

## **Solicitation RFP-OCAT-2404**

# **OPERATION AND MAINTENANCE OF AUTOMATED TELLER MACHINES**

**Bid Designation: Public**



**City of Oklahoma City and its Trusts**

## **Bid RFP-OCAT-2404**

### **OPERATION AND MAINTENANCE OF AUTOMATED TELLER MACHINES**

Bid Number	<b>RFP-OCAT-2404</b>
Bid Title	<b>OPERATION AND MAINTENANCE OF AUTOMATED TELLER MACHINES</b>
Bid Start Date	<b>In Held</b>
Bid End Date	<b>Jun 26, 2024 4:00:00 PM CDT</b>
Question & Answer End Date	<b>Jun 12, 2024 12:00:00 PM CDT</b>
Bid Contact	<b>Grace Clayton</b> <b>grace.clayton@okc.gov</b>
Bid Contact	<b>City Clerk</b> <b>cityclerk@okc.gov</b>
Contract Duration	<b>5 years</b>
Contract Renewal	<b>2 annual renewals</b>
Prices Good for	<b>Not Applicable</b>
Pre-Bid Conference	<b>Jun 6, 2024 10:00:00 AM CDT (Online)</b> <b>Attendance is optional</b>
Standard Disclaimer	<b>This site and system is hosted by Oklahoma City through BIDSYNC for use of The City of Oklahoma City and its trusts.</b> <b>Certain screens and flags may show the name and/or seal of The City; however, such references do not indicate or change the contracting entity.</b>
Bid Comments	<b>The Trust is seeking proposals for the operation and maintenance of a minimum of three automated teller machines ("ATMs"); at least one ATM located before the entrance of the West security checkpoint (pre-screening), and at least one machine located beyond the West security checkpoint (post-screening) inside the concourse. The selected Proposer may have the choice of placement of the third ATM.</b>

#### **Item Response Form**

Item	<b>RFP-OCAT-2404--01-01 - PRICING PROPOSAL FORM</b>
Quantity	<b>1 each</b>
Prices are not requested for this item.	
Delivery Location	<b>City of Oklahoma City and its Trusts</b> <u>No Location Specified</u>
	<b>Qty 1</b>

#### **Description**

Upload your response to the request for proposal as outlined in the RFP and any related documents to this line item.

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Item **RFP-OCAT-2404--01-02 - ACDBE PARTICIPANTS FORM**

Quantity **1 each**

Prices are not requested for this item.

Delivery Location **City of Oklahoma City and its Trusts**

No Location Specified

**Qty 1**

**Description**

Upload your response to the request for proposal as outlined in the RFP and any related documents to this line item.



**SOLICITATION RFP-OCAT-2404**

**REQUEST FOR PROPOSAL**

**FOR THE**

**OPERATION AND MAINTENANCE OF  
AUTOMATED TELLER MACHINES**





**ELECTRONIC REQUEST FOR PROPOSALS  
OPERATION AND MAINTENANCE OF AUTOMATED TELLER MACHINES**

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(Published in *The Journal Record* on **May 24, 2024**, and **May 31, 2024**)

### **NOTICE TO PROPOSERS**

Notice is hereby given that the Oklahoma City Airport Trust (“Contracting Entity”) will receive electronic proposals at the **OFFICE OF THE CITY CLERK, 200 North Walker Avenue, Oklahoma City, Oklahoma 73102** until 4:00:00 p.m., on the 26th day of June 2024, for the following:

#### **“RFP-OCAT-2404-OPERATION AND MAINTENANCE OF AUTOMATIC TELLER MACHINES”**

**NON-MANDATORY VIRTUAL PRE-PROPOSAL MEETING:** A non-mandatory virtual pre-proposal meeting will be held on June 06, 2024, at 10:00 a.m. CDT, via Microsoft Teams. Interested attendees are required to RSVP to [grace.clayton@okc.gov](mailto:grace.clayton@okc.gov), no later than 12:00 p.m. CDT on June 05, 2024, with full names and email addresses of each attendee, and the subject line of “RSVP RFP-OCAT-2404-OPERATION AND MAINTENANCE OF AUTOMATIC TELLER MACHINES”. The purpose of the meeting is to discuss the request for proposal and proposal documents. The Contracting Entity Trust is not bound by any oral statements made at the meeting. Any changes to the request for proposal documents and terms and conditions contained herein are only effective when made by written addenda.

The Contracting Entity has partnered with Periscope (formerly BidSync) to accept proposals electronically. You are invited to submit a proposal electronically through the Periscope system to supply the professional services, products, and/or systems specified in the electronic proposal packet. The Contracting Entity does not provide access to a computer to prepare electronic proposals or electronic proposal submission. Proposers must register with Periscope at <https://prod.bidsync.com/the-city-of-oklahoma-city> to submit an electronic proposal. The Contracting Entity recommends potential Proposers register and become familiar with the Periscope electronic proposal process in advance of submitting a proposal. There is no charge to the Proposer for registering or submitting an electronic proposal to the Contracting Entity through Periscope. Instructions on how to get registered to propose through Periscope can be found on The City of Oklahoma City’s website at <https://www.okc.gov/departments/bidding>.

A copy of the Guidelines and Procedures for Professional Consultant Selection may be downloaded at the following website: <https://www.okc.gov/departments/finance/policies>. Proposals shall be made in accordance with this Notice to Proposers, General Instructions and Requirements for Proposers, Oklahoma Open Records Act and Confidential Information, the RFP proposal packet, and any other documents which are included in the complete electronic proposal packet. A sample Non-Discrimination Statement, Non-Collusion Affidavit, and Vendor Registration form are attached for the Proposer’s reference and will be completed prior to contract approval. By submitting a proposal, the Proposer certifies that the Proposer, and any proposed subcontractors, are in compliance with 25 O.S. § 1313 and participate in the Status Verification System. The Status Verification System is defined in 25 O.S. § 1312 and includes but is not limited



to the free Employment Verification Program (E-Verify) through the Department of Homeland Security and available at [www.dhs.gov/E-Verify](https://www.dhs.gov/E-Verify).

The Contracting Entity reserves the right to waive formalities, irregularities, and defects in any or all proposals, except as otherwise required by law. The Contracting Entity reserves the right: to reject any or all proposals; to reject a portion of any or all proposals; to negotiate and execute or to not negotiate or execute an Agreement with any Proposer; and to solicit new or different proposals. The Contracting Entity reserves the right to negotiate and/or contract with one or more Proposers for all or a portion of any proposal or proposed professional services, products and/or systems.

Proposals timely received electronically through Periscope, in the City Clerk's Office, shall be forwarded to the Requesting Department for the Selection Committee to open and review. The Periscope system does not allow proposals to be submitted after the above stated date and time. There will be no exceptions to this policy.

All interested parties who submit proposals will be required to comply with all applicable Equal Employment Opportunity Regulations. The Contracting Entity will affirmatively ensure that Disadvantaged Business Enterprises will be afforded full opportunity to submit proposals in response to this solicitation.

Title VI Solicitation Notice: The Contracting Entity, 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 Proposers that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit proposals in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.



## **GENERAL INSTRUCTIONS AND REQUIREMENTS FOR PROPOSERS**

THESE INSTRUCTIONS, REQUIREMENTS AND ANY SPECIAL INSTRUCTIONS CONTAINED IN THE REQUEST FOR PROPOSAL (RFP) DOCUMENT AND SPECIFICATIONS ARE A PART OF THE TERMS AND CONDITIONS OF THE PROPOSER'S PROPOSAL.

1. **EXAMINATION BY PROPOSERS:** All Proposers must examine the terms, conditions, specifications, drawings, schedules, special instructions, contract (if attached), and these general instructions and requirements prior to electronically submitting any proposal. Failure to examine is at the Proposer's own risk as Proposer will be held to the terms, conditions, and requirements therein.
2. **SUBMISSION OF PROPOSALS ELECTRONICALLY TO THE CITY CLERK/SECRETARY:** Proposals timely received electronically through Periscope in the City Clerk's Office shall be forwarded to the Requesting Department for the Selection Committee to open and review. Proposals must be submitted electronically through Periscope and shall be opened at the time stated in the Notice to Proposers, or later, in the City Clerk's Conference Room, located on the 2nd floor of the Municipal Building. There is no charge to the Proposer for registering or submitting an electronic proposal to the City or its Trusts through Periscope. Should you have questions regarding registration through the Periscope system or assistance with submission of a proposal, you may contact Periscope Support at (800) 990-9339 during the hours of 7:00 a.m. to 7:00 p.m. CST/CDT, Monday through Friday. **The Periscope system does not allow Proposals to be submitted after the deadline. There will be no exceptions to this policy.**
3. **DESCRIPTIVE TERMS:** Unless the term "no substitute" is used, the use of brand name, manufacturer, make, or catalog designation in describing an item does not restrict Proposers to that particular brand name, etc. The term is simply to indicate the type, character, quality and/or performance equivalence of the item desired. However, the proposed substitution item must be of such character, quality and/or performance equivalence as indicated in the specifications. A proposed substitute item must include complete data as to the manufacturer's name, type, model number, any descriptive bulletins, and specifications. This data can be uploaded electronically through the electronic bidding system.
4. **EXCEPTIONS:**  
Any exceptions to these instructions, requirements, or the RFP packet must be specified and submitted with the Proposer's proposal by uploading a separate document labeled "Exceptions" into the Periscope system. Trust's RFP shall not be modified in any manner by the Proposer. Any Proposer's Notes to Buyer or RFP Exceptions to any specification that may alter the RFP may be rejected at the Trust's option. Failure to indicate any exceptions may be regarded by OCAT as full acceptance of the requirements, instructions, the RFP packet, and any other RFP Documents related to this RFP.
5. **EXEMPTIONS FROM CERTAIN TAXES:**



The purchase of certain goods or services by the Oklahoma City Airport Trust is generally exempt from the direct payment of most city, state, and federal sales, excise, transportation, and use taxes imposed by the federal, state, and/or local governments. Such taxes must not be included in the proposed price. However, it shall be understood this tax-exempt status cannot be utilized by the successful Proposer. Proposers are not entitled to make purchases for the Contract using the Trust's exemption status. Any taxes that are not exempt must be included in the proposed price. No additional payment or compensation will be made for taxes.

**6. PAYMENTS AND DISCOUNTS:**

- A. Payment for goods and services as specified in the Agreement/Contract shall be processed promptly after completion of delivery and acceptance of items and after receipt from Proposer of properly prepared invoice(s) and/or notarized claim voucher(s), if applicable.
- B. Discounts for prompt payment will not be considered in proposal evaluations, unless otherwise specified. Discounts offered by the Proposer will be taken, however, if payment is made within the discount period.
- C. Late charges cannot be assessed against the Oklahoma City Airport Trust.

**7. CURRENCY:**

The Proposer agrees that all proposals are to be submitted in U.S. dollars. Proposals submitted in any currency other than U.S. dollars may not be considered. The Proposer also agrees that all invoices shall be submitted in U.S. dollars and agrees to accept payment in U.S. dollars as full satisfaction of the correctly invoiced amount unless otherwise agreed to in a negotiated contract.

**8. AWARD OF AGREEMENT/CONTRACT:**

The Oklahoma City Airport Trust reserves the right to award by item, groups of items or all items of the proposal; to reject any or all proposals in whole or in part; and waive technical defects, irregularities, and/or omissions.

**9. PERFORMANCE BOND OR GUARANTY:**

If required by the RFP, the successful Proposer must submit the performance bond or a certified cashier's check in the amount required by the date requested prior to award of Agreement/Contract.

**10. PATENTS, TRADEMARK, AND LICENSE:**

The Proposer agrees to indemnify and save harmless the Oklahoma City Airport Trust and the City of Oklahoma City, including any of their employees, purchasing agent, and assistants from all suits and actions of every nature and description brought against the Proposer and/or any of its employees because of, or for the use of, patented, trademarks or licensed goods, equipment, products, names, or processes. The Proposer shall pay all royalties and charges which are legally required for the use of the same. Evidence of such payment or satisfaction shall be submitted upon request of the Oklahoma City Airport Trust.

**11. TERMINATION:**



- A. The performance of services and/or the delivery of items under any Agreement/Contract may be terminated by the Oklahoma City Airport Trust, in whole or in part, whenever it is determined to be in the best interest of the Oklahoma City Airport Trust.
- B. Any such termination will be in effect by delivering a termination notice to the Proposer specifying the extent to which performance or services and/or delivery of ordered commodities is terminated, and the date the termination becomes effective.
- C. After receipt of a termination notice, the Proposer shall stop performance of services and/or accept no further orders under the Agreement/Contract.

**12. COMPLIANCE WITH APPLICABLE LAWS:**

All Proposers must comply with all applicable federal, state, or local laws and regulations, including Title VI and all provisions of the Civil Rights Act of 1964 42, U.S.C. § 2000d, *et seq.*

**13. INSURANCE:**

The liability of the Oklahoma City Airport Trust for acts of negligence are limited and subject to the Governmental Tort Claims Act, 51 O.S. § 151, *et seq.*

**14. RIGHT TO AUDIT:**

The Oklahoma City Airport Trust shall, at all times, have the right to examine books, papers, and records of the successful Proposer relative to all aspects of the Proposer's proposal and the Agreements/Contracts awarded as a result of this proposal to confirm Agreement/Contract compliance. Failure to provide the requested information may result in termination of the Agreement/Contract. This right to audit only affects Agreement/Contract compliance as a result of this proposal and does not apply to Proposer records beyond the scope of the Agreement/Contract.

**15. SAMPLE FORMS:**

Sample forms are attached to this document and noted as Sample Forms. It is not necessary to submit these sample forms with your electronic proposal. The sample forms will be completed by the selected Proposer prior to Agreement/Contract approval.

**16. REFERENCES:**

The Oklahoma City Airport Trust has the right to request and verify references from Proposers.



## **OKLAHOMA OPEN RECORDS ACT AND CONFIDENTIAL INFORMATION**

All materials submitted to the Airport Trust pursuant to this Bid or Proposal potentially become subject to the mandates of the Oklahoma Open Records Act, 51 O.S. § 24A.1. *et seq.* The purpose of this Act is to ensure and facilitate the public's right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power. Almost all "records," as that term is defined in the Act, may be disclosed to the public upon request. Except where specific state or federal statutes create a specific and express exemption or confidential privilege, persons who submit information to public bodies have no right to keep this information from public access nor have a reasonable expectation that this information will be kept from public access.

If you believe that any of the information you have submitted to the Airport Trust pursuant to this Bid or Proposal is exempt or confidential under a specific state or federal statute, and therefore not subject to public access under the Oklahoma Open Records Act, you must comply with the following:

1. Place said documents/records in a separate electronic file attachment marked "Confidential." DO NOT label your entire Bid or Proposal as "Confidential" – label only those portions of the Bid or Proposal that you feel are exempt or are made confidential by state or federal law as "Confidential."
2. For each such document for which you are claiming an exemption or a confidential privilege, identify the federal and/or state law that creates said privilege, e.g., for trade secrets, see 21 O.S. § 1732 (Larceny of Trade Secrets) and the Uniform Trade Secrets Act, 78 O.S. § 85, *et seq.*

Should an Open Records request be presented to the Airport Trust requesting information you have identified as "Confidential," you will be responsible for defending your position in the District Court, if needed.

If you fail to identify any records submitted as part of your Bid or Proposal as "Confidential," you agree that said records are not exempt or confidential and are subject to public access.

Upon receipt of a request by a third party to review or copy records properly identified as "Confidential," you will be notified of the request and thereby given an opportunity to immediately enforce and protect your rights by initiating an action in a court of competent jurisdiction. Should you fail to timely bring an action to enforce your rights, then the requested records will be released by the Airport Trust based upon its determination of the application of the Oklahoma Open Records Act.





## **PROPOSAL SPECIFICATIONS**

### **1. INTENT**

The Oklahoma City Airport Trust ("OCAT") is soliciting proposals ("RFP") from qualified firms ("Proposers") for a single Proposer to enter into a Concession Services Agreement ("Agreement") to provide the operation and maintenance of Automated Teller Machines ("ATMs") at Will Rogers World Airport ("Airport" or "OKC").

The provision of the ATM services is considered to be an Airport Concession Disadvantaged Business Enterprise ("ACDBE") by the Federal Aviation Administration ("FAA") that is subject to the requirements of 49 CFR Part 23 and 26.

The Agreement will be for a three (3) year initial term with the option for OCAT to renew for two (2) additional one-year periods. It is anticipated that the selected Proposer will begin operations on July 1, 2024, unless another date is selected by OCAT.

### **2. PROJECT OVERVIEW**

The selected Proposer will be responsible for the operation, maintenance, and management of three (3) Automated Teller Machines ("ATMs") at various locations throughout the Will Rogers World Airport ("Airport") Terminal for use by passengers, the general public, visitors to the Airport, and Airport personnel, and in compliance with applicable policies of OCAT, as the same may be amended by OCAT from time to time.

### **3. BACKGROUND**

#### **A. General Airport Information**

OCAT was created and operates as a public trust under the authority of 60 O.S. §176 *et seq.*, of the Oklahoma Statutes as amended, pursuant to the provisions of a Trust Indenture dated as of the 1<sup>st</sup> day of April 1956, as amended, for the use and benefit of the City of Oklahoma City ("City").

The Airport Terminal Building is open to the public 24 hours a day, seven days a week, and serves approximately 4.4 million passengers per year. High traffic hours for passengers and visitors generally occur between the hours of 3:00 a.m.–7:00 a.m., 11:00 a.m.–1:00 p.m., 3:30 p.m. – 7:00 p.m., and 11:00 p.m. – 1:00 a.m., although many flights are scheduled at other times as well. Fall and Spring Breaks, summer travel during the months of June through August, Thanksgiving, and Christmas holidays are also high demand time periods at the Airport.

The successful Proposer shall work with the Airport Representative to determine the best times to schedule all Services.

#### **B. Statistical Data**

##### **1. Calendar Year Enplanement Statistics**

Current and prior year enplanement reports may be found at <https://flyokc.com/news-statistics>.





Will Rogers World Airport Passenger Traffic		
2021	2022	2023
3,336,919	3,940,522	4,400,049

2. Calendar Year Transactions Statistics

Will Rogers World Airport ATM Transactions		
2021	2022	2023
8,407	9,841	8,145

In providing these figures, the Trust makes no warranties or representation, expressed or implied, as to the accuracy of the table listed above, nor the level of future enplanements or automatic teller machine transactions anticipated at the Airport for calendar year 2024 and beyond. By submitting a Proposal, the Proposer warrants and represents that it has not relied on any warranties or representations by the Trust as to past or future enplanements, automatic teller machine transactions, or as to other factors relevant to the future use of the Airport, in formulating its Proposal, and that it has exercised its own judgment in formulating the Proposal.

**SEE THE ATTACHED SAMPLE AGREEMENT FOR ANTICIPATED FURTHER REQUIREMENTS AND DETAILS.**

4. **SCOPE OF SERVICES**

The Trust seeks a minimum of three automated teller machines ("ATMs"); at least one ATM located before the entrance of the West security checkpoint (pre-screening), and at least one machine located beyond the West security checkpoint (post-screening) inside the concourse. The selected Proposer may have the choice of placement of the third ATM.

Proposer shall provide Equipment and perform Services during the term of the Contract and any renewal periods. All labor to operate and maintain the automated teller machines herein will be provided by the selected Proposer. Additional details are included in the Sample Agreement.

The successful Proposer will be required to submit an O&M Plan for Director approval before an Agreement will be approved. See Article 1 in the Sample Agreement.

