental thereto.

(b) Temporary Construction Easement in Favor of Seller: Buyer shall grant Seller a nonexclusive right of entry and temporary construction easement (the "Seller's Temporary Construction Easement") in, upon, through, over, under and across a certain portion of Buyer's property to be mutually agreed upon at a later date (the "Buyer's Temporary Easement Property") subject to the terms of a Temporary Construction Easement Agreement which shall contain at least the following terms:

The purpose of the Seller's Temporary Construction Easement shall be for access to and use as a staging area for construction of a public water facility (the "Water Company Improvements").

Seller shall have the right to enter and occupy the Buyer's Temporary Easement Property for the purpose of doing any and all matters that may be necessary or desirable in connection with the construction of such Water Company Improvements including, but not limited to, the right to place in, upon, through, over, under and across the Buyer's Temporary Easement Property all equipment, structures, fixtures and other materials and items incidental thereto.

(c) Utility Easement: Buyer shall grant to Seller a perpetual non-exclusive easement for the construction, maintenance and replacement of water lines under a portion of the proposed new private roadway on Lot 1 that will extend east from Skinker Blvd., the exact dimensions of such easement shall be determined and mutually agreed upon at the time Seller notifies Buyer of its intent to construct the Water Company Improvements. The parties agree that they will work together in good faith with Buyer's surveyor and/or engineers to locate the water line utility easement prior to construction the University's Improvements.

Buyer shall grant to Seller a perpetual non-exclusive easement for the construction, maintenance and replacement of electrical service lines below the north eastern portion of Lot 1, the exact dimensions of such easement shall be determined and mutually agreed upon at a later date. The parties agree that they will work together in good faith with Buyer's surveyor

and/or engineers to locate the utility easement prior to construction of the University's Improvements.

(d) Access Easement: Buyer shall grant to Seller a non-exclusive perpetual easement for ingress/egress across the University Improvements, the precise location of which shall be determined once the University Improvements are substantially complete. The parties agree that they will work together in good faith with Buyer's surveyor and/or engineers to locate the access easement once the University Improvements have been designed and/or constructed.

5.2 Lot 2 Maintenance. The parties agree that Seller will permit Buyer to enter upon Lot 2 (the remainder of its property) from time to time for the sole purpose of maintaining the vacant Lot 2 until such time as Seller begins constructing the Water Company Improvements. Buyer's maintenance activities on Lot 2 may include but not be limited to mowing, weeding and removing litter and other debris from Lot 2. Such maintenance activities shall be in the sole discretion of Buyer and nothing herein shall obligate the Buyer to perform any maintenance to Lot 2 or require Buyer to maintain Lot 2 to any specific aesthetic standard. However, if Buyer undertakes such maintenance, it shall do so at Buyer's sole cost and expense.

5.3 Buyer's Indemnity. Buyer covenants and agrees to assume liability for and to defend, indemnify and hold Seller harmless from and against injuries to or death of persons (including reasonable fees and expenses of attorneys) arising out of the negligent errors, acts or omissions or misconduct of Buyer or any party for whom Buyer is legally liable which results from Buyer's presence on Lot 2 (or the presence of any party for whom Buyer is legally liable), except to the extent due to the negligence or misconduct of the Seller or any party for whom the Seller is legally liable. The Seller covenants and agrees, to the extent permitted by law, to assume liability for and to defend, indemnify and hold Buyer harmless from and against injuries to or death of persons (including reasonable fees and expenses of attorneys) arising out of the negligent errors, acts or omissions or misconduct of Seller or any party for whom Seller is legally liable which results from Seller's presence on Lot 1 (or the presence of any party for whom Seller is legally liable), except to the extent due to the negligence or misconduct of the Buyer or any party for whom the Buyer is legally liable.

5.4 Seller's Pumping Facility (Design Aesthetics). The parties acknowledge that Buyer has made and will continue to make a considerable effort to enhance the overall aesthetics of the area along Skinker Boulevard north of Delmar Boulevard and that the design aesthetic of all new construction in the area is critical to the development and growth of the area. Therefore, the parties agree that at such time as Seller designs its new pumping facility, Seller shall provide Buyer a meaningful opportunity to review and comment on the design aesthetics of the exterior of the pumping facility. If Buyer proposes a reasonable modification of the design aesthetic of the facility exterior, Seller will approve such request provided that 1) such proposed aesthetic modification does not materially impair or alter the functionality of the facility in order for it to be used for its intended purpose and 2) Buyer pays for the increased costs, if any, resulting from its proposed aesthetic modifications including any increased cost of using different material on the building exterior not originally specified in Seller's design as provided to Buyer for review.

5.5 Binding Agreement. This Agreement shall be binding on and shall inure to the benefit of the parties named herein and their respective heirs, personal representatives, successors and assigns.

5.6 Notices. All notices, requests, demands and other communications hereunder shall be deemed to have been duly given if the same shall be in writing and shall be delivered personally or sent by registered or certified mail, postage pre paid, and addressed as set forth below. Any party may change the address to which notices are to be addressed by giving the other parties notice in the manner herein set forth.

(a) If to Buyer:

Amy B. Kweskin
Treasurer
The Washington University
Campus Box 1084
700 Rosedale Avenue
St. Louis, Missouri 63112

With a copy to:

Heidi Potter Klosterman
Associate General Counsel
The Washington University
Campus Box 1058
One Brookings Drive

St. Louis, Missouri 63130-4899

(b) If to Seller:

City of St. Louis
Office of the Comptroller
City Hall
1200 Market Street, Room 212
St. Louis, Missouri 63103

With a copy to:

Curtis B. Skouby, P.E.
Water Commissioner
City of St. Louis Water Division
Dept. of Public Utilities
1640 S. Kingshighway
St. Louis, MO 63110

With a copy to:

City Counselor
City of St. Louis
314 City Hall
St. Louis, Missouri 63103

5.7 Representatives Not Personally Liable. No elected or appointed trustee, officer, agent, employee or attorney of the Buyer shall be personally liable to the Seller in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement. No elected or appointed official, agent, employee or representative of the Seller shall be personally liable to the Buyer in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

5.8 Governing Law. This Agreement shall be construed and interpreted according to the laws of the State of Missouri.

5.9 Time of the Essence. Time is of the essence with respect to each and every provision of this Agreement.

5.10 Performance on Business Days. If any date for the occurrence of an event or act under this Agreement falls on a Saturday or Sunday or legal holiday in the State of Missouri, then the time for the occurrence of such event or act shall be extended to the next succeeding business day.

5.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

5.12 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

5.13 Entire Agreement. This Agreement constitutes the entire undertaking between the parties hereto, and supersedes any and all prior agreements, arrangements and understandings between the parties.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

THE WASHINGTON UNIVERSITY

By: _____

Name: Amy B. Kweskin
Title: Treasurer

Date of Execution: _____

CITY OF ST. LOUIS, MISSOURI

By: _____

Name: Francis G. Slay
Title: Mayor

Date of Execution: _____

By: _____

Name: Darlene Green
Title: Comptroller

Date of Execution: _____

(SEAL)

Attest:

Parrie L. May, City Register

Approved as to Form:

City Counselor

**EXHIBIT B
QUIT CLAIM DEED**

THIS QUITCLAIM DEED, made and entered into this ____ day of _____, 2010, by and between the CITY OF SAINT LOUIS, a municipal corporation of the State of Missouri, 1200 Market Street, St. Louis, Missouri 63103 ("Grantor"), and THE WASHINGTON UNIVERSITY, a corporation established by Act of the General Assembly of the State of Missouri approved February 22, 1853 and acts amendatory thereto, whose address is One Brookings Drive, Campus Box 1058, St. Louis, Missouri 63130-4899 ("Grantee").

WITNESSETH, that the Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, does by these presents Remise, Release and Forever Quitclaim unto the Grantee, the following described Real Estate, situated in the City of St. Louis and State of Missouri, to wit:

A TRACT OF LAND BEING PART OF LOT 4 OF "ROSEDALE SUBDIVISION", PART OF OLIVE LANE, AND PART OF CITY BLOCK 4854, IN CITY BLOCK 4854, CITY OF SAINT LOUIS, MISSOURI AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST RIGHT OF WAY LINE OF SKINKER BOULEVARD, VARYING WIDTH, WITH THE CENTERLINE OF OLIVE LANE, 30 FEET WIDE; THENCE NORTHWARDLY ALONG SAID EAST RIGHT OF WAY LINE OF SKINKER BOULEVARD, VARYING WIDTH, ALONG A CURVE TO THE RIGHT WHOSE RADIUS POINT BEARS SOUTH 67 DEGREES 12 MINUTES 25 SECONDS EAST 390.00 FEET FROM THE LAST MENTIONED POINT A DISTANCE OF 159.93; THENCE LEAVING SAID EAST RIGHT OF WAY LINE OF SKINKER BOULEVARD, VARYING WIDTH, SOUTH 04 DEGREES 12 MINUTES 14 SECONDS EAST 29.93 FEET TO A POINT; THENCE SOUTH 54 DEGREES 05 MINUTES 44 SECONDS EAST 23.03 FEET TO A POINT; THENCE ALONG A CURVE TO THE RIGHT WHOSE RADIUS POINT BEARS SOUTH 35 DEGREES 54

MINUTES 16 SECONDS WEST 214.00 FEET FROM THE LAST MENTIONED POINT A DISTANCE OF 81.99 FEET TO A POINT; THENCE NORTH 79 DEGREES 11 MINUTES 09 SECONDS EAST 69.99 FEET TO THE WEST RIGHT OF WAY LINE OF THE METROLINK RIGHT OF WAY, VARYING WIDTH; THENCE SOUTHWARDLY ALONG SAID WEST RIGHT OF WAY LINE OF THE METROLINK RIGHT OF WAY, VARYING WIDTH THE FOLLOWING COURSES AND DISTANCES: SOUTH 11 DEGREES 00 MINUTES 37 SECONDS EAST 40.67 FEET, SOUTH 37 DEGREES 53 MINUTES 01 SECONDS WEST 22.55 FEET AND SOUTH 07 DEGREES 35 MINUTES 39 SECONDS WEST 15.00 FEET TO THE CENTERLINE OF SAID OLIVE LANE 30 FEET WIDE; THENCE WESTWARDLY ALONG SAID CENTERLINE OF OLIVE LANE, 30 FEET WIDE, NORTH 82 DEGREES 06 MINUTES 56 SECONDS WEST 229.44 FEET TO THE POINT OF BEGINNING AND CONTAINING 18,466 SQUARE FEET OR 0.424 ACRES ACCORDING TO CALCULATIONS BY EFK MOEN, L.L.C. DURING OCTOBER 2009.

TO HAVE AND TO HOLD the same, together with all rights and appurtenances to the same belonging, unto the said Grantee, and to its heirs and assigns, so that neither the said Grantor, nor its heirs, nor any other person or persons for it or in its name or behalf, shall or will hereafter claim or demand any right or title to the aforesaid premises, or any part thereof, but they and every one of them shall, by these presents, be excluded and forever barred.

IN WITNESS WHEREOF, the said Grantor and Grantee have executed these presents the day and year first above written.

GRANTOR:

GRANTEE:

THE CITY OF SAINT LOUIS

THE WASHINGTON UNIVERSITY

By: _____
Francis G. Slay
Mayor

By: _____
Amy B. Kweskin
Treasurer

By: _____
Darlene Green
Comptroller

Attest:

Parrie L. May, City Register

Approved as to Form:

City Counselor

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

On this _____ day of _____, 2010, before me appeared Francis G. Slay, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires:

STATE OF MISSOURI)
) SS.
 CITY OF ST. LOUIS)

On this _____ day of _____, 2010, before me appeared Darlene Green, to me personally known, who, being by me duly sworn, did say that she is the Comptroller of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires:

STATE OF MISSOURI)
) SS.
 COUNTY OF ST. LOUIS)

On this _____ day of _____, 2010, before me appeared Amy B. Kweskin, to me personally known, who being by me duly sworn, did say that she is the Treasurer of THE WASHINGTON UNIVERSITY, a corporation organized and existing by Act of the General Assembly of the State of Missouri approved February 22, 1853 and acts amendatory thereto, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My commission expires:

Approved: March 9, 2010

**ORDINANCE #68579
 Board Bill No. 296
 Floor Substitute**

An ordinance pertaining to the Grand Boulevard Viaduct, amending Ordinance 59558 by enacting a new Section allowing for the acquisition of real and personal property rights or interests including easements by purchase, lease, eminent domain, or otherwise as necessary for the completion of the Grand Boulevard Viaduct as approved by the Board of Public Service, and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF SAINT LOUIS AS FOLLOWS:

SECTION ONE. Ordinance 59558 of the City of St. Louis is hereby amended with the addition of Section 9 to read as follows:

SECTION NINE. The City of St. Louis (the "City") is hereby authorized to acquire any and all said real and personal property rights or interests, in whole or in part, including easements by purchase, lease, eminent domain or otherwise as necessary for the completion of the Grand Boulevard Viaduct as approved by the Board of Public Service of the City of St. Louis.

SECTION TWO. This ordinance being an ordinance providing for public work and improvement, it is hereby declared to be an emergency measure as defined in Article IV, Sections 19 and 20 of the City Charter and shall become effective immediately upon its passage and approval by the Mayor.

Approved: March 9, 2010

**ORDINANCE #68580
Board Bill No. 298**

An ordinance pertaining to the Wellington Avenue Bridge Reconstruction over River Des Peres, amending Ordinance 65099 by enacting a new Section allowing for the acquisition of real and personal property rights or interests including easements by purchase, lease, eminent domain, or otherwise as necessary for the completion of the Wellington Avenue Bridge Reconstruction over River Des Peres as approved by the Board of Public Service, and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF SAINT LOUIS AS FOLLOWS:

SECTION ONE. Ordinance 65099 of the City of St. Louis is hereby amended with the addition of Section 10 to read as follows:

SECTION TEN. The City of St. Louis (the "City") is hereby authorized to acquire any and all said real and personal property rights or interests, in whole or in part, including easements by purchase, lease, eminent domain or otherwise as necessary for the completion of the Wellington Avenue Bridge Reconstruction over River Des Peres as approved by the Board of Public Service of the City of St. Louis.

SECTION TWO. This ordinance being an ordinance providing for public work and improvement, it is hereby declared to be an emergency measure as defined in Article IV, Sections 19 and 20 of the City Charter and shall become effective immediately upon its passage and approval by the Mayor.

Approved: March 9, 2010

**ORDINANCE #68581
Board Bill No. 303**

An Ordinance recommended and approved by the Board of Estimate and Apportionment authorizing and directing the Director of Airports and the Comptroller of the City of St. Louis (the "City") to enter into and execute on behalf of the City the Lambert-St. Louis International Airport® ("Airport") Automated Teller Machine Concession Agreement AL-075 (the "Agreement"), between the City and Commerce Bank N.A. (the "Concessionaire"), granting to the Concessionaire the non-exclusive right, license, obligation, and privilege to design, construct, operate, manage and maintain an Automated Teller Machine ("ATM") Concession at the Airport within the premises as described in the Agreement, subject to and in accordance with the terms, covenants, and conditions of the Agreement, which was approved by the Airport Commission and is attached hereto as **ATTACHMENT "1"** and made a part hereof; providing that the provisions set forth in this Ordinance shall be applicable exclusively to the Agreement; containing a severability clause; and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Director of Airports and the Comptroller for the City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City the Lambert-St. Louis International Airport® ("Airport") Automated Teller Machine Concession Agreement AL-075 (the "Agreement"), between the City and Commerce Bank N.A., a Missouri corporation (the "Concessionaire"), granting to the Concessionaire the non-exclusive right, license, obligation, and privilege to design, construct, operate, manage and maintain an Automated Teller Machine ("ATM") Concession at the Airport within the premises as described in the Agreement, subject to and in accordance with the terms, covenants, and conditions of the Agreement, which was approved by the Airport Commission and is to read in words and figures substantially as set out in **ATTACHMENT "1"**, which is attached hereto and made a part hereof.

SECTION TWO. The terms, covenants, and conditions set forth in this Ordinance shall be applicable exclusively to the Agreement approved and authorized by this Ordinance and shall not be applicable to any other existing or future concession agreement or other agreements, documents, or instruments unless specifically authorized by ordinance enacted after the effective date of this Ordinance. All provisions of other ordinances of the City that are in conflict with this Ordinance shall be of no force or effect as to this Ordinance or the agreements, documents, and instruments approved and/or authorized by this Ordinance.

SECTION THREE. The sections, conditions, or provisions of this Ordinance or portions thereof shall be severable. If any section, condition, or provision of this Ordinance or portion thereof is held invalid by a court of competent jurisdiction, such holding shall not invalidate the remaining sections, conditions, or provisions of this Ordinance.

SECTION FOUR. This being an ordinance for the preservation of public peace, health, or safety, it is hereby declared an emergency measure as designed in Article IV, Section 20, of the City’s Charter and shall become effective immediately upon its approval by the Mayor of the City.

Attachment 1

LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®



**COMMERCE BANK N.A.
AUTOMATED TELLER MACHINE
CONCESSION AGREEMENT**

NO. AL# 075

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AIRPORT NUMBER AL# 075

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

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

WITNESSETH, THAT:

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

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

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

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

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

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

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

ARTICLE I DEFINITIONS

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

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

“Airport” as stated in the preamble hereof.

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

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

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

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

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

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

“City” as stated in the preamble hereof.

“Concession” as stated in the preamble hereof.

“Concessionaire” as stated in the preamble hereof.

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

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

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

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

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

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

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

- federal, state, county and municipal sales taxes or other sales taxes separately stated and collected from customers;
- cash or credit refunds given to customers for returned products or unperformed services purchased at the Airport;
- receipts in the forms of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers;
- sale or trade-in value of any equipment or fixtures approved for removal by the Director and owned by Concessionaire.
- gratuities paid by customers to members of Concessionaire’s staff.

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

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

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

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

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

ARTICLE II PREMISES

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

The Director shall have the right to add, substitute, relocate or delete portions of the Premises upon reasonable notice to the Concessionaire. The City will not be liable or responsible for any loss whatsoever, including without limitation, any inconvenience

or loss by the Concessionaire of work time, profit or business, actual, incidental, consequential or special damages resulting from these changes to the Premises.

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

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

ARTICLE III CONCESSION RIGHTS

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

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

Concessionaire shall not engage in advertising or provide an area for the distribution of advertisements on behalf of any company other than itself. City shall be the sole judge as to whether the conduct of Concessionaire’s representative in the solicitation of business constitutes a violation of this paragraph, and upon notice from the City, Concessionaire shall forthwith take all steps necessary to eliminate the undesirable condition.

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

ARTICLE IV CONCESSION TERM

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

Commencement Date: March 1, 2010

Expiration Date: February 28, 2015

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

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

ARTICLE V FEES AND RENTALS

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

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

- A. The Concessionaire agrees to pay to City an annual fee of Twenty-one Thousand Dollars (\$21,000) in 12 monthly payments of One Thousand Seven Hundred Fifty Dollars (\$1,750).
- B. An ATM Transaction Fee consisting of a percentage of the surcharge for all Foreign ATM Transactions. All computations of this portion of the Concession Fee shall be based upon 50% per Contract Year.

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

Section 504. Reports.

- A. Concessionaire shall submit to the City, by the 15th day of the second and each succeeding month of each Contract Year hereof, two copies of an accurate statement of Gross Receipts as it pertains to ATM surcharges. Concessionaire shall document in a manner satisfactory to the Director a report listing the ATM Transaction Fee and amount due to the Airport, total number of ATM transactions and number of Foreign ATM Transactions subject to surcharge and amount of surcharge, and be certified as accurate by an officer of the Concessionaire. The final statement of ATM Transaction Fees shall be due 120 days after completion of the fifth Contract Year. The City reserves the right to use these statements as a source of information to bidders in a future Solicitation for Bids or Request for Proposals for this Concession.
- B. Concessionaire shall submit an audited report of Gross Receipts within 120 days following the conclusion of each Contract Year. These audit reports must be prepared by an independent Certified Public Accountant. The audit reports shall, at a minimum, certify the accuracy of reported total accumulated Gross Receipts; and the aggregate amount of Gross Receipts and/or goods and services attributable to ACDBE participants. The audit reports shall also include a schedule showing the total of actual payments to the City during the Contract Year and shall state an opinion as to the correctness of the computation of Gross Receipts without exception.
- C. Delivery of an audit report containing a qualified opinion, an adverse opinion or a disclaimer of opinion as defined in the Statement on Auditing Standards, or as same may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be deemed to be a default pursuant to Article XI herein. In the event of an overpayment, Concessionaire must notify the Airport Accounts Receivable Section of Finance and Accounting. Airport Accounts Receivable will then verify the overpayment and authorize the Concessionaire to deduct the amount of the overpayment from the next scheduled Concession Fee Payment. If an overpayment occurs during the last Contract Year, the City will pay the amount of the overpayment to Concessionaire within 30 days of receipt of the final audit report.
- D. Concessionaire shall keep, and make available to the City, such records (copies of subcontracts, paid invoices, documentation or correspondence) as are necessary for the City to determine compliance with the ACDBE participation requirement. The City reserves the right to investigate, monitor and/or review records for compliance. Concessionaire shall submit quarterly ACDBE activity reports to the City in a form approved by the Director.

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

Section 506. Performance and Payment Bond. Concessionaire agrees to furnish a Performance and Payment Bond in a form acceptable to City in the principal amount equal to Ten Thousand Dollars (\$10,000) prior to execution of this Agreement. Such bond or other form of security agreed to by the City, shall remain in full force and effect throughout the term of this Agreement and shall extend at least 180 days following the expiration or early termination of this Agreement. In the event that said bond should expire prior to expiration or early termination of this Agreement, Concessionaire warrants, covenants and agrees to provide City a renewal bond 60 days prior to the expiring bond's expiration date. Such bond shall guarantee the payment of all fees and performance of all other terms, covenants and conditions of this Agreement. The Performance and Payment Bond shall be in the form of standard

commercial guaranty bond running to City, written by a surety company authorized to do business in Missouri: having a "Best" key rating of not less than A and with a "Best" Financial Size Category of not less than Class VIII; and shown on the most recent U.S. Treasury Circular No. 570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The bond shall be kept in full force and effect during the term hereof. City may agree to another form of deposit which shall provide equal protection of City's interest. If City cashes the bond or other form of deposit agreed to by the City, Concessionaire agrees to furnish a replacement Performance and Payment Bond or other form of deposit in the same principal amount within 15 days.

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

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

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

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

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

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

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

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

ARTICLE VI CONCESSIONAIRE'S OPERATIONS

Section 601. Standards of Service.

- A. The Concessionaire warrants, represents, covenants and agrees to meet the City's objectives as set out in the preamble hereof. The Concessionaire shall furnish a first-class ATM Concession serving the needs of all Airport users. The Concessionaire shall provide new equipment, quality services and products and shall equip, organize, put into service and manage efficiently the ATM Concession to provide service in a clean, attractive and pleasant atmosphere. All ATMs shall be capable of processing withdrawals, fund transfers, cash advances and status inquiry transactions for the users thereof. Further, Concessionaire must subscribe to the following networks and be capable of accepting at least, but not limited to, one of the following cards: Cirrus, Plus, BankMark, Honor,

American Express, Visa, MasterCard and Discover/Novus. As an option, Concessionaire may also offer loan services, deposits and instant loans. Concessionaire shall insure that servicing of ATMs shall be done at such times and in such manner as to minimize disruption of passenger traffic and/or other tenant operations.

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

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

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

Section 604. Personnel.

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

Concessionaire understands and agrees that fines and/or penalties may be assessed by the FAA or the TSA for Concessionaire's noncompliance with the provisions of the TSA's regulation 1542 as amended or other

applicable laws or regulations. Concessionaire shall promptly reimburse the City, within 30 days of the City's request, for any fines or penalties paid by the City due to Concessionaire's noncompliance with said laws or regulations.

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

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

Section 606. Pricing.

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

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

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

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

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

Section 611. Operation.

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

Section 612. Communication.

