

**ORDINANCE #69034**  
**Board Bill No. 177**

AN ORDINANCE EXTENDING THE MAXIMUM TERM OF REAL PROPERTY TAX ABATEMENT WITHIN THE ENHANCED ENTERPRISE ZONE OF THE CITY OF ST. LOUIS, MISSOURI TO FIFTEEN (15) YEARS AND AUTHORIZING AND DIRECTING THE TAKING OF OTHER ACTIONS AS NECESSARY OR DESIRABLE TO CARRY OUT AND COMPLY WITH THE INTENT HEREOF.

**WHEREAS**, pursuant to Ordinance No. 67029, the City of St. Louis, Missouri, established the Enhanced Enterprise Zone Board of the City of St. Louis, Missouri (the "EEZ Board") in compliance with Sections 135.950 to 135.973 of the Revised Statutes of Missouri (the "EEZ Act"); and

**WHEREAS**, the EEZ Board, in compliance with the EEZ Act, held a public hearing on November 15, 2006 and subsequently determined that it was in the best interest of the City to designate a portion of the City as an Enhanced Enterprise Zone (the "EEZ Area") and to exempt, in whole or in part, certain improvements within the EEZ Area from general ad valorem real property taxes to encourage investment in the EEZ Area; and

**WHEREAS**, pursuant to Ordinance No. 67350, the Mayor submitted a petition to the Missouri Department of Economic Development to have the EEZ Area designated as an Enhanced Enterprise Zone within the meaning of the EEZ Act, which petition was subsequently approved; and

**WHEREAS**, pursuant to Ordinance No. 67494, the City set forth certain conditions, beyond the minimum requirements of the EEZ Act, for certain improvements within the EEZ Area to receive whole or partial exemption from general ad valorem real property taxes;

**WHEREAS**, on September 27, 2011, the EEZ Board approved a resolution recommending that the Board of Aldermen authorize up to fifteen (15) years of whole or partial exemption from general ad valorem real property taxes; and

**WHEREAS**, the Board of Aldermen has now determined that it is in the public interest to further encourage investment in properties within the EEZ Area by authorizing up to fifteen (15) years of whole or partial exemption from general ad valorem real property taxes;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:**

**SECTION ONE.** The Board of Aldermen hereby finds, determines and declares that certain properties in the EEZ Area are in need of fifteen (15) years of whole or partial exemption from general ad valorem real property taxes, as permitted by the EEZ Act.

**SECTION TWO.** Notwithstanding anything to the contrary in Ordinance Nos. 67350 and 67494, "subsequent improvements," as defined in Ordinance No. 67494, shall be eligible, at the Board of Aldermen's sole discretion, for between eleven (11) and fifteen (15) years of whole or partial exemption from general ad valorem real property taxes, as permitted by the EEZ Act, if the following conditions are met:

- (a) All minimum requirements of the EEZ Act, as may be amended from time to time, are satisfied;
- (b) All minimum requirements set forth in Ordinance Nos. 67350 and 67494 are satisfied; and
- (c) The resolution approving the whole or partial exemption from general ad valorem real property taxes contains a finding by the Board of Aldermen that the subsequent improvements will be used by an entity that will retain, relocate from outside the City and/or create at least five hundred (500) full-time equivalent jobs within the EEZ Area.

**SECTION THREE.** The provisions of Ordinance Nos. 67350 and 67494 shall continue to govern all requests and grants of ten (10) years or less of exemption from general ad valorem real property taxes for subsequent improvements within the EEZ Area.

**SECTION FOUR.** The City shall, and the officials, agents and employees of the City are hereby authorized to, take such further action, and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

**SECTION FIVE.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is held to be invalid or

unconstitutional, or unlawful for any reason, by any court of competent jurisdiction, such portion shall be deemed and is hereby declared to be a separate, distinct and independent provision of this Ordinance, and such holding or holdings shall not affect the validity of the remaining portions of this Ordinance.