A. **Required Services**

The management and operation of the Concession must ensure customer satisfaction, maximize the revenue performance, and meet the objectives outlined herein:

1. At its sole cost and expense, Proposer shall install either new equipment or late model equipment that is in good working condition, operate, and maintain the ATM machines at the Trust approved locations.
  - a) The Trust will cause all necessary utility lines and services to be brought to the premises to facilitate the installation.



- b) The successful Bidder shall be responsible for providing network connectivity.
2. ATMs shall be installed in a manner compatible with the existing electrical, mechanical, and structural design of the premises.
3. ATM services shall be provided with consideration regarding the regularly scheduled opening and closing of the nearby stores. ATM services shall be available twenty-four (24) hours per day, seven (7) days per week, including holidays. Successful Proposer shall provide a twenty-four (24) hour response time for machine repairs and replacement. Successful Proposer shall pay for the telephone services associated with the ATMs.
4. The successful Proposer shall regularly service each ATM so that it will at all times be properly stocked, cleaned, and in condition for use. The awarded Proposer shall keep the ATM locations in good order and repair shall not allow the accumulation of waste in the area. Successful Proposer shall repair any holes in the walls and flooring resulting from the installation or removal of the ATM machine.
5. Successful Proposer shall be responsible for any security services and will be liable for any amount of damage to equipment installed and any contents of the ATM machines.

The Contracting Entity reserves the right to award this Contract to a single Bidder or to multiple Bidders, whichever is deemed to be in the best interest of the Contracting Entity.

**B. Minimum Qualifications**

Proposers must meet the following criteria at a minimum to be considered as a qualified Proposer. Only Proposers who comply with the following should submit proposals. Any Proposer not meeting these minimum criteria, will not be considered:

1. The Proposer shall be a financial institution.
2. The Proposer shall have a minimum of three (3) years of continuous experience in the management and operation of an ATM banking service business operating two or more ATMs simultaneously.
3. Proposers must submit written details of locations, landlords, experience, annual transaction volume, ATM services rendered, and reports confirming revenue.
4. Proposers must provide three (3) business references, one of which is a financial institution familiar with Proposer's business operations, to include the contact person, title, company affiliation, address, telephone, and, if available, a fax number for each reference given.



5. If the Proposer is a new legal entity, the identified owner(s), managing members, or executive officers must meet the Minimum Qualifications.
6. Proposers must be authorized to conduct business in the State of Oklahoma by the time the contract is submitted to OCAT for approval.

**5. NON-MANDATORY VIRTUAL PRE-PROPOSAL MEETING**

A non-mandatory virtual pre-proposal meeting will be held on **June 06, 2024, at 10:00 a.m.** CDT via Microsoft Teams. Interested attendees are required to RSVP to [grace.clayton@okc.gov](mailto:grace.clayton@okc.gov), no later than 12:00 p.m. CDT on June 05, 2024, with full names and email addresses of each attendee, and the subject line of "RSVP RFP-OCAT-2404-Operation and Maintenance of Automated Teller Machines". The purpose of the meeting is to discuss the request for proposal and proposal documents. OCAT is not bound by any oral statements made at the meeting. Any changes to the request for proposal documents and terms and conditions contained herein are only effective when made by written addenda.

**6. ESTIMATED TIMELINE**

EVENT	DAY	DATE	TIME
Request for Proposals Issued	Friday	May 24, 2024 & May 31, 2024	9:00 a.m.
<b>Non-Mandatory</b> Virtual Pre-Proposal meeting	Thursday	Jun 06, 2024	10:00 a.m.
Questions Due from Proposers	Wednesday	Jun 12, 2024	12:00 p.m.
Questions and Answers Posted	Monday	Jun 18, 2024	4:00 p.m.
Proposals due to the City Clerk's Office	Wednesday	Jun 26, 2024	4:00 p.m.
Interviews/clarifications, if desired by OCAT	Mon.– Fri.	Jul 8-12, 2024	TBD
Selection/Award of Contract/Agreement	Thursday	Jul 18, 2024	9:00 a.m.
Contract Commencement Date	Friday	Aug 1, 2024	TBD

***Note: Except for the Proposal due date, all dates are tentative and subject to change. All times are Central Daylight Savings Time (CDT).***

**7. PROPOSAL SUBMITTAL REQUIREMENTS**

The Proposer shall provide a detailed written proposal with accompanying information that demonstrates the Proposer's capability to meet the requirements as requested. Proposer's response should address each section below and each section should be identified to ensure the RFP Selection Committee considers the same information on each proposal. Each section below should be identified and presented in the same exact order.

**A. Cover Letter**

Identify the legal name of the proposing company, identify any ACDBE status with the Oklahoma Department of Transportation, describe the ownership/type of corporate structure (include the name of any parent company), Federal Tax ID, include the



Proposer's complete mailing address, phone number, and e-mail address. Indicate how the company is organized such as a sole proprietorship, privately or publicly held company, or limited liability company, state of organization for the entity and if Proposer is authorized to do business in the State of Oklahoma. The letter must be on business letterhead and signed by an authorized agent who can legally bind the Proposer. Any out of State entity will be required to register with the Oklahoma Secretary of State prior to award. Proposer must also complete and submit the ACDBE Participants Form, as depicted in Exhibit G of the Sample Agreement, as a line item in Periscope.

**B. Proposer History**

Provide detailed information regarding the number of years the company has been in business and the history of the Proposer for the past five (5) years. Discuss any actual or anticipated changes in the management or ownership of the Proposer.

**C. Financial Stability**

Provide information that describes its financial capabilities to manage, operate and provide the automated teller machine maintenance services. This shall include, but not be limited to: Proposer's financial statements, cash flow analysis, and debt/equity ratios.

**D. Qualifications and Experience**

Proposers must be a financial institution and have a minimum of three (3) years of continuous successful experience within the past five years in the management and operation of an ATM banking service business operating two or more ATMs simultaneously.

**E. Customer References**

Provide at least three (3) current business references that are using your firm's services for similar projects including any government agencies or airports. References of current customers should be submitted to include contact name, address, phone number, and email address. OCAT is not to be included as a reference.

**F. Pricing for Services**

Pricing must be submitted through the Line-Item area of the electronic bidding system as depicted in Exhibit F of the Sample Agreement. The Proposer shall submit pricing based on the annual cost for the Services required in the Technical Specifications during the term of the Contract and any renewal periods. Proposals shall incorporate the full cost for the Services including any lifts, equipment, tools, supplies, supervisors, and labor.

**G. Forms and Other Documents Acknowledgement**

The Periscope electronic bidding system will require you to acknowledge that you reviewed the General Instructions and Open Records Act requirements document by entering your electronic signature. The Non-Discrimination Statement, RFP Non-Collusion Affidavit and Vendor Registration Form must be completed prior to the



Agreement award.

8. **ADDITIONAL REQUIREMENTS AND INFORMATION**

A. **Clarification**

Proposers should thoroughly examine the instructions, specifications and requirements as set forth in this RFP. If there is any doubt or uncertainty as to the meaning of the same, Proposers may ask for an explanation or clarification through the question submittal process on Periscope **before** submitting a proposal. Only questions submitted in Periscope will receive a response.

No person is authorized to give oral interpretations of, or make oral changes to, the RFP documents. Therefore, oral statements will not be binding and should not be relied upon.

Proposers must submit all requests for explanation, clarification or technical questions regarding this RFP through the Periscope electronic bidding system, located at <https://www.periscopeholdings.com/bidsync/the-city-of-oklahoma-city>, by the date and time listed in the **Proposal Specifications, section 5, Estimated Timeline**, of this RFP. Answers to all questions not already addressed in the RFP document will be provided in the form of addenda.

B. **Addenda**

While Proposers may seek clarification to the RFP or Sample Agreement during the Q&A or exceptions submitted with the proposal submission, there is no guarantee OCAT will agree to any requested change by a Proposer. However, if OCAT elects to revise any part of this RFP, an addendum will be issued through the electronic bidding system. OCAT is not bound by any oral representation, clarifications, or changes unless the same is provided to proposers in written addendum form from OCAT.

It is the Proposer's responsibility to log into the electronic bidding system to monitor any addenda that may be issued during the process. A Proposal will not be accepted if all addenda are not acknowledged through the system. If you are set up for electronic notifications through the system, you will receive a notification by e-mail if any addenda are issued. No other statements or representations will be binding on OCAT except those in this RFP and any written addenda issued by OCAT.

C. **Exceptions and Deviations**

Any exceptions or deviations to the terms and conditions, procedures, scope, type, and frequency of services and specifications to those listed in this RFP shall be submitted during the Questions and Answer period. Failure to do so will be construed to mean that the Proposer agrees to provide the services or goods exactly as described, and in full compliance with all terms and conditions of the RFP. Unless altered in the final Agreement, the RFP terms and conditions will be incorporated into the agreement of the parties.

D. **Altering Proposals**

Proposals cannot be altered or amended after the submission deadline; however, the



selection committee may request clarification or additional information from any, some, or all proposers.

**E. Undue Influence**

Upon advertising this solicitation, no officer, employee, agent, or representative of the Proposer shall have any contact or discussion, verbal or written, with any representative of OCAT (i.e., Trust Officer, City Council member, or City staff) either directly or indirectly through others in which the Proposer seeks to influence any representative of OCAT regarding any matters pertaining to this solicitation.

Contacts by the Proposer with OCAT that do not pertain to a solicitation are exempt from this provision. Examples of these exempt contacts are:

- Private, non-business, contacts with OCAT by the Proposer employees acting in their personal capacity;
- Business contacts outside of this solicitation that OCAT may have with the Proposer;
- Presentations and/or responses to inquiries initiated by OCAT;
- Pre-proposal conferences; or
- Discussions with the departmental contact as outlined in the Clarifications section above.

If a representative of any Proposer violates the foregoing prohibition by contacting any of these parties, it may result in the Proposer being disqualified from the proposal process.

**F. Order of Actions**

OCAT will receive electronic proposals until the proposal submission deadline identified within the RFP's timeline, located in the **Proposal Specifications, Paragraph 5, Estimated Timeline**. Responses can be uploaded into the electronic bidding system in one file or in different files clearly labeling what is contained in each electronic file. **DO NOT SUBMIT ZIP FILES.**

- i. Electronically complete the Non-Discrimination Statement and RFB Non-Collusion Affidavit.
- ii. Electronically acknowledge the General Requirements, Instruction for Proposers, and Oklahoma Open Records Act and Confidential Information statements.
- iii. Attach a copy of any exceptions/deviations made to the contract documents and requirements of this RFP.
- iv. Attach all required Proposal information and compile them in the following order:
  - a. Cover Letter
  - b. Firm History
  - c. Financial Stability
  - d. Qualifications and Experience
  - e. Customer References





- f. Pricing for the Services
- g. Forms and Other Documents Acknowledgement

**G. Order of Precedence**

In the event of an inconsistency between provisions of this RFP, the inconsistency shall be resolved by giving precedence in the following order: a) Proposal Specifications; b) Notice to Proposers; and c) General Instructions and Requirements for Proposers. Upon approval of the Professional Services Agreement, the Agreement will take precedence over the RFP provisions.

**9. SELECTION PROCESS**

**A. Proposal Evaluation Process**

Each proposal will be independently evaluated by a Selection Committee. The Selection Committee may make its recommended selection based on the written proposals received, and may, at its discretion, conduct oral interviews with some or all of the Proposers. The Selection Committee will report the results of its evaluations and make its recommendation to OCAT's governing body. OCAT will either approve the recommended Proposer(s), select different Proposer(s), or decline to contract with any Proposer(s).

**10. TERMS AND CONDITIONS**

**A. Right to Accept or Reject**

The Trust reserves the right to accept or reject in part or in entirety any or all proposals, or to cancel in part or entirety the Request for Proposals.

**B. Clarification:**

The Trust reserves the right to request clarification of information submitted and to request additional information from any or all of the proposers.

**C. Proposal**

Any proposal submitted shall constitute an irrevocable offer to provide the Services set forth in these specifications until the award of the contract is made by OCAT.

**D. Contract Forms**

Any agreement or contract resulting from the acceptance of a proposal shall be in a form approved by OCAT and shall contain, at a minimum, applicable provisions of the Request for Proposals, and the proposal shall be incorporated by reference. OCAT reserves the right to reject any agreement that does not conform to the Request for Proposals and requirements for agreements and contracts.

**E. Assignment of Interest**

The successful Proposer shall not assign any interest, obligation, or benefit under or in the agreement and shall not transfer any interest in the same without prior written consent of OCAT.

**F. Independent Contractor**



The selected Proposer shall be an independent contractor with respect to activities and conduct while engaged in the performance of service for OCAT.

**G. Indemnity**

Proposer agrees to hold harmless, defend and indemnify OCAT from all claims for damages alleged to arise from Proposer's acts and/or omissions. Under Oklahoma law, the City, and the public trusts of which the City is a sole beneficiary are prohibited from indemnifying any third party. See, e.g., 2012 OK AG 18, 2006 OK AG 11, 1978 OK AG 256, and the Oklahoma Governmental Tort Claims Act, 51 O.S. § 151 et seq., as amended. Accordingly, any requirement for indemnification by the City or its Trusts in any contract proposed in response to this RFP will be deleted. The City and its Trusts reserve the right to eliminate or exclude from consideration any Proposer that requires such a clause.

**TECHNICAL SPECIFICATIONS**

**Questions shall be addressed through the electronic bidding system and responses will be electronically issued. Addenda, if necessary, shall be issued through the electronic bidding system.**

**1. SERVICES AND OPERATIONAL STANDARDS**

Proposers shall be solely responsible for the installation, operation, maintenance and servicing, security, and management of its ATMs for use by passengers, the general public, personnel, and visitors to the Airport.

**A. Installation**

1. Installation of the ATMs shall occur during off-peak hours of 7:00 a.m. through 10:00 a.m. and 8:30 p.m. through 5:00 a.m., CST/CDT, or other hours as may be designated in writing from time to time by the Director of Airports. Installation of all machines must be completed within forty-eight (48) hours after commencement of Contract.
2. ATMs will be located both pre- and post- security. Locations may be changed or reduced if mutually agreed upon between the Trust and the successful Proposer.
3. Successful Proposer shall respond within twenty-four (24) hours of notification for machine repairs and replacement.

**B. Operation**

1. ATMs shall be available to operate twenty-four (24) hours a day, seven (7) days a week, including holidays, with the exception of the ATM in the post-screening area which will only be available during the hours of 4:30 a.m. through 12:30 a.m.
2. ATMs must meet ADA compliance requirements as stated in the RFP MINIMUM EQUIPMENT SPECIFICATIONS, Section L, Sub-Section 3.





3. ATMs shall be maintained in good working order and shall be serviced and restocked at intervals that guarantee the equipment functions properly.

**C. Maintenance and Servicing**

1. Servicing of ATMs shall include, but not be limited to (a) restocking ATMs, (ii) general cleaning (more in-depth cleaning if requested by Trust), maintenance, and repair of equipment, (iii) collection and reporting of all revenues, and (iv) providing a 24-hour toll free number for responding to all ATM service/emergency calls.
2. Response time to service calls and/or replenishment of funds shall be within four (4) hours of notification.
3. Emergency service response shall be available within ninety (90) minutes of notice.
4. Except for emergency response, servicing of the ATMs shall occur during off-peak hours of 7:00 a.m. through 10:00 a.m. and 8:30 p.m. through 5:00 a.m., CST/CDT, or other hours as may be designated in writing from time to time by the Director of Airports.

**D. Management**

Management and operation of the ATMs must always meet commercially reasonable standards.

**E. Security**

Proposer acknowledges that Federal Aviation Administration regulations prohibit firearms past all security checkpoints. Servicing of ATMs beyond the security checkpoint will require escorting by the Airport Police. For regular cleaning and maintenance of ATMs beyond the security checkpoint, escort is required by designated Airport Building Maintenance personnel; therefore, advance coordination with Airport Police and/or Airport Building Maintenance will be required for the ATMs beyond the security checkpoint.

**F. ACDBE Participation**

In accordance with regulations of the Oklahoma Department of Transportation (ODOT), Uniform Certification Program, 49 CFR Part 23, Subpart C, the Trust has implemented an Airport Concessions Disadvantaged Business Enterprise (ACDBE) concession plan under which qualified firms may have the opportunity to operate or participate in the operation of an airport business. An ACDBE goal of 5.93%, as measured by total estimated annual gross revenues, has been established for concession programs. The Concessionaire shall make every reasonable attempt to achieve this goal.

ACDBE participation may be in the form of one or more subleases, joint ventures, partnerships, or other legal arrangement meeting the eligibility standards in 49 CFR Part 23, Subpart C. In the event that the Concessionaire qualifies as an ACDBE, the



goal shall be deemed to have been met.

Proposers shall submit information concerning ACDBE firm(s) that may participate in this concession (if any), including:

- Name and address of each firm.
- Annual estimated gross receipts to be earned by each named firm.
- Description of the legal arrangement(s) underlying each ACDBE's participation
- Total overall estimated annual gross receipts to be earned by the Proposer in the event it is the Selected Proposer

ACDBE firms that are not certified as such at the time of Proposal submittal must have submitted a certification application before the Proposal due date. Contact information for such certification may be obtained by contacting the State of Oklahoma Department of Transportation website at <http://www.okladot.state.ok.us> or by phone (405) 522-3379. Current ACDBE's may also be found on the ODOT website. The foregoing requirements with respect to ACDBE participation are not intended to force the Proposer to change its business structure.

#### **G. Performance Standards**

The Oklahoma City Airport Trust ("Trust") maintains the right to monitor and enforce quality standards for its concession operators. Areas for review will include, but not be limited to, cleanliness, maintenance and repair of equipment, quality of products, and overall responsiveness to Trust and/or customer concerns regarding the ATM concession.

The Trust maintains the right to determine and change an acceptable quality standard of normal operational time on each ATM. The Trust has set a standard of availability in a manner that will ensure ninety-five percent (95%) uptime (22.8 hours) for each twenty-four (24) hour period, seven (7) days per week. Additionally, more than five (5) operational failures in one month on one ATM will constitute "unsatisfactory" performance, which may result in default on the Agreement. Failure to comply with performance standards shall constitute a default as stipulated in the Agreement.

## **2. MINIMUM EQUIPMENT SPECIFICATIONS**

### **A. Design Dimensions**

ATM design dimensions may vary by location; however, the general guideline for installation provides for units **not to exceed 30" width, 30" depth, and 60" height** using free-standing, front-loading equipment which are attractive, reliable, and well-maintained. The furnishing, installation, operation, maintenance, and provisioning of each ATM and all associated software and hardware provided shall meet all applicable standards and recommendations.

### **B. Equipment Certification**

All equipment shall be UL and FCC approved.



**C. Machine Function and Capability**

1. Each ATM shall have an Integrated Pentium processor or better capable of advanced functions including LAN connectivity, system management capabilities for predicting, assisting, and reporting maintenance. ATMs will also have an electronic journal for storing various types of operational information.
2. Each ATM and fixtures shall be modular, state-of-the-art, and fully integrated, having the ability to incorporate new features and capabilities, interior free-standing ATM designs.
3. ATMs shall be equipped with cameras and an alarm system that is appropriate for the location and standard for the industry.
4. ATMs shall have a color Cathode Ray Tube (CRT), or if other (such as LCD or plasma), please specify.
5. ATMs shall have a card swipe or dip card interface as opposed to a card insert.
6. ATMs shall produce written receipts for all types of transactions.
7. ATMs shall be able to execute transactions using a variety of credit, debit, and ATM cards.
8. ATMs shall access at least two national networks (i.e., Cirrus, Plus, etc.) and each of the following networks: Visa, MasterCard, and American Express. Additional network affiliations are encouraged.
9. ATMs must have system management capabilities for predicting, assisting, and reporting maintenance and the need for cash replenishment.