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

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

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

**ARTICLE VII
IMPROVEMENTS AND ALTERATIONS**

Section 701. Construction by Concessionaire. The design should be sophisticated yet providing a comfortable and inviting atmosphere. Storefronts, if applicable, must be upscale and dynamic while complementing the design of the surrounding terminal space. The materials must provide the highest level of fit and finish yet must be durable enough to survive in the high volume airport environment. Finishes should be easy to maintain and keep clean. Passenger flow must be addressed to eliminate queuing into the concourses. The design must meet the criteria of the ADA along with all similar state and local requirements. Design of the Concession will be subject to the review and approval of the Airport Properties and Planning and Engineering Departments of the Airport. Drawings must be submitted to the Airport Properties Department along with a completed Tenant Construction or Alteration Application ("TCA"). Building permits will be required from St. Louis County. Fire protection drawings must be sealed by a licensed fire protection contractor and are subject to review and approval by the Airport's insurance carrier. No work can begin until drawings have been approved by the City, building permits have been submitted to the City and a pre-construction conference has been held.

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

Article XIII.

- 5) Failure to open and operate in accordance with this Section 701 will result in Concessionaire being assessed liquidated damages in the amount of **Five Hundred Dollars (\$500) per day** for each day beyond the 180 days after full execution by the City.
- 6) Concessionaire shall submit a certificate of completion and a certified copy of a St. Louis County occupancy permit, to the Airport Properties Department, as required by Section 706 hereof.

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

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

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

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

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

Section 706. Certificates of Completion. Upon the completion of the improvements hereunder, Concessionaire shall submit to the Director a copy of its acceptance letter certifying completion and a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Concessionaire. Concessionaire will provide the City with sealed as-built drawings within 90 days of opening.

Section 707. Signs.

- A. Concessionaire shall not erect, maintain or display any signs on the Premises without the prior written approval of the Director. The term "sign" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, Concessionaire shall have the right to install such advertising and identification signs as may be necessary for the proper conduct of an ATM Concession as contemplated hereunder. Concessionaire shall comply with all rules promulgated by the Director regarding the placement of signs and advertising in the Premises. A blade sign, installed in accordance with the Airport's blade sign specification must be installed as part of Concessionaires initial construction, if applicable to the Premises.
- B. Concessionaire shall be responsible for the cost of any new signs or modifications to Airport directories and other existing signs, including sign systems required by the Director. All modifications to these signs must be approved by the Director and are subject to all applicable requirements of this Section 707 hereof and the Tenant Design

Standards.

- C. Prior to the erection, construction or placement of any sign, Concessionaire shall submit to the Director for approval, all drawings, electrical details, sketches, designs, elevations, mounting details and dimensions of such signs. Any conditions, restrictions or limitations with respect to the use thereof as stated by the Director in writing shall become conditions of the Agreement.
- D. Concessionaire shall not place any advertising matter, displays or other literature not directly pertaining to an ATM Concession or place any signs outside of the Premises.

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

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

The City reserves the right and Concessionaire agrees that the Director may require Concessionaire to promptly and timely remove any or all Improvements and structures and restore the Premises to their original condition at the time Concessionaire took possession of the Premises. Concessionaire agrees to bear all costs of such removals and restorations.

ARTICLE VIII USE OF PREMISES

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

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

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

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

- Perform custodial services daily.
- Keep all its equipment and fixtures in good repair and appearance.
- Keep the Premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.
- Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of Concessionaire or its agents or employees.
- Provide for complete, sanitary handling and disposal of all trash, garbage and refuse (liquid or solid) in accordance with standards established by the Director applicable to all Airport tenants. Such standards may

require the use of special devices including, but not limited to, special containers, compactors and disposal systems. Concessionaire agrees to promptly provide and install same and to abide by such standards.

- Confine all handling and holding of Concessionaire's property to the Premises.
- Keep all papers and debris picked up daily from the Premises.
- Keep the Premises free of all pests, providing such pest control services as required.
- No storage will be permitted on the exterior areas of the Premises.

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and Concessionaire hereby releases and discharges the City from any and all inconvenience claims, liability or causes of action arising out of or incidental to the closing of any right-of-way, including without limitation loss of profit or business, incidental, consequential or special damages.

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

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

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

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

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

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

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

Section 805. Interference to Air Navigation. Concessionaire warrants, represents and agrees that no obstruction to air navigation, as such are defined from time to time by application of the criteria of Part 77 of the Federal Aviation Regulations or subsequent and additional regulations of the FAA, will be constructed or permitted to remain in or on the Premises. Any obstructions will be

immediately removed by Concessionaire at its expense. Concessionaire warrants, represents and agrees not to increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight of the control tower and its operations. Concessionaire further warrants, represents and agrees not to install any structures, objects, machinery or equipment that would interfere with the operation of navigation aides or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport.

ARTICLE IX INSURANCE, DAMAGE, AND INDEMNIFICATION

Section 901. Insurance.

- A. General. Concessionaire at all times during the term hereof, shall cause St. Charles County, Missouri; St. Clair County, Illinois; St. Louis County, Missouri; the City; their officers, agents and employees to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities or omissions of Concessionaire, its officers, agents, and employees pursuant to this Agreement both on the Premises and the Airport.
- B. Risks and Minimum Limits of Coverage. Concessionaire shall procure and maintain the following policies of insurance:
- 1) Commercial General Liability in an amount not less than Two Million Dollars (\$2,000,000). Such coverage shall be single limit liability with no annual aggregate.
 - 2) Automobile Liability Insurance. Concessionaire shall provide in an amount not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence (for automobiles used by Concessionaire in the course of its performance hereunder, including Concessionaire's non-owned and hired autos). In addition, Concessionaire shall carry excess coverage in the amount of Two Million Dollars (\$2,000,000) to Concessionaire automobile liability insurance.
 - 3) Workers' Compensation and Employer's Liability Insurance, in accordance with Missouri laws and regulations. With respect to Workers' Compensation Insurance, if Concessionaire elects to be self-insured, Concessionaire shall comply with the applicable requirements of law. Concessionaire shall require that all its subcontractors or licensees similarly provide such coverage (or qualify as a self-insured) for their respective employees. City, its officers, employees, or agents shall not be liable or responsible for any claims or actions occasioned by Concessionaire's failure to comply with the provisions of this subparagraph and that the indemnification provisions hereof shall apply to this section. It is expressly agreed that the employees of Concessionaire are not employees of the City for any purpose, and that employees of the City are not employees of Concessionaire.
 - 4) Contents Insurance. Concessionaire shall be solely responsible for obtaining insurance policies that provide coverage for losses of Concessionaire owned property. The City shall not be required to provide such insurance coverage or be responsible for payment of Concessionaire's cost for such insurance.
 - 5) Builders Risk Insurance. During any period of construction or reconstruction for which Concessionaire contracts, Concessionaire shall carry, or shall require its contractor or contractors to carry, a policy of Builders Risk Insurance in an amount sufficient to insure the value of the work. The City shall be named Loss Payee on Builders Risk coverage to the extent of the City's interest therein (except to the extent coverage relates to Concessionaire's equipment and personal property). Concessionaire may elect to self-insure for individual projects with a total cost of Fifty Thousand Dollars (\$50,000) or less.
 - 6) Other Property Coverage. Concessionaire shall provide an "All Risk" insurance policy providing protection from direct loss arising out of any fortuitous cause other than those perils or causes specifically excluded by norm and which covers Concessionaire's improvements to the Premises, trade fixtures, and equipment. The City shall be named Loss Payee on such coverage to the extent of the City's interest therein (except to the extent coverage relates to Concessionaire's equipment and personal property).
- C. Issuers of Policies. The issuer of each policy required herein shall be a financially sound insurance company

authorized to issue insurance policies in the State of Missouri. Acceptable insurers include insurance companies with an "A.M. Best Company" rating of at least an "A," or other insurers or insurance syndicates of similar recognized responsibility.

- 1) Form of Policies. The insurance may be in one or more policies of insurance.
 - 2) Non-waiver. Nothing the City does or fails to do shall relieve Concessionaire from its duties to provide the required coverage hereunder, and the City's actions or inactions shall not be construed as waiving the City's rights hereunder.
 - 3) Insured Parties. Each policy by endorsement, except those for Workers' Compensation and Employer's Liability, shall name the City, its officers, agents, and employees as "additional insured" on the certificate of insurance, including all renewal certificates, to the extent of Concessionaire's indemnification obligations hereunder. Inclusion as an "additional insured" is not intended to, and shall not, make the City a partner or joint venturer with Concessionaire in its operations.
 - 4) Deductibles. Concessionaire shall assume and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for the same against the City, its officers, agents, or employees; provided, however, that nothing herein stated shall diminish Concessionaire's rights or increase Concessionaire's obligations in respect to its undertakings or hold harmless defense and indemnification set forth in Section 904 hereof.
 - 5) Cancellation. Each policy shall expressly state that it may not be cancelled, materially modified or non-renewed unless a 30-day advance notice is given in writing to the City by the insurance company, or authorized representative of Concessionaire.
 - 6) Subrogation. Each policy shall contain an endorsement by which the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents, or employees.
 - 7) Endorsement of Primary Insurance. Each policy hereunder except Workers' Compensation shall be primary insurance to any other insurance available to the Additional Insured and Loss Payee with respect to claims arising hereunder.
 - 8) Liability for Premium. Concessionaire shall be solely responsible for payment of all insurance premiums required pursuant to this Agreement, and the City shall not be obligated to pay any premiums; provided, however, that if Concessionaire fails to obtain the insurance as required herein or make premium payments, the City may, without further notification, effect such insurance or make such payments on Concessionaire's behalf and, after notice to Concessionaire, the City may recover the cost of those payments with the installment of Fees and Charges next due, plus 15% administrative charge, from Concessionaire.
 - 9) Proof of Insurance. Within 30 days of the effective date of this Agreement and at any time during the term hereof, Concessionaire shall furnish the City with certificates of insurance. At least five days prior to the expiration of any such policy, Concessionaire shall submit to the City a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Concessionaire shall, within 15 days after the date of such notice from the insurer of such cancellation or reduction in coverage, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon reasonable notification by the City to Concessionaire, the City shall have the right to examine Concessionaire's insurance policies.
- D. Maintenance of Coverage. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that Concessionaire, continuously and without interruption, maintain in force the required insurance coverages set forth above.
- E. City Right to Review and Adjust Coverage Limits. The City reserves the right at reasonable intervals during the term of this Agreement to cause the insurance requirements of this Article to be reviewed, at its sole cost, by an independent insurance consultant experienced in insurance for public airports, taking into consideration changes in statutory law, court decisions, or the claims history of the airline industry as well as that of Concessionaire, and, based on the written recommendations of such consultant, and in consultation with Concessionaire, to

reasonably adjust the insurance coverages and limits required herein but not more often than every 24 months.

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

Section 903. Damage to Premises.

- A. **Minor Damage.** If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is partially damaged by fire or other casualty, but said circumstances do not render the Premises untenable as determined by the City, the same shall be repaired to usable condition with due diligence by the City as provided in this Section.
- B. **Substantial Damage.** If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is so extensively damaged by fire, or other casualty, as to render any portion of said Premises untenable but capable of being repaired, as determined by the City, the same shall be repaired to usable condition with due diligence by the City as provided in this section. In such case, the fees payable hereunder with respect to affected Premises shall be paid up to the time of such damage and shall thereafter be abated ratably in the proportion that the untenable area bears to the total Premises of the same category or type of space. Such abatement in fees will continue until the affected Premises are restored adequately for Concessionaire's use. The City shall use its best efforts to provide alternate facilities to continue Concessionaire's operation while repair, reconstruction, or replacement is being completed, at a rental rate not to exceed that provided herein for comparable space, provided that Concessionaire's rental costs shall not increase as a result of any such alternate facilities unless Concessionaire requests additional space and/or space replacement of a classification at higher rental rates concurrent with such reassignment to alternate facilities.
- C. **Total Damage.**
 - 1) If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is damaged by fire or other casualty, and is so extensively damaged as to render any portion of said Premises incapable of being repaired, as determined by the City, the City shall notify Concessionaire as soon as practicable under the circumstances after the date of such damage of its decision whether to reconstruct or replace said space. However, the City shall be under no obligation to replace or reconstruct such premises. The fees payable hereunder with respect to affected Premises shall be paid up to the time of such damage and thereafter shall cease until such time as replacement or reconstructed space shall be available for use by Concessionaire.
 - 2) If the City elects to reconstruct or replace affected Premises, the City shall use its best efforts to provide alternate facilities to continue Concessionaire's operation while repair, reconstruction, or replacement is being completed, at a rental rate not to exceed that provided herein for comparable space. However, if such damaged space shall not have been replaced or reconstructed, or the City is not diligently pursuing such replacement or reconstruction, within six months after the date of such damage or destruction, Concessionaire shall have the right, upon giving the City a 30-day advance notice, to delete the affected Premises from this Agreement, but this Agreement shall remain in effect with respect to the remainder of said Premises, unless such damaged or destroyed premises prevent Concessionaire from operating its ATM Concession at the Airport.
 - 3) If the City elects not to reconstruct or replace affected Premises, the City shall meet and consult with Concessionaire on ways to permanently provide Concessionaire with adequate replacement space for affected Premises. Concessionaire shall have the right, upon giving the City a 30-day advance notice, to delete the affected Premises from this Agreement, but this Agreement shall remain in full force and effect with respect to the remainder of said Premises, unless the loss of such premises prevents Concessionaire from operating its ATM Concession at the Airport.

- D. Scope of Restoration of Premises.
- 1) The City's obligations to repair, reconstruct, or replace affected Premises under the provisions of this Section shall in any event be limited to using due diligence and best efforts to restore affected Premises to substantially the same condition that existed prior to any such damage and shall further be limited by the provisions of Sections 903 A-C herein. If the City elects to repair, reconstruct, or replace affected premises as provided in this section, then Concessionaire shall proceed with due diligence and at its sole cost and expense to repair, reconstruct, or replace its signs, fixtures, furnishings, equipment, and other items provided or installed by Concessionaire in or about the Premises in a manner and in a condition at least equal to that which existed prior to said damage or destruction.
 - 2) In lieu of the City's repair, reconstruction, or replacement of the affected premises, as provided in this Section, if Concessionaire requests to perform said function with respect to damage under Sections 903 A and B, the City may, in its sole discretion, allow Concessionaire to do so. Any such work by Concessionaire must be done in accordance with the requirements of Article VII. The City shall reimburse Concessionaire for the cost of such work performed by Concessionaire. Concessionaire shall be considered to be doing such work on its own behalf and not as an agent or contractor of the City.
- E. Damage From Concessionaire Negligence. Notwithstanding the provisions of this Section, if damage to or destruction of the Premises is due to the negligent or willful acts of Concessionaire, its agents, servants, or employees, or those under its control, there shall be no abatement of fees during the restoration or replacement of said Premises. In addition, Concessionaire shall have no option to delete the affected Premises from this Agreement. To the extent that the costs of repairs pursuant to this section shall exceed the amount of any insurance proceeds payable to the City by reason of such damage or destruction, Concessionaire shall pay the amount of such additional costs to the City.

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

- A. The acts or omissions of Concessionaire, its agents, employees, contractors, or suppliers;
- B. Concessionaire's use or occupancy of the Airport and the Premises; and
- C. Any violation by Concessionaire in the conduct of Concessionaire's ATM Concession or use of its Premises or other areas or facilities at the Airport of any provision, warranty, covenant, or condition of this Agreement.

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

Concessionaire shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature associated therewith in any way arising from or based in whole or substantial part upon claim or allegation of a violation of any federal, state, or local laws, statutes, resolutions, regulations, ordinance, or court order affecting the Airport, by Concessionaire, its agents, employees, contractors, or

suppliers, in conjunction with Concessionaire's use and/or occupancy of the Premises or its operations at the Airport. Concessionaire will, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not. Concessionaire shall include the substance of this Subsection (C) in every sublease, contract or other agreement which Concessionaire may enter into related to its activities at the Airport, and any such sublease, contract or other agreement shall specifically provide that the City is a third-party beneficiary of this and related provisions. This provision does not constitute a waiver of any other condition of this Agreement prohibiting or limiting assignments, subletting or subcontracting.

If a prohibited incursion into the air operations area occurs, or if the AOA or sterile area security is breached, by or due to the negligence or willful act or omission of any of Concessionaire's employees, agents, contractors, or suppliers, and such incursion or breach results in a civil penalty action against the City, Concessionaire shall assume the defense of any such action and be responsible for any civil penalty or settlement amount required to be paid by the City as a result of such incursion or breach. The City shall notify Concessionaire of any allegation, investigation, or proposed or actual civil penalty sought for such incursion or breach. Civil penalties and settlement and associated expenses reimbursable under this paragraph include but are not limited to those paid or incurred as a result of violation of FAA or TSA regulations or security directives.

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

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

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

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

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

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

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

- A. Any acts or omissions of Concessionaire, its officers, directors, employees, agents, contractors, or suppliers, or for any conditions resulting from the operations or activities of Concessionaire's directors, officers, employees, agents, contractors, or suppliers;

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

ARTICLE X ASSIGNMENT AND SUBCONTRACTING

Section 1001. Assignment and Subcontracting.

- A. Concessionaire shall not assign or transfer this Agreement. In the event there is an assignment of this Agreement by operation of law, the City shall be entitled within 90 days after written notice thereof to exercise the City's option hereby given to terminate this Agreement no sooner than 30 days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, shall include but not be limited to the vesting of Concessionaire's right, title and interest in the Concessionaire's furnishings, Removable Fixtures, or Concessionaire's interest in this Agreement, as a trustee in bankruptcy or as an assignee for the benefit of creditors or in a purchase thereof at a judicial sale or other involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee, or assignee, any rights, title or interest in the City premises or any of the Removable Fixtures, except subject to the City's right to terminate this Agreement.
- B. Concessionaire shall not sublet the Premises and/or subcontract or transfer any part of the services to be performed hereunder, except as may be necessary to comply with the ACDBE participation goal in Article XII of this Agreement. At least 60 days prior to any contemplated subletting of the Premises or subcontracting of this Agreement, Concessionaire must submit a written request to the Director. This request must include a copy of the proposed subcontract or sublease. Any sublease for space or subcontract or granting of rights acquired hereunder shall be subject to the review and written approval of the Director. Such sublease or subcontract, however, must require at a minimum: strict compliance with all provisions of this Agreement; a provision that the sublessee or subcontractor will use the facilities solely for the purposes identified in this Agreement; and a provision ensuring that all Concession services are available during the hours of operation required by Article VI.

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

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

ARTICLE XI TERMINATION OF AGREEMENT IN ENTIRETY

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

this Agreement in its entirety.

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

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

Failure of the City to take any authorized action upon default of any term, covenant or condition required to be performed, kept and observed by Concessionaire shall not be construed to be or act as a waiver of default or in any subsequent default of any term, covenant or condition herein contained to be performed, kept and observed by Concessionaire. The acceptance of monies by the City from Concessionaire for any period or periods after a default by Concessionaire of any term, covenant or condition herein required to be performed, kept and observed by Concessionaire shall not be deemed a waiver or estopping of any right on the part of the City to terminate this Agreement for failure by Concessionaire to so perform, keep or observe any said term, covenant or condition.

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

- A. If a court of competent jurisdiction issues an injunction or restraining order against the City preventing or restraining the use of the Airport for Airport purposes in its entirety or in substantial entirety.
- B. If the City shall have abandoned the Airport for a period of at least 60 days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers.

- C. If the City shall have failed in the performance of any specific covenant constituting a material breach within the control of the City and required by this Agreement to be performed by the City.

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

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

ARTICLE XII
AIRPORT CONCESSION DISADVANTAGED
BUSINESS ENTERPRISE (ACDBE) PARTICIPATION

Section 1201. Compliance.

- A. Concessionaire agrees as a condition hereunder to meet a minimum ACDBE participation goal of not less than 15% participation in the ownership, management and control of the business by the methods of participation allowed by DOT 49 CFR Part 23. The goal shall be measured as a percentage of total Gross Receipts. The goal remains in effect throughout the term of this Agreement and credit toward the ACDBE goal will only be given for the use of Missouri Regional Certification Committee (MRCC) certified ACDBEs.

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

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

**ARTICLE XIII
LIQUIDATED DAMAGES**

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

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

**ARTICLE XIV
ENVIRONMENTAL REQUIREMENTS**

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

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

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

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

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

demands, complaints, notices, or actions so made. If Concessionaire is required, by any Environmental Laws, Environmental Permits, or governmental agency, to file any written notice or report of a release or threatened release of Hazardous Materials at, on, under or about the Airport, or any part thereof, Concessionaire shall simultaneously provide a copy of such notice or report to the City.

Section 1404. Environmental Remediation. Concessionaire shall undertake all necessary steps required under applicable Environmental Laws and Environmental Permits to remedy and remove at its cost any Hazardous Material, or environmental condition or damage to the extent caused by, or resulting solely from, the activities, conduct of Concessionaire or its agents, employees, contractors, or suppliers at the Airport, whether resulting from negligent conduct or otherwise (“**Remediation Work**”). Such Remediation Work shall be performed at Concessionaire’s expense. Except in the event of an emergency, such Remediation Work shall be performed after Concessionaire submits to the City a written plan for completing such Remediation Work and receives the prior approval of the City through Notice; provided, however, that the City’s approval shall not be unreasonably withheld or delayed. The City expressly reserves the right to review and approve any proposed: remedial investigations; remedial work plans; interim and final remedies; institutional controls; or other associated documents prior to submittal to the relevant governmental agencies responsible for enforcing Environmental Laws or Environmental Permits. Specific cleanup levels for any Remediation Work by Concessionaire shall be designed to meet and satisfy the requirements of all applicable Environmental Laws and Environmental Permits, as determined by the governmental agency responsible for enforcing Environmental Laws or Environmental Permits. Neither an ongoing remediation, including any testing or monitoring, nor the use of institutional controls, shall either unreasonably or materially impair or interfere with the City’s use and enjoyment of its property or the Airport, or that of current and future tenants. The City shall have the right to conduct a reasonable review and inspect all such Remediation Work at any time using consultants and representatives of its choice.

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

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

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

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

ARTICLE XV
MISCELLANEOUS PROVISIONS

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

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

Section 1502. Non-Discrimination and Affirmative Action Program.

- A. Concessionaire hereto understands and agrees that the City in the operation and use of the Airport will not on the grounds of race, creed, color, religion, sex, national origin or ancestry, discriminate or permit discrimination against any person or group of persons in a manner prohibited by Part 21 of the Federal Aviation Regulations of the Office of the Secretary of Transportation. Concessionaire hereby agrees that his premises shall be posted to such effect as required by said regulations.
- B. Concessionaire agrees that in performing under this Agreement, neither he nor anyone under his control will permit discrimination against any employee, worker or applicant for employment because of race, creed, color, religion, sex, national origin or ancestry. Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to the following: actions to bar, employ, upgrade or recruit, expel, discharge, demote or transfer, layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- C. Concessionaire will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of the Concessionaire state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". Concessionaire shall not make inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination because of race, creed, color, religion, sex, national origin or ancestry.
- D. Concessionaire will permit reasonable access by the City to such persons, reports and records as are necessary for the purpose of ascertaining compliance with fair employment practices.
- E. Concessionaire further agrees that these clauses (B through D) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Concessionaire in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, including all labor organizations who may furnish skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.
- F. Whenever Concessionaire is sued by a subcontractor, vendor, individual, group or association as a result of compliance with the clauses (A through E) of these provisions relating to fair employment practices, Concessionaire shall notify the City Counselor in writing of such suit or threatened suit within ten days.
- G. Concessionaire shall establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment. The City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.

