

TERMINAL LEASEHOLD #6222070030
At KANSAS CITY INTERNATIONAL AIRPORT

THIS CONCESSIONS/LEASE AGREEMENT is made and entered into this first day of March 2023, between KANSAS CITY, MISSOURI, a municipal corporation of the State of Missouri, ("City"), and U.S. Bank National Association ("Concessionaire").

WHEREAS, City operates and maintains an international airport known as the Kansas City International Airport, located in Platte County in the State of Missouri ("Airport"); and

WHEREAS, Concessionaire provides automated teller machine ("ATM") services; and

WHEREAS, Concessionaire desires to lease certain property and facilities at the Airport.

The parties agree as follows:

This Concessions/Lease consists of three parts: Part I, Part II City Standard Lease Conditions and Part III Federal Supplemental Terms and Conditions to All Airport Agreements. These parts and any attachments or exhibits are attached hereto and incorporated herein.

Exhibit A – Leased Premises

Exhibit B – Scope of Work

PART I

ARTICLE I
PREMISES & TERM

Sec 1.1. Leased Premises. The City hereby leases to Concessionaire the real property, a portion of passenger service kiosks, improvements and fixtures appurtenant thereto, more fully described in **Exhibit "A" – Leased Premises**, attached hereto and incorporated herein (hereinafter "Premises"). Concessionaire has inspected the Premises and accepts them in "as is" condition.

Sec. 1.2. Term of Lease. This Lease will begin on March 1, 2023 ("Commencement Date"), ending on February 29, 2028.

- A. Option to Renewal: After February 29, 2028, the City has the option to renew this Lease on a month-to-month basis.
- B. Termination Rights: Either the Concessionaire or City may terminate this Lease at any time with a thirty (30) day written notice.

Sec. 1.3. Use of Premises. Concessionaire shall use the Premises solely for the purpose of providing ATM banking services at the Airport, as provided for in accordance with this Lease. The ATM machines shall be accessible 24 hours per day, 365 days per year, including holidays (except during maintenance). Any unauthorized use of the Premises shall constitute acceptable grounds for immediate termination. During the term of this contract, the City expects ongoing changes within the new single terminal facility. Concessionaire will need to be flexible in maintaining ATM services. Upon the mutual consent of the parties, additional ATM machines may be added to, and incorporated into the terms of this

Lease. The installation of any new data-lines associated with these possible additional ATM machines would be the expense of Concessionaire.

ARTICLE II

RENT

Sec. 2.1. Rents, Fees and Charges.

- A. Rental Payments. Concessionaire shall pay to the City Monthly Percentage Rent (MPR).

“Monthly Percentage Rents” of **one hundred percent (100%)** per each surchargeable transaction shall be charged at each ATM at each terminal location at the KCI Airport. A surchargeable transaction is a fee imposed on a cardholder for a cash withdrawal or cash advance initiated at the ATM. Concessionaire/Bank may impose a fee to the cardholder for a cash withdrawal, deposit, cash advance initiated at the ATM (a “Surcharge”) with respect to some or all Transactions at the ATMs. All decisions with respect to the imposition of Surcharges, including without limitation the amount thereof and the types of cards and Transactions affected, shall be made by Concessionaire/Bank in its sole discretion.

- B. Monthly Activity Reports. A report showing the number of transactions per ATM location of the previous month shall be sent via email (or U.S. mail to the address pertaining to the City specified in Section 5.1, below) to the following Aviation Department Division: Properties & Commercial Development (jill.ronk@kcmo.org) and to Accounts Receivable (melissa.boney@kcmo.org and KCI.accountsreceivable@kcmo.org). Starting with the first month’s ATM transactions, Concessionaire will send these monthly reports along with the monthly payments by the 20th of the following month (and forth going) without notice or demand by the City.

Concessionaire is responsible for direct reporting to City, in a form acceptable to City. Reports need to be signed and certified by an authorized signatory that these reports are true and accurate within the terms of this Lease.

- C. Net Lease. It is the purpose and intent of the City and Concessionaire that this is a net lease and that from and after the Commencement Date, the rent shall, except as herein otherwise provided, be absolutely net to City, and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Premises and/or the operation of Concessionaire’s business in connection therewith, except as herein otherwise provided, which may arise or become due during the term hereof, shall be paid by Concessionaire and that City shall be protected, defended, indemnified and held harmless by Concessionaire from and against the payment of same or any obligation to pay the same.

- D. Method of Payment. Starting with the first month’s ATM transactions, Concessionaire will make either MMR or MPR payments by the 20th of the following month (and forth going) without notice or demand by City and without abatement, deduction or set-off, except as herein specifically provided. **The payments will be made in legal tender of the United States and mailed to the Aviation Department, P.O. Box 844124, Kansas City, Missouri 64184-4124, payable to the “City Treasurer” or electronically by utilizing the City’s approved Authomated Clearing House (ACH) process.** A service charge of one and one-half percent (1½%) per month shall automatically accrue to all payments made after the due date.

- E. Partial Year. If the Commencement Date should occur on any date other than the first day of a calendar month, Concessionaire shall pay City on the Commencement Date the proportionate amount of rent accrued for the balance of such current calendar month.
- F. Additional Rent. In addition to the Rent, Concessionaire agrees to pay as additional rent any sums which may become due by reason of failure of Concessionaire to comply with any covenants of this Lease and all damages, costs and expenses which City may incur because of any default of Concessionaire or failure to perform and any damages caused to the Premises by any act or negligence of Concessionaire, its officers, employees, agents and invitees.
- G. Fees and Charges. In the event the Premises, together with all other land located within the Airport, is subjected to a Declaration of Covenants and Restrictions, which includes, among other things, a provision for assessment of charges for maintenance of common properties and/or for provision of common charges to all land within the Airport, Concessionaire shall pay, in addition to any rent, its proportionate share of such charges.

ARTICLE III
REPAIRS AND MAINTENANCE OF PREMISES

Sec. 3.1. Repairs. Concessionaire, at its sole cost and expense, shall take good care of the Premises and all improvements thereto and additions thereon or thereto, and shall keep the same in good order and condition, except for reasonable wear and tear after the necessary repair, replacement, restoration or renewal by Concessionaire pursuant to its obligations hereunder, and shall make all necessary repairs thereto, which will assume such obligations. All repairs, restorations and renewals made by Concessionaire shall be at least equal in quality and class to the original work with respect hereto.

Sec. 3.2. Maintenance. The City shall furnish structural maintenance of City-constructed facilities, including the roof of the Terminal Building, and provide the maintenance and operation of City-installed mechanical and electrical systems. The City shall provide exterior window and building cleaning and interior window cleaning, except in Concessionaire's Premises, which shall be washed by Concessionaire, if applicable. The City shall provide custodial maintenance only in the public areas of the Terminal Building.

- A. At its sole cost and expense, the Concessionaire shall maintain and repair the Premises, its fixed improvements and its operating equipment at all times in accordance with all applicable present and future federal, state, local, or other statutes, charters, laws, rules, orders, regulations and ordinances, including those of the City.
- B. All maintenance, repairs, renewals and replacements shall be at the Concessionaire's sole expense and shall be subject to periodic monitoring by the City to insure a continuing high quality of appearance and a facility structural condition commensurate with maintenance and safety standards required for public facilities.
- C. Concessionaire shall comply with all rules and regulations promulgated by the federal, state and local entities including, but not limited to, the handling and disposal of refuse.

Sec. 3.3. Utility Services. Utility services, **excluding telephone and/or data services that are not available to all users and tenants in the new terminal**, required by Concessionaire during the Lease term shall be provided by the City at the City's sole cost and expense. Concessionaire may install and construct necessary utility lines or mains across reasonable routes as the City may designate; however,

these must be approved by the Director of Aviation through a Tenant Modification Agreement (see Sec. 5.3). Any change in, deletion of, or addition to such lines and mains shall be at the sole cost and expense of Concessionaire.