**D. Fees**

ATM transaction fees, surcharges, or any other bank fees may not exceed those charged at the Proposer's off-site locations in the Oklahoma City metropolitan area and shall in no event exceed \$2.00 per use; provided, however, such charges may be annually reviewed as provided further in the proposed Agreement.

**E. Directions**

ATMs shall display all written directions necessary to instruct customers in the operation of the ATM and a list of ATM transaction fees, transaction surcharges, or any other fee charged and to whom the transaction fees or surcharges apply.

**F. Services Offered**

Services offered at the ATMs shall include account inquiries, cash withdrawals, account transfers, and other transactions as permitted by the governing network regulations.



**G. Language**

ATM shall support the following transaction types in both English and Spanish:

- i. Cash withdrawal from credit card, checking and savings account;
- ii. Account transfers between checking and savings; and
- iii. Balance inquiries for checking and savings.

**H. Currency**

ATMs shall conduct all transactions in United States currency and be capable of dispensing in at least three (3) denominations, for example, five (\$5), ten (\$10), and twenty (\$20) dollar bills as the primary denomination for withdrawals.

**I. Contact Information**

Each ATM shall contain a clearly visible twenty-four (24) hour toll free telephone number to call for inquiries, maintenance issues, customer service issues, or complaints. Advertising other than that specifically denoting the successful Proposer's services is prohibited.

**J. Location**

Successful Proposers shall provide all necessary financing, construction, installation, and facility build-outs to ensure that the designated ATM locations are designed and finished in a manner that complies with building codes, regulatory requirements, and Airport standards. All equipment shall be subject to approval by and coordinated through the Director of Airports, or his designated representative.

**K. Utilities**

Successful Proposers may obtain, without charge, a supply of electricity for operation of its equipment, provided that existing outlets are adequate for this purpose. If a new area is designated, or existing outlets are inadequate, electrical hook-ups and all associated costs will be the responsibility of the Proposer.

**L. Equipment**

1. Proposer shall provide, at Proposer's sole cost and expense, all electrical distribution, telecommunications equipment, security alarm, and device lighting necessary for Proposer's operation at the Airport. In the event of any change desired by Proposer as to said points of supply by the Trust, the expense of making such changes or alterations shall be at the sole cost of the Proposer.
2. Telecommunications equipment that is installed, serviced, operated, and maintained by the Proposer shall be in accordance with standards established in the Building Industry Consulting Service International (BICSI) Telecommunications Distribution Methods Manual, current edition, as well as National Electrical Code low voltage requirements for the City of Oklahoma City. Deficiencies shall be corrected at the expense of the Proposer.
3. All equipment, products, and services shall be of the highest quality and must comply with all applicable federal, state, and local regulations, including



Americans with Disabilities Act ("ADA") guidelines; including approach height/reach requirements cleared floor space, accessible route, voice guidance, visibility on the display screen, braille instructions, and keypads that are tactically discernible, arranged in ascending or descending layout, and designed to contrast visually from the background service.

**M. Performance Standards**

The Oklahoma City Airport Trust ("Trust") maintains the right to monitor and enforce quality standards for its concession operators. Areas for review will include, but not be limited to, cleanliness, maintenance and repair of equipment, quality of products, and overall responsiveness to Trust and/or customer concerns regarding the ATM concession.

The Trust maintains the right to determine and change an acceptable quality standard of normal operational time on each ATM. The Trust has set a standard of availability in a manner that will ensure ninety-five percent (95%) uptime (22.8 hours) for each twenty-four (24) hour period, seven (7) days per week. Additionally, more than five (5) operational failures in one month on one ATM will constitute "unsatisfactory" performance, which may result in default on the Agreement. Failure to comply with performance standards shall constitute a default as stipulated in the Agreement.

[Remainder of page intentionally left blank]



### **PROPOSAL PRICING FORM**

Proposers shall download and complete the fillable Proposal Pricing Form and upload it as a line item in Periscope.

[Remainder of page intentionally left blank]



**ACDBE PARTICIPANTS FORM**

Proposers shall download and complete the fillable ACDBE Participants Form and upload it as a line item in Periscope.

[Remainder of page intentionally left blank]

**PROPOSAL PRICING FORM**

RFP-OCAT-2404 OPERATION AND MAINTENANCE OF AUTOMATED TELLER MACHINES

WILL ROGERS WORLD AIRPORT ( WRWA )

**\*Proposal Pricing Form must be completed, signed, and submitted with the proposal as a Line Item, in the Periscope Bid System, or the proposal will be deemed non-responsive.**

Number of Automated Teller Machines: 3

Proposed Annual Concession Fee:

\$

Proposed ATM Customer Usage Fee Per Transaction:

\$

Name:

Address:

Date:

**\*Proposals, and all accompanying documents, must be received by City Clerk s office by 12:00:00 p.m., CDT, on Wednesday, June 18, 2024.**

RFP-OCAT-2404 OPERATION AND MAINTENANCE OF AUTOMATED TELLER MACHINES

Page 1



**ACDBE PARTICIPANTS**

**RFP-OCAT-2404**

**OPERATION AND MAINTENANCE OF AUTOMATED TELLER MACHINES**

**COMPLETE ALL APPLICABLE FIELDS AND SUBMIT AS A LINE ITEM IN PERISCOPE.**

NAME OF FIRM:

ADDRESS:

CITY: \_STATE: \_ZIP:

EMAIL ADDRESS \_PHONE #

FEDERAL TAX ID

FIRM S ORGANIZATION TYPE (LLC., Sole Proprietorship, etc.)

IS FIRM AUTHORIZED TO DO BUSINESS IN OKLAHOMA

IS FIRM REGISTERED WITH THE OKLAHOMA SECRETARY OF STATE

FIRM STATUS: ACDBE  NON-ACDBE:

FIRM S MAJORITY OWNER: RACE \_GENDER

NAICS CODE APPLICABLE TO CONCESSION CONTRACT:

NAICS CODE APPLICABLE TO CONCESSION CONTRACT:

AGE OF FIRM:

FIRMS ANNUAL REVENUE:

SELECT ONE OF THE FOLLOWING

LESS THAN \$1 MILLION

\$1 - \$3 MILLION

\$3 - \$6 MILLION

\$6 - \$10 MILLION

RFP-OCAT-2404-OPERATION AND MAINTENANCE OF AUTOMATED TELLER MACHINES

Page 2 of 2



**CONCESSION SERVICES AGREEMENT**

**FOR THE**

**OPERATION AND MAINTENANCE OF AUTOMATED TELLER MACHINES**

**BETWEEN**

**THE OKLAHOMA CITY AIRPORT TRUST**

**AND**

\_\_\_\_\_

**Effective Date:** \_\_\_\_\_

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## **CONCESSION SERVICES AGREEMENT**

This Concession Services Agreement (“Agreement”), made and entered into by and between the Trustees of the Oklahoma City Airport Trust (“Trust”) and \_\_\_\_\_ (“Concessionaire”), a \_\_\_\_\_ organized under the laws of \_\_\_\_\_,

### **W I T N E S S E T H:**

**WHEREAS**, Trust leases, operates, and maintains certain real estate for benefit of The City of Oklahoma City (“City”), known as Will Rogers World Airport (“Airport”), located primarily in Oklahoma and Cleveland counties, Oklahoma; and

**WHEREAS**, Trust operates a concession program at the Airport as an essential service for its passengers and other patrons using the Airport; and

**WHEREAS**, on May 23, 2024, the Trust authorized the solicitation for the Request for Proposals (“RFP”) for a Concession Services Agreement for the Operation and Maintenance of Automated Teller Machines (“ATMs”); and

**WHEREAS**, on \_\_\_\_\_, the Trust received proposals to its RFP, for a single provider to professionally manage and operate the operation at the Airport; and

**WHEREAS**, based upon the representations and references Concessionaire submitted in its proposal (“Proposal”), the Selection Committee recommends the Trust select and enter into this Agreement with the Concessionaire; and

**WHEREAS**, all RFP and Proposal documents, specifications, addenda, and attachments become a part of this Agreement as if fully written herein; and

**WHEREAS**, Trust and Concessionaire desire to enter into an Agreement for the Concessionaire to provide the services more specifically set forth herein.

**NOW, THEREFORE**, for and in consideration of the mutual obligations, covenants, and agreements hereinafter set forth, both parties agree as follows, to wit:

### **ARTICLE 1. DEFINITIONS**

#### **1.01 Definitions**

Except as otherwise clearly indicated by the context, the words and phrases defined in this section shall have the following meanings when used elsewhere in this Agreement:

- A. “ACDBE” shall mean an Airport Concessions Disadvantaged Business Enterprise operated in compliance with 49 CFR Parts 23 and 26.
- B. “ADA” shall Americans with Disabilities Act of 1990 or as the same maybe subsequently amended thereto.

- C. “ATM Customer” shall mean any user of an ATM unit at the Airport, whether or not the user is a customer of Airport or Trust in any other capacity.
- D. “ATM Customer Use” shall mean use of an ATM unit performed pursuant to a single event of access of an ATM by an ATM Customer, regardless of the number of individual transactions performed during that event of access. ATM Customer Use for which no transaction is completed due to rejection of a customer’s card or aborting by the ATM Customer prior to concluding any transaction shall not be payable to the Trust.
- E. “Additional Fee” shall mean all charges and fees set out in this Agreement, including interest charged for delinquent payment.
- F. “Agreement Year” shall mean a period of one (1) year beginning on the Commencement Date, lasting for a period 365 days, and for every year thereafter ending at the end of the Term.
- G. “Concession Fee” shall mean the payment required from the Concessionaire as set forth in Article 5 for the right to provide the Services for the Airport and to access the customers generated by the Airport.
- H. “Director” shall mean the Director of Airports and General Manager of the Trust.
- I. “Effective Date” shall mean July 1, 2024.
- J. “First-Class Manner” shall mean Service equivalent to the highest standards for such similar services at airports comparable in size and volume of public to the Airport.
- K. “MAG” or “Minimum Annual Guarantee” shall mean the minimum annual guaranteed payment of the Concessionaire to the Trust for its concession operations as calculated in Article 5 of this Agreement.
- L. “Minor Repairs” shall mean Lessee’s normal maintenance and repairs in the performance of the requirements of Article 9 and replacement of obsolete, worn out or unusable equipment and fixtures.
- M. “Option Notice” shall mean the written notice from Concessionaire to Trust notifying Trust of Concessionaire desire to continue the lease of the Leased Premises for an Option Period.
- N. “Option Notice Period” shall mean the period that is at least one-hundred eighty (180) days prior to the expiration of the Primary Period or an available Option Period.
- O. “Option Period(s)” shall mean two (2), one (1) year Option Periods at the end of

the Primary Period where Concessionaire may continue to lease the Premises at mutually agreeable terms and conditions, subject to the fees set forth in Article 5.

- P. "Personal Property" shall mean the movable furniture, fixtures, materials, supplies, uniforms, and other products of the Concessionaire used in the conduct of Concessionaire's Services at the Airport.
- Q. "Premises" shall mean the designated premises as depicted in Exhibit A.
- R. "Primary Period" shall mean the initial term of the Agreement and shall be for three (3) years from the Effective Date.
- S. "Removable Fixtures" shall mean all furniture, trade fixtures, and equipment from time to time installed in the Premises by Concessionaire at its expense.
- T. "Services" shall mean the management and operations of automated teller machines.
- U. "Service and Operational Standards" shall be as set forth and described in Paragraph 4.01.
- V. "Termination Date" shall mean June 30, 2029.
- W. "Transaction" means a cash withdrawal, cash advance, funds transfer, or balance inquiry, but does not include any declined transactions.
- X. "Transaction Fees" shall mean fees charged to ATM Customers for access to an ATM unit, separate from any fees assessed for a specific purpose.
- Y. "Transaction Report" shall be as set forth and described in Paragraph 7.01.

1.02 Interpretation

- A. The terms "herein," "hereof," "hereto," and "hereunder," and any similar terms used in this Agreement refer to this Agreement.
- B. Words importing persons shall include firms, associations, partnerships, trusts, corporations, and other legal entities, including public bodies, as well as natural persons.
- C. Any headings preceding the text of the articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience or reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect.
- D. Words importing the singular shall include the plural and vice versa.

- E. Capitalized words or terms other than section or article headings and names of persons are technical and pertain strictly to this Agreement and are defined in Article 1.

1.03 Agreement

This Agreement shall consist of this instrument, including all exhibits attached hereto, and the following documents, which are incorporated herein by this reference:

- A. Trust's RFP in connection with this Agreement dated April 26, 2024, and all addenda and attachments thereto.
- B. Concessionaire's Proposal in its entirety, except those portions that have been modified or rejected in writing by the Trust in connection with this Agreement, or have been superseded by this Agreement, including all exhibits, schedules, addenda, presentation materials, letters, supplements and attachments or other documents, or any material representations.
- C. All insurance policies, bonds, letters of credit, guaranties, or other sureties or assurances issued in connection with this Agreement, as updated from time to time.
- D. In the event of any direct conflict between this Agreement and any of its exhibits or any document incorporated herein, the terms of this Agreement shall govern.

1.04 Incorporation of Exhibits

The following Exhibits are hereby made a part of this Agreement:

Exhibit A – Premises and Existing ATM Locations  
Exhibit B – Services and Operational Standards  
Exhibit C – Insurance Certificate  
Exhibit D – Performance Bond  
Exhibit E - Letter of Credit  
Exhibit F – Proposal Pricing Form  
Exhibit G – ACDBE Participants Form

**ARTICLE 2. PREMISES**

2.01 Permitted Use of the Premises

Trust hereby grants to Concessionaire the exclusive right, license, and privilege to operate and manage the Services within the Premises identified in Exhibit A, consistent with the Service and Operational Standards set forth in Paragraph 4.01, and the Rates/Charges to Customers, and further subject to the terms, covenants, and conditions contained in this Agreement. Concessionaire shall use the Premises only for the permitted uses and shall not use the Premises for any other purpose or in any other manner without the advance written approval of the Trust.

2.02 Acceptance “As-Is”

Concessionaire agrees that when Concessionaire takes possession of any portion of the Premises, such possession shall constitute Concessionaire’s acknowledgement that the Premises are in good condition, and such possession shall constitute an acceptance of such Premises in their “as-is” condition.

2.03 Exclusive Use of Premises

At the commencement of the Term of this Agreement and continuing until the remainder of the Term hereof, Trust provides the Premises identified on Exhibit A to Concessionaire for Concessionaire’s Exclusive Use and Operations. Trust shall have the right to change the location of the Premises upon reasonable advance notice. Concessionaire shall be exclusively responsible for all ADA compliance within its Premises.

**ARTICLE 3. TERM**

3.01 Primary Period

This Agreement shall commence on the Effective Date and be for the duration of the Primary Period. However, it is understood and agreed that this Agreement may be subsequently approved by the City of Oklahoma City, as the successor in interest to the Trust, but said approval by the City shall be subject to the same Effective Date.

3.02 Option Period

At the expiration of the Primary Period, provided that no Event of Default (as defined in Article 4) by the Concessionaire has occurred and is continuing, the Concessionaire shall have the option to continue to lease the Premises at the same terms and conditions for each Option Period. The rentals during any exercised Option Period shall be computed in accordance with Article 5. The Option Period available to Concessionaire shall become effective only in the event Concessionaire shall give its Option Notice within the Option Notice Period. If Concessionaire does not exercise the Option Notice within the Option Notice Period, all options are extinguished and Concessionaire’s right, use and occupancy of the Premises shall be null and void, and the Agreement terminated at the end of the then current period.

3.03 Compliance with Applicable Federal, state, or Local Law or Regulation

During the Initial Term or any Option Period, the provisions of this Agreement shall be modified as necessary to affirm compliance requirements with applicable federal, state or local laws, policies, or administrative regulation and all amendments thereto.

3.04 Laws, Regulations, and Codes

Concessionaire shall comply fully with applicable laws, regulations and codes as well as making any necessary accommodations in compliance with the ADA and all regulations thereunder protecting the rights of people with disabilities. Concessionaire shall also be responsible for all required permits and licenses. Concessionaire’s compliance will include, but not necessarily be limited to the following:

- A. Concessionaire will not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, compensation, benefits, discipline, layoffs, and termination of employment.
- B. No qualified individual with a disability may be excluded on the basis of disability from participation in or be denied the benefits of services, programs, or activities of Concessionaire.
- C. Concessionaire will post a statement addressing the requirement of the ADA in a prominent place at the work site.
- D. Where required by law, Concessionaire will bring up to code and make accessible any areas of Premises which deny access to disabled persons. All such improvements and alterations will be at the sole cost of Concessionaire.

#### **ARTICLE 4. CONCESSIONAIRE'S OPERATIONS**

##### **4.01 Service and Operational Standards**

Concessionaire shall provide the Services described herein and comply with all Service and Operational Standards set forth on Exhibit B. Any modification to the Service and Operational Standards shall be by written agreement by the parties.

##### **4.02 General Operating Standards**

Concessionaire shall not use or occupy or permit the Premises or any part thereof to be used or occupied, in whole or in part, in a manner which would in any way (a) violate any present or future legal requirements or Trust standards or policies, (b) violate any of the covenants, agreements, provisions and conditions of this Agreement, (c) as will constitute a public or private nuisance, (d) impair, in the Trust's reasonable judgment, with the character, reputation or appearance of the Airport or the Trust, or (e) occasion discomfort, inconvenience or annoyance to either the Trust or its adjoining tenants. Without limiting the foregoing, Concessionaire specifically agrees to comply with all applicable policies, rules, and regulations, whether now in existence or hereafter promulgated.

##### **4.03 Advertising**

Concessionaire shall not advertise on the Premises or at the Airport, including the dispensing of brochures, pamphlets or leaflets or like items whether for profit or not, without the written permission of the Director, or through the Airport's advertising concessionaire. Without the Director's approval, Concessionaire may only advertise Concessionaire's brand and business as it relates directly to services provided under this Agreement and shall be in accordance with applicable City ordinance and the Trust's advertising policies. Concessionaire shall not advertise any other brand or advertise on behalf of any other business. Advertising shall be consistent with the Trust's advertising policy and the requirements in this Agreement. Concessionaire affirms that its advertising shall be truthful, accurate, and not misleading.

##### **4.04 License and Permits**

Concessionaire will have and maintain, in current status, all federal, state, and city licenses

and permits required for the operation of the business conducted by Concessionaire. Concessionaire must maintain and continuously hold all such license and permits throughout the term of this Agreement. If for any reason such license or permit is suspended, cancelled, or otherwise denied, then Trust may terminate this Agreement immediately (a) in its entirety, or (b) for those services affected by the loss of any license or permit or as further specified in Article 19.

4.05 First-Class Operations

The Trust desires to provide the air travelers and the public Services of a First-Class Manner. In addition to, and not in lieu of, any other more specific standards that may be set forth in this Agreement, Concessionaire shall maintain a First-Class Manner of Service. The Trust shall reasonably determine in its sole discretion what constitutes a First-Class Manner, and such determination shall be binding on the parties unless there is clear and convincing evidence to the contrary that Trust's discretion was not reasonably exercised.