- H. Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, religion, sex, national origin or ancestry be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Concessionaire assures that it will require that its covered sub organizations provide assurances to the City that they similarly will undertake affirmative action programs and that they will require assurances from their sub organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.
- I. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulation, 49 CFR Part 23. The Concessionaire or contractor agrees that it will not discriminate against any business owner because of owner's race, color, national origin or sex in connection with the performance of any concession agreement, management contract, or subcontract, purchase or lease agreement or other agreement covered by 49 CFR 23.
- J. The Concessionaire or contractor agrees to include the above statement in any subsequent concession agreement or contract covered by 49 CFR 23 that it enters into, and cause those businesses to similarly include the statement in further agreements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 1523. Solicitation for Bids (SFB). Concessionaire’s Bid, including all exhibits, schedules, addenda, attachments, policies, bonds, letters of credit and the SFB for an ATM Concession at the Airport dated **September 28, 2009** is hereby made a part of this Agreement and is incorporated herein by reference. If an express provision of this Agreement or the Exhibits attached hereto is in conflict with any provision of Concessionaire’s Bid or the SFB referred to above, the provisions of this Agreement shall prevail.

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

Section 1525. Time is of the Essence. Time is of the essence in this Agreement. The parties agree that time shall be of the essence

in the performance of each and every obligation and condition of this Agreement.

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

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

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

(The balance of this page is intentionally blank.)

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

COMMERCE BANK N.A. BY:

ATTESTED TO BY:

Title: _____

Title: _____

Date: _____

Date: _____

FEDERAL TAX ID# _____

THE CITY OF ST. LOUIS, MISSOURI, OPERATING LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT® pursuant to City Ordinance # _____ approved the _____ day of _____, 2010:

The foregoing Agreement was approved by the Airport Commission at its meeting on the _____ day of _____, 2010.

BY: _____
Commission Chairman and Date
Director of Airports

The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on the _____ day of _____, 2010.

BY: _____
Secretary, Date
Board of Estimate and Apportionment

APPROVED AS TO FORM ONLY BY:

COUNTERSIGNED BY:

City Counselor Date
City of St. Louis

Comptroller Date
City of St. Louis

ATTESTED TO BY:

Register, City of St. Louis

Date

EXHIBIT "A"

**PREMISES
(to follow)**

Approved: March 9, 2010

**ORDINANCE #68582
Board Bill No. 304**

An Ordinance recommended and approved by the Board of Estimate and Apportionment authorizing and directing the Director of Airports and the Comptroller of the City of St. Louis (the "City") to enter into and execute on behalf of the City the Lambert-St. Louis International Airport® ("Airport") Automated Teller Machine Concession Agreement AL-078 (the "Agreement"), between the City and the Bank of America, N.A. (The "Concessionaire"), granting to the Concessionaire the non-exclusive right, license, obligation, and privilege to design, construct, operate, manage and maintain an Automated Tell Machine ("ATM") Concession at the Airport within the premises as described in the Agreement, subject to and in accordance with the terms, covenant, and conditions of the Agreement, which was approved by the Airport Commission and is attached here to as **ATTACHMENT "1"** and made a part hereof; providing that the provisions set forth in this Ordinance shall be applicable exclusively to the Agreement; containing a severability clause; and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Director of Airports and the Comptroller of the City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City the Lambert-St. Louis International Airport® ("Airport") Automated Teller Machine Concession Agreement AL-078 (the "Agreement"), between the City and Bank of America, N.A., a North Carolina Corporation (the "Concessionaire"), granting to the Concessionaire the non-exclusive right, license, obligation, and privilege to design, construct, operate, manage and maintain an Automated Teller Machine ("ATM") Concession at the Airport within premises as described in the Agreement, subject to and in accordance with the terms, covenants, and conditions of the Agreement, which was approved by the Airport Commission and is to read in words and figures substantially as set out in **ATTACHMENT "1"**, which is attached hereto and made a part hereof.

SECTION TWO. The terms, covenants, and conditions set forth in this Ordinance shall be applicable exclusively to the Agreement approved and authorized by this Ordinance and shall not be applicable to any other existing or future concession agreement or other agreements, documents, or instruments unless specifically authorized by ordinance enacted after the effective date of this Ordinance. All provision of other ordinances of the City that are in conflict with this Ordinance shall be of no force or effect as to this Ordinance or the agreements, documents, and instruments approved and/or authorized by this Ordinance.

SECTION THREE. The sections, conditions, or provisions of this Ordinance or portions thereof shall be severable. If any section, condition, or provision of this Ordinance or portion thereof is held invalid by a court of competent jurisdiction, such holding shall not invalidate the remaining sections, conditions, or provisions of this Ordinance.

SECTION FOUR. This being an ordinance for the preservation of public peace, health, or safety, it is hereby declared an emergency measure as designed in Article IV, Section 20, of the City Charter and shall become effective immediately upon its approval by the Mayor of the City.

Attachment 1
LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®



BANK OF AMERICA, N.A.
AUTOMATED TELLER MACHINE
CONCESSION AGREEMENT
NO. AL# 078

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AIRPORT NUMBER AL#078

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

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

WITNESSETH, THAT:

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

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

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

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

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

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

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

**ARTICLE I
DEFINITIONS**

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

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

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

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

- That is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged; or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more such individuals; and

- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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

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

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

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

“City” as stated in the preamble hereof.

“Concession” as stated in the preamble hereof.

“Concessionaire” as stated in the preamble hereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II PREMISES

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

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

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

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

ARTICLE III CONCESSION RIGHTS

Section 301. Rights. City hereby grants to Concessionaire, subject to and in accordance with all of the terms, covenants, warrants

and conditions of this Agreement the nonexclusive right, license and privilege and Concessionaire hereby assumes the obligation to design, construct and to operate, manage and maintain an ATM Concession within the Premises.

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

Concessionaire shall not engage in advertising or provide an area for the distribution of advertisements on behalf of any company other than itself. City shall be the sole judge as to whether the conduct of Concessionaire's representative in the solicitation of business constitutes a violation of this paragraph, and upon notice from the City, Concessionaire shall forthwith take all steps necessary to eliminate the undesirable condition.

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

ARTICLE IV CONCESSION TERM

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

Commencement Date: March 1, 2010
Expiration Date: February 28, 2015

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

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

ARTICLE V FEES AND RENTALS

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

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

- A. The Concessionaire agrees to pay to City an annual fee of Twenty-one Thousand Dollars (\$21,000) in 12 monthly payments of One Thousand Seven Hundred Fifty Dollars (\$1,750).
- B. An ATM Transaction Fee consisting of a percentage of the surcharge for all Foreign ATM Transactions. All computations of this portion of the Concession Fee shall be based upon 60% per Contract Year.

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

Section 504. Reports.

- A. Concessionaire shall submit to the City, by the 15th day of the second and each succeeding month of each Contract Year hereof, two copies of an accurate statement of Gross Receipts as it pertains to ATM surcharges. Concessionaire shall document in a manner satisfactory to the Director a report listing the ATM Transaction Fee and amount due to the Airport, total number of ATM transactions and number of Foreign ATM Transactions subject to surcharge and amount of surcharge, and be certified as accurate by an officer of the Concessionaire. The final statement of ATM Transaction Fees shall be due 120 days after completion of the fifth Contract Year. The City reserves the right to use these statements as a source of information to bidders in a future Solicitation for Bids or Request for Proposals for this Concession.
- B. Concessionaire shall submit an audited report of Gross Receipts within 120 days following the conclusion of each Contract Year. These audit reports must be prepared by an independent Certified Public Accountant. The audit reports shall, at a minimum, certify the accuracy of reported total accumulated Gross Receipts; and the aggregate amount of Gross Receipts and/or goods and services attributable to ACDBE participants. The audit reports shall also include a schedule showing the total of actual payments to the City during the Contract Year and shall state an opinion as to the correctness of the computation of Gross Receipts without exception.
- C. Delivery of an audit report containing a qualified opinion, an adverse opinion or a disclaimer of opinion as defined in the Statement on Auditing Standards, or as same may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be deemed to be a default pursuant to Article XI herein. In the event of an overpayment, Concessionaire must notify the Airport Accounts Receivable Section of Finance and Accounting. Airport Accounts Receivable will then verify the overpayment and authorize the Concessionaire to deduct the amount of the overpayment from the next scheduled Concession Fee Payment. If an overpayment occurs during the last Contract Year, the City will pay the amount of the overpayment to Concessionaire within 30 days of receipt of the final audit report.
- D. Concessionaire shall keep, and make available to the City, such records (copies of subcontracts, paid invoices, documentation or correspondence) as are necessary for the City to determine compliance with the ACDBE participation requirement. The City reserves the right to investigate, monitor and/or review records for compliance. Concessionaire shall submit quarterly ACDBE activity reports to the City in a form approved by the Director.

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

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

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

Section 508. Accounting Records and Reports. During the term hereof Concessionaire shall make available in the St. Louis area true,

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

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

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

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

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

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

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

ARTICLE VI CONCESSIONAIRE'S OPERATIONS

Section 601. Standards of Service.

- A. The Concessionaire warrants, represents, covenants and agrees to meet the City's objectives as set out in the preamble hereof. The Concessionaire shall furnish a first-class ATM Concession serving the needs of all Airport users. The Concessionaire shall provide new equipment, quality services and products and shall equip, organize, put into service and manage efficiently the ATM Concession to provide service in a clean, attractive and pleasant atmosphere. All ATMs shall be capable of processing withdrawals, fund transfers, cash advances and status inquiry transactions for the users thereof. Further, Concessionaire must subscribe to the following networks and be capable of accepting at least, but not limited to, one of the following cards: Cirrus, Plus, BankMark, Honor, American Express, Visa, MasterCard and Discover/Novus. As an option, Concessionaire may also offer loan services, deposits and instant loans. Concessionaire shall insure that servicing of ATMs shall be done at such times and in such manner as to minimize disruption of passenger traffic and/or other tenant operations.
- B. Concessionaire shall at all times retain one or more qualified, competent and experienced manager(s) who shall manage and supervise the operations and the facilities and represent and act for Concessionaire. The manager(s) shall ordinarily be available during regular business hours. In addition, the manager or a designated subordinate must be available for emergencies on a 24-hour basis. Concessionaire shall display (clearly visible at all times on the face of the ATM machine) a 24-hour toll-free telephone contact for immediate notification when the machine is out-of-service or for the convenience of customers experiencing problems with the ATM.
- C. Deliveries of supplies, cash and coin to the Concession Premises shall be made at such times, by such routes/modes and at such locations as the City may reasonably approve.

- D. Premises shall be kept clean, neat, businesslike and in an orderly condition at all times and Concessionaire shall provide for timely disposal of trash and debris at locations designated by the City.
- E. Concessionaire shall submit to the City for approval, on or before commencement date, detailed written operating and security procedures in conjunction with the Airport's Security Operations Division.
- F. Concessionaire shall assure that its agents and employees do not engage in solicitation or pressure sales tactics on or about the Airport.
- G. Operations shall fully comply with all **FAA** regulations including security requirements, Airport rules and regulations and Airport security plan. Employees shall be suitably badged in accordance with Airport security procedures and regulations and shall fully comply with the Transportation Security Administration's ("**TSA**") regulation 1542 regarding conduct and access to the Airfield Operations Area ("**AOA**").

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

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

Section 604. Personnel.

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

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

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

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

Section 606. Pricing.

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

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

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

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

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

Section 611. Operation.

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

Section 612. Communication.

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

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

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

ARTICLE VII IMPROVEMENTS AND ALTERATIONS

Section 701. Construction by Concessionaire. The design should be sophisticated yet providing a comfortable and inviting atmosphere. Storefronts, if applicable, must be upscale and dynamic while complementing the design of the surrounding terminal space. The materials must provide the highest level of fit and finish yet must be durable enough to survive in the high volume airport environment. Finishes should be easy to maintain and keep clean. Passenger flow must be addressed to eliminate queuing into the concourses. The design must meet the criteria of the ADA along with all similar state and local requirements. Design of the Concession will be subject to the review and approval of the Airport Properties and Planning and Engineering Departments of the Airport. Drawings must be submitted to the Airport Properties Department along with a completed Tenant Construction or Alteration Application (“**TCA**”). Building permits will be required from St. Louis County. Fire protection drawings must be sealed by a licensed fire protection contractor and are subject to review and approval by the Airport’s insurance carrier. No work can begin until drawings have been approved by the City, building permits have been submitted to the City and a pre-construction conference has been held.

- A. Concessionaire takes the Premises “**AS IS**” as provided for in Article II hereof, and agrees, at Concessionaire’s sole cost and expense, to design, erect, construct, equip and furnish all necessary Improvements, Removable Fixtures and equipment and make related facility changes as needed to operate an ATM Concession, pursuant to this Agreement, in accordance with plans prepared by Concessionaire and approved by the Director subject to the requirements of this Article VII.
- B. Concessionaire agrees that all such work shall be completed according to the Tenant Design Standards, which are filed of record in the Office of the Director.
 - 1) Concessionaire shall submit a signed TCA including complete sealed construction drawings and specifications, as required by Section 702 hereof, to the Airport Properties Department for its initial as well as future construction. The TCA shall be submitted not more than 30 days following full execution of the Agreement by City. Concessionaire will be asked to submit 30% design drawings for review and comment to expedite the approval of final plans and specifications.
 - 2) Concessionaire shall submit a St. Louis County building permit number not more than 30 days following submission of the TCA to the Airport Properties Department. (A building permit number is required before construction can begin.)
 - 3) Concessionaire shall submit the contractor’s liability insurance certificates and performance and payment bonds, required by Sections 704 and 705 hereof, to the Airport Properties Department not more than 45 days following the TCA approval and prior to commencement of work.
 - 4) Concessionaire shall complete all construction and open all Premises fully fixtured and operational no later than 180 days after full execution of the Agreement by the City, subject to the provisions of Article XIII.
 - 5) Failure to open and operate in accordance with this Section 701 will result in Concessionaire being assessed liquidated damages in the amount of **Five Hundred Dollars (\$500) per day** for each day beyond the 180 days after full execution by the City.
 - 6) Concessionaire shall submit a certificate of completion and a certified copy of a St. Louis County occupancy permit, to the Airport Properties Department, as required by Section 706 hereof.

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

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

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

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

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

Section 706. Certificates of Completion. Upon the completion of the improvements hereunder, Concessionaire shall submit to the Director a copy of its acceptance letter certifying completion and a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Concessionaire. Concessionaire will provide the City with sealed as-built drawings within 90 days of opening.

Section 707. Signs.

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

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

All Removable Fixtures shall remain the property of Concessionaire, and shall be removed by Concessionaire at date of expiration

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

The City reserves the right and Concessionaire agrees that the Director may require Concessionaire to promptly and timely remove any or all Improvements and structures and restore the Premises to their original condition at the time Concessionaire took possession of the Premises. Concessionaire agrees to bear all costs of such removals and restorations.

ARTICLE VIII USE OF PREMISES

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

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

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

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

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

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. Concessionaire understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and Concessionaire hereby releases and discharges the City from any and all inconvenience claims, liability or causes of action arising out of or incidental to the closing of any right-of-way, including without limitation loss of profit or business, incidental, consequential or special damages.

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

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

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

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

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

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

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

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

ARTICLE IX INSURANCE, DAMAGE, AND INDEMNIFICATION

Section 901. Insurance.

- A. General. Concessionaire at all times during the term hereof, shall cause St. Charles County, Missouri; St. Clair County, Illinois; St. Louis County, Missouri; the City; their officers, agents and employees to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities or omissions of Concessionaire, its officers, agents, and employees pursuant to this Agreement both on the Premises and the Airport.

- B. Risks and Minimum Limits of Coverage. Concessionaire shall procure and maintain the following policies of insurance:
- 1) Commercial General Liability in an amount not less than Two Million Dollars (\$2,000,000). Such coverage shall be single limit liability with no annual aggregate.
 - 2) Automobile Liability Insurance. Concessionaire shall provide in an amount not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence (for automobiles used by Concessionaire in the course of its performance hereunder, including Concessionaire's non-owned and hired autos). In addition, Concessionaire shall carry excess coverage in the amount of Two Million Dollars (\$2,000,000) to Concessionaire automobile liability insurance.
 - 3) Workers' Compensation and Employer's Liability Insurance, in accordance with Missouri laws and regulations. With respect to Workers' Compensation Insurance, if Concessionaire elects to be self-insured, Concessionaire shall comply with the applicable requirements of law. Concessionaire shall require that all its subcontractors or licensees similarly provide such coverage (or qualify as a self-insured) for their respective employees. City, its officers, employees, or agents shall not be liable or responsible for any claims or actions occasioned by Concessionaire's failure to comply with the provisions of this subparagraph and that the indemnification provisions hereof shall apply to this section. It is expressly agreed that the employees of Concessionaire are not employees of the City for any purpose, and that employees of the City are not employees of Concessionaire.
 - 4) Contents Insurance. Concessionaire shall be solely responsible for obtaining insurance policies that provide coverage for losses of Concessionaire owned property. The City shall not be required to provide such insurance coverage or be responsible for payment of Concessionaire's cost for such insurance.
 - 5) Builders Risk Insurance. During any period of construction or reconstruction for which Concessionaire contracts, Concessionaire shall carry, or shall require its contractor or contractors to carry, a policy of Builders Risk Insurance in an amount sufficient to insure the value of the work. The City shall be named Loss Payee on Builders Risk coverage to the extent of the City's interest therein (except to the extent coverage relates to Concessionaire's equipment and personal property). Concessionaire may elect to self-insure for individual projects with a total cost of Fifty Thousand Dollars (\$50,000) or less.
 - 6) Other Property Coverage. Concessionaire shall provide an "All Risk" insurance policy providing protection from direct loss arising out of any fortuitous cause other than those perils or causes specifically excluded by norm and which covers Concessionaire's improvements to the Premises, trade fixtures, and equipment. The City shall be named Loss Payee on such coverage to the extent of the City's interest therein (except to the extent coverage relates to Concessionaire's equipment and personal property).
- C. Issuers of Policies. The issuer of each policy required herein shall be a financially sound insurance company authorized to issue insurance policies in the State of Missouri. Acceptable insurers include insurance companies with an "A.M. Best Company" rating of at least an "A," or other insurers or insurance syndicates of similar recognized responsibility.
- 1) Form of Policies. The insurance may be in one or more policies of insurance.
 - 2) Non-waiver. Nothing the City does or fails to do shall relieve Concessionaire from its duties to provide the required coverage hereunder, and the City's actions or inactions shall not be construed as waiving the City's rights hereunder.
 - 3) Insured Parties. Each policy by endorsement, except those for Workers' Compensation and Employer's Liability, shall name the City, its officers, agents, and employees as "additional insured" on the certificate of insurance, including all renewal certificates, to the extent of Concessionaire's indemnification obligations hereunder. Inclusion as an "additional insured" is not intended to, and shall not, make the City a partner or joint venturer with Concessionaire in its operations.
 - 4) Deductibles. Concessionaire shall assume and bear any claims or losses to the extent of any deductible

amounts and waives any claim it may ever have for the same against the City, its officers, agents, or employees; provided, however, that nothing herein stated shall diminish Concessionaire's rights or increase Concessionaire's obligations in respect to its undertakings or hold harmless defense and indemnification set forth in Section 904 hereof.

- 5) Cancellation. Each policy shall expressly state that it may not be cancelled, materially modified or non-renewed unless a 30-day advance notice is given in writing to the City by the insurance company, or authorized representative of Concessionaire.
 - 6) Subrogation. Each policy shall contain an endorsement by which the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents, or employees.
 - 7) Endorsement of Primary Insurance. Each policy hereunder except Workers' Compensation shall be primary insurance to any other insurance available to the Additional Insured and Loss Payee with respect to claims arising hereunder.
 - 8) Liability for Premium. Concessionaire shall be solely responsible for payment of all insurance premiums required pursuant to this Agreement, and the City shall not be obligated to pay any premiums; provided, however, that if Concessionaire fails to obtain the insurance as required herein or make premium payments, the City may, without further notification, effect such insurance or make such payments on Concessionaire's behalf and, after notice to Concessionaire, the City may recover the cost of those payments with the installment of Fees and Charges next due, plus 15% administrative charge, from Concessionaire.
 - 9) Proof of Insurance. Within 30 days of the effective date of this Agreement and at any time during the term hereof, Concessionaire shall furnish the City with certificates of insurance. At least five days prior to the expiration of any such policy, Concessionaire shall submit to the City a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Concessionaire shall, within 15 days after the date of such notice from the insurer of such cancellation or reduction in coverage, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon reasonable notification by the City to Concessionaire, the City shall have the right to examine Concessionaire's insurance policies.
- D. Maintenance of Coverage. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that Concessionaire, continuously and without interruption, maintain in force the required insurance coverages set forth above.
- E. City Right to Review and Adjust Coverage Limits. The City reserves the right at reasonable intervals during the term of this Agreement to cause the insurance requirements of this Article to be reviewed, at its sole cost, by an independent insurance consultant experienced in insurance for public airports, taking into consideration changes in statutory law, court decisions, or the claims history of the airline industry as well as that of Concessionaire, and, based on the written recommendations of such consultant, and in consultation with Concessionaire, to reasonably adjust the insurance coverages and limits required herein but not more often than every 24 months.

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

Section 903. Damage to Premises.

- A. Minor Damage. If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is partially damaged by fire or other casualty, but said circumstances do not render the Premises untenable as determined by the City, the same shall be repaired to usable condition with due diligence by the City as provided in this Section.

- B. **Substantial Damage.** If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is so extensively damaged by fire, or other casualty, as to render any portion of said Premises untenantable but capable of being repaired, as determined by the City, the same shall be repaired to usable condition with due diligence by the City as provided in this section. In such case, the fees payable hereunder with respect to affected Premises shall be paid up to the time of such damage and shall thereafter be abated ratably in the proportion that the untenantable area bears to the total Premises of the same category or type of space. Such abatement in fees will continue until the affected Premises are restored adequately for Concessionaire's use. The City shall use its best efforts to provide alternate facilities to continue Concessionaire's operation while repair, reconstruction, or replacement is being completed, at a rental rate not to exceed that provided herein for comparable space, provided that Concessionaire's rental costs shall not increase as a result of any such alternate facilities unless Concessionaire requests additional space and/or space replacement of a classification at higher rental rates concurrent with such reassignment to alternate facilities.
- C. **Total Damage.**
- 1) If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is damaged by fire or other casualty, and is so extensively damaged as to render any portion of said Premises incapable of being repaired, as determined by the City, the City shall notify Concessionaire as soon as practicable under the circumstances after the date of such damage of its decision whether to reconstruct or replace said space. However, the City shall be under no obligation to replace or reconstruct such premises. The fees payable hereunder with respect to affected Premises shall be paid up to the time of such damage and thereafter shall cease until such time as replacement or reconstructed space shall be available for use by Concessionaire.
 - 2) If the City elects to reconstruct or replace affected Premises, the City shall use its best efforts to provide alternate facilities to continue Concessionaire's operation while repair, reconstruction, or replacement is being completed, at a rental rate not to exceed that provided herein for comparable space. However, if such damaged space shall not have been replaced or reconstructed, or the City is not diligently pursuing such replacement or reconstruction, within six months after the date of such damage or destruction, Concessionaire shall have the right, upon giving the City a 30-day advance notice, to delete the affected Premises from this Agreement, but this Agreement shall remain in effect with respect to the remainder of said Premises, unless such damaged or destroyed premises prevent Concessionaire from operating its ATM Concession at the Airport.
 - 3) If the City elects not to reconstruct or replace affected Premises, the City shall meet and consult with Concessionaire on ways to permanently provide Concessionaire with adequate replacement space for affected Premises. Concessionaire shall have the right, upon giving the City a 30-day advance notice, to delete the affected Premises from this Agreement, but this Agreement shall remain in full force and effect with respect to the remainder of said Premises, unless the loss of such premises prevents Concessionaire from operating its ATM Concession at the Airport.
- D. **Scope of Restoration of Premises.**
- 1) The City's obligations to repair, reconstruct, or replace affected Premises under the provisions of this Section shall in any event be limited to using due diligence and best efforts to restore affected Premises to substantially the same condition that existed prior to any such damage and shall further be limited by the provisions of Sections 903 A-C herein. If the City elects to repair, reconstruct, or replace affected premises as provided in this section, then Concessionaire shall proceed with due diligence and at its sole cost and expense to repair, reconstruct, or replace its signs, fixtures, furnishings, equipment, and other items provided or installed by Concessionaire in or about the Premises in a manner and in a condition at least equal to that which existed prior to said damage or destruction.
 - 2) In lieu of the City's repair, reconstruction, or replacement of the affected premises, as provided in this Section, if Concessionaire requests to perform said function with respect to damage under Sections 903 A and B, the City may, in its sole discretion, allow Concessionaire to do so. Any such work by Concessionaire must be done in accordance with the requirements of Article VII. The City shall reimburse Concessionaire for the cost of such work performed by Concessionaire. Concessionaire shall be considered to be doing such work on its own behalf and not as an agent or contractor of the City.