Sec. 3.4. Heating Ventilation Air Conditioning System. The City, at its sole cost and expense, shall maintain and repair the Heating Ventilation Air Conditioning (“HVAC”) system required by the Premises during the Lease term.

ARTICLE IV
DAMAGE, DESTRUCTION, RESTORATION OF PREMISES

Sec. 4.1. Damage or Destruction and Restoration. In case of any material damage to or destruction of the Premises or any part thereof, Concessionaire will give prompt notice to the City and, excepts as otherwise herein provided in Section 4.2, Concessionaire shall have the option to:

- A. Promptly commence and complete with due diligence and in accordance with plans approved by Concessionaire and the City, the restoration of the Premises as nearly reasonably practicable to the value and condition thereof immediately prior to such damage or destruction (with alterations, at Concessionaire’s election, and with the prior consent and approval of the City), or
- B. If Concessionaire and the City mutually agree, Concessionaire may use the insurance proceeds to construct other airline-related facilities providing equal security protection for any bondholders to those facilities not restored. In the event of such damage or destruction, the proceeds from all property insurance policy or policies shall be devoted exclusively to the restoration of the Premises except as provided elsewhere in this Lease.

Sec. 4.2. Concessionaire’s Election Not to Restore Damaged Property. In the event of damage to or destruction or loss of such improvements by an insured risk, which damage, destruction or loss is not capable of being repaired within 90 days, Concessionaire shall have the election, indicated by written notice given to City within 90 days after the occurrence of such event, not to repair, restore, rebuild or replace the improvements, such election to be effective as of the date of such damage, destruction or loss and, upon such election, Concessionaire shall be relieved of all further liability and obligations hereunder. In the event Concessionaire does not exercise the foregoing election, or in the event said damage, destruction or loss is capable of being repaired within 90 days, Concessionaire shall promptly repair, replace, restore or rebuild said improvements to the extent of the insurance proceeds received by it, as nearly as possible to the condition said improvements were in immediately prior to such damage, destruction or loss, or with such changes or alterations as may be approved by City. If such damage, destruction or loss occurs within the last six months of the term of this Lease, then Concessionaire shall have the option either to effect such repair, replacement, restoration or rebuilding or, in lieu thereof, to pay to City the proceeds received by reason of such damage, destruction or loss from the insurance required herein.

ARTICLE V
MISCELLANEOUS PROVISIONS

Sec. 5.1. Notices. Except as herein otherwise expressly provided, all notices required by this Concessions Lease shall be in writing sent regular U.S. mail, postage prepaid, or commercial overnight courier to the following:

City: Kansas City International Airport
Properties & Commercial Development
Attn: Jill Ronk, Sr. Properties Specialist
601 Brasilia Avenue
Kansas City, Missouri 64153
Phone: 816-243-3026

Concessionaire: U.S. Bank National Association
ATM Administration
555 SW Oak Street
Portland, OR 97204

Copy To: U.S. Bank Corporate Counsel-ATM
800 Nicollet Mall, 21st Floor
BC-MN-H21N
Minneapolis, MN 55402

All notices are effective on the date of mailing in the U.S. mail or deposit with an overnight courier.

Sec. 5.2. Relocation. After an ATM has been installed, City may request that it be relocated to a new location within the Premises or be temporarily shut off, such as for site maintenance. Such request shall be in writing and include the new proposed location, or disconnection date and duration, and be made at least thirty (30) days prior to the proposed action. Consent to the proposed action shall not be unreasonably delayed or withheld. If consent to the proposed action has not been given or denied within fifteen (15) days, it shall be deemed to have been granted. If the parties agree in writing to the relocation or disconnection, all expenses relating to such action shall be the responsibility of the party initiating the request. Only Bank's, or ATM Deployer's authorized employees, agents, or contractors may disconnect or move an ATM. Either Party may request the expansion or reduction of the Leased Premises. Such expansion or reduction of the Leased Premises shall occur only upon the mutual consent of the Parties. Monthly rents as provided for in Part I, Section 2.1.A of this Lease, shall not be affected by any possible relocation of ATM machine(s).

Section 5.3. ATM Access and Security. The City acknowledges that the ATMs are the property of Concessoinaire or ATM Deployer, and the City acknowledges that the currency contained in the ATMs are the property of Concessoinaire. The City, therefore, understands and agrees that it has no right, title, or interest whatsoever in any ATM or the currency placed in the ATM. Further, the City acknowledges that Concessoinaire has a strong proprietary interest in the safety and security of the ATMs and currency. The City agrees to allow Concessoinaire access to the ATMs and currency immediately upon Concessoinaire's request, subject to all applicable laws and security requirements. Concessoinaire may take all reasonable steps to secure the ATMs or currency, including but not limited to removal of the ATMs or currency without penalty if the City voluntarily or involuntarily becomes subject to or is expected to become subject to a bankruptcy court, receiver, or some other form of financial overseer, or if Concessoinaire reasonably believes that a serious risk to the safety or security of the ATMs or currency is imminent. The City acknowledges that any interference, interruption or prevention of Concessoinaire's access to the ATMs and currency or Concessoinaire's other rights under this section will result in irreparable harm to Concessoinaire, and agrees that Concessoinaire shall be entitled to immediate injunctive relief in order to enforce its rights under this section. At all times, the ATMs shall remain personal property of Concessoinaire regardless of the manner in which they may be affixed to the Premises.

Sec. 5.4. Improvements. Concessionaire shall be responsible, at the Concessionaire's sole expense, for any and all improvements made to the Premises during the term of this Lease. No improvements, structures, facilities, alterations or additions, including signage and lighting, to the Premises will be made by Concessionaire without prior written approval of the Director. This approval shall be in the form of a separate Tenant Modification Agreement through the Aviation Department's Engineering Division signed by City and Concessionaire. The Tenant Modification Agreement may have requirements for, prevailing wage, Minority/Women's Business Enterprise participation, and Federal Aviation Administration review, among other conditions.

Sec. 5.5. Priorities. In the event that any of the terms and conditions in Part I, Part II and Part III of this Concession Lease conflicts, interpretation of this Lease shall be according to the following priority, except as mandated by law, including City Ordinances.

1. Part I
2. Part II
3. Part III

IN WITNESS WHEREOF, the parties hereto for themselves, their successors and assigns, have executed this Concessions Lease the day and year first above written.

CONCESSIONAIRE

By: _____
Robert Myhre
Assistant Vice President

KANSAS CITY, MISSOURI

By: _____
Pat Klein
Director of Aviation

Approved as to form:

Assistant City Attorney

Part II
AVIATION DEPARTMENT STANDARD LEASE CONDITIONS

I. Definitions.

- A. *"Airport"* means Kansas City International Airport and Downtown Airport, in accordance with the context of this Lease.
- B. *"City"* means City of Kansas City, Missouri.
- C. *"Code"* means Kansas City, Missouri Code of General Ordinances.
- D. *"Contract"* includes any and all City of Kansas City, Missouri, Aviation Department contracts, agreements, leases, licenses, permits, concessions or other documents, however denominated that grant or convey a right or privilege on an Airport, and to which this Exhibit is annexed and made a part thereof.
- E. *"Contractor"* means every lessee, licensee, permittee, concessionaire or other person, firm or corporation exercising a right or privilege on an airport pursuant to a contract, and includes Contractor's heirs, personal representatives, successors-in-interest and assigns.
- F. *"Director"* means Kansas City, Missouri Director of Aviation.
- G. *"Lease"* includes any and all City of Kansas City, Missouri, Aviation Department contracts, agreements, leases, licenses, permits, or other documents, however denominated that grant or convey a right or privilege on an Airport, and to which this Exhibit is annexed and made a part thereof.
- H. *"Lessee"* means every lessee, licensee, permittee, concessionaire or other person, firm or corporation exercising a right or privilege on an airport pursuant to a contract, and includes Lessee's heirs, personal representatives, successors-in-interest and assigns.
- I. *"Premises"* means the leasehold or site occupied by Lessee pursuant to the lease, license or permit that is the subject of this Lease.