4.06 Concession Pricing Policy

Concessionaire shall be responsible for meeting any price setting requirements that may be imposed by federal, state, or local regulatory government or entity for such ATM operations. Any change to Concessionaire's fees, surcharges, etc. shall be approved by the Director in writing and shall be agreed to in writing by the parties by amendment hereto. Where applicable, Concessionaire shall seek any necessary approval or consent by any federal, state, or local regulatory government or entity. Without limiting any other rights that may exist under this Agreement, Concessionaire acknowledges that the failure to adhere to the policy shall be grounds for the imposition of liquidated damages as provided in Article 29.

4.07 Airport Security

Concessionaire acknowledges that security is of primary importance at the Airport, and that security requirements are likely to change during the term of this Agreement. Concessionaire shall at all times comply with all federal, state and local security laws, regulations, policies, requirements and directives whether written or verbal, including, without limitation, 49 CFR Part 1542 "Airport Security" or any amendment or successor thereto, and Concessionaire will work cooperatively with the Trust in connection with the same. The provisions of this Article 4.07 shall in no way be construed to limit Concessionaire obligations and the Trust's rights set forth in Article 11 of this Agreement.

4.08 Safety

Concessionaire agrees to take necessary safety precautions and comply with applicable provisions of federal, state, and local safety laws and building codes to prevent accidents or injury to any of its employees, agents, customers or others on, about, or adjacent to the Premises or any parking areas. This safety requirement shall not relieve any contractor or consultant performing work for Concessionaire from complying with the safety requirements of its contract or applicable law. Trust may, but is not obligated to, stop Concessionaire's operations if safety laws or safe work practices are not being observed.

4.09 Cooperation with Airport Development Activities

Concessionaire understands and agrees that Trust is pursuing development activities that may affect the Premises and other areas at the Airport. Concessionaire agrees to work cooperatively and in good faith with Trust and all other concessionaires and/or tenants or participants in Trust's Airport development activities to minimize any disruptions and provide for successful services under this Agreement. If requested by Trust, Concessionaire will cooperate with and assist the Trust in the development and implementation of any plans, designs, operational matters, or transition matters that may arise in connection with such activities.

As a result of Airport development activities, passenger traffic may change throughout the Term of the Agreement. Such changes in passenger traffic flow may significantly impact concession sales. The Trust is not responsible or liable for any potential loss of business or financial loss resulting from Airport development activities, construction phasing schedules, and changes in passenger traffic flow; nor will the Trust waive or relieve Concessionaire's financial requirements and obligations to the Trust.

4.10 Franchise and License

A. If the Premises or any portion of the Premises are operated under a franchise and/or license, Concessionaire represents and warrants to the Trust that Concessionaire has been granted the right to use any trade name that may be used at the Premises for the entire term of this Agreement, pursuant to a franchise or license agreement ("Franchise/License Agreement") with the trade name owner ("Franchisor/Licensor"). Concessionaire agrees to provide the Trust with a copy of the Franchise/License Agreement and reasonable evidence that such agreement remains in full force and effect. Concessionaire agrees that the termination of Concessionaire's right to use Franchisor/Licensor's trade name at the Premises or to conduct an operation at the Premises of the type then conducted by or under license from Franchisor/Licensor under Concessionaire's trade name, shall constitute a material breach of Concessionaire's obligations under this Agreement unless otherwise agreed to by the parties. Concessionaire agrees that if such Franchise/License Agreement is terminated, the Trust shall have the right to terminate this Agreement pursuant to Article 19.

B. Without limiting or otherwise reducing any of the standards otherwise imposed under this Agreement, Concessionaire shall also meet or exceed all franchise and/or license standards that are imposed on Concessionaire by any Franchisor/Licensor. Copies of those franchise and/or license standards and performance audit forms shall be sent to the Trust prior to unit opening date. Copies of inspections conducted by the Franchisor/Licensor, or any mystery shopper service hired by the Franchisor/Licensor shall be sent to the Trust within ten (10) days of receipt by Concessionaire or any subcontractor.

4.11 Copyright Clearance

Concessionaire and Concessionaire's subcontractors are responsible for obtaining permission to transmit any copyrighted music or media, including but not limited to, radio



broadcasts, recorded music, and television broadcasts, in their Premises at the Airport in compliance with Federal Copyright Law found in Title 17 of the United States Code, or as amended.

4.12 Liens and Encumbrances

Concessionaire agrees to pay, when due, all taxes and fees, and all sums for labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been provided or ordered with Concessionaire's consent for the Premises. Concessionaire shall keep the Premises at all times free and clear of all liens for labor or for material furnished in and about the construction of the Premises; further, Concessionaire will defend at its sole cost and expense each and every lien asserted or claim filed against the Premises on which the improvements by the Concessionaire are being constructed as well as the Premises, or any part thereof, for labor claimed to have been performed or material claimed to have been furnished with respect to Concessionaire's possession, occupancy, and activity on the Premises, and/or construction of the Premises. In the event such a lien or encumbrance of any kind is filed against the Premises, Concessionaire shall immediately discharge the lien or liens pursuant to the laws of the State of Oklahoma. Concessionaire will pay each and every judgment made or given against the Premises, or any part thereof, or against Trust or the City, on account of any such lien, and will indemnify and save harmless the Trust and the City from any and every claim and action on account of such claim, lien, or judgment. Notwithstanding the foregoing, Concessionaire may dispute any lien in good faith by appropriate proceedings so long as the pendency of such proceedings operates to prevent the realization upon the lien so contested. If any lien is filed against the Premises which Concessionaire wishes to protest, then Concessionaire shall immediately procure a bond acceptable to Trust, in an amount sufficient to cover the cost of removing the lien from the Premises. Failure to remove the lien or furnish a bond acceptable to Trust within ten (10) days shall constitute an event of default under this Agreement and Trust shall automatically have the right, but not the obligation, to pay the lien off with no notice to Concessionaire and Concessionaire shall immediately reimburse Trust for any sums so paid to remove any such lien. Concessionaire shall not encumber the Premises or any improvements thereon in any way without prior written approval of Trust.

4.13 Owner or Authorized User

Concessionaire shall represent at all times that it is the owner of or is fully authorized to use any and all services, processes, units, articles, makes, names, or slogans used by it in its operation or in any way connected with this Agreement.

4.14 Information Displays

[Insert information here on any information or displays relevant to Concessionaire's operations, e.g. directions, contact information for service to machines, etc.)

4.15 Management

Concessionaire shall select and appoint a full-time experienced manager fully authorized to represent and act on behalf of Concessionaire providing an emergency contact number on a twenty-four (24) hour seven (7) days per week basis. The manager shall be an

experienced, on-site manger, dedicated solely to the Airport, and shall oversee the business operations, on-site dispatching, sales and marketing, comprehensive records, recruitment, training of employees, scheduling of employees, monitoring of activities, collecting and reporting data, and maintain the fleet of shuttles and taxicabs.

## **ARTICLE 5. CONCESSION FEE**

### **5.01 Concession Fee**

Concessionaire shall pay to Trust a Concession Fee equal to the greater of the Minimum Annual Guarantee or the aggregate of each Customer Transaction Fee throughout the Term of this Agreement and any Option Period.

#### **A. Minimum Annual Guarantee Payment.**

For each Agreement Year during the Term including any Option Period, CONCESSIONAIRE shall pay a Minimum Annual Guarantee to the TRUST as a Concession Fee for the right and privilege to operate the Services on Airport property. The Minimum Annual Guarantee will be due and payable in arrears in monthly installments, on or before the last day of the month, in the amount of one-twelfth (1/12) of the annual amount.

#### **B. Monthly Concession Fee Payment.**

It is understood and agreed between the parties that the MAG paid pursuant to 5.01 (A) will be subject to a monthly reconciliation in the following month based on the actual customer transactions conducted during the previous month of activity as indicated on the monthly Transaction Report submitted pursuant to Article 8. To the extent the monthly aggregate Per Customer Transaction Fee for all transactions in the reporting period exceeds the month's MAG payment, Concessionaire shall remit any additional monies owed to the Trust by the 30<sup>th</sup> day of the month for which the Transaction Report was due.

#### **C. Illustration.**

For illustration purposes, on April 30, 2020, Concessionaire will pay one-twelfth (1/12) of the MAG for the Contract Year or \$3,000.00. The Transaction Report for April will be due May 15, 2020. To the extent that the aggregate Per Trip Fees for the month of April 2020 exceeds the \$3,000 MAG payment for the month of April 2020, the difference owed shall be due and payable on May 30, 2020. On this same date, the MAG for May 2020 and any additional charges invoiced for the month May pursuant to paragraph 5.06 below are due and payable.

### **5.02 Concession Fee for Subsequent Agreement Years**

Commencing the first (1<sup>st</sup>) day of the second Agreement Year, and continuing for each Agreement Year for the remaining Term of this Agreement and any Option Period, Concessionaire shall make Concession Fee payments to Trust as follows:

The greater of:

1. The aggregate amount of all transactions collected from Customer Transaction Fees from the Airport during the Agreement Year,

Or

2. A Minimum Annual Guarantee equal to eighty-five percent (85%) of the total Concession Fees paid by Concessionaire to Trust for the previous Agreement Year; (whether as Minimum Annual Guarantee or as an aggregate of the customer transactions); provided, however, the Minimum Annual Guarantee shall not be less than the Minimum Annual Guarantee for the previous Agreement Year.

5.03 Annual Minimum Annual Guarantee

The annual adjustment to the Minimum Annual Guarantee will continue using the above format through the final year of the Agreement Term.

5.04 Concession Fee for Partial Year

The Minimum Annual Guarantee amounts due for any partial Agreement Year shall be paid on a pro rata basis.

5.05 Minimum Annual Guarantee Adjustment for Significant Enplanement Changes

Should total enplaning passengers at the Airport decline by twenty-five percent (25%) or more in any one Agreement Year, Concessionaire's Minimum Annual Guarantee for that Agreement Year will be reduced in proportion to the percentage of passenger decline. Should such passenger traffic subsequently increase, Concessionaire's Minimum Annual Guarantee shall be increased in proportion to that same passenger increase, provided that any such increase shall not exceed the original Minimum Annual Guarantee for that Agreement Year.

5.06 All Other Amounts Due

Concessionaire will be invoiced for items (A), (B), and (C) below, on a monthly basis and are due to Trust on the last day of the month in which the invoice was issued. Without limitation, such amounts shall include the following:

- A. Utilities billed at a monthly flat rate fee.
- B. Fines, fees, interest charges, liquidated or other damages, and civil penalties, as allowed by applicable law.
- C. Additional Fees for services that may be provided in the future by the Trust.

## **ARTICLE 6. DELINQUENT FEES**

6.01 Due Date

All fee obligations of the Concessionaire under Article 5 shall be delinquent if not received

by Trust on or before the last day of each and every month of when due during the term hereof unless specified otherwise.

6.02 Delinquency Charges

It is hereby agreed by and between the Trust and Concessionaire that should Concessionaire fail, for any reason whatsoever, to make timely remittance of the monthly fees as required under any of the provisions hereof, then and in that event, the fee payment shall be immediately delinquent and the outstanding balance of such delinquency shall earn interest at the rate of one and one-half percent (1.5%) per month. Moreover, said interest shall be considered Additional Fees and shall become due and payable to, and received by, Trust on or before the last day of each month of the term hereof. To aid in the timely receipt of rental payments, the Concessionaire is encouraged to make all payments through the bank-to-bank automated clearing house ("ACH") network.

**ARTICLE 7. TRANSACTION REPORTS**

7.01 Transaction Report

Concessionaire shall submit to the Trust by the 15th day of the month a report showing, with respect to the prior month, a summary of all daily ATM Customer transactions for all Concessionaire ATMs at the airport. Such report shall be emailed to the Trust at the following address: [ocatactivity@okc.gov](mailto:ocatactivity@okc.gov).

7.02 Administrative Fees

The parties acknowledge that the Trust incurs additional administrative effort if Concessionaire's monthly Transaction Report is not complete and received by the due date of each report. To compensate the Trust for this administrative effort, Concessionaire agrees to pay the Trust \$50 for each monthly report which is not complete, accurate, and received by its due date. Moreover, said amount shall be considered additional compensation and shall become due and payable to, and received by, Trust on or before the last day of each month of the term hereof, and such outstanding balance of such delinquent additional compensation shall earn interest at the rate of one and one-half percent (1.5%) per month.

**ARTICLE 8. BOOKS AND RECORDS RETENTION AND AUDIT RIGHTS**

8.01 Books and Records

In order to ensure that the Trust, by and through the Director, is able to adequately monitor the Concessionaire's performance under the terms of this Agreement, the Concessionaire will keep and maintain true and accurate records relating to the service provided herein in accordance with generally accepted accounting principles ("GAAP"). Books and Records shall be kept in the United States, and Concessionaire shall make the same readily available for examination and audit by the Director or designee during normal business hours during the Term of this Agreement within five (5) business days of written notice to produce such Books and Records. Books and Records shall be maintained throughout the Term of this Agreement and for a period of no less than five (5) years after the end of the Term of this Agreement. Books and Records, subject to audit and inspection, (in whatever form the

information may be kept, whether written, electronic, or other form) shall be interpreted in the broadest sense.

8.02 Records Maintenance

- A. The books and records shall include, without limitation, true copies of all federal, state, and local sales and use tax returns and reports, journals, ledgers, and other pertinent original records of any other transactions conducted in or from the Premises. Pertinent records shall also include an electronic system of record keeping and such other reasonable documentation which would normally be examined by an independent accountant pursuant to GAAP in performing an audit of Concessionaire's sales sufficient to provide determination and verification of Concession Fees and the exclusions therefrom.

8.03 Audit Rights

- A. Concessionaire shall permit during ordinary business hours during the term of this Agreement, and for five (5) years after the expiration or termination of this Agreement, the examination and audit by the officers, employees and representatives of Trust of the sales Books and Records of Concessionaire (and where applicable, all individuals or other business entities who are party to this Agreement) to substantiate the accuracy of reported Concession Fees and Concessionaire's compliance with other provisions of this Agreement. This includes, but is not limited to, financial statements, general ledgers, sales journals, daily or periodic summary reports, bank deposit slips, bank statements, cancelled checks, tax reports/returns filed with state or federal entities, discount or rebate/allowance agreements, records of refunds or voids, and joint venture or partnership agreements. Such right of examination shall include cooperation by Concessionaire personnel (including, but not limited to, cooperation in sending confirmations to Concessionaire's suppliers or others, assisting the Trust in obtaining from governmental entities official copies of tax reports/returns, and disclosing all bank or other accounts into which Concession Fees are deposited) as reasonably considered necessary by the Trust's representatives to complete the audit. To such extent, Concessionaire expressly waives any claim of confidentiality which it may have in connection therewith.
- B. If Concessionaire fails to produce all the requested books or records, Concessionaire shall pay liquidated damages until the books and records are produced. As an alternative, Concessionaire may notify Trust within two (2) business days of receipt of the Trust's audit notice that Concessionaire elects to pay all reasonable expenses including, but not limited to, transportation, food, reproduction expenses, and lodging necessary for an examiner(s) selected by Trust to examine said books and records at any site selected by Concessionaire other than on the Airport. Trust's rights and Concessionaire obligations in this Article extend to Concessionaire's employees, agents, assigns, successors, and subcontractors, and shall be included in any agreements formed between the Concessionaire and any employees, agents, assigns, successors, and subcontractors to the extent that those agreements relate to fulfillment of the Concessionaire's obligations to Trust.

- C. Trust will be responsible for the cost of an audit pursuant to this Article with the exception of off-Airport audit expenses noted in 8.03 (B) above; provided however, Trust may recoup the entire cost of the audit or inspection from the Concessionaire if (i) the audit discovers substantive findings related to fraud, misrepresentation, or non-performance of the Concessionaire, or (ii) Concessionaire underreported Concession Fees or underpaid fees related to Concession Fees by one percent (1%) or more for the period audited.
- D. Pursuant to Article 6, Concessionaire shall be responsible for the payment of interest as a Delinquency Fee on any such underpayment of Concession Fees from the time the underpayment was due/owed to the Trust.
- E. If Concessionaire underreported Concession Fees or underpaid fees by three percent (3%) or more for the period audited, then in addition to the payment of the audit cost, the underpayment, and any Delinquency Fees, the Trust shall be entitled to terminate this Agreement for cause pursuant to Article 21, regardless of whether the deficiency is paid.
- F. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Concessionaire's invoices and/or records shall be made within sixty (60) days from delivery of Trust's audit or inspection findings to Concessionaire.

## **ARTICLE 9. PREMISES MAINTENANCE AND REPAIR OBLIGATION**

### **9.01 Maintenance and Operation by Trust**

Trust shall only be responsible for the reasonable diligence, maintenance, and repair of the of the common public use areas near and around the Premises. Except any such maintenance or repair responsibility by the Trust to areas near and around the Premises shall not apply when the same are damaged by Concessionaire or its employees or contractors (normal wear and tear excepted), in which case Concessionaire shall be responsible for the cost of repair.

### **9.02 Maintenance and Operation by Concessionaire**

During this Agreement, the Concessionaire shall maintain the Premises in a safe, neat, and attractive condition. Concessionaire agrees that all Minor Repairs and maintenance-type services to the Premises to be performed hereunder shall be accomplished by qualified personnel, or where regulated by law, a properly licensed contractor. All Minor Repairs shall be subject to Article 9 and of first-class quality in both materials and workmanship, shall be equal to or better than the original materials and workmanship, and, except in emergencies requiring immediate response, must have the prior written approval of the Director. The Director shall be the sole judge of the quality of maintenance and repairs. Unless otherwise identified as a Trust responsibility in 9.01, the Concessionaire's responsibilities to the Premises shall include, but is not limited to:

- A. Cleanliness.

- B. Quality of products.
- C. Maintenance and repair of equipment.
- D. Overall responsiveness to Trust and/or customer concerns.

9.03 Condition of Premises

Concessionaire agrees that at the expiration, termination or cancellation of this Agreement the Premises will be delivered in as good condition as when received, reasonable wear, tear and aging excepted. Reasonable wear, tear and aging shall be determined by Director and Concessionaire upon inspection of the Premises from time to time. The Director, on behalf of the Trust, reserves the right to make periodic inspection of the Premises and improvements and equipment therein during normal business hours of the Airport.

9.04 Premises not Maintained

If said Premises is not maintained and kept in a safe, clean, attractive, and healthful condition, this Agreement may be terminated pursuant to Article 19 herein. In an effort to avoid termination and within the notice of termination period set forth in Article 19 the parties will meet to discuss and try to resolve any outstanding issues in lieu of termination of this Agreement.

**ARTICLE 10. HAZARDOUS MATERIAL(S) AND COMPLIANCE WITH ENVIRONMENTAL LAW(S)**

10.01 Definitions

For the purpose of this article, the following definitions apply:

- A. “*Contamination*” shall mean the presence of any Hazardous Materials in concentrations exceeding those identified as relevant and appropriate pursuant to Environmental Laws.
- B. "*Hazardous Material(s)*" shall mean any hazardous or toxic substance, material or waste, regulated, considered or addressed by any Environmental Law, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law. Hazardous Materials shall be interpreted in the broadest sense to include any and all substances, materials, wastes, pollutants, oils or governmental regulated substances or contaminants as defined or designated as hazardous, caustic, corrosive, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, including but not limited to asbestos and asbestos containing materials, petroleum products including crude oil or any fraction thereof, gasoline, pavement and aircraft deicing materials, aviation fuel, jet fuel, diesel fuel,

lubricating oils and solvents, urea formaldehyde, flammable explosives, chemical paint removers and other caustics, PCBs, radioactive materials or waste, or any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, distributed, disposed, or released.