- E. Damage From Concessionaire Negligence. Notwithstanding the provisions of this Section, if damage to or destruction of the Premises is due to the negligent or willful acts of Concessionaire, its agents, servants, or employees, or those under its control, there shall be no abatement of fees during the restoration or replacement of said Premises. In addition, Concessionaire shall have no option to delete the affected Premises from this Agreement. To the extent that the costs of repairs pursuant to this section shall exceed the amount of any insurance proceeds payable to the City by reason of such damage or destruction, Concessionaire shall pay the amount of such additional costs to the City.

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

- A. The acts or omissions of Concessionaire, its agents, employees, contractors, or suppliers;
- B. Concessionaire’s use or occupancy of the Airport and the Premises; and
- C. Any violation by Concessionaire in the conduct of Concessionaire’s ATM Concession or use of its Premises or other areas or facilities at the Airport of any provision, warranty, covenant, or condition of this Agreement.

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

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

If a prohibited incursion into the air operations area occurs, or if the AOA or sterile area security is breached, by or due to the negligence or willful act or omission of any of Concessionaire’s employees, agents, contractors, or suppliers, and such incursion or breach results in a civil penalty action against the City, Concessionaire shall assume the defense of any such action and be responsible for any civil penalty or settlement amount required to be paid by the City as a result of such incursion or breach. The City shall notify Concessionaire of any allegation, investigation, or proposed or actual civil penalty sought for such incursion or breach. Civil penalties and settlement and associated expenses reimbursable under this paragraph include but are not limited to those paid or incurred as a result of violation of FAA or TSA regulations or security directives.

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

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

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

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

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

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

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

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

**ARTICLE X
ASSIGNMENT AND SUBCONTRACTING**

Section 1001. Assignment and Subcontracting.

- A. Concessionaire shall not assign or transfer this Agreement. In the event there is an assignment of this Agreement by operation of law, the City shall be entitled within 90 days after written notice thereof to exercise the City's option hereby given to terminate this Agreement no sooner than 30 days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, shall include but not be limited to the vesting of Concessionaire's right, title and interest in the Concessionaire's furnishings, Removable Fixtures, or Concessionaire's interest in this Agreement, as a trustee in bankruptcy or as an assignee for the benefit of creditors or in a purchase thereof at a judicial sale or other involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee, or assignee, any rights, title or interest in the City premises or any of the Removable Fixtures, except subject to the City's right to terminate this Agreement.
- B. Concessionaire shall not sublet the Premises and/or subcontract or transfer any part of the services to be performed hereunder, except as may be necessary to comply with the ACDBE participation goal in Article XII of this Agreement. At least 60 days prior to any contemplated subletting of the Premises or subcontracting of this Agreement, Concessionaire must submit a written request to the Director. This request must include a copy of the proposed subcontract or sublease. Any sublease for space or subcontract or granting of rights acquired hereunder shall be subject to the review and written approval of the Director. Such sublease or subcontract, however, must require at a minimum: strict compliance with all provisions of this Agreement; a provision that the sublessee or subcontractor will use the facilities solely for the purposes identified in this Agreement; and a provision ensuring that all Concession services are available during the hours of operation required by Article VI.

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

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

**ARTICLE XI
TERMINATION OF AGREEMENT IN ENTIRETY**

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

- A. If the fees, charges, or other money payments which Concessionaire herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due.
- B. If during the term of this Agreement, Concessionaire shall:
- 1) Apply for, or consent to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets;
 - 2) File a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;

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

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

Failure of the City to take any authorized action upon default of any term, covenant or condition required to be performed, kept and observed by Concessionaire shall not be construed to be or act as a waiver of default or in any subsequent default of any term, covenant or condition herein contained to be performed, kept and observed by Concessionaire. The acceptance of monies by the City from Concessionaire for any period or periods after a default by Concessionaire of any term, covenant or condition herein required to be performed, kept and observed by Concessionaire shall not be deemed a waiver or estopping of any right on the part of the City to terminate this Agreement for failure by Concessionaire to so perform, keep or observe any said term, covenant or condition.

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

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

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

Section 1104. Rights Cumulative. It is understood and agreed that the rights and remedies of the City and Concessionaire specified

in this Article XI are not intended to be and shall not be exclusive of one another or exclusive of any common law right of either of the parties hereto or any other remedies otherwise available to the parties at law or in equity.

**ARTICLE XII
AIRPORT CONCESSION DISADVANTAGED
BUSINESS ENTERPRISE (ACDBE) PARTICIPATION**

Section 1201. Compliance.

- A. Concessionaire agrees as a condition hereunder to meet a minimum ACDBE participation goal of not less than 15% participation in the ownership, management and control of the business by the methods of participation allowed by DOT 49 CFR Part 23. The goal shall be measured as a percentage of total Gross Receipts. The goal remains in effect throughout the term of this Agreement and credit toward the ACDBE goal will only be given for the use of Missouri Regional Certification Committee (MRCC) certified ACDBEs.

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

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

**ARTICLE XIII
LIQUIDATED DAMAGES**

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

damages, the City agrees to provide immediate written notice via facsimile and overnight courier of any such default or breach and the amount of liquidated damages due and payable to the City.

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

**ARTICLE XIV
ENVIRONMENTAL REQUIREMENTS**

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

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

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

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

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

Section 1404. Environmental Remediation. Concessionaire shall undertake all necessary steps required under applicable Environmental Laws and Environmental Permits to remedy and remove at its cost any Hazardous Material, or environmental condition or damage to the extent caused by, or resulting solely from, the activities, conduct of Concessionaire or its agents, employees, contractors, or suppliers at the Airport, whether resulting from negligent conduct or otherwise (“**Remediation Work**”). Such Remediation Work shall be performed at Concessionaire’s expense. Except in the event of an emergency, such Remediation Work shall be performed after Concessionaire submits to the City a written plan for completing such Remediation Work and receives the prior approval of the City through Notice; provided, however, that the City’s approval shall not be unreasonably withheld or delayed. The City expressly reserves the right to review and approve any proposed: remedial investigations; remedial work plans; interim and final remedies; institutional controls; or other associated documents prior to submittal to the relevant governmental

agencies responsible for enforcing Environmental Laws or Environmental Permits. Specific cleanup levels for any Remediation Work by Concessionaire shall be designed to meet and satisfy the requirements of all applicable Environmental Laws and Environmental Permits, as determined by the governmental agency responsible for enforcing Environmental Laws or Environmental Permits. Neither an ongoing remediation, including any testing or monitoring, nor the use of institutional controls, shall either unreasonably or materially impair or interfere with the City's use and enjoyment of its property or the Airport, or that of current and future tenants. The City shall have the right to conduct a reasonable review and inspect all such Remediation Work at any time using consultants and representatives of its choice.

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

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

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

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

ARTICLE XV
MISCELLANEOUS PROVISIONS

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

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

Section 1502. Non-Discrimination and Affirmative Action Program.

- A. Concessionaire hereto understands and agrees that the City in the operation and use of the Airport will not on the grounds of race, creed, color, religion, sex, national origin or ancestry, discriminate or permit discrimination against any person or group of persons in a manner prohibited by Part 21 of the Federal Aviation Regulations of the Office of the Secretary of Transportation. Concessionaire hereby agrees that his premises shall be posted to such effect as required by said regulations.
- B. Concessionaire agrees that in performing under this Agreement, neither he nor anyone under his control will permit discrimination against any employee, worker or applicant for employment because of race, creed, color, religion, sex, national origin or ancestry. Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to the following: actions to bar, employ, upgrade or recruit, expel, discharge, demote or transfer, layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- C. Concessionaire will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of the Concessionaire state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". Concessionaire shall not make inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination because of race, creed, color, religion, sex, national origin or ancestry.
- D. Concessionaire will permit reasonable access by the City to such persons, reports and records as are necessary for the purpose of ascertaining compliance with fair employment practices.
- E. Concessionaire further agrees that these clauses (B through D) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Concessionaire in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, including all labor organizations who may furnish skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.
- F. Whenever Concessionaire is sued by a subcontractor, vendor, individual, group or association as a result of compliance with the clauses (A through E) of these provisions relating to fair employment practices, Concessionaire shall notify the City Counselor in writing of such suit or threatened suit within ten days.
- G. Concessionaire shall establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment. The City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.
- H. Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, religion, sex, national origin or ancestry be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Concessionaire assures that it will require that its covered sub organizations provide assurances to the City that they similarly will undertake affirmative action programs and that they will require assurances from their sub organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.
- I. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulation, 49 CFR Part 23. The Concessionaire or contractor agrees that it will not discriminate against any business owner because of owner's race, color, national origin or sex in connection with the performance of any concession agreement,

management contract, or subcontract, purchase or lease agreement or other agreement covered by 49 CFR 23.

- J. The Concessionaire or contractor agrees to include the above statement in any subsequent concession agreement or contract covered by 49 CFR 23 that it enters into, and cause those businesses to similarly include the statement in further agreements.

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

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

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

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

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

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

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

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

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

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

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

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

Section 1515. Required Approvals. When the consent, approval, waiver, or certification (“**Approval**”) of other party is required under

the terms of this Agreement, such Approval must be in writing and signed by the party approving. Whenever the Approval of the City or the Director is required, the Approval must be from the Director or his/her authorized or designated representative. The City and Concessionaire agree that extensions of time for performance may be made by the written mutual consent of the Director and Concessionaire or its designee. Whenever the Approval of the City, or the Director, or Concessionaire is required herein, no such Approval shall be unreasonably requested or withheld.

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

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

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

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

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

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

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

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

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

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

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

Section 1527. Security Plan and Facilities. Concessionaire hereby acknowledges that the City is required by the TSA regulation 1542 to adopt and put into use facilities and procedures designed to prevent and deter persons and vehicles from unauthorized access to the AOA. The City has met said requirements by developing a master security plan for the Airport, and Concessionaire covenants and agrees to be fully bound by and immediately responsive to the requirements of the plan in connection with Concessionaire's

exercise of the privileges granted to Concessionaire hereunder. Concessionaire will, within 30 days of the City's request, reimburse the City for all fines or penalties imposed upon City by the TSA or the FAA resulting from Concessionaire's negligence or failure to act in relation to TSA regulation 1542 or any other applicable Airport security regulations.

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

(The balance of this page is intentionally blank.)

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

BANK OF AMERICA, N.A. BY:

ATTESTED TO BY:

Title: _____

Title: _____

Date: _____

Date: _____

FEDERAL TAX ID# _____

THE CITY OF ST. LOUIS, MISSOURI, OPERATING LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT® pursuant to City Ordinance # _____ approved the _____ day of _____, 2010:

The foregoing Agreement was approved by the Airport Commission at its meeting on the _____ day of _____, 2010.

BY: _____
Commission Chairman and Director of Airports Date

The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on the _____ day of _____, 2010.

BY: _____
Secretary, Board of Estimate and Apportionment Date

APPROVED AS TO FORM ONLY BY:

COUNTERSIGNED BY:

City Counselor Date
City of St. Louis

Comptroller Date
City of St. Louis

ATTESTED TO BY:

Register, City of St. Louis Date

EXHIBIT "A"

**PREMISES
(to follow)**

Approved: March 9, 2010

**ORDINANCE #68853
Board Bill No. 305**

An Ordinance recommended and approved by the Board of Estimate and Apportionment authorizing and directing the Director of Airports and the Comptroller of the City of St. Louis (the "City") to enter into and execute on behalf of the City the Lambert-St. Louis International Airport® Restated and Amended Agency Agreement (Advertising) (AL-290) (the "Agency Agreement"), between the City and The Directory Graphics, L.L.C. (the "Agent"), a Missouri Limited Liability Company, granting to the Agent the non-exclusive right, license, and privilege as well as the obligation to design, construct, operate, manage, and maintain reservation centers and to maintain certain City owned directories within the premises as more fully described in the Agency Agreement, subject to and in accordance with the terms, covenants, and conditions of the Agency Agreement, which was approved by the Airport Commission and is attached hereto as **ATTACHMENT "1"** and made a part hereof; providing that the provisions set forth in this Ordinance shall be applicable exclusively to the Agency Agreement; containing a severability clause; and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Director of Airports and the Comptroller for the City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City the Lambert-St. Louis International Airport® Restated and Amended Agency Agreement (Advertising) (AL-290) (the "Agency Agreement"), between the City and The Directory Graphics, L.L.C. (the "Agent"), a Missouri Limited Liability Company, granting to the Agent the non-exclusive right, license, and privilege as well as the obligation to design, construct, operate, manage, and maintain reservation centers and to maintain certain City owned directories within the premises as more fully described in the Agency Agreement, subject to and in accordance with the terms, covenants, and conditions of the Agency Agreement, which was approved by the Airport Commission and is to read in words and figures substantially as set out in **ATTACHMENT "1"**, which is attached hereto and made a part hereof.

SECTION TWO. The terms, covenants, and conditions set forth in this Ordinance shall be applicable exclusively to the Agency Agreement approved and authorized by this Ordinance and shall not be applicable to any other existing or future agency agreement or other agreements, documents, or instruments unless specifically authorized by ordinance enacted after the effective date of this Ordinance. All provisions of other ordinances of the City that are in conflict with this Ordinance shall be of no force or effect as to this Ordinance or the agreements, documents, and instruments approved and/or authorized by this Ordinance.

SECTION THREE. The sections, conditions, or provisions of this Ordinance or portions thereof shall be severable. If any section, condition, or provision of this Ordinance or portion thereof is held invalid by a court of competent jurisdiction, such holding shall not invalidate the remaining sections, conditions, or provisions of this Ordinance.

SECTION FOUR. This being an ordinance for the preservation of public peace, health, or safety, it is hereby declared an emergency measure as designed in Article IV, Section 20, of the City's Charter and shall become effective immediately upon its approval by the Mayor of the City.

**ATTACHMENT 1
LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®**



**THE DIRECTORY GRAPHICS, L.L.C.
RESTATED AND AMENDED AGENCY AGREEMENT
ADVERTISING
AGREEMENT NO. AL - 290**

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AIRPORT NUMBER...AL- 290

**LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®
 RESTATED AND AMENDED AGENCY AGREEMENT
 (ADVERTISING)**

THIS RESTATED AND SECOND AMENDMENT, made and entered into as of the ____ day of _____, 200_, (Agreement) by and between the CITY OF ST. LOUIS (City), a municipal corporation of the State of Missouri and THE DIRECTORY GRAPHICS, L.L.C. (Agent), a Missouri Limited Liability Company.

THIS AGREEMENT is a complete restatement of and second amendment to the Agency Agreement made the 10th day of August, 1998, as amended by the First Amendment to Agency Agreement dated October 10th, 2003, by and between the City of St. Louis, a municipal corporation of the State of Missouri and The Directory Graphics, L.L.C., a Missouri Limited Liability Company (the “Agency Agreement”). It is the intent of both parties that upon the Commencement Date of this Agreement that the terms, covenants and conditions of the Agency Agreement will no longer be in effect.

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 first class advertising services in the operation of Reservation Centers are essential for proper accommodation of the

public;

WHEREAS, Agent, since its initiation of operations at Lambert-St. Louis International Airport® under the Agency Agreement dated August 10, 1998, has earned the confidence of the City and has demonstrated a high level of service in the display advertising operations at the Airport;

WHEREAS, the City desires to maximize opportunities for disadvantaged, minority and women owned enterprises in the advertising agency agreement at the Airport as well as provide additional revenue and more favorable terms to the City;

WHEREAS, Agent has agreed to enter into various business arrangements in order to achieve and maintain an ACDBE participation level of thirty percent (30%) of Agent's Gross Receipts throughout the term of this Agreement;

WHEREAS, design and construction of said facilities and improvements will require Agent to invest or cause to be invested not less than Twenty Five Thousand Dollars (\$25,000.00) and Agent has agreed to commit to such investment; and

WHEREAS, by this Agreement, Agent hereby waives all rights to any and all reimbursements and compensation from the City for the depreciated value (unamortized costs) of existing Improvements and non-expendable equipment at the Airport as of the Commencement Date of this Agreement.

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 Agent agree as follows:

ARTICLE I DEFINITIONS

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

"Agent" as stated in the preamble hereof.

"Agreement" shall mean this Restated and Amended Agency Agreement for Advertising service and any subsequent amendments thereto, duly approved by the City.

"Airfield Operations Area" shall mean those areas of the Airport used for the landing, taking-off, movement, and parking of aircraft, as the same now exist or as the same hereafter may be added to, modified, changed, or developed.

"Airport" as stated in the preamble hereof.

"Airport Concessions Disadvantaged Business Enterprise (ACDBE)" shall mean a small business concern (i) 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 (ii) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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

"Applicable Percentage Fee" shall mean the product of (i) the Gross Receipts for each type of advertising sold for the appropriate period multiplied by (ii) the percentage set out in Article V hereof for each type of advertising.

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

"Build-Out or Build-Out Costs" shall mean costs incurred for the demolition/redevelopment of Improvements existing as of the Commencement Date and the construction of new Improvements to the Premises, including (but not limited to) furnishings, fixtures 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 and construction bonds; but excluding the costs of interest during construction and internal costs of Agent's employees.

“City” as stated in the preamble hereof.

“Commencement Date” shall mean May 1, 2010.

“Contract Year” shall mean a twelve (12) consecutive month period commencing on the Commencement Date, and each twelve (12) month period thereafter.

“Director” shall mean the Director of Airports of the City of St. Louis Airport Authority or his designee, and incorporates the granting of approval requirements of Section 1415 hereof.

“Directories” shall mean those Airport owned terminal way-finding directory fixtures that serve Airport users by locating Airport facilities; and customer service directories that assist Airport users in locating concessions.

“Environmental Laws” shall mean all applicable federal, state, and local statutes, ordinances, regulations, rules, laws, permits, permit conditions, Environmental Permits, and orders relating to the generation, use, storage, transportation, or disposal of Hazardous Materials, 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. §9601 *et seq.*; the Toxic Substance Control Act, 15 U.S.C. §2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. §2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, U.S.C. §1010 *et seq.* (See **EXHIBIT C** entitled “Environmental Requirements,” which is attached hereto and incorporated herein.)

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

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

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

- federal, state, county and municipal sales taxes or other sales taxes separately stated and collected from customers;
- cash or credit refunds given to customers for unperformed services purchased at the Airport;
- client agency fees and the value of utility cost (including telephone and electrical) billed to advertisers;
- sale or trade-in value of any equipment or fixtures that were sold or transferred from the Premises provided the sale or transfer was approved for removal by the Director and the equipment or fixture was owned by Agent; and
- payment for services performed in the maintenance of customer services directories and Directories.

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

“Improvements” shall mean all existing improvements and fixtures existing as of the Commencement Date as well as all construction of improvements and fixtures furnished, built or erected by the Agent, and forming a part of and which are permanently affixed or attached to any portion of the City’s real property or improvements within the Premises.

“**Minimum Annual Guarantee**” as stated in Article V, Section 502 hereof.

“**Notice**” shall mean a communication between the parties to this Agreement performed in accordance with the requirements of Section 1401. Notice.

“**Percentage**” shall mean that designated portion of Agent's Gross Receipts that are payable to the City.

“**Percentage Fee**” shall mean the product of (i) Gross Receipts multiplied by (ii) Percentages set out in Article V, Section 502 hereof.

“**Premises**” shall mean a location or locations described in Section 201 that have been designated by the City for the sale of Agent’s services or storage spaces, and for other uses provided specifically herein, together with all Improvements thereon.

“**Refurbishment**” shall mean to upgrade the Premises and return the Premises to original condition or the conversion of display advertising units to new concepts, including modernization/redesign by replacement of furnishings, fixtures and finishes and construction of Improvements.

“**Refurbishment Costs**” shall mean costs incurred to upgrade the Premises and return the Premises to original condition or convert display advertising units to new concepts, including modernization/redesign by replacement of furnishings, fixtures and finishes and construction of Improvements, 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 during construction and the internal costs of Agent’s employees.

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

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

“**Reservations Centers**” shall mean those telephone board fixtures having direct line telephone contact to local area service providers.

“**Unamortized Investment**” shall mean the undepreciated value of Agent’s investment in Build-Out Costs less the cost of Removable Fixtures. The Build-Out Cost shall be fully amortized on a straight line basis over the term of this Agreement.

ARTICLE II PREMISES

Section 201. Premises. City in accordance with the rights granted under Section 301. Rights hereby permits the Agent to install, maintain, and operate at the locations on Airport property including the Airport terminals and concourses and more fully described in Exhibit A, which is attached hereto and made a part hereof. The rights granted in Section 301 hereof must only be exercised within the Premises.

The Director shall have the right to add, substitute, relocate or delete portions of the Premises upon reasonable notice to the Agent. The City will not be liable or responsible for any loss whatsoever including, without limitation, any inconvenience or loss by the Agent of work time, profit or business, actual, incidental, consequential or special damages resulting from these changes to the Premises. In the event that the Premises are relocated or reclaimed Agent will be reimbursed the Unamortized Investment of the new Improvements within the reclaimed Premises or portions thereof. In addition, the City will make good faith efforts to find replacement space that is of equal size and value as that of the reclaimed Premises. If such replacement is not located, the Minimum Annual Guarantee payable under this Agreement shall be reduced in proportion to the percentage of Gross Receipts produced by the lost premises during the preceding twelve (12) months.

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

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

Section 203. Changes to the Airport. The City reserves the right to further develop or improve the Airport and all landing areas and taxiways as it may see fit, regardless of the desires or views of the Agent without interference or hindrance.

ARTICLE III AGENT’S RIGHTS

Section 301. Rights. City hereby grants to Agent, subject to and in accordance with all of the terms, covenants, warrants and conditions of this Agreement, the **nonexclusive right**, license and privilege and Agent hereby assumes the obligation to design, construct, operate, manage and maintain Reservation Centers and maintain Airport owned directories within the Premises.

Section 302. Limitation of Rights. Agent shall have no right to perform any services or offer for sale any products, or engage in any other business or commercial activity on the Airport that is not specifically granted under this Agreement. The Director reserves the right to require the immediate removal of any and all advertising copy deemed to be objectionable by the Director in his/her sole discretion and without justification. All advertising contracts must be approved as to form by the Director. With the consent of the Director, Agent will be permitted to install advertising operations within airline clubs in the Airport provided it has executed an agreement to do so with the appropriate airline that owns and operates the club. The use of area not specifically included in Exhibit A must be approved in advance and in writing by the Director (see Section 1413 below).

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

ARTICLE IV TERM OF AGREEMENT

Section 401. Term. The term of this Agreement shall commence on May 1, 2010 (the “**Commencement Date**”) and shall expire on April 30, 2013 (the “**Expiration Date**”) unless sooner terminated in accordance with other provisions of this Agreement.

Section 402. Surrender of Possession. No notice to quit possession at the expiration date of the term of this Agreement shall be necessary. Agent covenants and agrees that at the expiration date of the term of this Agreement, or at the earlier termination hereof, it will peaceably surrender possession of the Premises, in as good condition as that existing at the time of Agent's initial entry upon the Premises, reasonable wear and tear, acts of God, and other casualties excepted, and the City shall have the right to take possession of the Premises with or without due process of law (see Section 709 titled “Title To Improvements and Fixtures”).

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

ARTICLE V FEES AND RENTALS

Section 501. General. Agent, for and in consideration of the rights and privileges granted herein, agrees to pay the “Agency Fee Payments” and the other fees and charges set forth in this Agreement including, without limitation, in Sections 502, 503, 504.E, 505, 507, 509, 510, 512, 701.C(5), 702, 803, and Article XIII and the utilities described in Section 804 of this Agreement, without demand during the term of this Agreement.