**SECTION SIX.** After adoption of this Ordinance by the Board of Aldermen, this Ordinance shall become effective on the 30th day after its approval by the Mayor or adoption over his veto.

**Approved: November 9, 2011**

**ORDINANCE #69035**  
**Board Bill No. 178**

An ordinance, recommended by the Board of Estimate and Apportionment, pertaining to the real property located at 501 North Broadway (the "Development Area"); establishing an earnings and payroll tax reimbursement account in support of the development described herein; making findings with respect to such development, approving a Development Agreement for such development and authorizing execution thereof; and authorizing certain actions by City officials.

**WHEREAS,** Stifel Bank & Trust (together with its parent, and any and all subsidiaries and/or affiliates of Stifel Bank & Trust or its parent, collectively, the "Developer"), either directly or through an affiliated organization, proposes to acquire and develop the 501 North Broadway building (the "Project") as more particularly described in that certain enhanced enterprise zone project proposal duly considered, approved and recommended by the Enhanced Enterprise Zone Board of the City of St. Louis, Missouri (the "EEZ Application"); and

**WHEREAS,** affiliates of the Developer are collectively the largest tenant in the building and also a major downtown employer that currently employs approximately 800 people and, upon implementation of the EEZ Application, the Project will result in the retention of Stifel Financial Corp.'s headquarters, the relocation of the headquarters of Stifel Bank & Trust to downtown, the expansion of Developer's business operations in downtown St. Louis and the planned addition of at least 225 positions over the next 3 years;

**WHEREAS,** provision of the incentives described herein are part of an overall incentives package being provided by the State of Missouri and the City of St. Louis in order to retain and expand Developer's headquarters and operations in the City of St. Louis and the State of Missouri.

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

**SECTION ONE.** Findings. The Board of Aldermen hereby makes the following findings:

A. Affiliates of Developer are collectively the largest tenant in the building and also a major downtown employer that currently employs 800 people and upon implementation of the EEZ Application, the Project will result in the retention of Stifel Financial Corp.'s headquarters, the relocation of the headquarters of Stifel Bank & Trust to downtown, the expansion of Developer's business operations in downtown St. Louis and the planned addition of at least 225 positions over the next 3 years; and

B. The incentives described herein are deemed necessary for the retention and expansion of Developer's headquarters and operations in the City of St. Louis.

**SECTION TWO.** Earnings and Payroll Tax Reimbursement. Subject to annual appropriation, fifty percent (50%) of the revenue from payroll, earnings and net profit taxes which are generated by Developer (including its parent and any and all of the subsidiaries and/or affiliates of Developer or its parent) and Developer's employees, and which are generated by economic activities within the Development Area in an amount in excess of \$915,000 per calendar year, shall be deposited by the City into an account designated as the "501 North Broadway Earnings and Payroll Tax Reimbursement Account" and disbursed to the Developer to reimburse Developer for expenses incurred in connection with the Project pursuant to the terms and conditions set forth in the Development Agreement attached hereto as Exhibit A; provided, however, that in no event shall the amount of such earnings and payroll tax revenues disbursed to Developer exceed the lesser of (a) amounts deposited into the 501 North Broadway Earnings and Payroll Tax Reimbursement Account, (b) the costs incurred by the Developer in furtherance of the Project or (c) \$14,858,000. As used herein, (a) "earnings taxes" means the revenue from the tax imposed by the City on salaries, wages, commissions, other compensation and net profits, currently codified in Sections 5.22.010 to 5.22.140, R.C. City of St. Louis, and any similar successor tax or taxes, on the quarterly earning tax report, Form W-10, Form W-11 and any other forms governing earnings taxes filed with the Collector's office of the City, and (b) "payroll taxes" means the revenue from the tax imposed by the City on every person who,

in connection with his business engages, hires, employs, or contracts with one or more individuals as an employee, to perform work or render services in whole or part within the City, currently codified in Sections 5.23.010 to 5.23.140 R.C. City of St. Louis, and any similar successor tax or taxes, on the quarterly payroll tax report, Form P-10, filed with the Collector's office of the City; and

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

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

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

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

**SECTION SEVEN. Governing Law.** This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

## EXHIBIT A

### DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the City of St. Louis, Missouri, a city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri (the "City") and Stifel Bank & Trust, a trust company duly organized and existing under the laws of the State of Missouri ("Stifel Bank").