- C. “*Environmental Law(s)*” shall mean in the broadest sense any and all applicable federal, state and local statutes, ordinances, regulations, rules, guidance, or guidelines now or hereafter in effect, as the same may be amended from time to time relating to the protection of human health, safety or the environment and those substances defined as hazardous waste, hazardous substances, hazardous materials, toxic, pollutants or otherwise regulated under the analogous laws of Oklahoma and/or the United States or in regulations promulgated pursuant to such laws.

10.02 Hazardous Material(s)

Lessee covenants not to permit or introduce any Hazardous Materials to be brought upon, kept, generated, or used in or about the Airport property by Lessee, its agents, employees, contractors or invitees without first obtaining Director's written consent which shall not be unreasonably withheld as long as Lessee demonstrates such Hazardous Materials are necessary to Lessee's operations hereunder, and such Hazardous Materials must be used, kept, generated in a manner complying with all applicable federal, state, and local environmental laws or ordinances pertaining to the transportation, storage, use, generation, or disposal of such Hazardous Materials. Lessee shall be responsible for obtaining any permits and shall only store Hazardous Materials temporarily with the approval of the Director while further disposition is pending.

10.03 Notification and Immediate Response

After consultation and approval by the Director, Lessee shall clean up and remediate permanently any Contamination caused by or permitted by Lessee or its agents, employees, contractors or invitees in full compliance with all applicable statutes, regulations, and standards so that the Leased Premises is permanently mitigated to prevent further reoccurrence and remediated to such a condition that a “No Further Action” determination of completion or its equivalent is obtained from the regulatory or equivalent agency or agencies with jurisdiction over the Hazardous Material release and/or the Airport's property is reasonably demonstrated as having been returned to the condition existing prior to the introduction of any such Hazardous Materials or Contamination, or as otherwise agreed to by the Director in his or her reasonable discretion; and

10.04 Remediation

After consultation and approval by the Director, Concessionaire shall clean up and remediate permanently any Contamination caused by or permitted by Concessionaire or its agents, employees, contractors or invitees in full compliance with all applicable statutes, regulations, and standards so that the Premises is permanently mitigated to prevent further reoccurrence and remediated to such a condition that a “No Further Action” determination of completion or its equivalent is obtained from the regulatory or equivalent agency or



agencies with jurisdiction over the Hazardous Material release and/or the Airport's property is reasonably demonstrated as having been returned to the condition existing prior to the introduction of any such Hazardous Materials or Contamination, or as otherwise agreed to by the Director in his or her reasonable discretion; and

10.05 Indemnification

In addition to all other indemnities provided in this Agreement, Lessee agrees to defend, indemnify, and hold the Lessor and the City free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including reasonable attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the generation, manufacture, processing, use, release or other spills or leaks of chemicals and products that are or may become Hazardous Materials, the existence or discovery of any Hazardous Materials in excess of the levels allowed by Environmental Laws or violations of the Environmental Laws on the Premises, the subsurface or the migration of any Hazardous Material from the Leased Premises to other properties or into the surrounding environment, caused by the Lessee or its operations whether: (i) made, commenced or incurred during the Term; or (ii) made, commenced or incurred after the expiration or termination of this Agreement if arising out of events occurring during the Term; provided, however, Lessee's obligation to indemnify the Trust and City pursuant to this Paragraph shall not apply with respect to either: (i) any Hazardous Material released by the Trust, its Trustees, officers, agents and employees; or (ii) any Hazardous Material (for which Lessee is not otherwise responsible) clearly demonstrated to be migrating onto the Leased Premises from some other location through no fault of Lessee.

The foregoing indemnity shall survive the expiration or earlier termination of this Agreement and will not be affected in any way by the amount of or the absence in any case of covering insurance or the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Leased Premises. In addition, Lessee shall be responsible for any environmental cost associated with negligence or willful acts or omission by Lessee, and notifications to appropriate regulatory agencies arising therefrom.

**ARTICLE 11. TRUST'S RESERVED RIGHTS**

11.01 Airport Development Reservation

Lessor reserves the right to further develop or improve the aircraft operating area of the Airport as it sees fit and to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Lessee from erecting or permitting to be erected, any building or other structure on the Airport which, in the opinion of Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft.

11.02 War or National Emergency

During a time of war or national emergency declared by Congress, Lessor shall have the right to lease the Airport or any part thereof to the United States Government for military or naval use, and if any such lease is executed, the provisions of this instrument, insofar as they are inconsistent with the lease to the Government shall be suspended.

11.03 Subordination

Any other provision of this Agreement notwithstanding, this Agreement shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States, relative to the operation or maintenance of the Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to Lessor of Federal funds for the development of the Airport. To the extent any provision of this Agreement is in conflict with any grant assurance, rule or regulation imposed on the Lessor by the United States Government or other regulatory entity, the provision of the grant assurance, rule or regulation shall be incorporated in this Agreement as if written specifically herein and Lessee shall agree to abide by such grant assurance, rule or regulation as a condition precedent to the use of any facilities or premises of the Lessor.

11.04 Right to Enter

Lessor, through its duly authorized agent, shall have at any and all times the full and unrestricted right to enter the Leased Premises for the purpose of inspection or maintenance and for the purpose of doing any and all things which it is obligated and has a right to do under this Agreement during normal business hours with advanced notice provided to the Lessee when reasonably possible.

11.05 Reservation of Rights

Lessor reserves all rights and remedies that Lessor may otherwise have at law or in equity and the exercise of one or more rights or remedies will not prejudice the concurrent or subsequent exercise of other rights of remedies.

**ARTICLE 12. NONINTERFERENCE WITH OPERATION OF AIRPORT**

Lessee covenants and agrees that it will not allow any condition on the Leased Premises, nor permit the conduct of any activity on such premises, which shall materially or adversely affect the development, improvement, operation, or maintenance of the Airport or its facilities; nor will Lessee use or permit the Leased Premises to be used in any manner which might interfere with the landing and take-off of aircraft from the Airport or otherwise constitute a hazard. If any proscribed or prohibited condition or activity, as described above, shall be permitted to exist on the Leased Premises, the Lessor may terminate the Agreement. Provided, however, should the condition create a health, safety or welfare condition necessitating immediate abatement or correction of the condition interfering with operation of Airport, the Lessor, by and through the Director may immediately abate or correct the condition at Lessee's expense without any prior notice as described in Article 19.

### **ARTICLE 13. UTILITY SERVICES**

The Trust shall furnish gas, heating, ventilation, electricity, and air conditioning (HVAC) to the Premises located inside the Terminal Building. All internet, telephone lines, and other communications lines will be at the expense of the Concessionaire.

### **ARTICLE 14. PERSONS AND PROPERTY ON PREMISES AT RISK OF CONCESSIONAIRE**

All persons and property of every kind which may be on said Leased Premises during the term hereof shall be at the sole risk of the Lessee or those claiming under it and the Lessor shall not be liable to the Lessee, or any person whatsoever, for any injury, loss, or damage to any persons or property in or upon said Leased Premises, or upon the sidewalks and alleyways or other contiguous areas thereto. The Lessee hereby covenants and agrees to assume all liability for or on account of any injury, loss, or damage described above and to defend and to save the Lessor and the City harmless therefrom. Lessor shall not be liable for acts of injury or damage that may arise to persons or property on said Leased Premises or Facility, or that may occur during the Lessee's tenancy or occupancy.

### **ARTICLE 15. TAXES**

To the extent any taxes are assessed pursuant to applicable law or any assessment is not subject to the Trust's exempt status, Lessee agrees to pay all present and future taxes or, in lieu of taxes, special assessments now or hereafter levied or assessed for taxes arising during the term of this Agreement: (a) upon the Leased Premises and Facilities; (b) upon property owned or possessed by Lessee and situated on the Leased Premises; or (c) upon Lessee's interest in or use of the Leased Premises. Lessee shall defend, indemnify and save Lessor and the City harmless from any claims or liens in connection with such taxes or, in lieu of taxes, assessments.

### **ARTICLE 16. MISCELLANEOUS COVENANTS**

#### **16.01 Rules and Regulation Compliance**

Lessee shall observe and comply with any and all present and future requirements of the constituted public authorities and with all federal, state, or local laws, policies, administrative regulations and standard rules applicable to Lessee or Lessor for the intended use of the Leased Premises, including by way of example, but not of limitation, all general rules and regulations promulgated from time to time by the Director in connection with the administration of the Airport.

#### **16.02 Signs and Advertising**

Lessee shall not erect, maintain, or display any signs or other advertising at or on the Leased Premises or other Airport premises without first obtaining the written approval of the Director, such approval not to be unreasonably withheld.

16.03 Boise and Sound Shock Waves

Lessee hereby agrees to make no claims or file or cause to be filed any legal or equitable actions against Lessor or the City for any kind of damages which result from noise, vibration or sound shock waves due to aircraft use of the Airport's facilities.

16.04 Wireless Networks

Lessee shall not install, maintain, or operate, or to grant to any third party the right to install, maintain, or operate any wireless network, satellite dish, antenna, wireless communications equipment, meteorological, aerial navigation, distributed antenna system, UHF and VHF radio system, internet access equipment or systems, or other similar related equipment or systems (collectively "Communications Equipment") that could cause or be used to create electrical interference with communication between the Airport, the control tower, and any aircraft, make it difficult for flyers to distinguish between airport lights and others, impair visibility in the vicinity of the Airport, or endanger the landing, take off or maneuvering aircraft or interfere with security systems or the services provided by any Airport communications.

Lessee must first obtain written approval of the Director, such approval being at the sole discretion of the Director before installing any Communications Equipment. In the event that any of Lessee's Communication Equipment should create an Airport Interference or violate this section at any time, the Lessee shall disable such system immediately upon notification from the Director and collaboratively work with Lessor's staff to resolve any conflicts before such Communications Equipment may resume operations.

Should Lessee be permitted to use such Communications Equipment or systems, then such use is pursuant to the following:

A. Restricted to Leased Premises

Lessee's wireless communication system and/or related Communications Equipment shall be installed and operated within the Leased Premises only, and at no other location on or about the Airport.

B. No Use by Third Parties

Lessee shall not solicit, suffer, or permit other lessees, tenants, occupants, visitors, or passengers of the Airport to use the Lessee's network or any other communications service, including, without limitation, any wired or wireless internet service that passes through, is transmitted through, or emanates from the Leased Premises.

C. Interference

Lessee agrees that Lessee's Network and any other Communications Equipment and the Communications Equipment of Lessee's service providers and contractors located on the Premises or installed on the Airport to service the Premises including, without limitation, any antennas, switches, or other equipment (collectively, "Lessee's Communications Equipment") shall be of a type and, if applicable, a frequency that will not cause radio frequency, electromagnetic, or

other interference to any other party or any equipment of any other party including, without limitation, Trust, other Lessees, tenants, occupants, visitors, passengers, or any other party. In the event that Lessee's Communications Equipment causes or is believed to cause any such interference, upon receipt of notice from Trust of such interference, Lessee will take all steps necessary to correct and eliminate the interference. If the interference is not eliminated within twenty-four (24) hours (or a shorter period if Trust believes a shorter period to be appropriate) then, upon request from Trust, Lessee shall shut down the Lessee's Communications Equipment pending resolution of the interference, with the exception of intermittent testing upon prior notice to and with the approval of Trust.

D. Non-Exclusivity

Lessee acknowledges that Trust has granted and/or may grant lease rights, licenses, and other rights to various other tenants and occupants of the Airport and to telecommunications service providers for the installation of a Wi-Fi network and related equipment at the Airport.

**ARTICLE 17. INDEMNITY AND INSURANCE**

17.01 Indemnity

Except as otherwise provided in Article 11, Lessee hereby agrees to release, defend, indemnify, and save harmless the Lessor and the City and their officers, agents, and employees from and against any and all loss of or damage to property or injuries to or death of any person(s), or all claims, damages, suits, costs, expense, liability, actions, demands, liens, fines, encumbrances, or proceedings (including all reasonable legal fees and expenses) of any kind or nature whatsoever in matters resulting from, or arising out of: (a) Lessee's intentional acts or omissions, negligence, misconduct, operations, or activities under or in connection with this Agreement; or (b) in matters resulting from, or arising out of Lessee's use and occupancy of any portion of the Airport, and including, without limiting the generality of the foregoing, acts and omissions of Lessee's officers, employees, representatives, suppliers, invitees, contractors, subcontractors, and agents. Provided, however, Lessee shall not be liable or be required to release Lessor for any loss, damage, claims, suits, cost, expense, or actions occasioned by the negligence or willful misconduct of the Lessor, the City, or their officers, trustees, and employees. The parties covenant to give each other prompt notice of any claims. The foregoing indemnity shall survive the expiration or earlier termination of this Agreement.

17.02 Liability Insurance

Lessee shall purchase, or cause to be purchased, and maintain in effect during the Term of this Agreement with insurance carriers or risk retention groups authorized to do business in the State of Oklahoma and approved by the Director, any insurance required by this paragraph. The insurance and additional insured requirements contained in this Agreement are considered minimum coverage amounts and Lessee may elect greater coverage limits than what is specified in this Agreement or as may be required by law. All applicable coverage, unless specified otherwise, shall remain in full force and effect until the expiration, cancellation, or termination of the Agreement and for the subsequent two (2)

years following the expiration, cancellation, or termination for loss covered by and occurring during the term of the Agreement.

A. Workers' Compensation and Employer's Liability Insurance

Lessee shall maintain during the term of the Agreement, Workers' Compensation Insurance in the amount as prescribed by the laws of the State of Oklahoma and Employer's Liability Insurance in a recommended amount of no less than \$1,000,000 per accident for bodily injury or disease.

B. Commercial General Liability Insurance

Lessee shall carry a policy of Commercial General Liability Insurance, which must include coverage for contractual liability, to protect the Lessee and any additional insured parties from claims for bodily injury, including death, as well as from claims for property damages or loss which may arise from activities, omissions, and operations of the Lessee under the Agreement, whether such activities, omissions, and operations be by the Lessee, subcontractor, or by anyone employed by or acting for the benefit of the Lessee in conjunction with this Agreement in a combined single occurrence or accident of \$1,000,000 for any number of property or bodily injury claims arising out of a single act, accident, or occurrence.

C. Automobile Liability Insurance

Concessionaire shall carry insurance covering owned, leased, hired, or other non-owned vehicles to be utilized by Lessee in the amounts prescribed by Oklahoma law.

17.03 Property Insurance

Lessee shall purchase and maintain in effect, during the initial and renewal term(s) hereof, with responsible underwriters approved by Lessor and authorized to do business in the State of Oklahoma, a blanket "all-risk" form type of policy with the broadest extended coverage endorsements attainable, including, but not limited to, loss or damage caused by wind, hail, fire, flood, earthquake, and such other perils and hazards on the building and improvements, including boiler and machinery coverage, situated on the Leased Premises to the extent of the full replacement cost thereof. The Lessor shall be named as an additional insured for all insurance on buildings and structures when owned by the Lessor or a loss payee for all buildings and structures owned by the Lessee and title will transfer to the Lessor in the future.

The Lessee shall furnish the Lessor with certificates of such insurance issued by insurance underwriters, evidencing the existence of valid policies of insurance with the coverage specified, which certificates shall not be amended so as to decrease the protection below the limit specified herein or be subject to cancellation without at least thirty (30) days advance written notice to Lessor.

17.04 Certificates of Insurance

A. Deductibles

Any policy, except Worker's Compensation and Employer's Liability, having a deductible or retained self-insurance that exceeds \$25,000 shall not be allowed unless such insurance program is approved in advance by the Director, such approval shall not be unreasonably withheld. Lessee shall notify the Director immediately if Lessee has deductibles or retains self-insurance in excess of this stated amount. Lessee shall be solely responsible for any allowed deductible or retained self-insurance amounts. Any elected deductible or self-insured retention of the Lessee will not diminish Lessee's liability under this Agreement for claims or losses falling within any such deductible or self-insured retention amounts. Failure by Lessee to assume and pay for any deductible or retained self-insurance amount may be considered a material breach and may result in immediate termination at the Lessor's option. If, during the term of the Agreement, the Lessee's elected insurance program exceeds any approved deductible or retained self-insurance amount, or if there is a change in the financial conditions of the Lessee which in the Director's sole discretion may impact the Lessee's ability to satisfy any deductible or retained self-insurance, then the Director may require Lessee to take such reasonable actions to ensure first dollar of loss coverage to the Lessor and City including reducing or eliminating such deductibles or self-insured retentions or providing a financial guarantee for the deductible or retained self-insurance amount.

B. Form of Certificate

Certificate(s) of Insurance, acceptable to the Lessor, in the form as shown on Exhibit "C" attached to Agreement or a form substantially similar thereto such as an approved ACORD form which includes the applicable line(s) of insurance, name(s) of insurance companies, policy number(s), amount of any deductible or self-insurance retainage, coverage amounts, all additional insured parties, and contractual liability coverage, shall be submitted to the Lessor in conjunction with the signed Agreement.

C. Additional Insured

The Certificates of Insurance shall name Lessee as insured and the Oklahoma City Airport Trust and The City of Oklahoma City as additional insured (including any actual policy endorsement numbers) on any general liability insurance policy, in a manner of equal standing to that of any named insured under said policy. Any insurance policy or liability coverage of the City or the Lessor shall be considered subordinate, if applicable at all, to the primary coverage of the Lessee. Copies of additional insured or notice provision endorsements shall be submitted to the Lessor along with any Certificates of Insurance. Copies of all insurance policies required herein naming the City or Lessor as an additional insured shall be made available for review by the Lessor or the City at the Lessor's principal place of business on a timely basis when requested.

D. Notice of Change in Policy

Lessee must provide the Lessor at least thirty (30) days prior written notice of any cancellation or material coverage change in their policies or to have an endorsement

made to each policy to include such notice periods in the event the policy provides a different notice period for any additional insured(s). For the purpose of this provision, a material change shall be considered any deductible or self-insurance that exceeds \$25,000 or any coverage amount that does not meet the minimum requirements contained herein or any coverage that is adverse to any terms that received approval by the Director.

E. Signatory

The Certificates of Insurance must be signed by the Authorized Representatives of the insurance company(s) shown on the certificate with proof that he/she is an authorized representative thereof.

F. Contractual Liability

The Certificate of Insurance for the Commercial General Liability Insurance shall also include evidence of coverage for Lessee's contractual liabilities as required herein. In the event the Certificate of Insurance does not delineate coverage for Lessee's contractual liabilities or the Lessee's insurance policy does not provide sufficient coverage for the Lessee's contractual obligations contained in this Agreement, Lessee agrees that Lessee's contractual obligations to the Lessor are not diminished by the Lessee's elected insurance provisions.

D. Failure to Maintain Insurance

If Lessee fails to provide the foregoing insurance or fails to maintain a current certificate of insurance on file with the Trust, the Director may assess a \$100 per day fee on the Lessee for each day that the Lessee is not in compliance.

E. Umbrella Coverage

In the event the Lessee relies on excess or umbrella insurance to satisfy the requirement of this Article, any such policy shall follow form and be no less broad than the underlying policy, shall cover the term of the underlying policy without interruption, and shall include a dropdown provision with no gap in policy limits.