II. Premises Use and Ownership.

- A. Use. The Premises will be used by Lessee only for the purposes set forth in the Lease.
- B. Title. Unless otherwise provided in the Lease, title to the Premises and any improvements, whether existing or installed by Concessionaire as part of the Lease, shall remain and are at all times in the City.
- C. Concessionaire's Access to Premises. Concessionaire is granted the right, for itself, its agents, employees, patrons, suppliers and other persons doing business with Concessionaire, of ingress and egress to and from the Premises over Airport roadways, including the use of common use roadways, and other common areas as reasonable necessary to use the Premises, subject only to law and to such reasonable rules and regulations governing the use of the Airport as the Director may establish, including the establishment of a fee or charge for the privilege of entry upon the Airport. "Common areas" shall mean those areas which are furnished in and about the Premises for the common and non-exclusive use of Concessionaire and City and their officers, agents, employees, customers, invitees and licensees.
- D. Signs. No signs or advertising displays exposed to public view will be painted on or erected in any manner on the Premises without the prior written approval of the Director and in accordance with the City's standards with respect to wording, type, size, design, color and location. Upon termination, cancellation or expiration of the Lease, Concessionaire at its costs will remove, obliterate or paint out, any and all of its signs, advertising and displays as the Director may direct and restore the Premises to its original condition.
- E. Permits/Licenses. Concessionaire will obtain, maintain and pay for all licenses and permits necessary or required by law for the conduct of its business and operations.
- F. City's Right of Entry. City shall have the right to enter upon the Premises at all reasonable times to inspect the Premises; to observe the performance by Concessionaire of its obligations under

the lease agreement or for doing any act or thing which City may be obligated or have the right to do under the Lease; to perform maintenance and make repairs in any case where Concessionaire is obligated, however, but has failed to do so, after City has given Concessionaire reasonable notice so to do (in which event, Concessionaire shall reimburse City for the reasonable cost thereof promptly upon demand); or otherwise. No abatement of fees and charges shall be claimed by or allowed to Concessionaire by reason of the exercise of such right. City shall not be obligated to inform Concessionaire that an inspection or observation is planned or in progress.

- G. City's Exclusive Rights in Premises. City reserves exclusive rights to the following; provided, however that the City's use or exercise of those rights will not unreasonable interfere with Concessionaire's use of the Premises:
1. All gas, oil and minerals in and under the soil on the Premises;
 2. All cemeteries, archeological findings and other historical sites on the Premises. City shall make all decisions as to the preservation, use or relocation of those findings or sites.
 3. To grant, without compensation to Concessionaire, utility rights-of-way to itself and others, over, under, through, across or on the Premises.

III. Repair & Maintenance of Premises. Provisions Applicable to All Leases.

- A. Concessionaire will keep the Premises and all improvements thereon in good repair and in a clean and orderly condition and appearance. Concessionaire will not do or suffer any material waste or damage, disfigurement or injury to the Premises or any part thereof.
- B. City reserves the right but shall not be obligated to Concessionaire to maintain and keep in repair all of the common areas of the Airport.
- C. Concessionaire, at its sole cost and expense, shall take good care of the Premises and all improvements thereto and additions thereon or thereto, including without limitation, all alleyways, walkways, passageways, sidewalks, aprons, curbs and streets, parking facilities adjoining the same and shall keep the same in good order and condition, except for reasonable wear and tear after the necessary repair, replacement, restoration or renewal by Concessionaire pursuant to its obligations hereunder, and shall make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen, which will assume such obligations.
- D. Concessionaire must abide with guidelines in the section below "Improvements and Modifications."

IV. Assignment, Sublease & Encumbrances.

- A. No Right to Assign, Sublease, and Encumber. Concessionaire has no right to assign, sublet, mortgage, encumber or otherwise affect this Lease or any interest therein, without the prior written consent of City in its sole and absolute discretion, except that Concessionaire may, without the consent of the City, assign or delegate this Agreement or any portion hereof to any entity or person controlling, controlled by, or under common control with Concessionaire, or to any entity arising out of the merger, consolidation, sale or acquisition of Bank . Any assignee or subconcessionaire must have assumed all obligations of Concessionaire under this Lease and shall have specifically agreed to perform and observe the covenants and conditions contained in this Lease on Concessionaire's part to be performed and observed. Concessionaire shall notify City within thirty (30) days of such assignment.
- B. City Consent. City shall not be obligated to consent to a sublease or assignment. In the event of any proposed sublease or assignment, Concessionaire, not less than 30 days prior to the proposed effective date of such action, shall give notice to the City which includes the name, address and telephone number of the proposed assignee or subconcessionaire and a fully executed original set of any and all documents being used to effect the proposed actions in a

form acceptable to the City. All documents will clearly set forth that the sublease or assignment and assumption actions are subject to and conditioned upon the City's consenting thereto in writing. Any assignee or subconcessionaire must have assumed all obligations of Concessionaire under this Lease and shall have specifically agreed to perform and observe the covenants and conditions contained in this Lease on Concessionaire's part to be performed and observed.

V. Defaults & Remedies.

- A. Concessionaire Defaults. Each of the following will constitute a default by Concessionaire hereunder:
1. Concessionaire's failure to pay any rent, charges or any other payments of money required to be paid by Concessionaire hereunder, within ten (10) days after receipt of written notice of such failure to pay;
 2. Concessionaire's failing to perform or violation of any provision, covenant or condition of this Lease (other than payment of money) within thirty (30) days after written notice or, if the cure or performance thereof reasonably requires more than thirty (30) days to complete, Concessionaire's failing to begin cure or performance thereof within such thirty-day period and proceed diligently to cure or completion thereafter;
 3. Use of the Premises for anything other than the use specified in the Lease;
 4. Concessionaire vacates, abandons or deserts the Premises or fails to occupy the Premises for more than thirty (30) consecutive days;
 5. Except as provided for in Section IV.A., the attempted assignment or assumption of this Lease by anyone without the prior written consent of City;
 6. The suspension or revocation of any act, power, license, permit or authority that prevents Concessionaire from fully complying with all of the rights and obligations hereunder for any period;
 7. The filing by the Concessionaire or its assignee or subconcessionaire of a voluntary petition in bankruptcy or any assignment for benefit of creditors of all or any part of Concessionaire's assets; or the adjudication of the Concessionaire or its assignee or subconcessionaire as a bankrupt pursuant to any involuntary bankruptcy proceedings; or the taking, by a court of competent jurisdiction of Concessionaire's or its assignee's or subconcessionaire's, assets pursuant to proceedings brought under the provisions of any federal reorganization act; or the appointment of a receiver or trustee of the Concessionaire's or its assignee's or sub-concessionaire's assets by a court of competent jurisdiction or a voluntary agreement with Concessionaire's creditors;
 8. The levy of any attachment or execution of any process of a court of competent jurisdiction which does or, as a direct consequence of such process, will interfere with its operations under the Lease, and which is not enjoined, vacated, dismissed or set aside within a period of 30 days.
- B. City Defaults. Each of the following will constitute a default by City hereunder:
1. Except as provided in Section V.B.2 hereof, City's failing to perform or violation of any provision, covenant or condition of this Lease within thirty (30) days after written notice or, if the cure or performance thereof reasonably requires more than thirty (30) days to complete, City's failing to begin cure or performance thereof within such thirty-day period and proceed diligently to cure or completion thereafter;
 2. The lawful assumption by the United States government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part thereof, in such manner as to materially restrict Concessionaire from operating thereon for a period of at least thirty (30) days.
- C. City's Remedies. Upon default by Concessionaire of this Lease, City may do any one or more of the following:

1. Terminate the Lease upon ten (10) days written notice to Concessionaire;
 2. Re-enter the Premises and every part thereof on the effective date of termination of the Lease without further notice of any kind, remove any and all persons therefrom and regain and resume possession either with or without the institution of summary or legal proceedings. Such re-entry, however, shall not in any manner affect, alter or diminish any of the obligations or ownership rights in the ATM or currency placed in the ATM under the Lease;
 3. Upon termination of the Lease or upon re-entry, regaining or resumption of possession of the Premises, occupy the Premises and have the right in the name of the City to relet and permit any person, firm or corporation to enter the Premises and use the same for such term and on such conditions as City may determine; and
 4. Perform, on behalf and at the expense of Concessionaire, any obligation of Concessionaire under this Lease which Concessionaire has failed to perform and of which City have given Concessionaire notice, the cost of which performance by City, together with interest thereon from the date of such expenditure, shall be deemed Additional Rent and shall be payable by Concessionaire to City upon demand. Notwithstanding the provisions of this clause and regardless of whether a default shall have occurred, city may exercise the remedy described in this clause without any notice to Concessionaire if City, in its good faith judgment, believes it would be materially injured by failure to take rapid action or if the unperformed obligation of Concessionaire constitutes an emergency; and
 5. Any other remedy that City may have under law or equity.
- D. Concessionaire Remedies. Upon default by City of this Lease, Concessionaire may cancel the Lease in its entirety after 30 days prior written notice to the City.

VI. Termination of Lease.

- A. No Notice to Quit Possession. No notice to quit possession at the expiration date of the term of this Lease shall be necessary. Concessionaire agrees that at the expiration date of the term of this Lease, or at the earlier termination thereof, it shall peaceably surrender possession of the Premises in good condition, reasonable wear and tear and acts of God excepted. City shall have the right to re-enter and take possession of the Premises at that time with or without process of law.
- B. Holding Over. Should Concessionaire hold over the use of or continue to occupy the Premises or any part thereof after the termination of the letting, the holding over shall be deemed merely a tenancy from month to month upon a monthly rental in an amount equal to the rate existing at the end of the Lease term (subject, however, to reappraisal or CPI-U increases).
- C. Waiver. No acceptance by City of the rent and charges or other payments specified herein, in whole or in part, and for any period or periods, after a default of any of the terms, covenants and conditions to be performed, kept or observed by Concessionaire, other than the default in the payment thereof, shall be deemed a waiver of any right on the part of City to cancel or terminate this Lease on account of such default. No waiver by City at any time of any default by Concessionaire shall be or be construed to be a waiver at any time thereafter by City of any other or subsequent default in performance of any terms, conditions, covenants and no notice by City shall be required to restore or revive time as of the essence hereof after waiver by City of default in one or more instances.
- D. Waiver of Redemption and Damages. Concessionaire hereby waives any and all rights or redemption granted by or under any present or future law or statute arising in the event it evicted or dispossessed for any cause or in the event City obtains or retains possession of the Premises in any lawful manner. Concessionaire further agrees that in the event the manner or method employed by City in reentering or regaining possession of the Premises gives rise to a cause of action in Concessionaire for damages or in forcible entry and detainer under the laws

of the State of Missouri, then the total amount of damages to which Concessionaire shall be entitled to in any such action shall be the sum of One Dollar (\$1.00) and Concessionaire agrees that the provisions of this section may be filed in any such action as its stipulation fixing the amount of damages to which it would be entitled therein.

- E. Termination from Taking. If during the term of this Lease there shall be a taking of the whole or substantially all of the Premises, this Lease shall terminate and expire on the date of such taking and the rent payable hereunder shall be equitable apportioned and paid to the date of such taking. "Substantially all of the Premises" shall be deemed to have been taken if the untaken part of the premises shall be insufficient for the economic and feasible continued operation of the Concessionaire's business in connection therewith.
- F. Personal Property not Removed. Any personal property of Concessionaire which shall remain in or on the Premises after the termination of this Lease may, at the option of City, be deemed to have been abandoned by Concessionaire and either may be retained by City as its property or be disposed of, without accountability, in such manner as City may see fit, or if City shall give written notice to Concessionaire to such effect, such property shall be immediately removed by Concessionaire at Concessionaire's sole cost and expense.

VII. Quiet Enjoyment.

Upon payment by Concessionaire of the rents herein provided, and upon the observance and performance of all the covenants, terms and conditions on Concessionaire's part to be observed and performed, Concessionaire shall peaceably and quietly hold and enjoy the Premises for the term demised without hindrance or interruption by City or any other person or persons lawfully or equitable claiming, by, through or under the City, subject, nevertheless, to the terms and conditions of the lease.

VIII. Environmental Requirements.

- A. Lessee hereby covenants and agrees to comply in all material respects with all-applicable Environmental Laws and Regulations in connection with its use and occupancy of the Premises, or its operations of the facilities. For purposes of this Lease, "Environmental Laws" shall mean and include all federal, state and local statutes, ordinances, regulations and rules relating to environmental quality, health, safety, contamination and clean-up, 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 ("FIFRA"), 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 ("RCRA"), 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 ("TSCA"), 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, 42 U.S.C. §1010 *et seq.*; all Missouri State environmental protection, superlien and environmental clean-up statutes, with implementing regulations and guidelines and all local laws, regulations and ordinances insofar as they are equivalent or similar to the federal laws recited above or purport to regulate Hazardous Materials.
- B. Review of Environmental Documents. As applicable, Lessee, at request of City, shall make available for inspection and copying upon reasonable notice and at reasonable times, any or all of the documents and materials Lessee has prepared pursuant to any environmental law or

submitted to any governmental regulatory agency; provided, that such documents and materials relate to environmental issues or environmental laws and are pertinent to the Airport or the Premises. If any environmental law requires Lessee to file any notice or report of a release or threatened release of Hazardous Materials on under or about the Premises or the Airport, Lessee shall provide a copy of such report or notice to City and, to the extent practicable, shall receive the approval of City prior to submitting such notice or report to the appropriate governmental agency.