#### WITNESSETH

**WHEREAS,** affiliates of Stifel Bank are collectively the largest tenant in the building subject of the development described herein and such affiliates are also a major downtown employer that currently employ approximately 800 people;

**WHEREAS,** the provision of the incentives described herein are part of an overall incentives package being provided to Stifel Bank (together with its parent, and any and all subsidiaries and/or affiliates of Stifel Bank or its parent, collectively the "Developer") by the State of Missouri and the City of St. Louis in order to retain and expand Developer's headquarters and operations in the City of St. Louis and the State of Missouri;

**WHEREAS,** Stifel Bank, either directly or through an affiliated organization owned by it, proposes to acquire and develop the 501 North Broadway building, which is located in the 501 North Broadway Development Area described on Exhibit A attached hereto (the "Development Area");

**WHEREAS,** the Enhanced Enterprise Zone Board of the City of St. Louis, Missouri approved an enhanced enterprise zone

project proposal for the Development Area on \_\_\_\_\_, 2011 (collectively, the "EEZ Application");

**WHEREAS**, the City, pursuant to Ordinance No. \_\_\_\_\_ (Board Bill No. \_\_\_\_\_), has approved entering into this Agreement (the "Ordinance");

**WHEREAS**, upon implementation of the activities described in the EEZ Application and this Agreement, it is anticipated that the Project will result in the retention of Stifel Financial Corp.'s headquarters in downtown St. Louis, relocation of the headquarters of Stifel Bank to downtown St. Louis, the expansion of Developer's business operations in downtown St. Louis and the planned addition of at least 225 positions over the next three years; and

**WHEREAS**, it is the intent of the City and the Developer that this Agreement shall set forth the rights and obligations of the City and the Developer with respect to the implementation of the Project described in the EEZ Application;

**NOW, THEREFORE**, the City and the Developer, in consideration of the premises and the mutual agreements herein contained, subject to the conditions herein set forth, do agree as follows:

1. **Definitions.** As used in this Agreement, the following words and terms shall have the following meanings:

"Acquisition Costs": All costs of acquiring the Project Site, including, but not limited to, cost of land and improvements; brokerage commissions; costs of title commitments, reports or policies; surveys; engineering fees, soil and hazardous waste and other site and property related reports; appraisals; and professional fees of any kind or nature, including attorneys' fees, filing fees, recording fees, experts' fees, and all litigation costs, including commissioners' awards, judgments, and all associated court costs, fees and expenses.

"Agreement": This Development Agreement, as the same may be from time to time modified, amended or supplemented in writing by the parties hereto.

"City": The City of St. Louis, Missouri, a body corporate and political subdivision of the State of Missouri.

"City Board": The Board of Aldermen of the City of St. Louis, Missouri.

"Development Area": The area designated to be developed as part of the Project and as designated in the EEZ Application as the 501 North Broadway Development Area and as described on Exhibit A attached hereto.

"Earnings and Payroll Tax Revenue": Fifty percent (50%) of the Earnings Tax Revenue plus fifty percent (50%) of the Payroll Tax Revenue, in each case which are generated by economic activities of Developer (including its parent and any and all subsidiaries and/or affiliates of Developer or its parent) within the Development Area in an amount in excess of \$915,000 per calendar year.