## **ARTICLE 18. PERFORMANCE GUARANTEE**

Lessee shall, upon execution of this Agreement, obtain and deliver to the Trust a Performance Guarantee in the form of a performance bond or letter of credit in the amount of \$32,500 to secure Concessionaire's full performance of this Agreement, including the payment of all fees and other amounts now or hereafter payable to the Trust hereunder. In the event that a late charge is payable under Article 6 (whether or not collected) for three (3) installments of Concession Fee's in any twelve (12) month period, the amount of the Performance Guarantee may, at the Trust's election, be doubled. The amount, form, provisions, and nature of the Performance Guarantee shall at all times be subject to the Trust's approval but may take the form of a bond or an acceptable irrevocable Letter of Credit attached hereto as Exhibits D and E. The Performance Guarantee shall apply to the full term of the Agreement, including any applicable renewal options or holdover period. A Performance Bond may be written on an annual basis but shall be renewed or replaced for each contract year. If the Performance Guarantee is in a form that periodically requires



renewal, Lessee must renew the Performance Guarantee not less than 45 days before the Performance Guarantee is scheduled to expire.

## **ARTICLE 19. TERMINATION FOR EVENTS OF DEFAULT**

### **19.01 Termination by Trust**

In the event that Concessionaire shall fail to perform, keep, and observe any terms, covenants, or conditions to be performed, kept, and observed ("Event of Default"), Trust may terminate the agreement. Prior to termination for non-monetary Events of Default, the Trust shall give thirty (30) days written notice to Concessionaire to use due diligence to correct such condition or Event of Default. If Concessionaire shall not abate or correct such condition or Event of Default for thirty (30) days after receipt of such notice, or such other time as agreed to in writing by the Lessee the non-defaulting party may terminate this Agreement after giving ten (10) day termination notice and the term hereby demised shall thereupon cease and expire at the end of such ten (10) day notice period in the same manner and effect as if it were the expiration of the lease term. Prior to termination for Events of Default for the non-payment of rent, fees or other monies as set forth in this Agreement and also known as monetary Events of Default, the Lessor shall give thirty (30) days written notice to Lessor to pay said delinquent amount and if said amount is not paid in full by the expiration of the thirty (30) day notice period, the Lessor may elect to immediately terminate the Agreement without further notice or time to cure provided to the other party.

### **19.02 Lessor's Option to Eliminate Event of Default**

As an alternative to termination of the Agreement for any non-monetary Event of Default by the Lessee, Lessor may enter the Leased Premises itself or by its agents, servants, or employees, during normal business hours with advanced notice provided to the Lessee when reasonably possible, without such entering causing or constituting a termination of this Agreement or an interference with possession of the Premises by the Lessee, and the Lessor may correct such condition and the Lessee shall pay the Lessor, within thirty (30) days after submission of an invoice, the expenses Lessor incurred to correct said condition.

### **19.03 Meeting**

Within the thirty (30) day notice period set forth in Paragraph 18.01 for monetary or non-monetary Events of Default, the parties may meet to discuss and to try to resolve any Events of Default in lieu of termination of this Agreement.

### **19.04 Notices**

Notwithstanding Paragraphs 18.01, 18.02 and 18.03, Lessor may terminate this Agreement and all of its obligations hereunder after providing thirty (30) day written notice of termination if Lessee shall voluntarily abandon the Lease Premises except when such abandonment be caused by acts of God or force majeure events that are beyond either Lessee's or Lessor's reasonable control including fire, floods, earthquake, tornadoes, labor disputes, war, acts of terrorism, health related pandemic, or other similar calamity.

19.05 Repossession

In the event the Lessor terminates this Agreement for default of the Lessee and after the expiration of the notice of termination has expired, Lessor may enter upon and repossess the Premises or any part thereof and possess the improvements thereon, or any part thereof, and declare all fees remaining for the unexpired term of the Agreement to be due and owing (said repossession and possession being hereinafter referred to as "repossession") by force, summary proceedings, ejectment or otherwise without being deemed guilty of any manner of trespass, and may remove Lessee and all other persons and property therefrom. In the event of repossession by the Lessor, the Lessee shall release, defend, indemnify and save harmless Lessor and the City, and their officers, agents and employees, from all claims, damages, suits, actions, costs, expense or liability of whatsoever nature arising from the Lessor's repossession of the Leased Premises as authorized herein; provided, however, Lessee shall not be liable for or release the Lessor or the City from any loss or damage caused by the sole negligence or willful misconduct of the Lessor, the City, or their officers, agents or employees in connection with any repossession activities authorized herein.

19.06 Monies Due After Termination

No termination of this Agreement and no repossession of the Leased Premises or any part thereof shall relieve the Lessee of Lessee's obligations and liabilities under this Agreement, all of which shall survive any such termination or repossession. Thereafter Lessee, until the end of what would have been the full term of this Agreement, shall pay to Lessor, as and for liquidated and agreed current damages for Lessee's default, the equivalent amount of the fees and such other sums and charges which would be payable under this Agreement by Lessee if this Agreement were still in effect.

19.07 Strict Performance

No failure by Lessor to insist upon the strict performances of any term hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial fees during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term.

19.08 Breach

In the event of any breach or threatened breach by Lessee of any of the terms contained in this Agreement, Lessor shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise, except this Agreement shall be terminated only in the manner set forth herein.

**ARTICLE 20. WAIVER OR STATUTORY NOTICE**

In the event Trust exercises its option to terminate this Agreement for any reason, any notice of termination given by Trust to Concessionaire as provided in this Agreement shall be sufficient to cancel and terminate this Agreement. To the extent any such notice of termination is required pursuant to 41 O.S § 51 *et seq.*, Concessionaire hereby expressly waives the receipt of any notice to quit or notice of termination which would otherwise be given by Trust under any provisions of the laws of the State of Oklahoma. Upon such termination, Concessionaire hereby agrees that it

will forthwith surrender possession of the demised Premises to the Trustees of the Oklahoma City Airport Trust.

#### **ARTICLE 21. REMOVAL OF PERSONAL PROPERTY**

is mutually covenanted and agreed that all Personal Property, including furniture, fixtures, and equipment, that is owned and not affixed to the Leased Premises, or Personal Property that is affixed to the Leased Premises, but which can be removed without causing any damage to the Leased Premises, shall be removed by the Lessee by the termination or expiration of this Agreement. Any damage resulting from the removal of Personal Property shall be repaired by Lessee by the termination or expiration date of this Agreement. Should the Lessee fail to remove said Personal Property by the time stated herein, title to all such Personal Property shall vest in the Lessor and Lessor may cause the removal of all or any portion of such property at the sole risk and expense of the Lessee.

#### **ARTICLE 22. TRANSFER OF MAJORITY INTEREST, VOTING CONTROL, OR OWNERSHIP**

If any individual or group of individuals, or any other entity presently owns or possesses a majority interest, equity position, voting control, or ownership in Lessee, then a transfer of a majority interest, equity position, voting control, or ownership of Lessee, including by sale, merger, consolidation, or other reorganization (collectively referred to as a "Change in Control"), shall be deemed to be an assignment of this Agreement that requires the express written consent of the Lessor, as provided in Article 23. As used in this Agreement, a "Change in Control" means a change in the ownership of more than 50% of the outstanding voting equity interests of Lessee or a change in the possession of the power to direct or cause the direction of the management and policies of Lessee, whether through the ownership of voting equity, by statute, or according to the provisions of a contract. If a Change in Control occurs without the prior written approval of Lessor, then the Lessor may terminate this Agreement under the provisions of Article 19 hereof. If Lessee is a "reporting company" as defined in the Corporate Transparency Act or other similar public disclosure reporting requirements and there is a Change in Control of Lessee, such change shall be reported to Lessor in conjunction with any reporting required by the Corporate Transparency Act or other similar public disclosure reporting requirements. If Lessee does not make such disclosure to Lessor, Lessor may terminate the Agreement under the provisions of Article 19 hereof. Any person or entity with a majority interest, voting control, or ownership of Lessee, regardless of the form of the entity, shall have sufficient financial resources and operational experience to conduct the operation and activities permitted on the Leased Premises under this Agreement. As required by Article 23, at least ninety (90) days prior to any Change in Control, Lessee shall submit written documentation to Lessor showing good and sufficient financial worth and adequate experience in the operation of the Facilities on the part of the contemplated transferee, and evidencing the intent of such contemplated transferee to expressly assume in writing, and agree to be bound by and fulfill all of the terms, covenants, obligations, and agreements contained in this Agreement, the sufficiency of which shall be in the sole discretion of the Director.

## **ARTICLE 23. ASSIGNMENT AND SUBCONTRACTING**

### **23.01 Written Approval for Assignment**

Lessee shall not assign this Agreement or any interest therein by operation of law, process or proceeding of any court or otherwise, and/or the operation or maintenance of the Leased Premises, without first obtaining the prior written approval of Lessor. Any Change in Control of Lessee shall be deemed an assignment within the meaning of this Agreement and subject to the requirements of this Paragraph. Additionally, any sale or transfer of all or more than fifty percent (50%) of Lessee's assets shall be considered an assignment within the meaning of this Agreement and subject to the requirements of this Paragraph. At least ninety (90) days prior to any contemplated assignment, Lessee shall submit a written request to Lessor for approval of such assignment, and Lessee shall submit evidence showing good and sufficient financial worth and adequate experience in the operation of the Facilities on the part of the contemplated assignee. In any event, no assignment shall be made or shall be effective if Lessee is in default on any of the terms, provisions, covenants, and conditions contained in this Agreement or without the prior written approval of Lessor. The assignee shall expressly assume in writing and agree to be bound by and fulfill all terms, covenants, obligations, and agreements contained in this Agreement.

### **23.02 Lessee Continuing Liability**

In the event of any approved assignment, the assigning Lessee shall remain liable to Lessor pursuant to Article 10 of this Agreement for events arising prior to the date of such assignment. Further, in the event of any such approved assignment subject to this Article, the assignee shall not assign or sublet any portion of the Leased Premises except with the prior written approval of Lessor, and any and all Lessee assignments shall contain a clause to this effect.

### **23.03 Subleasing With Advanced Approval**

Subleasing all or any portion of the Premises or assigning all or any part of the Agreement or its rights and privileges contained in this Agreement is not allowed. Concessionaire may subcontract or partner with another entity to provide taxicab and shuttle operations, but the Concessionaire will still be responsible for both types of operations.

## **ARTICLE 24. GENERAL CIVIL RIGHTS PROVISIONS**

In all its activities within the scope of its airport program, the Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin, (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessee. The above provision obligates the Lessee for the period during which the property is

owned, used, or possessed by the Lessee and the Lessor remains obligated to the Federal Aviation Administration.

## **ARTICLE 25. CIVIL RIGHTS TITLE VI ASSURANCE**

### **25.01 Title VI Clauses for Compliance with Nondiscrimination Requirements**

During the performance of this Agreement, the Lessee, for itself, its assignees, and successors in interest, agrees as follows:

A. **Compliance with Regulations**

The Lessee (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

B. **Nondiscrimination**

The Lessee, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of sublessees, including procurements of materials and leases of equipment. The Lessee will not participate directly or indirectly in the discrimination prohibited by the [Title VI] Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

C. **Solicitations for Subcontracts, including Procurements of Materials and Equipment**

In all solicitations, either by competitive bidding or negotiation made by the Lessee 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 Lessee of the Lessee's obligations under this Agreement and the [Title VI] Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

D. **Information and Reports**

The Lessee will provide all information and reports required by the Acts, the Regulations, and the 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 Trust/Lessor or the Federal Aviation Administration to be pertinent to ascertain compliance with such [Title VI] Nondiscrimination Acts and Authorities and instructions. Where any information required of a Lessee is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee will so certify to the Lessor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

E. **Sanctions for Noncompliance**

In the event of a Lessee's noncompliance with the nondiscrimination provisions of this Agreement, the Lessor will impose such contract sanctions [in accordance with any applicable notice and cure provisions provided for in this Contract] as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

1. Withholding any payments to the Lessee under the Agreement until the Lessee complies; and/or
2. Cancelling, terminating, or suspending an Agreement, in whole or in part.

F. Incorporation of Provisions: The Lessee will include the provisions of [Paragraph 24.01, subparagraphs] A through F in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Lessee will take action with respect to any subcontract or procurement as the Lessor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Lessee becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Lessee may request the Lessor to enter into any litigation to protect the interests of the Lessor. In addition, the Lessee may request the United States to enter into the litigation to protect the interests of the United States.

25.02 Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, the Lessee, for itself, its assignees, and successors in interest 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 USC § 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 USC § 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 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-259) (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 (42 USC § 12101, *et seq*) (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) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
  - The Federal Aviation Administration's Nondiscrimination statute (49 USC § 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 (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 (2005)];
  - Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681 *et seq*).

## **ARTICLE 26. EMPLOYEE BADGING AND BACKGROUND CHECKS**

### **26.01 Requirements**

Lessee shall be responsible for requesting the issuance of Airport security badges to all officers, invitees, employees, suppliers, contractors, and agents who will be employed in the terminal building or will need access to secured areas at the Airport. Lessee's officers, invitees, employees, suppliers, contractors, and agents must abide by all applicable security regulations of the Department of Airports (DOA), Federal Aviation Administration (FAA) and the Transportation Security Administration (TSA). Any of Lessee's officers, invitees, employees, suppliers, contractors, and agents who require unescorted access to any secured areas of the Airport where access is controlled must make application for, and wear, the properly designated Airport security badge. Those employees or contractors seeking access to secured areas must submit a set of fingerprints for a Criminal History Records Check (CHRC) conducted by the Federal Bureau of Investigation (FBI) as required by TSA Regulation Part 1542. In addition, the applicant must submit biographical information for a Security Threat Assessment (STA) conducted by the TSA. At the time the application is made, Lessee shall be responsible for payment of the then current fee for fingerprinting and the fee for issuance of an initial security badge, based on the Trust's current Miscellaneous Fee and Rental Schedule. The current fee for fingerprinting is \$35.00 per person. The current cost of an initial security badge is \$20.00 per person. Upon a satisfactory completion of the CHRC and STA, the applicant must then attend a security badging session to receive training and have a security badge issued.

26.02 Lost, Stolen, Termination

Upon expiration of any badge, Lessee shall ensure that all officers, invitees, employees, suppliers, contractors, and agents timely renew their badge and pay the then applicable badge renewal fee which is currently \$15.00 per person.

26.03 Renewal of Badges

Upon expiration of any badge, Concessionaire shall ensure that all officers, invitees, employees, suppliers, contractors, and agents timely renew their badge and pay the then applicable badge renewal fee which is currently \$15.00 per person.

**ARTICLE 27. CIVIL PENALTIES**

27.01 Assessment

Lessee shall be responsible for any civil penalties which may be assessed upon it, or the Trust, or the City, for violations occurring at the Airport by Lessee, its officers, invitees, employees, suppliers, contractors, and/or agents. Should a civil penalty assessment be made to Lessee, the Trust, or the City as a result of the actions of Lessee, its officers, invitees, employees, suppliers, contractors, and/or agents, the Trust shall also charge and bill Lessee a processing fee of two hundred fifty dollars (\$250.00) plus the amount of any civil penalty. Lessee shall pay Trust such amount immediately upon receipt of such invoice.

27.02 Indemnification

In this regard, Lessee will indemnify, defend and hold the Oklahoma City Airport Trust and the City of Oklahoma City harmless from and against any claims, suits, causes of action, costs and fees, including attorney's fees, arising from or connected with any such civil penalty assessment, or claim of such civil penalty assessment. This provision shall survive the termination of this Agreement.

**ARTICLE 28. AIRPORT CONCESSIONS DISADVANTAGED BUSINESS  
ENTERPRISE (ACDBE)**

28.01 ACDBE Participation

The Lessor, as a recipient of federal financial assistance, is required to develop a program aimed at strengthening the participation of Airport Concessions Disadvantaged Business Enterprises ("ACDBE") in the Airport's programs, projects and facilities.

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



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

#### 28.02 ACDBE Goal

The Airport has an annual non-rental car overall goal for ACDBE participation in Airport concession agreements. This Agreement has an annual ACDBE concession specific participation goal of \_\_\_\_%. Prior to establishing this concession specific goal, Concessionaire/Contractor/Permittee mutually agreed with the Trust on the appropriate goal for this concession. Concessionaire/Contractor/Permittee /etc. understands that it may satisfy any goal specific requirements herein by direct certification as an ACDBE, through an approved joint venture arrangement, or by contracting with a certified ACDBE for the purchase of supplies, goods or services associated with this Contract/Agreement/Permit.

In order to be considered as an ACDBE, the Concessionaire/Contractor/Permittee /etc. or its contractor/subcontractor must be certified as such by the State of Oklahoma, Department of Transportation (“ODOT”) under its Uniform Certification Program. Contact information for such certification may be obtained by contacting the State of Oklahoma Department of Transportation website at <http://www.okladot.state.ok.us> or by phone (405) 522-3379. Current ACDBE’s may also be found on the ODOT website.

**OR**

#### ACDBE Goal

The Airport has an annual non-rental car overall goal for ACDBE participation in Airport concession agreements of 5.93%. However, this Agreement does not have a concession specific ACDBE goal. Even though there is not a concession specific goal associated with this Agreement, if Concessionaire/Contractor/Permittee is unable to qualify directly as an ACDBE then Concessionaire/Contractor/Permittee shall utilize best efforts throughout the term of this Contract/Agreement/Permit to reasonably utilize the services of or to purchases goods and supplies from an ACDBE and/or to identify and to encourage ACDBE qualified subcontractors or suppliers to become ACDBE certified.

Concessionaire/Contractor/Permittee /etc. understands that it may satisfy the requirements herein by direct certification as an ACDBE, through an approved joint venture arrangement, or by contracting with a certified ACDBE for the purchase of supplies, goods or services associated with this Contract/Agreement/Permit.

In order to be considered as an ACDBE, the Concessionaire/Contractor/Permittee /etc. or its contractor/subcontractor must be certified as such by the State of Oklahoma, Department of Transportation (ODOT) under its Uniform Certification Program. Contact information for such certification may be obtained by contacting the ODOT website at <http://www.okladot.state.ok.us/> or by phone (405) 522-3379. Current ACDBE’s may also be found on the ODOT website.

28.03 Reporting Requirements

An ACDBE concession specific goal or ACDBE participation when no specific goal is established in this Article is based on a percentage of the gross revenues or gross sales of the ACDBE's to the Lessee and Lessee shall report the gross revenues or gross sales of an ACDBE along with the Lessee's gross revenues monthly/annually in writing to the Director or his designated representative for this concession.

Lessee may be required to submit the following information:

- A. Documentation that the ACDBE participant(s) are properly certified with ODOT.
- B. The names and addresses of ACDBE companies and/or suppliers that will participate in the concession.
- C. A copy of any agreement(s) with ACDBE participant(s).
- D. A description of the type of business or businesses that ACDBE participant will operate or goods or services to be provided to Lessee by the ACDBE participant.
- E. The dollars paid to an ACDBE or the gross revenues or gross payments made for the participation of each ACDBE firm participating in this Agreement.
- F. Information on the estimated investment required on the part of the ACDBE and any unusual management or financial arrangements between the Concessionaire and ACDBE.
- G. Information on the estimated gross receipts and net profit to be earned by the ACDBE.
- H. Written and signed documentation of commitment to use an ACDBE whose participation it submits to meet a contract goal.
- I. Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment.
- J. If the contract goal stated above is not met for each year of the Agreement, or if there is no stated concession specific goal, evidence of good faith efforts.