- C. Access for Environmental Inspection. City shall have access to the Premises to inspect the same in order to confirm Lessee is using the Premises in accordance with all of environmental laws. Any tests shall be conducted by qualified independent experts chosen by Lessee and subject to City's approval. Lessee shall provide copies of reports from any testing to City upon receipt.
- D. Environmental Noncompliance. If Lessee fails to comply with any applicable environmental laws, City, in addition to its rights and remedies provided elsewhere within this Agreement, may enter the Premises and take all reasonable and necessary measures, at Lessee's expense, to insure compliance with environmental laws.
- E. Written Authorization Necessary to Store, Use or Dispose of Hazardous Materials. Lessee shall not store, use or dispose of any Hazardous Materials on the Premises unless Lessee first secures the written authorization of City and complies with any conditions City may impose, including the submission to City of all Material Safety Data Sheets for the materials to be stored.
- F. Duty to Notify City. In the event of a release or threatened release of Hazardous Materials or other contaminants into the environment relating to or arising out of Lessee's use or occupancy of the Premises or in the event any claim, demand, action or notice is made against Lessee regarding Lessee's failure or alleged failure to comply with any environmental laws, Lessee shall notify City, in writing, and shall provide City with copies of any written claims, demands, notices, or actions so made.
- G. Environmental Remediation. Lessee shall undertake such steps to remedy and remove any Hazardous Materials and any other environmental contamination that arises out of Lessee's use of the Premises that are necessary to protect the public health and safety and the environment from actual or potential harm and to bring the Contaminated Premises into compliance with all environmental laws. Such work shall be performed at Lessee's sole expense, after Lessee submits to City a written plan for completing such work and receives the prior written approval of City. City shall have the right to review and inspect all such work at any time using consultants and representatives of its choice. Lessee shall pay the cost of such review and inspection. Specific cleanup levels for any environmental remediation work shall be designed to meet all of the applicable environmental laws.
- H. National Emission Standards for Hazardous Air Pollutants. Lessee warrants that all planning, design, fabrication, installation, construction, start-up, testing, maintenance and repair work performed pursuant to this Agreement shall be performed in accordance with any applicable National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 C.F.R. 61.145.
- I. Duty to Correct Hazardous or Potentially Hazardous Conditions. If City reasonably determines that a condition of the Premises or other City property caused as a result of Lessee's use of the Premises is hazardous or potentially hazardous to persons or property, it may direct Lessee, in writing, to correct the condition, and Lessee, at its expense, shall immediately comply with such directive.
- J. Environmental Indemnification. **In addition to any indemnification set forth herein, Lessee hereby indemnifies and agrees to defend and hold harmless City, its agents, partners, officers, representatives and employees, from all costs, claims, demands, actions, liabilities, complaints, fines, citations, violations or notices of violation ("Claims") arising from or attributable to (i) the presence due to Lessee's handling, generation, manufacturing, processing, treating, storing, using, reusing, refining, recycling, reclaiming, blending or**

burning for energy recovery, incinerating, accumulating speculatively, transporting, transferring, disposing or abandoning of Hazardous Materials ("Management") at the Airport or the subsurface thereof or the violation of any environmental laws due to Lessee's Management, including, without limiting the generality thereof, any cost, claim, liability or defense expended in remediation required by a governmental authority, or by reason or any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Hazardous Materials into the environment (as environment is defined in CERCLA), due to Lessee's Management at the Airport or violation of any environmental laws), or (ii) any breach by Lessee of any of its warranties, representations or covenants in this Section. Lessee's obligations hereunder shall survive the termination or expiration of this Agreement, and shall not be affected in any way by the amount of or the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Airport or any part thereof.

- K. Definitions. For purposes of this Section, the term "Hazardous Materials" shall mean and include the following, including mixtures thereof; any hazardous substance, pollutant, contaminant, waste, by-product or constituent as defined in any environmental law; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the FIFRA; asbestos and asbestos-containing materials, PCBs and other substances regulated under the TSCA; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. §1910.1200 *et seq.*; any "Hazardous Waste" as defined by the Missouri Hazardous Waste Management Law, Mo.Rev.Stat. §§260.350 to 260.430; and industrial process and pollution control wastes, whether or not hazardous within the meaning of RCRA.

IX. General Indemnification.

- A. For purposes of this Section 1 only, the following terms shall have the meanings listed:
1. **Claims** means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the City in the enforcement of this indemnity obligation.
 2. **Concessionaire's Agents** means Concessionaire's officers, employees, subconcessionaires, subcontractors, successors, assigns, invitees, and other agents.
 3. **City** means City, its Agencies, its agents, officials, officers and employees.
- B. Concessionaire's obligations under this Section with respect to indemnification for acts or omissions, including negligence, of City, shall be limited to the coverage and limits of insurance that Concessionaire is required to procure and maintain under this Contract. Concessionaire affirms that it has had the opportunity to recover all costs of the insurance requirements imposed by this Contract in its contract price.
- C. Concessionaire shall defend, indemnify and hold harmless City from and against all claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by Concessionaire or Concessionaire's Agents, regardless of whether or not caused in part by any act or omission, including negligence, of City. Concessionaire is not obligated under this Section to indemnify City for the sole negligence of City.
- D. In no event shall the language in this section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

X. Insurance.

- A. Concessionaire shall maintain in effect throughout the term of this Contract insurance policies with coverage not less than the types and amounts specified in this Section. Concessionaire must have:
1. Commercial General Liability Insurance Policy: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:
 - a. Severability of Interests Coverage applying to Additional Insureds
 - b. Contractual Liability
 - c. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
 - d. No Contractual Liability Limitation Endorsement
 - e. Additional Insured Endorsement, ISO form CG20 10, current edition, or its equivalent.
 2. Workers' Compensation Insurance and Employers Liability Policies are required by Missouri Law
Workers' Compensation Statutory Employers Liability \$1,000,000 accident with limits of:
 - \$1,000,000 disease-policy limit
 - \$1,000,000 disease-each employee
 3. Commercial Automobile Liability Insurance: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. The Policy shall coverage on an "any auto" basis and on an "occurrence" basis. This insurance policy will be written on a Commercial Business Auto form, or an acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Agreement, by Contractor.
 4. If this Contract is for professional services, Concessionaire shall maintain Professional Liability Insurance with limits per claim and annual aggregate of \$1,000,000.
 5. Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.
- B. Concessionaire shall provide the CITY ten (10) days written notice of cancellation in the event that the cancellation is for CONTRACTOR's nonpayment of premiums and thirty (30) days written notice of cancellation to CITY for all other reasons of cancellation.
- C. The Commercial General and Automobile Liability Insurance Policies specified above shall provide that CITY and its agencies, agents, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Contract. CONTRACTOR shall provide to CITY at execution of this Contract a certificate of insurance showing all required endorsements and additional insureds.
- D. All insurance policies must be provided by Insurance Companies that have an A.M. Best's rating of A-, V or better, and are licensed or approved by the State of Missouri to provide insurance in Missouri.
- E. Regardless of any approval by CITY, CONTRACTOR shall maintain the required insurance coverage in force at all times during the term of this Contract. CONTRACTOR's failure to maintain the required insurance coverage will not relieve CONTRACTOR of its contractual obligation to

indemnify the CITY pursuant to this Section of this Contract. In the event CONTRACTOR fails to maintain the required insurance coverage in effect, CITY may declare CONTRACTOR in default.

XI. Improvements and Modifications.

- A. Tenant Modification Agreement. No improvements, structures, facilities, alterations or additions to the Premises will be made by Concessionaire without prior written approval of the Director. This approval shall be in the form of a separate Tenant Modification Agreement through the Aviation Department's Engineering Division signed by City and Concessionaire. The Tenant Modification Agreement may have requirements for payment and performance bonds, prevailing wage, Minority/Women's Business Enterprise participation, and Federal Aviation Administration review, among other conditions.
- B. Mechanic's/Materialman's Liens. Concessionaire will not permit any mechanic's or materialman's or any other lien to be placed upon the Premises or the leasehold, or the equipment or facilities thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman.
- C. Removal of Fixtures. If Concessionaire is allowed to remove any fixtures or improvements when this Lease terminates, it will do so at its expense and will restore the Premises to its original condition prior to installation of the fixtures or improvements.