Section 502. Agency Fee Payments.

- A. Agent agrees to pay to City for each Contract Year, a sum equal to the greater of the Minimum Annual Guarantee (hereinafter referred to as MAG) as set forth in Section 502.B below or the aggregate of the applicable Percentage Fees for each product category as set out in this Section 502.A and which shall be applied to the

Gross Receipts, as defined, of Agent and each sublessee, whether the owner of one or multiple units, separately, for each Contract Year or portion thereof (the “Agency Fee Payments”).

STATIC ADVERTISING	65%
DIGITAL ADVERTISING	65%

- B. For Contract Years One, Two and Three (5/1/2010 through 4/30/2013) the MAG shall be Two Hundred Forty Thousand Dollars (\$240,000.00).

Section 503. Payment. Payments for each month of each Contract Year shall consist of (a) an amount equal to 1/12 of the MAG for the applicable Contract Year paid in advance on or before the first day of each month; and (b) an amount equal to the portion of the Percentage Fee applied to the Gross Receipts for the previous month to be paid on or before the 15th day of the second month and each succeeding month during the term of the Agreement. (See Article V, Section 505 Unpaid Fees for the amount of any applicable service charge and Article XIII LIQUIDATED DAMAGES.)

Section 504. Reports.

- A. Agent shall submit to the City by the 15th day of the second and each succeeding month of each Contract Year hereof, two copies of an accurate statement of Gross Receipts. The Director reserves the right to request Agent to provide documentation in a manner satisfactory to the Director, the specifics of all refunds deducted from Gross Receipts. The statement of Gross Receipts shall separately state Gross Receipts by location and be certified as accurate by an officer of the Agent. The final statement of Gross Receipts will be due by the 15th day of the month following expiration of this Agreement. Agent shall report Gross Receipts on a form approved by the Director. The City reserves the right to use these statements of Gross Receipts as a source of information to bidders in a future solicitation for bids or request for proposals for this agreement.
- B. Agent shall submit an audited report of Gross Receipts within one hundred twenty (120) days following the conclusion of each Contract Year. These audit reports must be prepared by an independent Certified Public Accountant. The audit reports shall, at a minimum, certify the accuracy of (i) reported total accumulated Gross Receipts; and (ii) the aggregate amount of Gross Receipts and/or goods and services attributable to ACDBE participants. The audit reports shall also include a schedule showing the total of actual Agency Fee Payments to the City during the Contract Year and shall state an opinion as to the correctness of the computation of the Agency Fee Payments without exception.
- C. Within thirty (30) days after the close of each Contract Year, except the last Contract Year, Agent shall provide the City with an estimate of projected monthly Gross Receipts for the subsequent Contract Year.
- D. The City is required to report ACDBE utilization to the FAA. Agent shall be required to submit to the City by the 15th day following each calendar quarter (April 15, July 15, October 15 and January 15), two copies of an accurate statement of ACDBE utilization. Agent shall document in a manner satisfactory to the Director the specifics of all Gross Receipts attributable to ACDBEs in addition to purchases from certified ACDBEs. This statement shall be certified as accurate by an officer of the Agent. Agent shall report ACDBE utilization on a form approved by the Director. The City reserves the right to use these statements as a source of information to bidders in a future solicitation for bids or request for proposals for this agreement.
- E. Delivery of an audit report containing a qualified opinion, an adverse opinion or a disclaimer of opinion as defined in the Statement on Auditing Standards, or as same may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be deemed to be a default pursuant to Section 1101 (B) (10) herein. In the event the annual audit indicates that there was an underpayment of any fees payable to the City, Agent shall immediately pay the amount of the underpayment to the City. In the event of an overpayment, Agent shall deduct the amount of the overpayment from the next scheduled Agency Fee Payment. If an overpayment occurs during the last contract year, the City will pay the amount of the overpayment to Agent within 30 days of receipt of the audit report.
- F. Agent shall keep, and make available to the City, such records (copies of subcontracts, paid invoices, documentation or correspondence) as are necessary for the City to determine compliance with the ACDBE participation requirement. The City reserves the right to investigate, monitor and/or review records for compliance. Agent shall submit quarterly ACDBE activity reports to the City in a form approved by the Director.

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

Section 506. Performance and Payment Bond. Agent agrees to furnish a Performance and Payment Bond in a form acceptable to City in the principal amount equal to Sixty Thousand Dollars (\$60,000.00) prior to execution of this Agreement. Such bond or other form of security agreed to by the City, shall remain in full force and effect throughout the term of this Agreement and shall extend at least one hundred eighty (180) days following the expiration or early termination of this Agreement. In the event that said bond should expire prior to expiration or early termination of this Agreement, Agent warrants, covenants and agrees to provide City a renewal bond sixty (60) days prior to expiration date of the expiring bond. Such bond will guarantee the payment of all fees and performance of all other terms, covenants and conditions of this Agreement. The Performance and Payment Bond will be in the form of standard commercial guaranty bond running to the City, written by a surety company authorized to do business in Missouri and (i) having a "Best" key rating of not less than A and with a "Best" Financial Size Category of not less than Class VIII and (ii) shown on the most recent U.S. Treasury Circular No. 570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The bond will be kept in full force and effect during the term hereof and shall extend at least one hundred eighty (180) days following the expiration or early termination of this Agreement. City may agree to another form of deposit which will provide equal protection of City's interest. If City cashes the bond or other form of deposit agreed to by the City, Agent agrees to furnish a replacement Performance and Payment Bond or other form of deposit in the same principal amount within twenty (20) days.

Section 507. Prompt Payment of Taxes and Fees. Agent 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, Agent shall make available in the St. Louis area true, accurate, complete and auditable records of all business it conducts at the Airport. Agent shall make same records available in the St. Louis area for three (3) years following the expiration or early termination of this Agreement. These records shall be accessible during usual business hours to the City or its duly appointed agents or auditors. Agent 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 Agent's place of records.

Section 509. Audit.

- A. City, or its duly appointed agents or auditors, reserves the right to audit Agent's, subcontractor's, or others doing business under this Agreement, books, records and receipts at any time for the purpose of verifying the Gross Receipts hereunder. If the audit reveals a change in Gross Receipts that results in Agent owing additional Agency Fee Payments, Agent will, within thirty (30) days, remit to the City the additional Agency Fee Payments. If the results of the audit(s) reveal a discrepancy of more than five percent (5%) between Gross Receipts reported by Agent and Gross Receipts determined by the audit, the cost of the audit shall be borne by Agent.
- B. If as a result of an audit by any governmental entity, Agent is required to restate Gross Receipts as defined herein, Agent 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 Agent owing additional Agency Fee Payments, Agent will, within thirty (30) days, remit to the City the additional Agency Fee Payments.

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

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

Such payments shall include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of fees, charges and rentals thereafter due hereunder. Each and every part of such payment shall

be recoverable by the City in the same manner and with like remedies as if it were originally a part of the basic fees, charges and rentals, as set forth herein.

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

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

Section 512. Marketing and Promotion. The Airport reserves the right to establish a Marketing Fund to be controlled by the Airport or its designated agent for the purpose of advertising, promotion and other activities appropriate for marketing concessions and services at the Airport. Agent agrees to fully participate in said marketing fund and pay any fees or assessments levied by the City for said Marketing Fund. The amount of annual Marketing Fund contributions shall be limited to 0.25% of the Agent's Gross Receipts.

ARTICLE VI AGENT'S OPERATIONS

Section 601. Standards of Service.

- A. Deliveries of supplies to the Agent's Premises shall be made at such times, by such routes/modes and at such locations as the City may reasonably approve.
- B. The Premises shall be kept clean, neat, and businesslike and in an orderly condition at all times and Agent shall provide for timely disposal of trash and debris at locations designated by the City.
- C. Operations shall fully comply with all Federal Aviation Administration (FAA) regulations including security requirements, Airport rules and regulations and Airport security plan. Employees shall be suitably badged in accordance with Airport security procedures and regulations and shall fully comply with the Transportation Security Administration's (TSA) regulation 1542 regarding conduct and access to the Airfield Operations Area (AOA).

Section 602. Hours of Operation. The minimum hours of operation for serving the public shall be twenty four (24) hours per day seven (7) days a week including holidays. Agent may not change the hours of operation without written application to, and the written approval of, the Director. The Director may require Agent to change its hours of operation to reflect changing operational circumstances at the Airport.

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

Agent will enter into a written Reservation Center contract with each advertiser. Each Reservation Center contract will include a provision allowing the contract to be assigned to the City if this Agreement is terminated and a provision indemnifying the City and the Indemnified Parties as defined and provided for in Section 904 of this Agreement.

Agent will use only Reservation Center contract forms which have been approved in writing in advance by the Director. Agent may make minor non-substantial changes to Reservation Center contract forms to accommodate requirements of individual advertisers subject to the approval of the Director.

Agent shall submit to the Director a copy of all Reservation Center contracts within fifteen (15) days of execution. The Director reserves the right to require the Agent to cancel its Reservation Center contracts which the City finds unacceptable. *(These changes are assuming that all contracts are Reservation Center contracts??)*

Section 604. Personnel.

- A. All employees will wear name tags or badges so that they may be identified by the public and indicate the fact and nature of their employment. Agent shall employ only properly trained, efficient, pleasant, neat, clean and

courteous personnel, each of whom shall be proficient in the duties to be performed in the operation of this Agreement. Agent agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules and regulations. Agent shall prohibit and restrain its agents, servants and employees from loud, noisy, boisterous or otherwise objectionable behavior. Upon objection from the Director concerning the conduct or appearance of any such persons, Agent shall immediately take all steps necessary to remove the cause of the objection.

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

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

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

Smoking is permitted only in designated smoking lounges. Agent will not permit any employee to smoke anywhere except designated smoking locations. Employees may not use the smoking lounges except during their authorized breaks. Employees may not stop at smoking lounges if they are transporting any property of Agent. If smoking is prohibited in the Airport, Agent will enforce the non-smoking policy.

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

Section 606. Pricing. Pricing for Advertising shall be established on a fair, reasonable and nondiscriminatory basis to all categories of users. The basis shall be substantially similar to the prices charged for similar services at other airports of similar size and as approved by the Director. Agent will submit a complete price list of services to be sold and list of prices from at least three (3) comparable airports. Prices are not to be implemented until approved by the Director and Agent shall not change prices until approved in writing by the Director.

Section 607. Manager. Agent shall at all times retain one or more qualified, competent and experienced manager(s) who shall manage and supervise the operations and the facilities and represent and act for Agent. The manager(s) shall be available during regular business hours. The manager or a responsible subordinate shall be available at all times for emergencies and during the manager's absence.

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

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

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

Section 611. Operation.

- A. Agent shall be responsible for all aspects of the management and operation of this Agency Agreement. Agent shall regularly monitor all Reservation Centers and Directories to insure that they are in like new condition and operating properly. Further, Agent shall provide and be responsible for all employees and necessary components of the operation, including inventory, fixtures, equipment and supplies.
- B. The City shall not be responsible for any equipment, Improvements, supplies or fixtures used, maintained or stored on the Premises, nor will it be responsible for any damage or loss to any such items resulting from any cause whatsoever including, without limitation, flood, fire, explosion, vandalism, casualty, or other causes outside the direct control and responsibility of the City.

Section 612. Communication.

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

Section 613. Customer Comments. Agent shall establish procedures for handling all customer comments. Agent shall respond in writing to every comment, written or oral, within seven (7) calendar days of the comment and shall make good faith efforts to explain, resolve or rectify the cause of any complaint. Agent shall provide the Airport Properties Department with a copy of such comments and its written response thereto.

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

Section 615. Inspections. Agent will provide the Director a copy of any health inspection, brand inspection or secret shopper report on or before the tenth (10th) day of each month for the prior month's inspection or report for each location. If said inspection does not result in a written report, Agent shall submit a written summary of the nature and findings of such inspection as they were communicated to the Agent. Agent shall also provide the Director with any required corrective actions and timeframes for each corrective action to be implemented. If at any time an inspection or report does not result in the highest grade for any location Agent will be subject to the application of liquidated damages as set forth in Article XIII.

Section 616. Entertainment Systems/Wireless Data: No radio or television or other similar device shall be installed without first obtaining, in each instance, the Director's written consent which will not be unreasonably withheld. No antenna or aerial shall be erected on the roof, interior walls or exterior walls of the Premises or on the Airport without, in each instance, first obtaining the prior written consent of the Director. Any radio, television, or other similar device, antenna or aerial so installed without such prior written consent shall be subject to removal and/or forfeiture without notice at any time. No loudspeakers, televisions, phonographs, radios, or other devices shall be used in a manner so as to be heard outside the Premises without the prior written consent of the Director. Surveillance equipment shall be permitted within the Premise for surveillance within the Premises only. Agent shall not be permitted, nor permit others to use, establish, purchase, sell, or maintain any type of wireless data transmission service or antennae in, on or from the Premises without obtaining the prior written consent of the Director, whose consent may be withheld for any reason whatsoever, or for no reason. The cost removal of any of the foregoing shall be borne by the Agent. 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 of this Agreement in accordance with the provisions of the prior Agency Agreement are considered approved by the Director. In addition, wireless transmission of data from the Agent's point of sales systems to its accounting and other systems will be reasonably permitted.

Section 617. Digital Advertising: Agent shall install three (3) digital advertising displays over the three Reservation Centers. Agent will sell advertising time on the digital advertising displays as part of this Agreement. The City shall be entitled to a minimum of two advertising slots at all time for the promotion of the City, the Airport or Airport activities.

Section 618. Directory Maintenance: Agent will be responsible for keeping Directories up to date. Any modification to the Directories

necessitated by tenant changes or changes in tenant premises will be charged to the tenant necessitating the change. Any changes to the Directories requested by the City will be promptly made by the Agent. Agent will be reimbursed for the changes by a rent credit in an amount approved in advance in writing by the Director. Agent shall provide a schedule of fees for such modifications, for the prior written approval of the Director, within 30 days of commencement.

ARTICLE VII IMPROVEMENTS AND ALTERATIONS

Section 701. Construction by Agent.

- A. Agent takes the Premises “**AS IS**” as provided for in Article II, Section 201 hereof, and agrees, at Agent’s sole cost and expense, to design, erect, construct, equip and furnish all necessary Improvements, Removable Fixtures and equipment and make related facility changes as needed to operate an advertising agency agreement, in accordance with plans prepared by Agent and approved by the Director, subject to and in accordance with the provisions of this Agreement including, without limitation the requirements of this Article VII.
- B. Agent shall, no later than August 31, 2011, complete at minimum the following Improvements:
- 1) Installation of new lighting to increase the brightness of the advertising copy on two main terminal reservation centers (MT-12 and MT 17);
 - 2) Install new brushed aluminum face over the existing tile front on two main terminal reservation centers (MT-12 and MT 17);
 - 3) Ensure that all phone systems are in proper operation at all times, including replacing defective devices as required; and
 - 4) Install three digital advertising displays over three reservations centers (East Terminal, MT-12 and MT 17).
- C. Agent agrees that all such work shall be completed according to the Tenant Design Standards, which are filed of record in the Office of the Director.
- 1) Agent shall submit a signed Tenant Construction or Alteration Application (**TCA**) including complete sealed construction drawings and specifications, as required by Section 702 hereof, to the Airport Properties Department for its initial as well as future construction. The TCA shall be submitted for each location in accordance with the approved phasing and construction schedules as agreed to between the Agent and the City.
 - 2) Agent shall submit a St. Louis County building permit number not more than thirty (30) business days following City’s written approval/acceptance of the TCA submission that was provided to the Airport Properties Department. A building permit number is required before construction can begin.
 - 3) Agent shall submit the contractor's liability insurance certificates and performance and payment bonds, required by Sections 704 and 705 hereof, to the Airport Properties Department not more than forty-five (45) business days following the TCA approval by the Airport Properties Department and prior to beginning of work.
 - 4) Agent shall complete all construction of the Premises fully fixtured and operational no later than one hundred thirty (130) business days after the receipt of all needed City and municipal approvals including the St. Louis County building permit for each location, subject to the provisions of Article XIII.
 - 5) Agent acknowledges, agrees, and stipulates that its failure to operate in accordance with this Section 701 shall result in Agent being assessed by the City for liquidated damages in the amount of \$100/day for each day beyond the one hundred thirty (130) business days after the receipt of all needed City and municipal approvals for each location, in addition to any other remedies the City may have under this Agreement or at law or in equity.

- 6) Agent shall submit a certificate of completion and a certified copy of a St. Louis County occupancy permit, to the Airport Properties Department, as required by Section 707 hereof.

In the event Agent 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, Agent shall immediately stop work in the affected area and report the condition to the Director in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the Director and Agent, if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless by written agreement of the Director and Agent. Agent shall not be required to perform, without their consent, any work related to asbestos or PCB.

Section 702. Cost of Improvements. In connection with Agent's performance under Section 701B of this Agreement, Agent shall expend or cause to be expended for Build-Out Costs not less than Twenty Five Thousand Dollars (\$25,000.00). Agent shall complete or cause to be completed such Improvements in accordance with all requirements of this Article VII. Agent's Build-Out shall be completed in accordance with the plan and shall be completed no later than August 31, 2011, unless delayed further at the City's written direction.

Agent shall furnish the Director with satisfactory proof of Build-Out Costs for each unit within one hundred eighty (180) days following completion of work to the Premises. This proof of 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 Agent. Upon completion of the Build-Out called for in Section 701B, Agent will have the total Build-Out Cost certified by an Independent Certified Public Accountant and will supply the resulting audit report to the Director. Agent shall provide to the Director any other proof necessary to satisfy the Director.

Agent is encouraged by City to productively expend the entire amount obligated to Build-Out Costs called for in Section 701.B, but in the event Agent's actual expenditures are less than the total of Twenty Five Thousand Dollars (\$25,000.00); or this Agreement is cancelled or terminated, per Article XI of this Agreement, by either party prior to the expenditure of the Twenty-Five Thousand Dollars (\$25,000), the difference shall be an item of additional payment due and payable to City within thirty (30) days after the receipt of an invoice for such difference from City or the termination of this Agreement.

Section 703. Preparation of Plans and Specifications. Agent shall submit detailed drawings, plans and specifications sealed by an appropriate Missouri registered professional for improving and equipping the Premises. Agent shall begin work on proposed construction only after it has received the written approval of its plans and specifications, from the Director.

Section 704. Contractor's Liability Insurance. In any contract appertaining to improving and equipping the Premises, Agent shall require the contractor to cause the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, to be insured against the risk of claims and demands, just or unjust, by third persons against the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, with bodily injury limits of not less than three million dollars (\$3,000,000.00) as to any one person, and three million dollars (\$3,000,000.00) as to any one occurrence, and with property damage limits of not less than three million dollars (\$3,000,000.00) as to any one occurrence. Said insurance shall be in a form acceptable to the City.

Section 705. Performance and Payment Bonds. Agent shall require each of its contractors and suppliers of construction materials to furnish a Performance Bond and a Payment Bond each in the full amount of any contract in a form acceptable to the City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo (Revised Statutes State of Missouri). Copies of the bonds shall be given to the City for approval before work begins. Any sum or sums derived from said Performance Bond and/or Payment Bond shall be used for the completion of said construction and the payment of laborers and material suppliers, as the case may be.

Section 706. Mechanics' and Materialmen's Liens. Agent agrees not to permit any mechanics' or materialmen's or any other lien or encumbrances to be attached or foreclosed upon the Premises or any part or parcel thereof, or the Improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

Section 707. Certificates of Completion. Upon the completion of the Improvements hereunder, Agent 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 Agent. Sealed as-built drawings shall be submitted within one hundred (100) business days of completion.

Section 708. Signs.

- A. Agent shall not erect, maintain or display any signs on the Premises without the prior written approval of the Director. The term "sign" as used herein, shall mean advertising signs, billboards, identification signs or symbols, posters, displays, logos, or any similar devices. Subject to the foregoing, Agent shall have the right to install such advertising and identification signs as may be necessary for the proper conduct of a display advertising agency agreement as contemplated hereunder. Agent shall comply with all rules promulgated by the Director regarding the placement of signs and advertising on the Premises.
- B. Agent shall be responsible for the cost of any new signs or modifications to existing signs, including sign systems required by the Director. All modifications to these signs must be approved by the Director and are subject to all applicable requirements of this Section 707 hereof and the Tenant Design Standards. This requirement shall not extend beyond the Premises.
- C. Prior to the erection, construction or placement of any sign, Agent shall submit to the Director for approval, all drawings, electrical details, sketches, designs, elevations, mounting details and dimensions of such signs. Any conditions, restrictions or limitations with respect to the use thereof as stated by the Director in writing shall become conditions of the Agreement.

Section 709. Title to Improvements and Fixtures. All Improvements constructed or placed in the Premises by Agent that are not Removable Fixtures, as well as all alterations, modifications and enlargements thereof shall become part of the Premises with title vesting free, clear and unencumbered to the City upon expiration or earlier termination of this Agreement. This vesting of title is subject, however, to Agent's obligation to operate, repair, maintain and replace, and its right of possession, use and occupancy during the term and in accordance with this Agreement.

All Removable Fixtures shall remain the property of Agent, and shall be removed by Agent at date of expiration or early termination of this Agreement. Within one hundred twenty (120) days of the commencement of the operation in the Premises, a list of such Removable Fixtures shall be submitted in writing to the Director by Agent for the Director's approval, and such list shall be periodically updated by Agent.

The City reserves the right, and Agent agrees that the Director may require Agent to promptly and timely remove any or all proprietary fixtures and restore the Premises to an acceptable condition as approved by the Director. Agent agrees to bear all costs of such removals and restorations (see Section 402, titled "Surrender of Possession").

Section 710. Alterations, Refurbishment and Redecoration.

- A. Agent shall have the right, without cost to City, to construct additional Improvements to or in the Premises, provided however, that they shall be subject to all the requirements of this Article VII.
- B. If it becomes reasonably necessary during the term of this Agreement, as determined by the Director, Agent will, at its own expense upgrade the Premises and Improvements, and replace fixtures to keep the Premises in like new condition.

**ARTICLE VIII
USE OF PREMISES**

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

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

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

- C. The washing of the exterior of windows in the terminal building.

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

- A. Perform custodial services daily.
- B. Keep all its equipment and fixtures in good repair and appearance.
- C. Keep the Premises free from all fire and other hazards to persons and property and furnish and maintain adequate portable fire protection equipment.
- D. Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of Agent or Agent's agents or employees.
- E. Provide for complete sanitary handling and disposal of all trash, garbage and refuse (liquid or solid) in accordance with standards established by the Director. Such standards may require the use of special devices including, but not limited to, special containers, compactors and disposal systems. Agent agrees to promptly provide and install same and to abide by such standards.
- F. Confine all handling and holding of Agent's property to the Premises.
- G. Keep all papers and debris picked up daily from the Premises.
- H. Keep the Premises free of all pests, providing such pest control services as required.
- I. No storage will be permitted on the exterior areas of the Premises.
- J. If the City provides or designates a service for picking up refuse and garbage, Agent will be required to use said service.
- K. If the City establishes a recycling program, the Agent will fully participate in said recycling program. Agent must comply with all applicable City, county state and federal regulations regarding recycling.

The Director may temporarily or permanently close any roadway or other right-of-way for access to the Premises, so long as another means of access is provided. Agent understands and agrees that there may be inconveniences caused by construction or renovations of the Airport, and Agent 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 Agent is negatively impacted the City will make good faith efforts to work with Agent to provide a solution that will minimize 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 shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Agent's operations as is practicable) to enter upon, and in, the Premises for the following purposes:

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

Section 804. Utilities. Agent shall be responsible for any needed modification or upgrade in electrical supply caused by increased

lighting or other changes to the Premises made by Agent.

Agent shall pay for all costs of other utilities (including telephone and other third party service), including, but not limited to, deposits, installation costs, cost of upgrading or relocating utility service regardless of whether or not such utility services are furnished by the City or a utility service company.