"Earnings Tax Revenue": The revenue from (a) the tax imposed by the City on net profits pursuant to Sections 5.22.010 to 5.22.140 of the Revised Code of the City of St. Louis, or any similar successor tax or taxes, and paid by Developer (including its parent and any and all subsidiaries and/or affiliates of Developer) and (b) the tax imposed by the City on salaries, wages, commissions and other compensation on residents of the City and nonresidents that perform or render work or services in the City pursuant to Sections 5.22.010 to 5.22.140 of the Revised Code of the City of St. Louis or any similar successor tax or taxes and paid by resident or nonresident employees of the Developer (including its parent and any and all subsidiaries and/or affiliates of Developer) performing or rendering work or services in the Development Area.

"Headquarters": The primary national offices of Stifel Financial Corp., Stifel, Nicolaus & Company, Incorporated, and Stifel Bank & Trust, which includes the offices of senior executives of such entities.

"Ordinance": Ordinance No. \_\_\_\_\_ (Board Bill # \_\_\_\_\_) approved by the City Board on \_\_\_\_\_, 2011.

"Payroll Tax Revenue": The revenue from the tax imposed by the City on every person who, in connection with his business engages, hires, employs, or contracts with one or more individuals as an employee, to perform work or render services in whole or part within the City pursuant to Sections 5.23.010 to 5.23.140 of the Revised Code of the City of St. Louis, or any similar or successor tax or taxes, and paid by Developer (including its parent and any and all subsidiaries and/or affiliates of Developer).

"Project": The development project described in the EEZ Application and this Agreement.

“Project Costs”: The sum total of all costs and expenses incurred by the Developer in connection with the Work and any such costs incidental to the Project. Such costs include, but are not limited to, the following: (a) costs of all due diligence permitted hereunder, including studies, surveys, plans, reports, tests and specifications; (b) professional service costs, including, but not limited to, architectural, engineering, legal, marketing, financial, planning or special services; (c) Acquisition Costs; and (d) costs of rehabilitation, reconstruction, or repair or remodeling of existing buildings and fixtures.

“Project Site”: The Development Area which generally contains the site for development of a commercial office building comprising in the aggregate approximately 1.284 acres as set forth in Exhibit A attached hereto.

“Semi-Annual Calculation Period”: Each six (6) month period during the Term commencing on January 1 and ending on June 30, and commencing on July 1 and ending on December 31.

“Term”: The period commencing on the date hereof through the date that is the earlier of (a) December 31, 2034, or (b) the date on which the Headquarters are no longer located in the City of St. Louis.

“Work”: All work necessary to prepare the Project Site and to construct the Project, or reasonably necessary to effectuate the intent of this Agreement.

“501 North Broadway Earnings and Payroll Tax Reimbursement Account”: The account of the Developer to be held by the City, designated and named the “501 North Broadway Earnings and Payroll Tax Reimbursement Account – Stifel, St. Louis Missouri” into which there shall be deposited an amount equal to the Earnings and Payroll Tax Revenue.

2. **Project.** The City and the Developer severally agree to carry out the Project in accordance with this Agreement, the EEZ Application and the Ordinance and Exhibits thereto. The terms and provisions of the Ordinance and of the EEZ Application, as may be amended from time to time, are fully incorporated herein by reference.

(a). **Project Requirements.** The Developer agrees, subject to the terms and conditions hereof, to:

(i) acquire the Project;

(ii) commence renovation of the Project by no later than June 30, 2012 and complete construction of the Project to be undertaken by the Developer as described in the EEZ Application within twenty four (24) months after the Developer acquires fee simple or leasehold title to the entire Development Area, absent any Excusable Delay, as defined herein, unless such time be extended in writing for good cause shown, by agreement of the parties hereto; provided, however, that the completion date shall not be extended beyond December 31, 2014;

(iii) certify to the City in writing when the Project is completed, subject to the City’s verification thereof. The Developer shall allow representatives of the City to verify such completion, provided that if within 30 days of the Developer’s certification to the City, the City does not either acknowledge the completion of the Project or provide the Developer with written reasons why the Project has not been completed, the Project shall be deemed completed;