XII. City Requirements.

- A. Gratuities and Kickbacks. The provisions of City's Code Section 2-1765, prohibiting gratuities to City employees, and kickbacks by subcontractors, and Code Section 2-1770 and 2-1771, imposing sanctions for violations, shall apply to this Lease. (Code § 2-1765)
 - 1. Gratuities. Concessionaire certifies that it has not and will not offer or give any city employee or officer a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a contract requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract, or to any solicitation or proposal therefor.
 - 2. Kickbacks. Concessionaire certifies that no payment, gratuity, offer of employment or benefit has been or will be made by or on behalf of or solicited from a subcontractor under a contract to Concessionaire or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.
- B. Conflicts of Interest. The provisions of City Charter Section 472 and City's Code Sections 2-1015 and 2-1764, prohibiting city officers and employees from having a financial or personal interest in any contract with City, and Code Sections 2-1016 and 2-1770, imposing sanctions for violations, shall apply to this Lease. Concessionaire certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Lease, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Concessionaire in this Lease.
- C. Prohibition Against Contingent Fees. The provisions of City's Code Section 2-1766, prohibiting the retention of persons to solicit contracts for contingent fees, and Sections 2-1770 and 2-1771, imposing sanctions for violations, shall apply to this Lease. Concessionaire certifies that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Concessionaire for the purpose of securing business. For breach or violation of

this warranty, City shall have the right to annul this Lease without liability or, at its discretion, to deduct from the Lease price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee. (Code § 2-1766)

- D. Earnings Tax/Occupational License Clearance. As a condition precedent to approval of this Lease if over \$131,000, Concessionaire shall furnish the City sufficient proof from City's Commissioner of Revenue, dated not more than 60 days before the date furnished to the City, that it is not delinquent for any City earnings or occupational license taxes, including withholdings from its respective employees.
- E. Records/Audit. The City Auditor, City's Director of Human Relations and the Aviation Department (collectively "Auditors") shall have the right to audit this Lease and all Concessionaire's books, documents and records relating thereto to the extent reasonably necessary to verify Concessionaire's compliance with the terms of this Lease during said period. Concessionaire agrees to allow the Auditors access to such books, documents and records during normal business hours and in such a manner as to not interfere unreasonably with normal business activities, and upon at least ten (10) days prior written notice to Concessionaire. Concessionaire agrees to maintain its books, records and documents relating to this Lease during the Lease term and for three (3) years thereafter.

XIII. Miscellaneous Provisions.

- A. Headings; Construction of Lease. The headings of each section of this Lease are for reference only. Unless the context of this Lease clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.
- B. Merger. This Lease, including any referenced Attachments or Exhibits, constitutes the entire agreement between City and Concessionaire with respect to this subject matter, and supersedes all prior agreements between City and Concessionaire with respect to this subject matter, and any such prior agreement shall be void and of no further force or effect as of the date of this Lease.
- C. Governing Law. This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The City and Contractor: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum non conveniens as an objection to the location of any litigation.
- D. Americans with Disabilities Act. Concessionaire agrees to comply, during the course of this Agreement, with all provisions of the Americans with Disabilities Act, Public Law 101-336 as well as 28 CFR Parts 35 and 36 and 29 CFR Part 1630, as applicable and as amended from time to time.
- E. Rights & Remedies Cumulative. All rights and remedies granted to City herein and any other rights and remedies which City may have at law and in equity are hereby declared to be cumulative and not exclusive, and the fact that the City may have exercised any remedy without terminating this Lease shall not impair City's rights thereafter to terminate or to exercise any other remedy herein granted or to which City may be otherwise entitled.
- F. Modification.
 - 1. Unless stated otherwise in this Lease, no provision of this Lease may be waived, modified or amended except by written amendment signed by City and Concessionaire.
 - 2. No act, conversation or communication with any officer, agent or employee of City, either before or after the execution of this Lease, shall affect or modify any term or terminology of this Lease and any such act, conversation or communication shall not be binding upon City or Concessionaire.

- G. Severability of Provisions. Except as specifically provided herein, all of the provisions of this Lease shall be severable. In the event that any provision of this Lease is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Lease shall be valid unless the court finds the valid provisions of this Contract are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Lease could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.
- H. Binding Effect. This Lease shall be binding upon City and Concessionaire and their successors in interest.
- I. Representations and Warranties. City and Concessionaire each certify that it has the power and authority to execute and deliver this and to perform this Lease in accordance with its terms.
- J. Compliance With Laws. Concessionaire shall comply with all federal, state and local laws, ordinances and regulations applicable to this Lease. Concessionaire, at its own expense, shall secure all occupational and professional licenses and permits from public or private sources necessary for the fulfillment of its obligations under this Lease.
- K. Force Majeure. Neither party shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to causes beyond the control of that party including, without limitation, strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, action of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such party is not responsible or which is not in its power to control.
- L. Interpretation. The language of this Lease shall be construed according to its fair meaning, and not strictly for or against either City or Concessionaire.
- M. No Personal Liability. No councilman, director, officer, employee or other agent of either party shall be personally liable under or in connection with this Lease.
- N. Time of the Essence. Time is of the essence of this Lease.
- O. Affirmative Action. If applicable, Concessionaire shall establish and maintain for the term of this Lease an Affirmative Action Program in accordance with the provisions of Chapter 3 of the City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto. Concessionaire shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry or national origin, sex, disability, age, or sexual orientation, in a manner prohibited by Chapter 3 of the City's Code, then such failure shall be deemed a total breach of this Lease and this Lease may be terminated, canceled or suspended, in whole or in part, and Concessionaire may be declared ineligible for any further contracts funded by the City for a period of one (1) year. This is a material term of this Lease.

Part III
SUPPLEMENTAL TERMS AND CONDITIONS TO ALL AIRPORT AGREEMENTS

I. Assurances.

- A. Concessionaire/Contractor shall furnish its services on a fair, equal and not unjustly discriminatory basis to all users of the Airport.
- B. Concessionaire/Contractor shall charge fair, reasonable and not unjustly discriminatory prices for each unit or services; provided that, Concessionaire/Contractor may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers. Non-compliance with this requirement shall be a material breach of this Lease/Contract/Agreement for which the City shall have the right to terminate this Lease/Contract/Agreement and any estate created herewith, without liability therefor; or, at the election of the City or the United States, either or both of said governments shall have the right to judicially enforce said requirement.
- C. Concessionaire/Contractor warrants that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap, be excluded from participating in any activity conducted on or from the Premises, or otherwise be excluded from the benefits offered by Concessionaire/Contractor to the general public.
- D. As part of the consideration of this Lease/Contract/Agreement, Concessionaire/Contractor does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a DOT program or activity is extended for another purpose involving the provision of similar services or benefits, Concessionaire/Contractor shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Code of Federal Regulations, Title 49, DOT, Subtitle A, Office of the Secretary of Transportation, Part 21-Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights of 1964, as said regulations exist and may be amended from time to time. In this Lease/Contract/Agreement, the Covenant is hereby made a covenant running with the land for the term of the Lease/Contract/Agreement, and is judicially enforceable by the United States.
- E. As part of the consideration of the Lease/Contract/Agreement, Concessionaire/Contractor does hereby covenant and agree that:
 1. No person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; and
 2. In the construction of any improvements on, over or under such Premises and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
 3. That the Concessionaire/Contractor will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts and Authorities. In this Lease/Contract/Agreement, the Covenant is hereby made a covenant running with the land for the term of the Lease/Contract/Agreement, and is judicially enforceable by the United States.
- F. The foregoing discrimination covenants are a material part of this Lease/Contract/Agreement and for breach thereof the City shall have the right to terminate this Lease/Contract/Agreement and to reenter and repossess the Premises and facilities thereon, and hold the same as if said Lease/Contract/Agreement had never been made. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed, including expiration of appeal rights.