The City shall not be liable to the Agent 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. Agent does hereby release and discharge the City from any and all inconvenience, claims or cause of actions arising out of or incidental to such interruption, including, without limitation, loss of profit or business, actual, incidental, consequential or special damages.

Section 805. Interference to Air Navigation. Agent 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 Federal Aviation Administration, will be constructed or permitted to remain in or on the Premises. Any obstructions will be immediately removed by Agent at its expense. Agent warrants, represents and agrees not to increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight of the control tower and its operations. Agent further warrants, represents and agrees not to install any structures, objects, machinery or equipment that would interfere with the operation of navigation aides or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport.

ARTICLE IX INSURANCE, DAMAGE AND INDEMNIFICATION

Section 901. Insurance.

- A. General. Agent, at all times during the term hereof, shall cause St. Charles County, Missouri, St. Clair County, Illinois, St. Louis County, Missouri, the City, their officers, agents and employees to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities or omissions of Agent, its officers, agents, and employees pursuant to this Agreement both on the Premises and the Airport.
- B. Risks and Minimum Limits of Coverage. Agent shall procure and maintain the following policies of insurance:
 - 1) Commercial General Liability in an amount not less than three million dollars (\$3,000,000.00). Such coverage shall be single limit liability with no annual aggregate.
 - 2) Automobile Liability Insurance in an amount not less than three million dollars (\$3,000,000.00) combined single limit per occurrence (for automobiles used by Agent in the course of its performance hereunder, including Agent'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 Agent elects to be self-insured, Agent shall comply with the applicable requirements of law. Agent shall require that all its subcontractors or licensees similarly provide such coverage (or qualify as a self-insured) for their respective employees. City, its officers, employees, or agents shall not be liable or responsible for any claims or actions occasioned by Agent'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 Agent are not employees of the City for any purpose, and that employees of the City are not employees of Agent.
 - 4) Contents Insurance. Agent shall be solely responsible for obtaining insurance policies that provide coverage for losses of Agent owned property. The City shall not be required to provide such insurance coverage or be responsible for payment of Agent's cost for such insurance.
 - 5) Builders Risk Insurance. During any period of construction or reconstruction for which Agent contracts, Agent shall carry, or shall require its contractor or contractors to carry, a policy of Builders Risk Insurance in an amount sufficient to insure the value of the work. The City shall be named Loss Payee on Builders Risk coverage to the extent of the City's interest therein (except to the extent coverage relates to Agent's equipment and personal property). Agent 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. Agent shall provide an "All Risk" insurance policy providing protection from direct loss arising out of any fortuitous cause other than those perils or causes specifically excluded by form and which covers Agent's improvements to the Premises, trade fixtures, and equipment. The City shall be named Loss Payee on such coverage to the extent of the City's interest therein (except to the extent coverage relates to Agent's equipment and personal property).
- C. Issuers of Policies. The issuer of each policy required herein shall be a financially sound insurance company authorized to issue insurance policies in the State of Missouri. Acceptable insurers include insurance companies with an "A.M. Best Company" rating of at least an "A," or other insurers or insurance syndicates of similar recognized responsibility.
- 1) Form of Policies. The insurance may be in one or more policies of insurance.
 - 2) Non-waiver. Nothing the City does or fails to do shall relieve Agent from its duties to provide the required coverage hereunder, and the City's actions or inactions shall not be construed as waiving the City's rights hereunder.
 - 3) Insured Parties. Each policy by endorsement, except those for Workers' Compensation, Employer's Liability, shall name the City, its officers, agents, and employees as "additional insured" on the certificate of insurance, including all renewal certificates, to the extent of Agent's indemnification obligations hereunder. Inclusion as an "additional insured" is not intended to, and shall not, make the City a partner or joint venturer with Agent in its operations.
 - 4) Deductibles. Agent shall assume and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for the same against the City, its officers, agents, or employees; provided, however, that nothing herein stated shall diminish Agent's rights or increase Agent's obligations in respect to its undertakings or hold harmless defense and indemnification set forth in Section 904 hereof.
 - 5) Cancellation. Each policy shall expressly state that it may not be cancelled, materially modified or non-renewed unless thirty (30) days advance notice is given in writing to the City by the insurance company, or authorized representative of Agent.
 - 6) Subrogation. Each policy shall contain an endorsement by which the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents, or employees.
 - 7) Endorsement of Primary Insurance. Each policy hereunder, except Workers' Compensation, shall be primary insurance to any other insurance available to the Additional Insured and Loss Payee with respect to claims arising hereunder.
 - 8) Liability for Premium. Agent shall be solely responsible for payment of all insurance premiums required pursuant to this Agreement, and the City shall not be obligated to pay any premiums; provided, however, that if Agent 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 Agent's behalf and, after Notice to Agent, 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 Agent.
 - 9) Proof of Insurance. Within thirty (30) days of the Effective Date of this Agreement and at any time during the term hereof, Agent shall furnish the City with certificates of insurance. At least fifteen (15) days prior to the expiration of any such policy, Agent shall submit to the City a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Agent shall, within fifteen (15) days after the date of such notice from the insurer of such cancellation or reduction in coverage, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon reasonable notification by the City to Agent, the City shall have the right to examine Agent'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 Agent, 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 Airport as well as that of Agent, and, based on the written recommendations of such consultant, and in consultation with Agent, to reasonably adjust the insurance coverages and limits required herein but not more often than every eighteen (18) months.

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

Section 903. Damage to Premises.

- A. **Minor Damage.** If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is partially damaged by fire or other casualty, but said circumstances do not render the Premises untenable as determined by the City, the same shall be repaired to usable condition with due diligence by the City as provided in this Section. In such case, the fees payable hereunder with respect to affected Premises shall be paid up to the time of such damage and shall thereafter be abated ratably in the proportion that the untenable area bears to the total Premises of the same category or type of space. Such abatement in fees will continue until the affected Premises are restored adequately for Agent's use.
- B. **Substantial Damage.** If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is so extensively damaged by fire, or other casualty, as to render any portion of said Premises untenable but capable of being repaired, as determined by the City, the same shall be repaired to usable condition with due diligence by the City as provided in this Section. In such case, the fees payable hereunder with respect to affected Premises shall be paid up to the time of such damage and shall thereafter be abated ratably in the proportion that the untenable area bears to the total Premises of the same category or type of space. Such abatement in fees will continue until the affected Premises are restored adequately for Agent's use. The City shall use its best efforts to provide alternate facilities to continue Agent's operation while repair, reconstruction, or replacement is being completed, at a rental rate not to exceed that provided herein for comparable space, provided that Agent's rental costs shall not increase as a result of any such alternate facilities unless Agent requests additional space and/or space replacement of a classification at higher rental rates concurrent with such reassignment to alternate facilities.
- C. **Total Damage.**
- 1) If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is damaged by fire or other casualty, and is so extensively damaged as to render any portion of said Premises incapable of being repaired, as determined by the City, the City shall notify Agent as soon as practicable under the circumstances after the date of such damage of its decision whether to reconstruct or replace said space. However, the City shall be under no obligation to replace or reconstruct such premises. The fees payable hereunder with respect to affected Premises shall be paid up to the time of such damage and thereafter shall cease until such time as replacement or reconstructed space shall be available for use by Agent.
 - 2) If the City elects to reconstruct or replace affected Premises, the City shall use its best efforts to provide alternate facilities to continue Agent's operation while repair, reconstruction, or replacement is being completed, at a rental rate not to exceed that provided herein for comparable space. However, if such damaged space shall not have been replaced or reconstructed, or the City is not diligently pursuing such replacement or reconstruction, within six (6) months after the date of such damage or destruction, Agent shall have the right, upon giving the City thirty (30) days advance Notice, to delete

the affected Premises from this Agreement, but this Agreement shall remain in effect with respect to the remainder of said Premises, unless such damaged or destroyed premises prevent Agent from operating its display advertising agency agreement at the Airport. In the event certain Premises are deleted from the Agreement the MAG and any other rental payments will be proportionally reduced, based upon the percentage of Gross Receipts of the deleted Premises compared to total Gross Receipts generated throughout the Airport during the prior twelve (12) month period, to reflect the loss of the Premises.

- 3) If the City elects not to reconstruct or replace affected Premises, the City shall meet and consult with Agent on ways to permanently provide Agent with adequate replacement space for affected Premises. Agent shall have the right, upon giving the City thirty (30) days advance Notice, to delete the affected Premises from this Agreement, but this Agreement shall remain in full force and effect with respect to the remainder of said Premises, unless the loss of such premises prevents Agent from operating its display advertising agency business at the Airport. In the event certain Premises are deleted from the Agreement, the MAG will be proportionally reduced, based upon the percentage of Gross Receipts of the deleted Premises compared to total Gross Receipt generated throughout the Airport during the prior twelve (12) month period, to reflect the loss of the Premises.

D. Scope of Restoration of Premises.

- 1) The City's obligations to repair, reconstruct, or replace affected Premises under the provisions of this Section shall in any event be limited to using due diligence and best efforts to restore affected Premises to substantially the same condition that existed prior to any such damage and shall further be limited by the provisions of Section 903 A-C. If the City elects to repair, reconstruct, or replace affected premises as provided in this Section, then Agent shall proceed with due diligence and at its sole cost and expense to repair, reconstruct, or replace its signs, fixtures, furnishings, equipment, and other items provided or installed by Agent in or about the Premises in a manner and in a condition at least equal to that which existed prior to said damage or destruction.
- 2) In lieu of the City's repair, reconstruction, or replacement of the affected premises, as provided in this Section, if Agent requests to perform said function with respect to damage under Section 903 A-B, the City may, in its sole discretion, allow Agent to do so. Any such work by Agent must be done in accordance with the requirements of Article VII and Section 801. The City shall reimburse Agent for the cost of such work performed by Agent. Agent shall be considered to be doing such work on its own behalf and not as an agent or contractor of the City.
- 3) Damage from Agent's Negligence. Notwithstanding the provisions of this Section, if damage to or destruction of the Premises is due to the negligent or willful acts of Agent, its agents, servants, or employees, or those under its control, there shall be no abatement of fees during the restoration or replacement of said Premises. In addition, Agent shall have no option to delete the affected Premises from this Agreement. To the extent that the costs of repairs pursuant to this Section shall exceed the amount of any insurance proceeds payable to the City by reason of such damage or destruction, Agent shall timely pay the amount of such additional costs to the City.

Section 904. Indemnification.

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

- 1) The acts or omissions of Agent, its agents, employees, contractors, or suppliers;
- 2) Agent's use or occupancy of the Airport and the Premises; and

- 3) Any violation by Agent in the conduct of Agent's display advertising concession or its use of its Premises or other areas or facilities at the Airport of any provision, warranty, covenant, or condition of this Agreement

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

- B. Agent shall defend, indemnify, pay, and hold harmless the Indemnified Parties from and against all applicable taxes and assessments for which the City may become liable and which by law may be levied or assessed on the Premises, or which arise out of the operations of Agent or by reason of Agent's occupancy of its Premises except for any taxes or assessments based on the gross or net income or gross or net receipts of the City that are not allocable to advertising agency related receipts. However, Agent may, at its own risk, cost, and expense, and at no cost to the City, contest, by appropriate judicial or administrative proceedings, the applicability or the legal or constitutional validity of any such tax or assessment, and the City will, to the extent permitted by law, execute such documents as are necessary to permit Agent to contest or appeal the same. Agent 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 Agent. Agent shall, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not.
- C. Agent shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature associated therewith in any way arising from or based in whole or substantial part upon claim or allegation of a violation of any federal, state, or local laws, statutes, resolutions, regulations, ordinance, or court order affecting the Airport, by Agent, its agents, employees, contractors, or suppliers, in conjunction with Agent's use and/or occupancy of the Premises or its operations at the Airport. Agent will, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not. Agent shall include the substance of this Subsection (C) in every sublease, contract or other agreement which Agent 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. If a prohibited incursion into the air operations area occurs, or if the Airfield Operations Area or sterile area security is breached, by or due to the negligence or willful act or omission of any of Agent's employees, agents, contractors, or suppliers, and such incursion or breach results in a civil penalty action against the City, Agent shall assume the defense of any such action and be responsible for any civil penalty or settlement amount required to be paid by the City as a result of such incursion or breach. The City shall notify Agent 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.
- E. Agent's obligation to defend and indemnify past officers, employees, and agents of the City shall apply to such persons only for claims, suits, demands, actions, liability, loss, damages, judgments, or fines arising from events, occurrences, and circumstances during which said officers, employees, and agents held their office or position with the City.
- F. The City shall promptly notify Agent of each claim, action, proceeding, or suit in respect of which indemnity may be sought by the City against Agent hereunder, setting forth the particulars of such claim, action, proceeding or suit; shall furnish Agent 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 Agent.
- G. The duty to defend, indemnify, hold harmless, and reimburse shall apply to any claim, demands, or suits made against the City for which Agent 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 Agent herein agrees to indemnify and hold the City harmless, the City shall promptly notify Agent of such claim and, if Agent does not settle or compromise such claim, then Agent shall undertake the legal defense of such claim both on behalf of Agent and on behalf of the City, at Agent's expense; provided, however, that Agent shall immediately notify City if a conflict between the interests of Agent and City arises during the course of such representation. Agent shall use counsel reasonably acceptable to the City Counselor of the City or his or her designee, after consultation with the Director, in carrying out its obligations hereunder. The provisions of this section shall survive the expiration

or early termination of this Agreement. It is specifically agreed, however, that the City, at its option and at its own expense, may participate in the legal defense of any claim defended by Agent in accordance with this Section. Any final judgment rendered against the City for any cause for which Agent is liable hereunder shall be conclusive against Agent as to amount upon the expiration of the time for appeal therefrom. Nothing in this Article IX shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim of legal liability against the City. This Section shall not be construed as a waiver of the City's sovereign or other immunity.

- H. The City, at its own expense except as otherwise provided herein, shall be invited to attend and participate in all meetings (including those related to settlement) and to appear and participate in all judicial proceedings and to the extent of its interests, approve, in writing, the terms of any settlement related to any claim, action, proceeding or suit set forth in this Section.
- I. Notwithstanding the provisions of this Section, Agent shall have no obligation to defend, indemnify, or hold harmless the City for any consequential damages or for any amounts to be paid in connection with losses, liabilities, penalties, damages of whatever nature, causes of action, suits, claims, demands, injunctive relief, judgments, awards and settlements if the City is conclusively determined to be more than fifty percent (50%) liable due to contributory negligence.
- J. This Section shall survive the expiration or early termination of this Agreement. Agent understands and agrees that any insurance protection furnished by Agent pursuant to Section 901 shall in no way limit Agent's responsibility to indemnify and hold harmless the City under the provisions of this Agreement.

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

- A. Any acts or omissions of Agent, its officers, directors, employees, agents, contractors, or suppliers, or for any conditions resulting from the operations or activities of Agent's directors, officers, employees, agents, contractors, or suppliers;
- B. Agent'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 Agent's business or other operations or activities, or which might otherwise cause damages to Agent through loss of business, destruction of property, or injury to Agent, 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. Agent shall not assign or transfer this Agreement. In the event there is an assignment of this Agreement by operation of law, the City shall be entitled within 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 Agent's right, title and interest in the Agent's furnishings, Removable Fixtures, or Agent's interest in this Agreement, as a trustee in bankruptcy or as an assignee for the benefit of creditors or in a purchase thereof at a judicial sale or other involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee, or assignee, any rights, title or interest in the City premises or any of the Removable Fixtures, except subject to the City's right to terminate this Agreement.

- B. Agent shall not sublet the Premises and/or subcontract or transfer any part of the services to be performed hereunder, except as may be necessary to comply with the ACDBE participation goal in Article XII of this Agreement or the provision of Airport Network Programming Service. Prior to any contemplated subletting of the Premises or subcontracting of this Agreement, Agent 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 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 agency services are available during the hours of operation required in Section 602 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 Agent is responsible for the performance of its assignees, sublessees, and subcontractors under this Agreement. Agent agrees to initiate and take all corrective action should a subcontractor or sublessee fail to comply with its contract with the Agent 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 shall be effective as it pertains to the City until such time as the City receives a fully executed copy of the approval, subcontract, sublease or agreement as provided for above. Any such assignment or transfer or subcontract of services or the subletting of the Premises without the consent of the City, as provided for above, shall constitute a default on the part of Agent under this Agreement, and the City may terminate this Agreement as provided for in Section 1103. No action or failure to act on the part of any officer, agent or employee of the City shall constitute a waiver by the City of this provision.

ARTICLE XI TERMINATION OF AGREEMENT IN ENTIRETY

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

- A. If the fees, charges, or other money payments which Agent herein agrees to pay, or any part thereof shall remain unpaid after the date the same shall become due and Agent does not satisfy the obligation after written notice and a reasonable cure period.
- B. If during the term of this Agreement, Agent 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 Agent as bankrupt or insolvent; or approving a petition seeking a reorganization of Agent, 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 Agent under this Agreement;
 - 8) Allow a lien to be filed against Agent or any of the equipment or furnishings therein because of or resulting from any act or omission of Agent that is not removed or enjoined within thirty (30) days;
 - 9) Desert, vacate or discontinue all or a portion of its operation of the Premises that in the opinion of the Director results in a failure to provide the public and others the service contemplated hereunder;
 - 10) Fail in the performance of any term, covenant or condition herein required to be performed by Agent when not cured upon written notice and a reasonable cure period.
- C. The City shall have the right to cancel this Agreement at the end of each Contract year by giving ninety (90) days written notice to Agent of the intent to terminate this Agreement.

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

Failure of the City to take any authorized action upon default of any term, covenant or condition required to be performed, kept and observed by Agent shall not be construed to be or act as a waiver of default or in any subsequent default of any term, covenant or condition herein contained to be performed, kept and observed by Agent. The acceptance of monies by the City from Agent for any period or periods after a default by Agent of any term, covenant or condition herein required to be performed, kept and observed by Agent shall not be deemed a waiver or estopping of any right on the part of the City to terminate this Agreement for failure by Agent to so perform, keep or observe any said term, covenant or condition.

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

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

Section 1103. Procedures for Termination with Cause. No termination declared by either party shall 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 shall 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 shall be thirty (30) days after written notice by City to Agent for failure to make any payment when due, or for failure to provide the security for performance as specified in Article V or for failure to provide any insurance coverage as specified in Article IX unless cured in such thirty (30) days after written notice by City to Agent.

Section 1104. Either Party's Right to Terminate Without Cause. Either Party, at its option, may cancel or terminate this Agreement without cause or justification by providing at least six (6) months prior written notice to the non-terminating Party and specifying the termination date in their written notice (the "**Early Termination Date**"); provided that the terminating party is not in default under the terms of this Agreement. This early termination of the Agreement without cause shall be considered a no-fault cancellation. On the giving of such notice, this Agreement and the term hereof shall cease and come to an end on the Early Termination Date, with the same force and effect as if such Early Termination Date was the Expiration Date as defined in Section 401 of this Agreement..

Section 1105. Rights Cumulative. It is understood and agreed that the rights and remedies of the City and Agent specified in this Article are not intended to be and shall not be exclusive of one another or exclusive of any common law right of either of the parties hereto or any other remedies otherwise available to the parties at law or in equity.

ARTICLE XII
AIRPORT CONCESSIONAIRE DISADVANTAGED BUSINESS
ENTERPRISE (ACDBE) PARTICIPATION

Section 1201. Compliance.

- A. Agent agrees, as a condition hereunder, to meet a minimum ACDBE participation goal of not less than thirty percent (30%) participation in the ownership, management and control of the business by the methods of participation allowed by Department of Transportation (DOT) 49 CFR Part 23. The goal shall be measured as a percentage of total Gross Receipts. The goal remains in effect throughout the term of the Agreement and credit toward the ACDBE goal will only be given for the use of Missouri Regional Certification Committee (MRCC) certified ACDBEs. The City anticipates seeking an independent consultant to conduct a disparity study. Upon completion of the study, the City will consider revising the ACDBE goals to a level consistent with the study's identification of available ACDBEs or potential ACDBEs in the St. Louis marketplace.
- B. If these good faith efforts result in the fulfillment of the ACDBE goal, Agent will not be required to perform additional good faith efforts, except in the event that Agent's ACDBE participation fails to continue to meet the goal or comply with the applicable federal regulations. In the event Agent's ACDBE participation fails to continue to meet the goal or comply with applicable federal regulations, Agent 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 Agent.
- C. If these good faith efforts did not result in fulfillment of the ACDBE goal, Agent 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 Agent.
- D. In the event that any ACDBE Sublessee defaults, Agent 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, Agent must make good faith efforts to sublease other rights of Agent to secure ACDBE participation. The Director will determine if Agent has made acceptable good faith efforts. Agent must immediately operate the food and/or beverage unit(s) 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 Agent of its obligation to maintain the minimum participation goal. The Airport DBE Office will provide Agent 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. Agent 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 covered by 49 CFR Part 23. Agent agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.
- F. Agent shall operate its display advertising 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. Agent shall also comply with any City of St. Louis executive orders, resolutions or ordinances enacted, now or in the future, to implement the foregoing federal regulations, as applicable. In the event of breach of any of the above covenants, the City shall have the right to terminate this Agreement.

ARTICLE XIII
LIQUIDATED DAMAGES

Section 1301. Liquidated Damages. Agent 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 Agent defaults or breaches any of the terms, covenants or conditions enumerated below. Therefore, the Agent agrees and stipulates that the Director, on behalf of the City, may elect after

written notice to the Agent of said default or breach to impose the charges set forth below as liquidated damages on the basis of each default or breach. The first default or breach in any category will result in a warning letter. The second default or breach will require Agent to pay liquidated damages in the amount listed below. For the third default or breach in the same category, Agent will pay City liquidated damages in the amount listed below. For the fourth and each subsequent cumulative default or breach, Agent shall pay to City the third default or breach amount. Such liquidated damages shall be due and payable by the Agent within thirty (30) days of the City's request or notice. The stated defaults or breaches in this Section 1301 are cumulative over the term of this Agreement and are in addition to any other remedies City may have under this Agreement or at law or in equity. For any defaults or breaches specified in this section with associated liquidated damages, the City agrees to provide immediate written notice via facsimile and overnight courier of any such default or breach and the amount of liquidated damages due and payable to the City.

LIQUIDATED DAMAGES FOR BREACH OF OPERATING STANDARDS

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

Section 1302. Continuing Operations. The continuous operation of all advertising display areas within the Premises is essential to the provision of excellent customer service to the traveling public. If Agent fails to operate any portion of the Premises set forth in Exhibit "A" for more than five (5) consecutive days, except in the case of damage or destruction of the Premises, Agent, as solely determined and notified in writing by the Director, shall: a) either promptly return said portion of the Premises to the City without cost or liability of any kind what so ever to the City, or b) 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 Agent's failure to earn revenue.

**ARTICLE XIV
MISCELLANEOUS PROVISIONS**

Section 1401. Notice. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, to the Director of Airports, St. Louis Airport Authority, 10701 Lambert International Boulevard, P.O. Box 10212 Lambert Station, St. Louis, MO 63145. **A copy of all notices shall also be mailed to the Airport Properties Manager at the same address.** All notices, demands and requests by the City to Agent shall be sent by certified mail, return receipt requested addressed to:

Mr. Charles Hodge
The Directory Graphics, L.L.C.
1951 Newburyport Road
Chesterfield, Missouri 63005

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

Section 1402. Non-Discrimination and Affirmative Action Program.