28.04 Monitoring and Good Faith Efforts – Specific Goal

The Concessionaire/Contractor/Permittee shall make good faith efforts, as required in Part 23 and defined in 49 CFR Part 26, Appendix A, to meet the concession specific goal for ACDBE participation in the performance of this concession. The Trust reserves the right to implement monitoring and enforcement mechanisms to ensure Lessee's compliance with 49 CFR Part 23. Lessee must make reasonable efforts to provide any requested documents to assist the Trust in its enforcement and monitoring efforts. At any time, a Lessee fails to reach its contractually required goal, said Lessee will be required to substantiate its good faith efforts to return to compliance. These reports will be required on a quarterly basis until compliance is achieved or until it is determined that the Lessee's efforts are insufficient.

28.05 Monitoring and Good Faith Efforts – No Specific Goal

Lessee shall make good faith efforts as required in Part 23 and defined in 49 CFR Part 26, Appendix A, to utilize ACDBE participation in the performance of this concession even though no concession specific goal is established. The Trust reserves the right to implement monitoring and enforcement mechanisms to ensure Lessee compliance with 49 CFR Part 23. Lessee must make reasonable efforts to provide any requested documents to

assist the Trust in its enforcement and monitoring efforts. Lessee will be required to periodically substantiate its good faith efforts to utilize ACDBE participation during the Airport's ACDBE compliance and reporting term.

**28.06 Good Faith Efforts When Terminating or Substituting an ACDBE**

Good Faith Efforts when terminating or substituting an ACDBE sub-concessionaire. Concessionaire shall make good faith efforts to replace or to substitute an ACDBE sub-concessionaire that is terminated or has otherwise failed to complete its concession agreement, lease, or subcontract with another certified ACDBE to the extent needed to meet any concession specific goal. Concessionaire must give five (5) days prior written notice to the ACDBE sub-concession and to Lessor of its intent to request to terminate and/or substitute and the reason for the request before such termination and/or substitution is effective. The Concessionaire must give the ACDBE sub-concessionaire at least five (5) days to respond to the Concessionaire's notice if the ACDBE objects with the termination or substitution. Such response by the ACDBE shall be provided to the Concessionaire and the Lessor. Lessor shall then have five (5) days to approve or to deny the Concessionaire's action. If required in a particular case as a matter of public necessity (*e.g.*, safety), the Lessor may provide a response period shorter than five (5) days. No termination or substitution of an ACDBE shall be effective until approved by the Lessor.

Lessee's good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its work on a concession with another certified ACDBE shall include reasonable efforts in a timely manner to find another ACDBE to perform at least the same amount of work under the agreement as the ACDBE that was terminated, to the extent needed to meet the agreement goal that the Lessor established for the procurement. The good faith efforts shall be documented by the Lessee. If the Lessor requests documentation from the Lessee under this provision, the Lessee shall submit the documentation to Lessor within seven (7) days, which may be extended for an additional seven (7) days if necessary, at the request of the Lessee, and the Lessor shall provide a written determination to the Lessee stating whether or not good faith efforts have been demonstrated.

**28.07 Failure to Comply**

Lessee further understands that failure to cooperate in good faith with these provisions may result in:

- A. Suspension or debarment pursuant to 49 CFR Part 23 and 2 CFR parts 180 and 1200;
- B. Enforcement action pursuant to 49 CFR Part 31;
- C. Prosecution pursuant to 18 USC § 1001; or
- D. Termination of this Agreement as provided in this Agreement.

**ARTICLE 29. QUALITY OF PERFORMANCE AND LIQUIDATED DAMAGES**

**29.01 Liquidated Damages**

The following Agreement requirements are among those that relate directly to the quality of the ATM service that the Trust expects to be provided to the public under the Agreement. The Concessionaire agrees that less than full performance of the following requirements

denigrates the quality of the service, is in violation of this Agreement, and that the following liquidated damages are a reasonable approximation of the Trust's actual damages for such violations. The Director has the sole discretion to impose any liquidated damages set forth herein and will notify the Concessionaire within forty-five (45) days following the violation if liquidated damages will be imposed. Failure to impose liquidated damages for a violation shall not be an acceptance of any action by the Concessionaire and will not bar the Director from imposing liquidated damages for subsequent violations of the same nature. The availability of liquidated damages shall not bar the Director or the Trust from exercising other remedies, including termination under this Agreement. The Concessionaire will be invoiced for liquidated damages, and payment of the invoice is due upon receipt by the Concessionaire in accordance with Paragraph 5.06.

29.02 Customer Complaints

For each customer complaint verified by the Trust concerning ATM service provided by the Concessionaire which shows that the service provided did not meet the service standards required by this Agreement, including but not limited to poor customer experience, low quality services, not providing contact details, poor customer service; liquidated damages may be assessed to the Concessionaire. At the option of the Concessionaire's Officer, in the amount of one hundred dollars (\$100.00) for each complaint received.

29.03 Denial of Service

For each time the Trust observes a passenger being denied ATM services by the Concessionaire, unless such denial is permitted by the Agreement, liquidated damages may be assessed to the Concessionaire, at the option of the Concessionaire's Officer, in the amount of five hundred dollars (\$500.00) for each passenger denied service.

29.04 ADA Compliance

Liquidated damages may be assessed to the Concessionaire, at the option of the Director, in the amount of five hundred dollars (\$500.00) per occurrence for the Concessionaire's failure to provide an ADA vehicle to a passenger within 10 minutes from the time of the request.

29.05 Rates and Charges

Liquidated damages may be assessed to the Concessionaire, at the option of the Director, in the amount of five dollars (\$500.00) per occurrence for customers being charged and fees at a rate or of the type not agreed to in Paragraph 4.06 to this Agreement and without approval of the Director and compliance with any local, state or federal requirement.

**ARTICLE 30. GENERAL CONDITIONS**

30.01 Notices

Notices to Trust or Lessee pursuant to the provisions hereof shall be sufficient if sent by:  
(a) registered or certified mail, return receipt requested, postage prepaid, and deemed received on the third business day after the date mailed if recipient refused proper delivery;  
(b) a nationally recognized overnight courier (receipt requested) and deemed received the

next business day following the date it was sent if the recipient refused proper delivery; (c) electronic mail and deemed received on the date sent if sent during normal business hours of the recipient and on the next business day if sent after normal business hours of the recipient; or (d) hand delivered, addressed to:

For the Trust:           Oklahoma City Airport Trust  
                                Will Rogers World Airport  
                                7100 Terminal Drive, Unit 937  
                                Oklahoma City, Oklahoma 73159-0937  
                                Telephone: (405) 316-3200  
                                Email: [AP-Procurement@okc.gov](mailto:AP-Procurement@okc.gov)

For the Concessionaire:

[Name]  
[Address]  
[Telephone]  
[Email]

A party may designate a change to the physical address by written notice given to the other Party in accordance with this Paragraph 30.01.

Unless otherwise stated herein, notice to each party shall be sufficient and deemed received on the third business day if sent by U.S. Postal Service regular mail, postage prepaid, to the address listed herein whether accepted, or if hand delivered. Bills, statements, and other communication to Lessee or Lessor may be through telephone or sent through the U.S. Postal Service regular delivery, or electronic mail.

30.02 Non-Waiver

The waiver by Trust of any breach of the Concessionaire of any term, covenant, provision, or condition hereof shall not operate as a waiver of any subsequent breach of the same or a waiver of any breach of any other covenant, term, provision, or condition hereof, nor shall any forbearance by the non-breaching party to seek a remedy for any breach by the breaching party be a waiver by the non-breaching party of its rights and remedies with respect to such or any subsequent breach of the same or with respect to any other breach.

30.03 Binding Effect

This Agreement shall be binding upon the parties, and their respective successors and assigns, as of the Effective Date.

30.04 Severability

In the event any terms, covenants, conditions, or provisions of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other term, covenant, condition, or provision hereof.

30.05 Entire Agreement; Modification Hereof

This Agreement (including the Exhibits hereto) expresses the entire understanding of Trust and the Concessionaire concerning the Agreement at the Airport and all agreements of Trust and of Concessionaire with each other, and neither Trust nor Concessionaire has made or shall be bound by any agreement or any representation to the other concerning the Agreement which is not expressly set forth in this Agreement (including the Exhibits hereto). This Agreement (including the Exhibits hereto) may be modified only by a written agreement of subsequent date hereto signed by Trust and Concessionaire.

30.06 Execution of Counterparts

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

30.07 Effect of Saturdays, Sundays and Legal Holidays

Whenever this Agreement requires any action to be taken on a Sunday, a Saturday, or a legal holiday, such action shall be taken on the first business day occurring thereafter in the place where the action is to be taken. Whenever in this Agreement the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on Sunday, a Saturday, or a legal holiday recognized by the City of Oklahoma City, such time shall continue to run until 11:59 p.m. on the next succeeding business day.

30.08 Descriptive Headings: Table of Contents

The descriptive headings of the sections of this Agreement and any table of contents annexed thereto or copies hereof are inserted or annexed for convenience of reference only and do not constitute a part of this Agreement, and shall not affect the meaning, construction, interpretation, or effect of this Agreement.

30.09 Construction and Enforcement

This Agreement shall be construed and enforced in accordance with the laws of the State of Oklahoma. Whenever in this Agreement it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform or not to perform, as the case may be, such act or obligation.

30.10 Venue

The parties acknowledge and agree that in the event of any dispute or disagreement that necessitates court intervention, the venue for all litigation shall be the District Court of Oklahoma County, Oklahoma.

30.11 Construction of Agreement

In the event of ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party on the basis that such party did or did not author the same.

30.12 Recitals Contractual in Nature

The parties acknowledge and agree that the recitals as contained hereinabove in this Agreement are contractual in nature and binding on the parties.

30.13 Holding Over

If Concessionaire shall hold over without the written consent of Trust, by and through the Director and remain in possession of the Premises after the expiration of the term specified herein, such possession of the Premises by Concessionaire shall be deemed to be merely a month-to-month tenancy, terminable upon thirty (30) days written notice, delivered at any time by either party. During any such month-to-month tenancy for a holdover not consented to by the Trust, Concessionaire shall promptly pay at a rate of 125% of the total monthly rentals, fees, and charges. All other provisions of this Agreement shall apply to said month-to-month tenancy. A holdover agreed to by the parties shall be at the terms agreed upon by the parties at that time.

30.14 Surrender of the Premises

Except as otherwise expressly provided in this Agreement, at the expiration or sooner termination of this Agreement, or any extension hereof, Concessionaire agrees to surrender possession of Premises peacefully and promptly to Trust in as good condition as existed at the Effective Date of this Agreement, ordinary wear, tear and obsolescence only excepted. Trust reserves the right to make periodic inspection of Premises and equipment therein during normal business hours with advanced notice provided to the Concessionaire when reasonably possible.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands as of the day and year first above written.

**ATTEST:**

**CONCESSIONAIRE:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name


\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title



**APPROVAL RECOMMENDED:**

 For \_\_\_\_\_  
Director of Airports

**APPROVED** by the Oklahoma City Airport Trust and signed by the Chairman this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**ATTEST: (SEAL)**

**OKLAHOMA CITY AIRPORT TRUST**

\_\_\_\_\_  
Trust Secretary

\_\_\_\_\_  
Chairman

**REVIEWED** for form and legality.

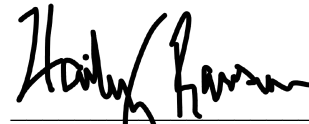
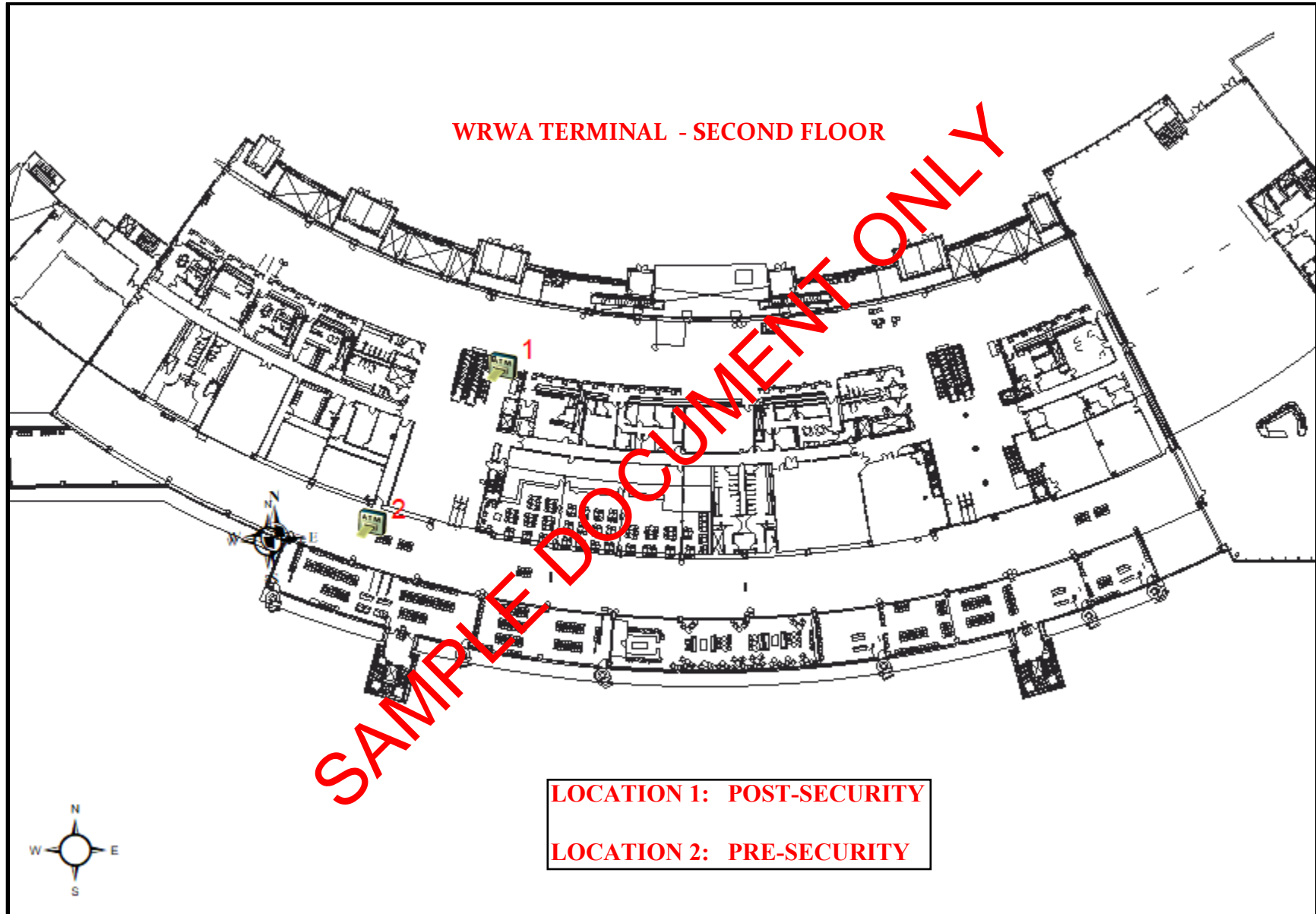
 \_\_\_\_\_  
Assistant Municipal Counselor/  
Attorney for the Trust

EXHIBIT "A"  
PREMISES AND EXISTING ATM  
LOCATIONS



## **EXHIBIT B – SERVICE AND OPERATIONAL STANDARDS**

### **1. SERVICE AND OPERATIONAL STANDARDS**

Proposers shall be solely responsible for the installation, operation, maintenance and servicing, security, and management of its ATMs for use by passengers, the general public, personnel, and visitors to the Airport.

#### **A. Installation**

1. Installation of the ATMs shall occur during off-peak hours of 7:00 a.m. through 10:00 a.m. and 8:30 p.m. through 5:00 a.m., CST/CDT, or other hours as may be designated in writing from time to time by the Director of Airport. Installation of all machines must be completed within forty-eight (48) hours after commencement of Contract.
2. ATMs will be located both pre- and post- security. Locations may be changed or reduced if mutually agreed upon between the Trust and the successful Proposer.
3. Successful Proposer shall respond within twenty-four (24) hours of notification for machine repairs and replacement.

#### **B. Operation**

1. ATMs shall be available to operate twenty-four (24) hours a day, seven (7) days a week, including holidays, with the exception of the ATM in the post-screening area which will only be available during the hours of 4:30 a.m. through 12:30 a.m.
2. ATMs must meet ADA compliance requirements as stated in the RFP MINIMUM EQUIPMENT SPECIFICATIONS, Section L, Sub-Section 3.
3. ATMs shall be maintained in good working order and shall be serviced and restocked at intervals that guarantee the equipment functions properly.

#### **C. Maintenance and Servicing**

1. Servicing of ATMs shall include, but not be limited to (a) restocking ATMs, (ii) general cleaning (more in-depth cleaning if requested by Trust), maintenance, and repair of equipment, (iii) collection and reporting of all revenues, and (iv) providing a 24-hour toll free number for responding to all ATM service/emergency calls.
2. Response time to service calls and/or replenishment of funds shall be within four (4) hours of notification.
3. Emergency service response shall be available within ninety (90) minutes of

4. Except for emergency response, servicing of the ATMs shall occur during off-peak hours of 7:00 a.m. through 10:00 a.m. and 8:30 p.m. through 5:00 a.m., CST/CDT, or other hours as may be designated in writing from time to time by the Director of Airports.

**D. Management**

Management and operation of the ATMs must always meet commercially reasonable standards.

**E. Security**

Proposer acknowledges that Federal Aviation Administration regulations prohibit firearms past all security checkpoints. Servicing of ATMs beyond the security checkpoint will require escorting by the Airport Police. For regular cleaning and maintenance of ATMs beyond the security checkpoint, escort is required by designated Airport Building Maintenance personnel; therefore, advance coordination with Airport Police and/or Airport Building Maintenance will be required for the ATMs beyond the security checkpoint.

**F. ACDBE Participation**

In accordance with regulations of the Oklahoma Department of Transportation (ODOT), Uniform Certification Program, 49 CFR Part 23, Subpart C, the Trust has implemented an Airport Concessions Disadvantaged Business Enterprise (ACDBE) concession plan under which qualified firms may have the opportunity to operate or participate in the operation of an airport business. An ACDBE goal of 5.93%, as measured by total estimated annual gross revenues, has been established for concession programs. The Concessionaire shall make every reasonable attempt to achieve this goal.

ACDBE participation may be in the form of one or more subleases, joint ventures, partnerships, or other legal arrangement meeting the eligibility standards in 49 CFR Part 23, Subpart C. In the event that the Concessionaire qualifies as an ACDBE, the goal shall be deemed to have been met.

Proposer shall submit information concerning ACDBE firm(s) that may participate in this concession (if any), including:

- Name and address of each firm.
- Annual estimated gross receipts to be earned by each named firm.
- Description of the legal arrangement(s) underlying each ACDBE's participation
- Total overall estimated annual gross receipts to be earned by the Proposer in the event it is the Selected Proposer

ACDBE firms that are not certified as such at the time of Proposal submittal must have submitted a certification application before the Proposal due date. Contact information for such certification may be obtained by contacting the State of Oklahoma Department

of Transportation website at <http://www.okladot.state.ok.us> or by phone (405) 522-3379. Current ACDBE's may also be found on the ODOT website. The foregoing requirements with respect to ACDBE participation are not intended to force the Proposer to change its business structure.