- G. Concessionaire/Contractor agrees to insert the foregoing six provisions (A-F) in any Lease/Contract/Agreement by which Concessionaire/Contractor grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on or from the Premises.
- H. Concessionaire/Contractor agrees that it will undertake an **affirmative action plan** in conformance with 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment, contracting or leasing activities covered in 14 CFR Part 152, Subpart E. Concessionaire/Contractor assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. Concessionaire/Contractor further agrees that it will require its covered suborganizations to provide assurances to Concessionaire/Contractor that they similarly will undertake affirmative action programs and that they will require like assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E.
- I. The City reserves the right, but is in no way obligated to Concessionaire/Contractor, to develop or improve the landing area of the Airport as it deems appropriate, without regard to Concessionaire/Contractor, and without interference or hindrance from Concessionaire/Contractor.
- J. The City reserves the right, but is in no way obligated to Concessionaire/Contractor, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Concessionaire/Contractor in this regard.
- K. Concessionaire/Contractor acknowledges that this Lease/Contract/Agreement is subordinate to any existing or future agreement between the City and the United States concerning the development, operation or maintenance of the Airport.
- L. The Lease/Contract/Agreement is subordinate to the reserved right of the City its successors and assigns, to occupy and use for the benefit of the public the airspace above the Premises for the right of flight for the passage of aircraft. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft through said airspace or in landing at or taking off from, or operation on an Airport.
- M. Lessee/Contractor agrees to comply with the notification and review requirements of Federal Aviation Regulation Part 77 in the event future construction of a structure is planned for the Premises, or in the event of a planned modification of a structure on the Premises. Lessee/Contractor covenants for itself, its successors and assigns that it will not erect or permit the erection of any structure or permit the growth of any tree, on the Premises above the mean sea level elevation that is defined as an object that effects navigable airspace as defined in Federal Aviation Regulations Part 77. As a remedy for the breach of said covenant the City of Kansas City, Missouri, reserves the right to enter upon the Premises and remove the offending structure or cut the offending tree, all at the expense of Lessee/Contractor.
- N. Concessionaire/Contractor, by accepting this Lease/Contract/Agreement, covenants for itself, its successors and assigns that no use will be made of the Premises that might in any manner interfere with the landing and taking off of aircraft from the Airport, or otherwise constitute a hazard to air navigation. As a remedy for the breach of said covenant, the City reserves the right to enter upon the Premises and cause the abatement of such interference, all at the expense of Concessionaire/Contractor.
- O. Lessee/Contractor acknowledges that nothing contained in this Lease/Contract/Agreement shall be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. Section 40103(e).
- P. This Lease/Contract/Agreement and all provisions hereof are subordinate to whatever rights the United States now has or in the future may acquire affecting the control, operation,

regulation and taking-over of the Airport, or the exclusive or non-exclusive use of the Airport by the United States during a time of war or national emergency.

II. Right to Amend.

In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, the Concessionaire/Contractor agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required.

III. Immigration Reform and Control Act of 1986.

Concessionaire/Contractor understands and acknowledges the applicability of the IRCA to it. Concessionaire/Contractor agrees to comply with the provisions of IRCA as it applies to its activities under this Lease/Contract/Agreement and to permit the City to inspect its personnel records to verify such compliance.

IV. Disadvantaged Business Enterprise Requirements.

To the extent that this Lease/Contract/Agreement is covered by 49 CFR Part 23, Subpart F, Concessionaire/Contractor agrees that this Lease/Contract/Agreement is subject to the requirements of the U.S. Department of Transportation Regulations at 49 CFR Part 23, Subpart F. Concessionaire/Contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award, or performance of any Lease/Contract/Agreement covered by 49 CFR Part 23, Subpart F. Concessionaire/Contractor agrees to include the foregoing statement in any subsequent Lease/Contract/Agreement that it enters and cause those businesses to similarly include said statement in further agreements.

V. Restricted Areas/Security.

Lessee/Contractor will comply with any and all applicable present and future rules, regulations, restrictions, ordinances, statutes, laws and/or orders of any federal, state or local governmental entity regarding airfield security. Lessee/Contractor shall fully comply with applicable provisions of the Code of Federal Regulations (CFR) Title 49: Transportation. Lessee/Contractor shall fully comply specifically with 49 CFR Part 1540 – Civil Aviation Security; 49 CFR Part 1542 – Airport Security; 49 CFR Part 1544 – Aircraft Operator Security: Air Carriers and commercial Operators (if Lessee/Contractor is an air carrier); and 49 CFR Part 1546 – Foreign Air Carrier Security (if Lessee/Contractor is a foreign air carrier). City has adopted a Security Plan for the Airport approved by the Transportation Security Administration (TSA) pursuant to Department of Transportation (DOT) TSA CFR 49 part 1542. Lessee/Contractor agrees to be bound by and follow the Airport Security Plan. Any access to the Airport granted to Lessee/Contractor shall not be used, enjoyed or extended to any person, entity or vehicle engaged in any activity or performing any act or furnishing any service for or on behalf of the Lessee/Contractor that Lessee/Contractor is not authorized to engage in or perform under this Lease/Contract/Agreement unless expressly authorized in writing by the Director in accordance with TSA CFR 49 1542. In the event Lessee/Contractor, its officer, employees, invitees or Lessee/Contractors cause or contribute to unauthorized persons or vehicles entering the air operations areas of the Airport, or otherwise violate the Security Plan or any laws, regulations, rules, etc. governing airport security, and in addition to any other remedies available hereunder, Lessee/Contractor shall be liable to City for an amount equal to any civil penalty imposed on City for such violations and hereby agrees to indemnify City for any such federal civil penalties, provided City shall promptly notify Lessee/Contractor in writing of any claimed violations so as to permit Lessee/Contractor an opportunity to participate in any investigation or proceedings.

VI. General Civil Rights Provisions.

The Concessionaire/Contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Concessionaire/Contractors from the bid/RFP solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

If, Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the Concessionaire/Tenant/Concessionaire. This provision obligates the Concessionaire/Tenant/Concessionaire for the period during which the property is owned, used or possessed by the Concessionaire/Tenant/Concessionaire and the airport remains obligated to the Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects Issued on June 19, 2018 Page 13 Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

VII. Civil Rights-Title VI Assurances.

A. Title VI Solicitation Notice:

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

B. Compliance with Nondiscrimination Requirements

During the performance of this contract, the Concessionaire/Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Concessionaire/Contractor") agrees as follows:

1. **Compliance with Regulations:** The Concessionaire/Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The Concessionaire/ Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Concessionaire/ Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for subcontractors, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The Concessionaire/Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its

facilities as may be determined by the City or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts and Authorities and instructions. Where any information required of a Concessionaire/Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Concessionaire/Contractor will so certify to the City or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a Concessionaire/Contractor's noncompliance with the Non-discrimination provisions of this contract, the City will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Concessionaire/Contractor under the contract until the Concessionaire/Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The Concessionaire/Contractor will include the provisions of paragraphs one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Concessionaire/Contractor will take action with respect to any subcontract or procurement as the City or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Concessionaire/Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Concessionaire/Contractor may request the City to enter into any litigation to protect the interests of the City. In addition, the Concessionaire/Contractor may request the United States to enter into the litigation to protect the interests of the United States.

For persons with Limited English Proficiency (LEP), please contact KCAD Airport Communications Center (ACC) at 816-243-4000 for help to obtain interpreters of many different languages.

VIII. TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES. During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients,

sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects Issued on June 19, 2018 Page 23
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

IX. ADDITIONAL RECORDS REQUIREMENTS. In addition to the requirements related to Records in Part II of this Contract, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives shall have a right to examine or audit all Records and Contractor shall provide access to them of all Records upon ten (10) days written notice.

X. CLEAN AIR AND WATER POLLUTION CONTROL. Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Contractor agrees to report any violation to the City immediately upon discovery. The City assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration. Contractor must include this requirement in all subcontracts that exceeds \$150,000.

XI. TEXTING WHEN DRIVING. In accordance with Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving”, (10/1/2009) and DOT Order 3902.10, “Text Messaging While Driving”, (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the City encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

XII. ENERGY CONSERVATION REQUIREMENTS Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201et seq).

XIII. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE) All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division

XIV. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970. All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

XIV. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. Contractor and Subcontractor agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)].