A. Agent hereto understands and agrees that the City in the operation and use of Lambert-St. Louis International

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

- B. Agent agrees that in performing under this Agreement, neither he nor anyone under his control will permit discrimination against any employee, worker or applicant for employment because of race, creed, color, religion, sex, national origin or ancestry. Agent will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to the following: actions to bar, employ, upgrade or recruit, expel, discharge, demote or transfer, layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- C. Agent will, in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of the Agent; state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". Agent shall not make inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination because of race, creed, color, religion, sex, national origin or ancestry.
- D. Agent will permit reasonable access by the City to such persons, reports and records as are necessary for the purpose of ascertaining compliance with fair employment practices.
- E. Agent 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 Agent in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, including all labor organizations who may furnish skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.
- F. Whenever Agent is sued by a subcontractor, vendor, individual, group or association as a result of compliance with the clauses (A through E) of these provisions relating to fair employment practices, Agent shall notify the City Counselor in writing of such suit or threatened suit within ten (10) days.
- G. Agent will establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment. The City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.
- H. Agent assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, religion, sex, national origin or ancestry be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Agent 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. Agent assures that it will require that its covered sub organizations provide assurances to the City that they similarly will undertake affirmative action programs and that they will require assurances from their sub organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.
- I. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Agent or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in conjunction 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.
- J. The Agent or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters and causes those businesses to similarly include the statements in further agreements.

Section 1403. No Personal Liability. No Alderman, Commissioner, Director, officer, agent or employee of either party shall be personally liable under or in connection with this Agreement.

Section 1404. Force Majeure. Neither the City nor Agent shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, act of superior governmental authority, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible and which is not within its control.

Section 1405. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, sublessees and assigns of the respective parties hereto.

Section 1406. Quiet Enjoyment. Subject to the terms, covenants and conditions of the Agreement, the City covenants that Agent, on paying the fees and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable possession of the Premises.

Section 1407. Operation and Maintenance of the Airport. The City shall at all times operate the Airport properly and in a sound and economical manner; and the City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

Section 1408. Title to the Site. The Premises from the date hereof until the expiration or early termination of this Agreement shall be owned in fee simple title by the City or in such lesser estate as in the opinion of the City Counselor is sufficient to permit the letting thereof by the City as herein provided for the full term provided in this Agreement.

Section 1409. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any agreements heretofore made between the City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to the City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act as it has been amended from time to time.

Section 1410. Modifications for Granting FAA Funds. In the event that the Federal Aviation Administration requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this document, Agent agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the terms, conditions, or requirements of this Agreement, as may be reasonably required to enable the City to obtain said Federal Aviation Administration funds, provided that in no event shall such changes substantially impair the rights of Agent hereunder.

Section 1411. Governing Law. This Agreement shall be deemed to have been made in and be construed in accordance with the laws of the State of Missouri, and is subject to the City's Charter and ordinances, as they may be amended from time to time.

Section 1412. Headings. The headings of the Articles and Sections of this Agreement are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 1413. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by representatives of all the parties hereto. However, the Director in the best interest of the Airport, the City and the traveling public is hereby authorized, on behalf of the City, to amend or modify Exhibit A, entitled "Premises".

Section 1414. Previous Agreements. It is expressly understood that the terms and provisions of this Agreement shall in no way affect or impair the terms, obligations or conditions of any existing or prior agreement between Agent and the City.

Section 1415. Required Approvals. When the consent, approval, waiver, or certification of other party is required under the terms of this Agreement, such approval must be in writing and signed by the party approving. Whenever the approval of the City or the Director is required, the approval must be from the Director or his/her authorized or designated representative. The City and Agent agree that extensions of time for performance may be made by the written mutual consent of the Director and Agent or its designee. Whenever the approval of the City, or the Director, or of Agent is required herein, no such approval shall be unreasonably requested, delayed, or withheld, unless otherwise expressly provided for herein.

Section 1416. Waivers. No waiver of default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms,

covenants or conditions herein contained to be performed, kept and observed by the other party. Any waiver must be in writing and signed by the party waiving.

Section 1417. Invalid Provisions. In the event any term, covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such term, covenant, condition or provision does not materially prejudice either the City or Agent in its respective rights and obligations contained in the valid terms, covenants, conditions and provisions of this Agreement.

Section 1418. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire Agreement between the parties hereto and all other representations or statements heretofore made, verbal or written, are merged herein and this Agreement may be amended only in writing and executed by duly authorized representatives of the parties hereto.

Section 1419. Not a Lease. This Agreement is not a lease, and the right to use the Premises is entirely dependent upon the rights and privileges granted hereunder. Agent will in no instance be deemed to have acquired any possessory rights against the City or the Premises or be deemed to be a tenant of the City.

Section 1420. Advertising. Agent shall have no right to use the trademarks, symbols, trade names or name of the Airport or Premises, either directly or indirectly, in connection with any production, promotion service or publication without the prior written consent of the Director.

Section 1421. Conflicts Between Tenants. In the event of a conflict between Agent and any other tenant, licensee or concessionaire, as to the respective rights of the others, the Director shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each party, and Agent agrees to be bound by such decision. All determinations by the Director are final and binding.

Section 1422. Prevailing Wage. Agent shall, as a condition of the Agreement, include in all service contracts pertaining to the Premises, language specifying the minimum prevailing wages to be paid and fringe benefits to be provided by the service contractor to employees of said service contractor. This section is in accordance with and is subject to City Ordinance No. 62124.

Section 1423. Solicitation for Bids. This Section was intentionally deleted.

Section 1424. Americans with Disabilities Act (ADA). Agent shall be responsible for compliance with the Federal ADA, plus any federal, state, or local laws or regulations and City Ordinances pertaining to the disabled individual having access to Agent's services.

Section 1425. Time is of the Essence. Time is of the essence in this Agreement. The parties agree that time shall be of the essence in the performance of each and every obligation and condition of this Agreement.

Section 1426. Acknowledgment of Terms and Conditions. The parties affirm each has full knowledge of the terms, covenants, conditions and requirements contained in this Agreement. As such, the terms of this Agreement shall be fairly construed and the usual rule of construction, if applicable, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed in the interpretation of this Agreement or any amendments, modifications or exhibits thereto.

Section 1427. Security Plan and Facilities. Agent hereby acknowledges that the City is required by the Transportation Security Administration's (TSA) regulation 1542 to adopt and put into use facilities and procedures designed to prevent and deter persons and vehicles from unauthorized access to Airfield Operations Areas (AOA). The City has met said requirements by developing a master security plan for the Airport, and Agent covenants and agrees to be fully bound by and immediately responsive to the requirements of the plan in connection with Agent's exercise of the privileges granted to Agent hereunder. Agent 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 Agent's negligence or failure to act in relation to TSA regulation 1542 or any other applicable airport security regulations.

Section 1428. Environmental Notice. Agent shall promptly notify the Director of (i) any change in the nature of the Agent's operations on the Premises that will materially and/or substantially change the Agent's or City's potential obligations or liabilities under the Environmental Laws; or (ii) the commencement by any governmental entity of a formal administrative proceeding before an administrative law judge or a civil or criminal action before a judicial tribunal alleging a violation of any environmental law in connection with Agent's operations on the Premises. (See Exhibit C entitled "Environmental Requirements" which is attached hereto and incorporated herein.)

Section 1429. 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 Agent hereby warrants, represents, stipulates and agrees to comply with these measures:

- A. Minimum Compensation: Agent 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 Agent 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: Agent 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 Agent's employees within thirty (30) days of Agreement execution for existing employees and within thirty (30) days of employment for new employees.
- C. Posting: Agent shall post the Living Wage Bulletin, together with a "Notice of Coverage", in English, Spanish and other languages spoken by a significant number of Agent's employees, in a prominent place in a communal area of each worksite covered by the Agreement.
- D. Subcontractors and Sublessees: Agent 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. Agent shall include these Living Wage Compliance Provisions in any contract with such Subcontractors and Sublessees.
- E. Term of Compliance: Agent 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: Agent shall provide the annual reports and attachments required by the Ordinance and Regulations.
- G. Penalties: Agent 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. Agent hereby acknowledges receipt of a copy of the Ordinance and Regulations.

Notwithstanding the preceding, all of the provisions of this Section 1429, or any part thereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. (See Sec. 3(G) of City Ordinance 65597).

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

AGENT BY:

ATTESTED TO BY:

Title: _____

Title: _____

Date: _____

Date: _____

FEDERAL TAX ID# _____

THE CITY OF ST. LOUIS, MISSOURI, OPERATING LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT® pursuant to City Ordinance # _____ approved the _____ day of _____, 200_:

The foregoing Agreement was approved by the Airport Commission at its meeting on the _____ day of _____, 200_.

BY: _____
Commission Chairman and Director of Airports Date

The foregoing Agreement was approved by the Board of Estimate and Apportionment at its meeting on the _____ day of _____, 200_.

BY: _____
Secretary, Board of Estimate and Apportionment Date

APPROVED AS TO FORM ONLY BY:

COUNTERSIGNED BY:

City Counselor Date
City of St. Louis

Comptroller Date
City of St. Louis

ATTESTED TO BY:

Register, City of St. Louis Date

**EXHIBIT "A"
PREMISES**

**EXHIBIT "B"
LIVING WAGE ANNOUNCEMENT BULLETIN**

ST. LOUIS LIVING WAGE ORDINANCE

LIVING WAGE ADJUSTMENT BULLETIN

**NOTICE OF ST. LOUIS LIVING WAGE RATES
EFFECTIVE APRIL 1, 2009**

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 **\$11.33** 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 **\$14.57** 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: **\$3.24** 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, 2009**. 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.stlouiscity.com/livingwage> or obtained from:

City Compliance Official
DBE Program Office -4th Floor
11495 Navaid Road
St. Louis, MO 63044
(314) 551-5000

Dated: February 14, 2009

EXHIBIT "C"
ENVIRONMENTAL REQUIREMENTS

EXHIBIT "C"
ENVIRONMENTAL REQUIREMENTS

Agent warrants, covenants, stipulates and agrees that in conducting any activities or business at the Airport, including any activities directly related or incidental to its performance of obligations under the Agreement, Agent shall comply with any and all applicable Environmental Laws. Agent further covenants and warrants as follows:

(a) Environmental Permits.

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

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

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

(c) Environmental Remediation. Agent shall undertake all necessary steps required under applicable Environmental Laws and Environmental Permits to remedy and remove at its cost any Hazardous Material, or environmental condition or damage to the extent caused by, or resulting solely from, the activities, conduct of Agent or its agents, employees, contractors, or suppliers at the Airport, whether resulting from negligent conduct or otherwise ("**Remediation Work**"). Such Remediation Work shall be performed at Agent's expense. Except in the event of an emergency, such Remediation Work shall be performed after Agent submits to the City a written plan for completing such Remediation Work and receives the prior approval of the City through Notice; provided, however, that the City's approval shall not be unreasonably withheld or delayed. The City expressly reserves the right to review and approve any proposed: remedial investigations, remedial work plans, interim and final remedies, institutional controls or other associated documents prior to submittal to the relevant governmental agencies responsible for enforcing Environmental Laws or Environmental Permits. Specific cleanup levels for any Remediation Work by Agent shall be designed to meet and satisfy the requirements of all applicable

Environmental Laws and Environmental Permits, as determined by the governmental agency responsible for enforcing Environmental Laws or Environmental Permits. Neither an ongoing remediation, including any testing or monitoring, nor the use of institutional controls, shall either unreasonably or materially impair or interfere with the City's use and enjoyment of its property or the Airport, or that of current and future tenants. The City shall have the right to conduct a reasonable review and inspect all such Remediation Work at any time using consultants and representatives of its choice.

- (d) Access for Environmental Inspection. Upon reasonable notification to Agent, the City shall have reasonable access to the Premises to inspect the same in order to confirm that Agent is using the Premises in accordance with all applicable Environmental Laws and Environmental Permits. Agent shall cooperate fully with any such inspections provided that such inspections shall not unreasonably interfere with Agent's operations. If the City's inspection results in any type of written report, the City shall provide Agent a reasonable opportunity to timely review and comment on a draft of the report. Agent shall provide to City for its review and comment copies of: any and all notices of alleged non-compliance issued by governmental agencies responsible for enforcing Environmental Laws or Environmental Permits; draft official submittals (proposed final drafts) prepared by, or on behalf of, Agent responding to such alleged non-compliance; and any and all consent orders or administrative determinations, whether preliminary or final, issued by such governmental agencies. The City agrees to maintain the confidentiality of the documents produced in accordance with this subsection to the extent consistent with the City's legal obligations.
- (e) Corrective Action by City. If Agent fails to comply with any applicable Environmental Laws or Environmental Permits governing its activities at the Airport, or if Agent fails to conduct necessary Remediation Work in a timely manner as required under this Exhibit C, 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 Leased Premises and take all reasonable and necessary actions to conduct Remediation Work to remove Hazardous Materials or other contaminants and insure such compliance with such Environmental Laws and Environmental Permits. All Remediation Costs incurred by the City shall be paid or reimbursed by Agent. Remediation Work, if necessary, shall be performed in accordance with the provisions of subsection (C) above, but only after first having provided Notice to Agent of such failure to comply, and 30 days within which Agent may demonstrate why no such alleged failure is present, or to timely remedy such alleged failure that may be present. If Agent's compliance reasonably requires more than 30 days to complete, the City may enter the Premises and take such reasonable and necessary measures to achieve compliance only upon Agent's failing to timely begin curing such noncompliance within such 30 day period and to continue diligently working to achieve compliance thereafter.
- (f) Review of Environmental Documents. At the reasonable request of the City, Agent shall make available for inspection and copying, at reasonable times, any and all non-privileged documents and materials Agent has prepared pursuant to any applicable Environmental Laws or Environmental Permits, or submitted to any governmental agency, which documents and materials relate to environmental issues, Environmental Laws or Environmental Permits and which pertain to the Airport or the Premises, and which would be discoverable in litigation.
- (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 under this Exhibit C shall survive the expiration or early termination of the Agreement.

Approved: March 9, 2010

ORDINANCE #68584
Board Bill No. 307

An Ordinance authorizing and directing the Fire Chief, on behalf of the City of St. Louis, to enter into and execute a Grant Agreement with the U. S. Department of Health and Human Services, Health Resources and Services Administration, to fund a public access defibrillator demonstration project, upon approval of the Board of Estimate and Apportionment, and to expend funds by entering into contracts or otherwise for grant purposes and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Fire Chief is hereby authorized and directed, on behalf of the City of St. Louis, to enter into and execute a Grant Agreement with U. S. Department of Health and Human Services, Health Resources and Services Administration, to fund a public access defibrillator demonstration project.

SECTION TWO. The Fire Chief is hereby authorized and directed, upon approval of the Board of Estimate and Apportionment, to expend the funds, which are hereby appropriated for said purpose, by entering into contracts or otherwise received pursuant to the Grant Agreement, totaling \$454,185 in a manner that is consistent with the provisions of said Agreement, a copy of which is attached hereto and shall become part of the ordinance.

SECTION 3. Emergency Clause. This being an Ordinance for the immediate preservation of public peace, health and safety, it is hereby declared to be an immediate measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and therefore this Ordinance shall become effective immediately upon its passage and approval by the Mayor.

NOTICE OF GRANT AWARD (Continuation Sheet)

Page 2	Date Issued: 08/28/2009
Award Number: 1 D67RH16306-01-00	

HRSA Electronic Handbooks (EHBs) Registration Requirements

The Project Director of the grant (listed on this NGA) and the Authorizing Official of the grantee organization are required to register (if not already registered) within HRSA's Electronic Handbooks (EHBs). Registration within HRSA EHBs is required only once for each user for each organization they represent. To complete the registration quickly and efficiently we recommend that you note the 10-digit grant number from box 4b of this NGA. After you have completed the initial registration steps (i.e., created an individual account and associated it with the correct grantee organization record), be sure to add this grant to your portfolio. This registration in HRSA EHBs is required for submission of noncompeting continuation applications. In addition, you can also use HRSA EHBs to perform other activities such as updating addresses, updating email addresses and submitting certain deliverables electronically. Visit <https://grants.hrsa.gov/webexternal/login.asp> to use the system. Additional help is available online and/or from the HRSA Call Center at 1-877-464-4772.

Terms and Conditions

Failure to comply with the special remarks and condition(s) may result in a draw down restriction being placed on your Payment Management System account or denial of future funding.

Grant Conditions:

- ✓ 1. Due Date: Within 30 days of Award Issue Date
Submit separate one-year budget and budget narrative for each of the 3 years within the project period. The budget should include all information requested as outlined in the FY 2009 Public Access to Defibrillation Demonstration Project guidance to enable HRSA to streamline the continuation process.

Program Terms:

1. On a regularly scheduled basis, HRSA grantees are required during their project period to participate in a performance review of their HRSA funded program(s) by a review team from HRSA's Office of Performance Review. If your organization has been selected for a performance review, you will be contacted at least twelve weeks before your performance review begins in order to provide you with additional information about the scope and process for your review, and to schedule the dates for the on-site phase. Upon completion of the performance review, grantees are expected to prepare an Action Plan that identifies key actions to improve program performance as well as addresses any identified program requirement issues.

Standard Terms:

- All discretionary awards issued by HRSA on or after October 1, 2006, are subject to the HHS Grants Policy Statement (HHS GPS) unless otherwise noted in the Notice of Award (NoA). Parts I through III of the HHS GPS are currently available at <http://ftp.hrsa.gov/grants/hhsgrantspolycystatement.pdf> and it is anticipated that Part IV, HRSA program-specific guidance will be available at the website in the near future. In addition, HRSA-specific contacts will be appended to Part III of the GPS which identifies Department-wide points of contact. Please note that the Terms and Conditions explicitly noted in the award and the HHS GPS are in effect. Once available, Part IV, HRSA program-specific guidance will take precedence over Parts I and II in situations where there are conflicting or otherwise inconsistent policies.
- The HHS Appropriations Act requires that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments, shall clearly state the percentage of the total costs of the program or project which will be financed with Federal money, the dollar amount of Federal funds for the project or program, and percentage and a dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.
- Recipients and sub-recipients of Federal funds are subject to the strictures of the Medicare and Medicaid anti-kickback statute (42 U.S.C. 1320a - 7b(b)) and should be cognizant of the risk of criminal and administrative liability under this statute, specifically under 42 U.S.C. 1320 7b(b) Illegal remunerations which states, in part, that whoever knowingly

1. DATE ISSUED: 08/28/2009		2. PROGRAM CFDA: 93.259		DEPARTMENT OF HEALTH AND HUMAN SERVICES HEALTH RESOURCES AND SERVICES ADMINISTRATION  NOTICE OF GRANT AWARD AUTHORIZATION (Legislation/Regulation) P.L.107-188, Section 105 Section 330A of the Public Health Service Act, note (42 U.S.C. 254c, note)							
3. SUPERCEDES AWARD NOTICE dated: <small>except that any additions or restrictions previously imposed remain in effect unless specifically rescinded.</small>											
4a. AWARD NO.: 1 D67RH16306-01-00		4b. GRANT NO.: D67RH16306	5. FORMER GRANT NO.:								
6. PROJECT PERIOD: FROM: 09/01/2009 THROUGH: 08/31/2012											
7. BUDGET PERIOD: FROM: 09/01/2009 THROUGH: 08/31/2010											
8. TITLE OF PROJECT (OR PROGRAM): Public Access Defibrillation Demonstration Projects											
9. GRANTEE NAME AND ADDRESS: St. Louis Fire Department 1421 N. Jefferson St. Louis, MO 63106-2136			10. DIRECTOR: (PROGRAM DIRECTOR/PRINCIPAL INVESTIGATOR) Douglas Randell St. Louis Fire Department 1421 N. Jefferson St. Louis, MO 63106-2136								
11. APPROVED BUDGET: (Excludes Direct Assistance) <input checked="" type="checkbox"/> Grant Funds Only <input type="checkbox"/> Total project costs including grant funds and all other financial participation			12. AWARD COMPUTATION FOR FINANCIAL ASSISTANCE								
a. Salaries and Wages: \$ 0.00 b. Fringe Benefits: \$ 0.00 c. Total Personnel Costs: \$ 0.00 d. Consultant Costs: \$ 0.00 e. Equipment: \$ 0.00 f. Supplies: \$ 0.00 g. Travel: \$ 0.00 h. Construction/Alteration and Renovation: \$ 0.00 i. Other: \$ 0.00 j. Consortium/Contractual Costs: \$ 0.00 k. Trainee Related Expenses: \$ 0.00 l. Trainee Stipends: \$ 0.00 m. Trainee Tuition and Fees: \$ 0.00 n. Trainee Travel: \$ 0.00 o. TOTAL DIRECT COSTS: \$ 148,567.00 p. INDIRECT COSTS: (Rate: % of S&W/TADC) \$ 0.00 q. TOTAL APPROVED BUDGET: \$ 148,567.00 i. Less Non-Federal Resources: \$ 0.00 ii. Federal Share: \$ 148,567.00			a. Authorized Financial Assistance This Period \$ 148,567.00 b. Less Unobligated Balance from Prior Budget Periods i. Additional Authority \$ 0.00 ii. Offset \$ 0.00 c. Unawarded Balance of Current Year's Funds \$ 0.00 d. Less Cumulative Prior Award(s) This Budget Period \$ 0.00 e. AMOUNT OF FINANCIAL ASSISTANCE THIS ACTION \$ 148,567.00								
13. RECOMMENDED FUTURE SUPPORT: (Subject to the availability of funds and satisfactory progress of project)											
<table border="1"> <thead> <tr> <th>YEAR</th> <th>TOTAL COSTS</th> </tr> </thead> <tbody> <tr> <td>02</td> <td>\$ 157,332.50</td> </tr> <tr> <td>03</td> <td>\$ 148,285.00</td> </tr> </tbody> </table>						YEAR	TOTAL COSTS	02	\$ 157,332.50	03	\$ 148,285.00
YEAR	TOTAL COSTS										
02	\$ 157,332.50										
03	\$ 148,285.00										
14. APPROVED DIRECT ASSISTANCE BUDGET: (In lieu of cash)											
a. Amount of Direct Assistance \$ 0.00 b. Less Unawarded Balance of Current Year's Funds \$ 0.00 c. Less Cumulative Prior Awards(s) This Budget Period \$ 0.00 d. AMOUNT OF DIRECT ASSISTANCE THIS ACTION \$ 0.00											
15. PROGRAM INCOME SUBJECT TO 45 CFR Part 74.24 OR 45 CFR 92.25 SHALL BE USED IN ACCORD WITH ONE OF THE FOLLOWING ALTERNATIVES: A=Addition B=Deduction C=Cost Sharing or Matching D=Other [A] Estimated Program Income: \$ 0.00											
16. THIS AWARD IS BASED ON AN APPLICATION SUBMITTED TO, AND AS APPROVED BY HRSA, IS ON THE ABOVE TITLED PROJECT AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING: <small>a. The grant program legislation cited above. b. The grant program regulation cited above. c. This award notice including terms and conditions. If any, noted below under REMARKS. d. 45 CFR Part 74 or 45 CFR Part 92 as applicable. In the event there are conflicting or otherwise inconsistent policies applicable to the grant, the above order of precedence shall prevail. Acceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn or otherwise obtained from the grant payment system.</small>											
REMARKS: (Other Terms and Conditions Attached <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No)											
Electronically signed by Dorothy M. Kelley, Grants Management Officer on: 08/28/2009											
17. OBJ. CLASS: 41.45		18. CRS-EIN: 1436003231B7		19. FUTURE RECOMMENDED FUNDING:							
FOYON	GRD	DOCUMENT NO.	AMT FIN ASS	AMT DIR ASST	SUBPROJ CODE						
09-3704189	93.259	D67RH16306A0	\$ 148,567.00	\$ 0.00	N/A						

NOTICE OF GRANT AWARD (Continuation Sheet)

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and willfully:

(A) Solicits or receives (or offers or pays) any remuneration (including kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind, in return for referring (or to induce such person to refer) an individual to a person for the furnishing or arranging for the furnishing of any item or service, OR

(B) In return for purchasing, leasing, ordering, or recommending purchasing, leasing, or ordering, or to purchase, lease, or order, any goods, facility, services, or item

....For which payment may be made in whole or in part under subchapter XIII of this chapter or a State health care program, shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000 or imprisoned for not more than five years, or both.

4. Items that require prior approval from the awarding office as indicated in 45 CFR Part 74.25 [Note: 74.25 (d) HRSA has not waived cost-related or administrative prior approvals for recipients unless specifically stated on this Notice of Grant Award] or 45 CFR Part 92.30 must be submitted in writing to the Grants Management Officer (GMO). Only responses to prior approval requests signed by the GMO are considered valid. Grantees who take action on the basis of responses from other officials do so at their own risk. Such responses will not be considered binding by or upon the HRSA.