**G. Performance Standards**

The Oklahoma City Airport Trust ("Trust") maintains the right to monitor and enforce quality standards for its concession operators. Areas for review will include, but not be limited to, cleanliness, maintenance and repair of equipment, quality of products, and overall responsiveness to Trust and/or customer concerns regarding the ATM concession.

The Trust maintains the right to determine and change an acceptable quality standard of normal operational time on each ATM. The Trust has set a standard of availability in a manner that will ensure ninety-five percent (95%) uptime (22.8 hours) for each twenty-four (24) hour period, seven (7) days per week. Additionally, more than five (5) operational failures in one month on one ATM will constitute "unsatisfactory" performance, which may result in default on the Agreement. Failure to comply with performance standards shall constitute a default as stipulated in the Agreement.

**SAMPLE DOCUMENT ONLY**

**EXHIBIT C – INSURANCE CERTIFICATE**

ISSUE DATE: _____		<b>OKLAHOMA CITY AIRPORT TRUST CERTIFICATE OF INSURANCE</b>		PROJECT OR CONTRACT NUMBER: _____	
PRODUCER   ADDRESS   INSURED   ADDRESS   		NOTE: THIS CERTIFICATE CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER, NOR DOES IT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY POLICIES BELOW, EXCEPT AS SHOWN BELOW. <b>COMPANIES AFFORDING COVERAGE</b> COMPANY A LETTER COMPANY B LETTER COMPANY C LETTER COMPANY D LETTER COMPANY E LETTER			
COVERAGES: THIS IS TO CERTIFY THAT THE INSURANCE POLICIES LISTED BELOW HAVE BEEN ISSUED TO THE INSURED(S), FOR THE POLICY PERIOD INDICATED HEREIN. THE POLICIES SHOWN IN THIS CERTIFICATE ARE DEEMED PRIMARY TO ANY INSURANCE CARRIED BY THE INSURED(S) FOR THE SPECIFIC LOCATION, PROJECT OR EVENT.					
TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS	
<b>GENERAL LIABILITY</b> _____ OCCURRENCE _____ CLAIMS MADE AND TAIL COVERAGE _____ CONTRACTUAL LIABILITY _____ Ded/SIR \$ _____				GENERAL AGGREGATE	
				BODILY INJURY (Per Person)	
				PROPERTY DAMAGE (Per Accident)	
				EACH OCCURRENCE	
				MEDICAL EXPENSES (Any One (1) Person)	
<b>AUTOMOBILE LIABILITY</b> _____ ANY AUTO _____ ALL OWNED AUTOS _____ SCHEDULED AUTOS _____ HIRED AUTOS _____ NON-OWNED AUTOS				COMBINED SINGLE LIMIT	
				BODILY INJURY (Per Person)	
				BODILY INJURY (Per Accident)	
				PROPERTY DAMAGE	
<b>WORKER'S COMPENSATION AND EMPLOYER LIABILITY</b> Standard Compliance for the State of Oklahoma				EACH ACCIDENT	
				DISEASE - POLICY LIMIT	
				DISEASE - EACH EMPLOYEE	
<b>VALUABLE PAPERS INSURANCE</b> (If required by Contract)					
<b>EXCESS LIABILITY</b> (If required by Contract)				EACH OCCURRENCE	
				AGGREGATE	
<b>OTHER</b> (If required by Contract)					
<b>DESCRIPTION OF OPERATION(S)/VEHICLES/SPECIAL ITEMS</b> THE CITY OF OKLAHOMA CITY AND THE OKLAHOMA CITY AIRPORT TRUST ARE ADDITIONAL INSURED(S), WITH RESPECT TO LIABILITY. CONTRACTUAL LIABILITY INCLUDED.					
<b>CERTIFICATE HOLDER(S)</b> The City of Oklahoma City and The Oklahoma City Airport Trust 7100 Terminal Drive, Unit 937 Oklahoma City, OK 73159-0937		<b>CANCELLATION</b> IT IS AGREED THAT NONE OF THESE POLICIES WILL BE CANCELLED OR CHANGED EXCEPT IN THE APPLICATION OF THE AGGREGATE LIABILITY LIMIT PROVISIONS, SO AS TO AFFECT THE INSURANCE DESCRIBED IN THIS CERTIFICATE UNTIL AFTER 30 DAYS PRIOR WRITTEN NOTICE OF SUCH CANCELLATION, REDUCTION IN COVERAGES, OR NONRENEWAL FOR NONPAYMENT OF PREMIUM HAS BEEN DELIVERED TO THE CERTIFICATE HOLDER. AUTHORIZED REPRESENTATIVE SIGNATURE _____ TELEPHONE NUMBER ( ) _____			

## **CERTIFICATE OF INSURANCE EXPLANATION OF THE CITY OF OKLAHOMA CITY AND PARTICIPATING TRUST(S)**

The Certificate Holder(s) require the use of this Certificate of Insurance as evidence that the insurance requirements of the contract have been complied with and will continue as long as the contract is in force. The City and/or Trust rely on this Certificate as proof of compliance with the insurance requirements agreed upon. The City and/or Trust must be advised of any cancellation or non-renewal of the insurance coverages required or any reduction in the coverages provided, in compliance with the contract, as shown in the Certificate of Insurance. Thirty (30) days prior written notice of cancellation, reduction in coverages (other than an aggregate limit provision reduction) or nonrenewal for nonpayment of premium must be provided to the City and/or Trust so that the City and/or Trust may take appropriate action.

Many certificates of insurance are received by the City and its Trusts and many contain statements claiming that the certificate is issued as a matter of information only and confers no rights upon the certificate holder. A common example is "Should any of the above-described policies be canceled before the expiration date hereof, the issuing company will endeavor to mail (number of days) days written notice to the named holder, but failure to mail such notice shall impose no obligation of liability of any kind upon the company, its agents or representatives." This is unacceptable.

The City and Trust have the right of notice of cancellation, nonrenewal and reduction of coverage, as a requirement in the contract. The City and Trust rely upon the Certificate of Insurance as evidence of contract compliance.

The authorization requirement (that the authorized representative signing the Certificate of Insurance provide written acknowledgment by the insurance company or companies to the City and/or Trust) is written proof that the person signing the Certificate is legally authorized by the insurance company or companies to obligate them, as shown in the Certificate.

The City and/or Trust must have positive evidence in the form of the Certificate of Insurance that the insurance requirements of the contract have been met and will continue to be met without interruption during the term of the contract. Neither the named insured nor its insurance company may attach any endorsement(s) or rider(s) to the insurance policy or this Insurance Certificate that change or modify the insurance requirements, obligations, or additional insured status of the Trust or City in any manner. To the extent the insurance policy or any endorsement or rider is inconsistent with the contractual insurance obligations, the contractual agreement between the insured and the Trust and/or City shall control.

No activity will begin until the insurance Certificate is received. Your cooperation in providing the City and/or Trust with acceptable evidence of insurance compliance will prevent confusion and delay.

**EXHIBIT D – PERFORMANCE GUARANTEE FORM**

**KNOW ALL MEN BY THESE PRESENTS:**

That \_\_\_\_\_, as Principal, and \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of the State of \_\_\_\_\_ and authorized to transact business in the State of Oklahoma, as Surety, are held and firmly bound unto the Oklahoma City Airport Trust (“Trust”) in the penal sum of: One Million Dollars and 00/100 (\$1,000,000.00) beginning on the date of execution of the Agreement through the end of the contract year and subject to renewal and modification for work to be performed by the Principal in lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, executors, administrators, trustees, successors, and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that:

WHEREAS, said Principal entered into a written Agreement with the Oklahoma City Airport Trust, dated this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_, for:

\_\_\_\_\_  
AGREEMENT  
FOR THE  
OKLAHOMA CITY AIRPORT TRUST  
OKLAHOMA CITY, OKLAHOMA

all in compliance with the Agreement and on file in the office of the Oklahoma City Airport Trust, 7100 Terminal Drive, Unit 937, Oklahoma City, Oklahoma 73159-0937.

NOW THEREFORE, if said Principal shall, in all particulars, well, truly, and faithfully perform and abide by said Agreement and each and every covenant condition, and part thereof and shall fulfill all obligations resting upon said Principal by the terms of said Agreement and said specifications; and if said Principal shall protect and save harmless said Oklahoma City Airport Trust from any pecuniary loss resulting from the breach of any of the items, covenants and conditions of said Agreement resting upon said Principal, then this obligation shall be null and void and Surety shall have no obligation under this Performance Bond unless specified herein.

In the event the Principal defaults in its performance under the Agreement:

1. The Trust shall inform the Contractor and the Surety that the Trust has declared the Principal in default. The Surety may, within five (5) business days after receipt of the Trust’s notice, require a conference. Any conference shall be held within ten (10) business days of Trust’s receipt of Surety’s conference request. If the Trust, Principal and Surety jointly agree, the Principal shall be allowed to perform under the terms and conditions jointly agreed, but such an agreement shall not waive the Trust’s right, if any, to declare subsequently the Principal in default;
2. Upon the satisfaction of paragraph 1, the Surety shall, at the Surety’s sole cost and expense:



- a. Arrange for a third-party agreed to by the Trust and the Surety to undertake the remaining performance and obligations of the Principal and pay to the Trust any damages owed as the result of the Principal's default including any legal, professional, loss of income, costs to correct such defects, cost and expenses to secure another Lessee, liquidated damages, or other reasonable expenses related to or caused by said conditions of default; or
  - b. Pay to the Trust the full amount of the bond.
3. It is further expressly agreed and understood by the Principal, Surety and Trust that Surety waives notice of any change order, modifications, or amendments to the Agreement between the Principal and the Trust and any such changes or alterations in said Agreement shall not have the effect of releasing the Surety or Principal from the obligations of this bond.

SIGNATURES TO FOLLOW

**IN WITNESS WHEREOF**, the said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officers, and the said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its attorney-in-fact, duly authorized so to do, the day and year set forth below.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by the Principal.

\_\_\_\_\_  
Principal

**ATTEST:**

\_\_\_\_\_  
(Witness - Secretary)

\_\_\_\_\_  
(Authorized Officer)

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by the Surety.

\_\_\_\_\_  
Surety (Name of company)

**ATTEST:**

\_\_\_\_\_  
(Witness - Secretary)

\_\_\_\_\_  
(Attorney-in-Fact)

**EXHIBIT E - LETTER OF CREDIT FORM**

Irrevocable Standby Letter of Credit No. \_\_\_\_\_

(Date) \_\_\_\_\_, \_\_\_\_\_

AMOUNT: USD \$ \_\_\_\_\_

BENEFICIARY:

Trustees of the Oklahoma  
City Airport Trust

APPLICANT:

\_\_\_\_\_

EXPIRES: \_\_\_\_\_

At the request of \_\_\_\_\_, we (name and address of national banking institution) hereby establish our Irrevocable Standby Letter of Credit in your favor for USD One Million and 00/100 cents, (\$1,000,000.00). This Irrevocable Standby Letter of Credit expires on \_\_\_\_\_, 20\_\_\_\_, but will be automatically extended for additional consecutive one-year if you have not received by certified mail notification of our intention not to renew one hundred and eighty (180) days prior to the original expiration date and each subsequent expiration date.

We warrant to you that all drafts under this Irrevocable Standby Letter of Credit will be duly honored and timely paid upon presentation of your draft drawn on us at (\_\_\_\_\_), on or before the expiration date or on or before any automatically extended date when accompanied by the following:

1. A copy of our written notification of our intention not to renew the Letter of Credit and a written statement by the Director of Airports or his designated representative stating a certain sum of money (not to exceed the amount of the Letter of Credit) is due and payable; or
2. A signed statement by the Director of Airports or his designated representative that applicant, \_\_\_\_\_, has defaulted on its CONCESSION SERVICES Agreement dated \_\_\_\_\_, and that a certain sum of money (not to exceed the amount of the Letter of Credit) is due and payable.

SIGNATURE TO FOLLOW

(NAME OF INSTITUTION)

BY: \_\_\_\_\_  
AUTHORIZED SIGNER

TITLE: \_\_\_\_\_

PRINTED NAME \_\_\_\_\_

(ATTACHED DOCUMENTS INDICATING SIGNATORY AUTHORITY OF SIGNER FOR BANK)

SAMPLE DOCUMENT ONLY

**EXHIBIT F - PROPOSAL PRICING FORM**

RFP-OCAT-2404—OPERATION AND MAINTENANCE OF AUTOMATED TELLER MACHINES  
WILL ROGERS WORLD AIRPORT (“WRWA”)

**\*Proposal Pricing Form must be completed, signed, and submitted, with the proposal as a Line Item, in the Periscope Bid System, or the proposal will be deemed non-responsive.**

Number of Automated Teller Machines: 3

Proposed Annual Concession Fee:

\$ \_\_\_\_\_

Proposed ATM Customer Usage Fee Per Transaction:

\$ \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

**\*Proposals, and all accompanying documents, must be received by City Clerk’s office by 12:00:00 p.m., CDT, on Wednesday, June 18, 2024.**

**EXHIBIT G – ACDBE PARTICIPANTS FORM**

**RFP-OCAT-2404**

**OPERATION AND MAINTENANCE OF AUTOMATED TELLER MACHINES**

**COMPLETE ALL APPLICABLE FIELDS AND SUBMIT AS A LINE ITEM IN PERISCOPE.**

NAME OF FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_ PHONE # \_\_\_\_\_

FEDERAL TAX ID \_\_\_\_\_

FIRM'S ORGANIZATION TYPE (LLC., Sole Proprietorship, etc.) \_\_\_\_\_

FIRM'S STATE OF ORGANIZATION \_\_\_\_\_

IS FIRM AUTHORIZED TO DO BUSINESS IN OKLAHOMA \_\_\_\_\_

IS FIRM REGISTERED WITH THE OKLAHOMA SECRETARY OF STATE \_\_\_\_\_

FIRM STATUS: ACDBE \_\_\_\_\_ NON-ACDBE: \_\_\_\_\_

FIRM'S MAJORITY OWNER: RACE \_\_\_\_\_ GENDER \_\_\_\_\_

NAICS CODE APPLICABLE TO CONCESSION CONTRACT: \_\_\_\_\_

AGE OF FIRM: \_\_\_\_\_

FIRMS ANNUAL REVENUE:

SELECT ONE OF THE FOLLOWING:

LESS THAN \$1 MILLION \_\_\_\_\_

\$1 - \$3 MILLION \_\_\_\_\_

\$3 - \$6 MILLION \_\_\_\_\_

\$6 - \$10 MILLION \_\_\_\_\_

[Remainder of page intentionally left blank]

SAMPLE DOCUMENT ONLY

The undersigned, of lawful age, being duly sworn, upon oath, deposes and says: That the undersigned has the lawful authority to execute the within and foregoing proposal/bid for, and on behalf of, the Proposer/Bidder; that the Proposer/Bidder has not, directly or indirectly, entered into any agreement, express or implied, with any Proposer/Bidder, having for its object the controlling of the price or amount of such proposal/bid, the limiting of the proposals/bids or the Proposers/Bidders, the parceling or farming out to any Proposer/Bidder or other persons, of any part of the Agreement or any part of the subject matter of the proposal/bid, or of the profits thereof, and that Proposer/Bidder has not and will not divulge the sealed proposal/bid to any person whomsoever, except those having a partnership or other financial interest with the Proposer/Bidder in the said proposal/bid, until after the said sealed proposals/bids are opened.

The undersigned further states that the Proposer/Bidder has not been a party to any collusion: among Proposer/Bidders in restraint of freedom of competition, by any agreement to bid at a fixed price, or to refrain from proposing; or with any City/Trust official, City/Trust employee or City/Trust agent as to the quantity, quality, or price in the prospective Agreement, or any other terms of the said prospective Agreement; or in any discussions between the Proposers/Bidders or City/Trust official, City/Trust employee or City/Trust agent concerning the exchange of money or other thing of value for special consideration in the letting of Agreement. The Proposer/Bidder states that it has not paid, given or donated or agreed to pay, give or donate to any City/Trust official, officer or employee of the City or awarding agency, any money or other thing of value, either directly or indirectly, in the procuring of the award of Agreement pursuant to this Proposal/Bid.

Witness the hands of the parties hereto:

The undersigned states that the Proposer/Bidder will be bound by its proposal/bid, the specification, the terms and conditions of the Agreement, and the Requirements for Proposer/Bidders.

→ → THIS FORM TO BE COMPLETED BY THE PROPOSER/BIDDER PRIOR TO AGREEMENT APPROVAL ← ←

Type Name of Authorized Agent/Representative \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Address \_\_\_\_\_ Zip Code \_\_\_\_\_

Telephone Number and Fax Number, if any \_\_\_\_\_

TO BE COMPLETED BY THE NOTARY:

State of \* \_\_\_\_\_ )  
 County of \_\_\_\_\_ ) SS.  
 [\*State and County where notarized must be written in for bid/proposal to be considered.]

Signed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_  
 [Day] [Month] [Year] [Print the name of the agent/representative who signed above.]

My Commission Number: \_\_\_\_\_ [Oklahoma] \_\_\_\_\_ Type Name of Notary Public \_\_\_\_\_

My Commission Expires: \_\_\_\_\_ [Date/Year] \_\_\_\_\_ Signature of Notary Public \_\_\_\_\_  
 [49 Okla. Stat. 2011 §119]



## NON-DISCRIMINATION STATEMENT

The Proposer agrees, in connection with the performance of work under this Agreement/Contract:

- a. That the Proposer will not discriminate against any employee or applicant for employment, because of race, creed, color, sex, age, national origin, ancestry or disability. The Proposer shall take affirmative action to insure that employees are treated without regard to their race, creed, color, age, national origin, sex, ancestry or disability. Such actions shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment, advertising, lay-off, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Proposer agrees to post, in a conspicuous place available to employees and applicants for employment, notices to be provided by the City Clerk/Secretary of the Contracting Entity setting forth the provisions of this section, and,
- b. That the Proposer agrees to include this non-discrimination clause in any subcontracts connected with the performance of this Agreement/Contract
- c. In the event of the Proposer's non-compliance with the above non-discrimination clause, this Agreement/Contract may be canceled or terminated by the Contracting Entity. The Proposer may be declared by the Contracting Entity ineligible for further Agreement[s]/Contract[s] with the Contracting Entity until satisfactory proof of intent to comply is made by the Proposer.

**THIS FORM MUST BE COMPLETED BY THE PROPOSER PRIOR TO  
AGREEMENT/CONTRACT AWARD**

Sign Here **X**

Signature of Individual

Title

Printed Name of Individual

Company Name and Address

Zip Code

Telephone Number and Fax Number if any

## VENDOR SELF-REGISTRATION

Vendors who wish to do business with OKC must self-register using instructions provided in the following link:

[How to Do Business with OKC | City of OKC](#)

The screenshot displays the City of Oklahoma City website. At the top, there is a navigation bar with links for Residents, Business, Recreation, Government, Department, Visitors, and I Want to... Below this is a search bar with the text 'Search The City of Oklahoma City'. The main content area features a large heading 'HOW TO DO BUSINESS WITH OKC' and a subheading 'How do I become a registered vendor with the City?'. A video player is embedded, showing a 'Supplier Registration Video'. A large red watermark is overlaid diagonally across the page, reading 'SAMPLE DOCUMENT ONLY DO NOT SUBMIT WITH PROPOSAL TO BE COMPLETED PRIOR TO CONTRACT APPROVAL'.

## Question and Answers for Bid #RFP-OCAT-2404 - OPERATION AND MAINTENANCE OF AUTOMATED TELLER MACHINES

### Overall Bid Questions

There are no questions associated with this bid.