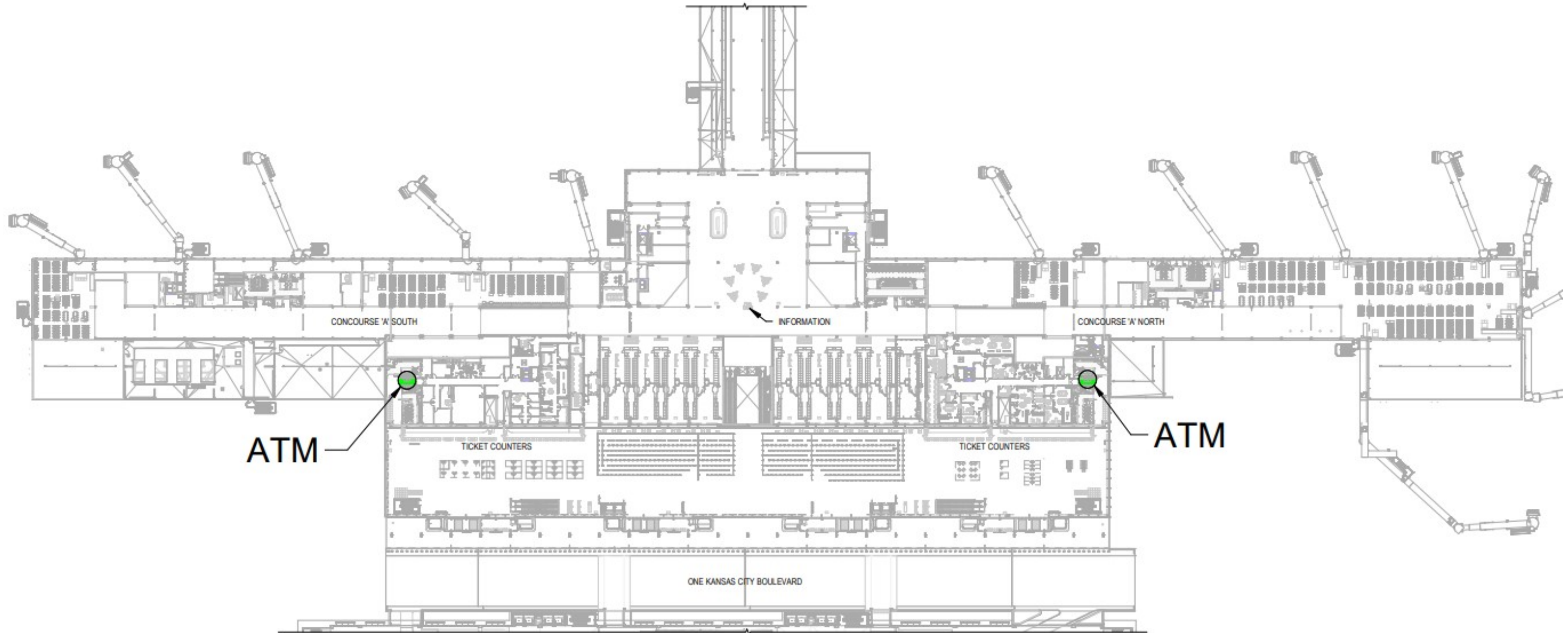
XV. RIGHT TO AMEND. In the event that the Federal Aviation Administration, its successors, or other agency of the United States government with regulatory authority over the airport requires modifications or changes to this agreement or its underlying agreements as a condition precedent to the granting of funds for the improvement of the airport, or otherwise, the parties agree to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this agreement as may be reasonably required.

XVI. DUTIES AND OBLIGATIONS NOT LIMITED. The duties and obligations imposed by this Lease and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

XVII. SCOPE OF WORK LIMITED. This contract is strictly limited to the scope of work outlined herein. The scope of work cannot be altered except by written amendment or change order incorporating additional provisions. Altering the scope of work to include services funded through Airport Improvement Funds may require additional contractual provisions and obligations and void this contract and any obligations of the City to pay for services provided under the terms of this agreement.

**EXHIBIT A
LEASED PREMISES**

Terminal Map is attached with locations identified below. This Exhibit may be modified to add/subtract or change ATM locations without further Council approval.



1 | LEVEL 2.1 - DEPARTURES - ATM LOCATIONS

EXHIBIT B
SCOPE OF WORK

(This Exhibit may be modified by the Director of Aviation without further Council approval)

General Requirements: The goals of the passenger service concessions program are to:

1. Provide first-class ATM services, equipment and maintenance.
2. Proposers shall demonstrate a minimum of three (3) years experience in the ownership, management, or operation of ATM services at high-volume businesses or facilities.
3. All equipment, construction or modification to business center areas, including the addition of electrical and data lines, shall be approved by the Director of Aviation through a tenant modification agreement. All such equipment and improvements shall be at the Proposer's expense. HVAC is provided and maintained by the Airport at no additional cost to tenant.
4. Utilize spaces efficiently to maximize services in the most professional, attractive and user-friendly methods for customers.
5. Passenger service locations may shared by other tenants (i.e. stamp machines, etc.).

Staff Requirements:

1. Experience. Proposer shall be qualified and licensed to conduct business in the state of Missouri. Non-resident Proposers must confirm, in writing, that such licensing shall be obtained within thirty (30) days following notice of selection.
2. Local Manager. The Proposer shall provide a local manager to oversee and/or repair equipment/machine problems, maintenance, inventory needs, cleaning services, trash disposal and emergencies. Adequate staff shall be available for on-call needs 24-hours a day, 7 days per week, including holidays.
3. Continuous Hours of Operation. The Proposer shall remain continuously and uninterruptedly open to the public 24-hours a day, 7 days per week, including holidays. However, the City realizes there will be down times for routine maintenance or service calls when ATMs malfunction.
4. Supervision and Personnel. Proposer's operations shall have a contact person that can easily be reached by City staff for handling complaints and emergencies. All personnel employed by the Proposer shall be neat, clean, and courteous at all times, shall abide by the Airport Rules and Regulations, and shall wear appropriate business attire and/or uniforms.

Pricing:

1. The Transaction Fee proposed and accepted by the City shall remain the same throughout the contract term.
2. Proposer shall maintain a value pricing policy as follows, if applicable: For merchandise, such as stamps or other services offered through the ATMs, the selling price shall not exceed the Street Price for each particular item. The "Street Price" for each particular item will be determined on the basis of a survey, to be conducted by Proposer no less frequently than annually, of prices at comparable non-airport retail establishments in the Kansas City metropolitan area.

Safety and Cleanliness:

1. Proposer's Premises shall be maintained in a first class manner with regard to safety and cleanliness. Proposer shall, at its sole expense, keep the assigned areas clean and free from trash and dust.
2. Provide routine maintenance and cleaning.

Equipment:

1. Proposer shall own or lease, operate, maintain and replace equipment/machines with the most current and up-to-date models at their own expense. Replace worn out or out-of-date models.
2. Provide or develop equipment that is tamper resistant for Airport safety concerns, as is possible.
3. Provide regular monitoring of ATMs and timely responses for repairs, maintenance and stock missing supplies.
4. Post clearly marked, toll free telephone numbers for customers to report problems or ask for assistance with using the machines.
5. Post or program easily understood instructions on equipment. Instructions shall be in English (other foreign languages, if needed).
6. Where applicable, ATM/Debit Card and like services should provide transaction fees, surcharges, receipt options and provide United States currency (and applicable foreign currencies). KCI Airport does not have foreign currency exchange services.
7. The City reserves the right to approve or disapprove any equipment installed or proposed to be installed for purposes of maintaining the appearance and decorum of the terminals.
8. All equipment shall meet the Americans with Disabilities Act regulations for approach height and reach; shall accommodate use by the visually impaired, if possible.