In addition to the prior approval requirements identified in Part 74.25, HRSA requires grantees to seek prior approval for significant rebudgeting of project costs. Significant rebudgeting occurs when, under a grant where the Federal share exceeds \$100,000, cumulative transfers among direct cost budget categories for the current budget period exceed 25 percent of the total approved budget (inclusive of direct and indirect costs and Federal funds and required matching or cost sharing) for that budget period or \$250,000, whichever is less. For example, under a grant in which the Federal share for a budget period is \$200,000, if the total approved budget is \$300,000, cumulative changes within that budget period exceeding \$75,000 would require prior approval. For recipients subject to 45 CFR Part 92, this requirement is in lieu of that in 45 CFR 92.30(c)(1)(ii) which permits an agency to require prior approval for specified cumulative transfers within a grantee's approved budget. [Note, even if a grantee's proposed rebudgeting of costs falls below the significant rebudgeting threshold identified above, grantees are still required to request prior approval, if some or all of the rebudgeting reflects either a change in scope, a proposed purchase of a unit of equipment exceeding \$25,000 (if not included in the approved application) or other prior approval action identified in Parts 74.25 and 92.30 unless HRSA has specifically exempted the grantee from the requirement(s).]

5. Payments under this award will be made available through the ~~DHHS Payment Management System (PMS)~~ PMS is administered by the Division of Payment Management, Financial Management Services, Program Support Center, which will forward instructions for obtaining payments. Inquiries regarding payment should be directed to: Payment Management, DHHS, P.O. Box 6021, Rockville, MD 20852, <http://www.dpm.psc.gov/> or Telephone Number: 1-877-614-5533.
6. The DHHS Inspector General maintains a toll-free hotline for receiving information concerning fraud, waste, or abuse under grants and cooperative agreements. Such reports are kept confidential and callers may decline to give their names if they choose to remain anonymous. Contact: Office of Inspector General, Department of Health and Human Services, Attention: HOTLINE, 330 Independence Avenue Southwest, Cohen Building, Room 5140, Washington, D. C. 20201, Email: Htips@os.dhhs.gov or Telephone: 1-800-447-8477 (1-800-HHS-TIPS).
7. Submit audits, if required, in accordance with OMB Circular A-133, to: Federal Audit Clearinghouse Bureau of the Census 1201 East 10th Street Jefferson, IN 47132 PHONE: (310) 457-1551, (800)253-0696 toll free <http://harvester.census.gov/sac/facconta.htm>
8. EO 13166, August 11, 2000, requires recipients receiving Federal financial assistance to take steps to ensure that people with limited English proficiency can meaningfully access health and social services. A program of language assistance should provide for effective communication between the service provider and the person with limited English proficiency to facilitate participation in, and meaningful access to, services. The obligations of recipients are explained on the OCR website at <http://www.hhs.gov/ocr/lep/reviselep.html>.
9. This award is subject to the requirements of Section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104). For the full text of the award term, go to <http://www.hrsa.gov/grants/trafficking.htm>. If you are unable to access this link, please contact the Grants Management Specialist identified in this Notice of Grant

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Award to obtain a copy of the Term.

~~Reporting Requirements~~

1. **Due Date: Within 90 days of Budget End Date**
The grantee must submit a Financial Status Report within 90 days after the budget period end date. This report should reflect cumulative reporting within the project period and must be submitted using the Electronic Handbook (EHB).
2. **Due Date: Within 90 days of Budget End Date**
An annual Performance Report (in the format prescribed by the Office of Rural Health Policy) must be received by the Office of Rural Health Policy within 90 days of the end of the budget period. This annual report will serve as the non-competing continuation application and is required for receiving continued grant support in years two and three. The report will require you to document progress achieved with grant funds during the past year, as well as, outline plans for the upcoming year and note any significant change in your proposed budget. Instructions for preparing and submitting this report will be sent to grantees prior to the end of the budget period and must be submitted using the Electronic Handbook (EHB).

Failure to comply with these reporting requirements will result in deferral or additional restrictions of future funding decisions.

NGA Email Address(es):

phillipsdd@stlouiscity.com;randellD@stlouiscity.com

Note: NGA emailed to these address(es)

Contacts:

Program Contact: For assistance on programmatic issues, please contact Michele Pray-Gibson at:

9A-55

HRSA/ORHP

5600 Fishers Ln

Rockville, MD 20852-1750

Phone: (301)443-7320

Email: mpray@hrsa.gov

Division of Grants Management Operations: For assistance on grants administration issues, please contact Carolyn

Cobb at:

11A-02

HRSA/OFAM/DGMO

5600 Fishers Ln

Rockville, MD 20852-1750

Phone: (301)443-0829

Email: ccobb2@hrsa.gov

Fax: (301)443-6343

Responses to reporting requirements, conditions, and requests for post award amendments must be mailed to the attention of the Office of Grants Management contact indicated above. All correspondence should include the Federal grant number (item 4 on the award document) and program title (item 8 on the award document). Failure to follow this guidance will result in a delay in responding to your request.

Approved: March 9, 2010

ORDINANCE #68585
Board Bill No.311

An ordinance authorizing the execution of an amendment to Redevelopment Agreement by and between the City of St. Louis and ParkPacific TIF, Inc.; prescribing the form and details of said amendment; making certain findings with respect thereto; authorizing other related actions; and containing a severability clause, an appropriation clause, and an emergency clause.

WHEREAS, pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865 of the Revised Statutes of Missouri, as amended (the "*Act*" or "*TIF Act*"), the City adopted Ordinance No. 67235 (the "*Approving Ordinance*"), which Approving Ordinance (i) designated as a "redevelopment area" a certain portion of the City (the "*Redevelopment Area*"), (ii) approved a redevelopment plan titled "Park Pacific TIF Redevelopment Plan" (the "*Redevelopment Plan*"), (iii) approved the redevelopment project described in the Redevelopment Plan (the "*Redevelopment Project*"), (iv) adopted tax increment allocation financing within the Redevelopment Area, and (v) established the "Park Pacific Special Allocation Fund" all as set forth in the Approving Ordinance and in accordance with the requirements of the Act; and

WHEREAS, pursuant to provisions of the Act, the City adopted Ordinance No. 67526, which authorized the execution of a redevelopment agreement (as subsequently executed as of October 27, 2008, the "*Redevelopment Agreement*") by and between the City and ParkPacific TIF, Inc. (the "*Developer*") setting forth the terms and obligations of the parties with respect to the implementation of the Redevelopment Project approved in the Approving Ordinance; and

WHEREAS, pursuant to the provisions of the Act, the City adopted Ordinance No. 67584, which was subsequently amended by Ordinance No. _____ (BB# ___) (as so amended, the "*Note Ordinance*"), which authorized and directed the issuance and delivery of not to exceed \$21,410,000 principal amount of Tax Increment Revenue Notes (Park Pacific Redevelopment Project), Series 200_-A/B (the "*TIF Notes*"), to finance the development of the Redevelopment Project; and

WHEREAS, the Developer and the City desire to approve and execute an amendment to the Redevelopment Agreement (the "*Amendment*") to extend the deadlines for commencement and completion of the Redevelopment Project and to amend or modify certain other terms of the Redevelopment Agreement, including the issuance of subordinate TIF Notes.

WHEREAS, it is hereby found and determined that it is necessary and advisable and in the best interest of the City and of its inhabitants to authorize the City to execute the Amendment in order to amend the Redevelopment Agreement as it concerns the deadlines for commencement and completion of the Redevelopment Project and certain other terms of the Redevelopment Agreement, including the issuance of subordinate TIF Notes; and

WHEREAS, the Board of Aldermen hereby determines that the terms of the Amendment attached as **Exhibit A** hereto and incorporated herein by reference are acceptable and that the execution, delivery and performance by the City and the Developer of the attached Amendment is necessary and desirable and in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes specified in the TIF Act.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

Section 1. The Board of Aldermen finds and determines that it is necessary and desirable to enter into the Amendment with the Developer in order to implement the Redevelopment Project and to enable the Developer to carry out its proposal for development of the Redevelopment Project.

Section 2. The Board of Aldermen hereby approves, and the Mayor and Comptroller of the City are hereby authorized and directed to execute, on behalf of the City, the Amendment by and between the City and the Developer attached hereto as **Exhibit A**, and the City Register is hereby authorized and directed to attest to the Amendment and to affix the seal of the City thereto. The Amendment shall be in substantially the form attached, with such changes therein as shall be approved by said Mayor and Comptroller executing the same and as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized.

Section 3. The Mayor and Comptroller of the City or their designated representatives are hereby authorized and directed to take any and all actions to execute and deliver for and on behalf of the City any and all additional certificates, documents, agreements or other instruments as may be necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such action by the Mayor and the Comptroller or their designated representatives.

Section 4. The Mayor and the Comptroller or their designated representatives, with the advice and concurrence

of the City Counselor and after approval by the Board of Estimate and Apportionment, are hereby further authorized and directed to make any changes to the documents, agreements and instruments approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such changes by the Mayor and the Comptroller or their designated representatives.

Section 5. It is hereby declared to be the intention of the Board of Aldermen that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Aldermen intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

EXHIBIT A

Form of First Amendment to Redevelopment Agreement (Attached hereto.)

FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT

This First Amendment to Redevelopment Agreement (this "Amendment") is made and entered into as of this ___ day of _____, 2010, by and between the **CITY OF ST. LOUIS, MISSOURI**, a municipal corporation and political subdivision of the State of Missouri ("City"), and **PARKPACIFIC TIF, INC.**, a Missouri corporation ("Developer").

RECITALS

A. By Ordinance No. 67235, the City, upon the recommendation of the TIF Commission, approved the Park Pacific TIF Redevelopment Plan for the Park Pacific Redevelopment Area (the "Redevelopment Area") dated April 21, 2006, as amended June 23, 2006, with amendments, if any, from time to time (the "Redevelopment Plan"), which Redevelopment Area was more fully described therein;

B. By Ordinance No. 67526, the City affirmed adoption of the Redevelopment Plan, designated the Developer as developer of the Redevelopment Area, and authorized the City to enter into a Redevelopment Agreement with the Developer (the "Redevelopment Agreement") with respect to the Park Pacific Redevelopment Project (the "Redevelopment Project");

C. The City and the Developer entered into the Redevelopment Agreement for the Redevelopment Project as of October 27, 2008;

D. In light of difficult economic conditions and in consideration of the continued progress that the Developer has made with the Redevelopment Project, the City and the Developer desire to enter into this Amendment to extend the deadlines for commencement and completion of the Redevelopment Project and to amend or modify certain other terms of the Redevelopment Agreement.

AGREEMENT

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The first paragraph of Section 3.4 of the Redevelopment Agreement shall be deleted in its entirety and replaced with the following:

3.4 Developer to Construct the Work. The Developer shall commence or cause the commencement of the construction of the Work not later than June 30, 2010, which Work shall be constructed in a good and workmanlike manner in accordance with the terms of this Agreement and the Redevelopment Plan. The Developer shall substantially complete or cause the Work to be substantially complete not later than December 31, 2011 absent an event of Force Majeure. In the event of any delay caused by an event of Force Majeure as defined in **Section 7.5** of this Agreement, Developer shall be granted additional time to complete the Work, but under no circumstance shall such time to complete

the Work extend beyond December 31, 2012.

2. The definition of the term "TIF Notes" in Section 1.1 of the Redevelopment Agreement shall be deleted in its entirety and replaced with the following:

"TIF Notes" means one or more series of tax increment revenue notes issued by the City pursuant to and subject to this Agreement and the Note Ordinance, to evidence the City's limited obligation to repay Reimbursable Redevelopment Project Costs incurred by or on behalf of the Developer on behalf of the City in accordance with the TIF Act and this Agreement.

3. The definition of the term "Project Lender" in Section 1.1 of the Redevelopment Agreement shall be deleted in its entirety and replaced with the following:

"Project Lender" means a commercial bank, savings bank, savings and loan association, credit union or other financial institution that has loaned funds to the Developer or a Related Entity to be used for construction of the Redevelopment Project and has secured such loan with a mortgage or security interest in the Redevelopment Project.

4. The definition of the term "Note Ordinance" in Section 1.1 of the Redevelopment Agreement shall be deleted in its entirety and replaced with the following:

"Note Ordinance" means Ordinance No. 67584, as amended by Ordinance No. [_____], adopted by the Board of Aldermen and signed by the Mayor authorizing the TIF Notes and TIF Obligations, any trust indenture relating thereto, and all related proceedings.

5. The following sentence shall be added to the end of Section 2.1 of the Redevelopment Agreement:

Wherever applicable herein, any requirement imposed upon Developer shall be satisfied to the extent Developer takes such action or causes such action to be taken, and Developer may modify the form of any certificate attached hereto as an Exhibit to reflect that Developer has caused any action provided for therein to have been taken.

6. Section 7.3.2 of the Redevelopment Agreement contains the phrase "...the fee title to the Property shall not be sold, transferred or otherwise disposed of and the rights, duties and obligations of the Developer under this Agreement shall not be assigned...", which shall be amended to read as follows:

...the fee title to the Property shall not be sold, transferred or otherwise disposed of (to anyone other than a Related Entity) and the rights, duties and obligations of the Developer under this Agreement shall not be assigned...

7. Section 5.6 of the Redevelopment Agreement shall be deleted in its entirety and replaced with the following:

5.6. Subordinate Notes. TIF Notes may be issued in two series, with one series subordinate to TIF Notes of the other series issued hereunder (the "Subordinate Notes"), such that no payment of principal or interest on any such Subordinate Notes may be made while any TIF Notes are outstanding. All such Subordinate Notes shall be payable as to principal and interest according to the terms set forth in **Sections 5.4** and **6.3** of this Agreement.

If the amount of TIF Bonds issued pursuant to this Agreement is insufficient to refund all of the outstanding TIF Notes, the TIF Notes remaining outstanding shall be redeemed by the issuance of Subordinate Notes. Each Subordinate Note shall have the same maturity and have the same outstanding principal amount and the same interest rate as the TIF Note it redeems. All such Subordinate Notes shall be payable as to principal and interest according to the terms set forth in **Sections 5.4** and **6.3** of this Agreement.

8. All capitalized terms not otherwise defined herein shall have the meaning given such term in the Redevelopment Agreement.

9. This Amendment may be executed in multiple counterparts, each of which when taken together shall constitute one and the same instrument.

10. Except as expressly set forth herein, the provisions of the Redevelopment Agreement shall remain as set forth therein.

[Remainder of page intentionally left blank. Signature pages to follow.]

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed in their respective names and the City has caused its seal to be affixed thereto, and attested as to the date first above written.

“CITY”

CITY OF ST. LOUIS, MISSOURI

By: _____
Francis G. Slay, Mayor

By: _____
Darlene Green, Comptroller

(SEAL)

Attest:

Parrie May, City Register

Approved as to Form:

_____, City Counselor

“DEVELOPER”

PARKPACIFIC TIF, INC., a Missouri corporation

By: _____
Name: _____
Title: _____

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

On this ____ day of _____, 2010, before me appeared Francis G. Slay, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires:

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

On this ____ day of _____, 2010, before me appeared Darlene Green, to me personally known, who, being by me duly sworn, did say that she is the Comptroller of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires:

STATE OF MISSOURI)
) SS.
_____ OF MISSOURI)

On this ____ day of _____, 2010, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he is the _____ of _____, a Missouri corporation, and that he is authorized to sign the instrument on behalf of said corporation, and acknowledged to me that he executed the within instrument as said corporation's free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the _____ and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires:

Approved: March 9, 2010

ORDINANCE #68586
Board Bill No. 318

An ordinance establishing a four way stop site at the intersection of Virginia Avenue and Eichelberger Street by regulating all north-south traffic traveling on Virginia Avenue approaching such intersection and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. There is hereby established a four way stop site for all traffic approaching the intersection of Virginia Avenue and Eichelberger Street by regulating all north-south traffic traveling on Virginia Avenue. The Director of Streets is hereby authorized and directed to install stop signs at said location to regulate traffic approaching this intersection.

SECTION TWO. Emergency Clause. This being an ordinance for the preservation of public peace, health and safety, it is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and therefore this ordinance shall become effective immediately upon its passage and approval by the Mayor.

Approved: March 9, 2010

ORDINANCE #68587
Board Bill No. 319
Committee Substitute

An Ordinance Approving The Petition Of Various Owners Of Certain Real Property To Establish A Community Improvement District, Establishing The CWE Business Community Improvement District, Finding A Public Purpose For The Establishment Of The CWE Business Community Improvement District, And Containing An Emergency Clause And A Severability Clause.

WHEREAS, Mo. Rev. Stat. §67.1400 et seq. (the "CID Act") authorized the Board of Aldermen to approve the petitions of property owners to establish a Community Improvement District; and

WHEREAS, a petition has been filed with the City, requesting formation and establishment of The CWE Business Community Improvement District, signed by owners or authorized representatives of the owners of more than fifty percent by assessed value and per capita of the property located within the proposed boundaries of The CWE Business Community Improvement District (as amended, the "Petition"); and

WHEREAS, the Register of the City of St. Louis did review and determine that the Petition substantially complies with the requirements of the CID Act; and

WHEREAS, a public hearing, duly noticed and conducted as required by and in accordance with the CID Act was held at 9:00 a.m. on February 23, 2010, by the Board of Aldermen; and

WHEREAS, this Board of Aldermen hereby finds that the adoption of this ordinance is in the best interest of the City of St. Louis and that the owners of real property located within The CWE Business Community Improvement District, as well as the City as a whole, will benefit from the establishment of The CWE Business Community Improvement District.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE.

(a) A community improvement district, to be known as "The CWE Business Community Improvement District" (hereinafter referred to as the "District"), is hereby established pursuant to the CID Act on certain real property described below to provide services, construct improvements, impose taxes and carry out other functions as set forth in the Petition, which is attached hereto as Appendix A and incorporated herein by this reference.

(b) The District boundaries are set forth in the Petition and are generally described as follows: Kingshighway on its most Western boundary; Washington Avenue on its most Northern boundary; Walton Avenue on its most Eastern boundary; and Lindell Avenue on its most Southern boundary, provided that said boundaries are irregular and do not encompass all parcels located therein.

SECTION TWO. The District is authorized by the Petition, in accordance with the CID Act, to impose a tax upon retail sales within the District to provide funds to accomplish any power, duty or purpose of the District.

SECTION THREE. The District is authorized by the CID Act, at any time, to issue obligations, or to enter into agreements with other entities with the authority to issue obligations, for the purpose of carrying out any of its powers, duties, or purposes. Such obligations shall be payable out of all, part or any combination of the revenues of the District and may be further secured by all or any part of any property or any interest in any property by mortgage or any other security interest granted. Such obligations shall be authorized by resolution of the District, and if issued by the District, shall bear such date or dates, and shall mature at such time or times, but not more than twenty (20) years from the date of issuance, as the resolution shall specify. Such obligations shall be in such denomination, bear interest at such rate or rates, be in such form, be payable in such place or places, be subject to redemption as such resolution may provide and be sold at either public or private sale at such prices as the District shall determine subject to the provisions of Mo. Rev. Stat. §108.170. The District is also authorized to issue such obligations to refund, in whole or part, obligations previously issued by the District.

SECTION FOUR.

(a) Pursuant to the Petition, the District shall be in the form of a political subdivision of the State of Missouri, known as "The CWE Business Community Improvement District."

(b) Pursuant to Section 67.1471 of the CID Act, the fiscal year for the District shall be the same as the fiscal year for the City of St. Louis.

(c) No earlier than one hundred and eighty (180) days and no later than ninety (90) days prior to the first day of each fiscal year, the District shall submit to the Board of Aldermen a proposed annual budget for the District, setting forth expected expenditures, revenues, and rates of assessments, if any, for such fiscal year. The Board of Aldermen may review and comment on this proposed budget, but if such comments are given, the Board of Aldermen shall provide such written comments no later than sixty (60) days prior to the first day of the relevant fiscal year; such comments shall not constitute requirements, but shall only be recommendations.

(d) The District shall hold an annual meeting and adopt an annual budget no later than thirty (30) days prior to the first day of each fiscal year.

SECTION FIVE. The District is authorized to use the funds of the District for any of the improvements, services or other activities authorized under the CID Act.

SECTION SIX. Pursuant to the CID Act, the District shall have all of the powers necessary to carry out and effectuate the purposes of the District and the CID Act as set forth in the CID Act.

SECTION SEVEN. The City of St. Louis hereby finds that the uses of the District proceeds as provided for in the Petition hereto will serve a public purpose by encouraging the redevelopment of real property within the District.

SECTION EIGHT. Within one hundred twenty (120) days after the end of each fiscal year, the District shall submit a report to the Register of the City and the Missouri Department of Economic Development stating the services provided, revenues collected and expenditures made by the District during such fiscal year, and copies of written resolutions approved by the board of directors of the District during the fiscal year. The Register shall retain this report as part of the official records of the City and shall also cause this report to be spread upon the records of the Board of Aldermen, pursuant to Section 67.1471 of the CID Act.

SECTION NINE. The term for the existence of the District shall be as set forth in the Petition, as may be amended from time to time or as such term may be otherwise modified in accordance with the CID Act.

SECTION TEN. Pursuant to the CID Act, the Board of Aldermen shall not decrease the level of publicly funded services in the District existing prior to the creation of the District or transfer the burden of providing the services to the District unless the services at the same time are decreased throughout the City, nor shall the Board of Aldermen discriminate in the provision of the publicly funded services between areas included in the District and areas not so included.

SECTION ELEVEN. The Register shall report in writing the creation of The CWE Business Community Improvement District to the Missouri Department of Economic Development.

SECTION TWELVE. The Petition provides that the District shall be governed by a Board of Directors consisting of seven individual directors (collectively the "Directors" and each a "Director"), such Directors to be appointed by the Mayor of the City with the consent of the Board of Aldermen, in accordance with the CID Act and the qualifications set forth in the Petition. By his approval of this ordinance, the Mayor does hereby appoint the following named individuals as Directors of the District for the terms set forth in parentheses below, and by adoption of this ordinance, the Board of Aldermen hereby consents to such appointments:

	<u>Name</u>	<u>Term</u>	<u>Qualification</u>
1.	Jim Smith	2 years	Property Owner and Business Owner located South of Pershing Avenue; Business Owner and Property Owner of a hotel with more than one hundred (100) guest rooms
2.	Trip Straub	2 years	Property Owner and Business Owner located South of Pershing Avenue; Business Owner and Property Owner of a full service grocery store of at least five thousand (5,000) square feet
3.	Jim Dwyer	2 years	Property Owner located North of Pershing Ave.

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| 4. | Derek Gamlin | 4 years | Business Owner located South of Pershing Avenue; restaurant Business Owner |
| 5. | Pete Rothschild | 4 years | Property Owner located South of Pershing Ave. |
| 6. | Aaron Teitelbaum | 4 years | Business Owner located North of Pershing Avenue; restaurant Business Owner |
| 7. | Todd Lannom | 2 years | Business Owner located North of Pershing Avenue; retail Business Owner |

SECTION THIRTEEN. If any section, subsection, sentence, clause, phrase or portion of this ordinance is held to be invalid or unconstitutional, or unlawful for any reason, by any court of competent jurisdiction, such portion shall be deemed and is hereby declared to be a separate, distinct and independent provision of this ordinance, and such holding or holdings shall not affect the validity of the remaining portions of this ordinance.

SECTION FOURTEEN. The Board of Aldermen hereby finds and determines that this ordinance constitutes an “emergency measure” pursuant to Article IV, Section 20 of the City Charter, because this Ordinance establishes the District, which is a taxing district, and as such, this Ordinance shall take effect immediately upon its approval by the Mayor as provided in Article IV, Section 20 of the City Charter.

APPENDIX A

Petition to Establish The CWE Business Community Improvement District
IS ON FILE WITH THE CITY REGISTER.

Approved: March 9, 2010