(iv) obtain any and all permits and licenses reasonably required by the City necessary to perform under this Agreement and to conform to all rules, regulations, codes and ordinances of the City applicable to performance by the Developer under this Agreement;

(v) permit access to the Development Area and to all records of files pertaining to the Project by the representatives of the City and its designees at all reasonable times for any purpose related to this Agreement that the City deems necessary, including, but not limited to, inspection of all work being performed in connection with the construction of improvements in the Development Area or verification of compliance with this Agreement or applicable law; and

(vi) notwithstanding anything contained herein to the contrary, the obligation of the Developer to renovate the Project is subject to the timely satisfaction or waiver by the Developer no later than June 30, 2012, of the following conditions, as determined in the sole and absolute discretion of the Developer:

(A) the overall feasibility, economic or otherwise, of the Project, and

(B) the suitability of the Development Area including, without limitation, the Developer's satisfaction, in its sole and absolute discretion, with (1) all surveys, environmental and other physical

investigations, inspections, tests or reports with respect to the Development Area, (2) the status of title to the Development Area including, without limitation, the zoning thereof and the availability of access thereto, (3) the availability of utilities to the Development Area, (4) the availability of all permits and approvals necessary for the acquisition, development and operation of the Development Area, and (5) any other investigations, inspections, tests or reports with respect to the Development Area.

If the Developer determines that any one or more of the above listed conditions cannot be satisfied in the sole and absolute discretion of the Developer or waived by the Developer no later than June 30, 2012, the Developer shall provide written notice to the City. Such notice shall constitute evidence of the termination of all rights and obligations of the Developer under this Agreement. In the absence of such notice, the Developer shall complete the Project. If the Project is not completed by June 30, 2014 (as may be extended for an Excusable Delay), all rights and obligations of the City and the Developer hereunder shall be terminated.

(b) Excusable Delay. For purpose of this Agreement, "Excusable Delay" shall mean any and all causes beyond the control of Developer including but not limited to acts of God, terrorism, war, fire or other casualty, strike, lockout or other labor dispute, weather conditions, shortages or unavailability of material, labor or utilities, failure or delay in financing (except as hereinafter provided), vandalism, laws, orders or regulations of any court, governmental, civilian or military authority; provided, however, that all duties and obligations of the City hereunder and under the Ordinance and the EEZ Application, shall cease and terminate on December 31, 2014, unless the Developer has, on or before such date, completed construction of the Project. Notwithstanding anything to the contrary contained herein, no Excusable Delay shall be deemed to exist (i) as to any matter that could have reasonably been avoided by the exercise of due care applicable to developers of developments substantially similar to the Project in scope and complexity, and (ii) unless the Developer provides the City with a written notice within 30 days of the commencement of such claimed Excusable Delay setting forth the justification therefor.

3. Project Costs. The costs of the Project shall be paid, or shall be caused to be paid, by the Developer, subject to the terms and conditions hereof. Upon occupancy of the Project, the Developer shall deliver to the City a written certification stating the amount of the Project Costs expended or incurred by the Developer, in form and content attached as Exhibit B, evidencing total Project Costs of no less than \$34,858,000. Such certification shall state what portion of such Project Costs are attributable to property acquisition.

4. Earnings and Payroll Tax Reimbursement Account: Collection and Use of Earnings and Payroll Tax Revenue.

(a) Creation of, and Deposit into, the Earnings and Payroll Tax Reimbursement Account. The City agrees to cause a financial officer to establish an account of the City to be held by the City, designated and named the "501 North Broadway Earnings and Payroll Tax Reimbursement Account," into which there shall be deposited the Earnings and Payroll Tax Revenue. The 501 North Broadway Earnings and Payroll Tax Reimbursement Account shall be under the custody and control of the City, subject however, to the provisions of this Agreement and the Ordinance. The City and the Developer agree to cooperate and take all reasonable actions necessary to cause the Earnings and Payroll Tax Revenue to be paid into the Earnings and Payroll Tax Reimbursement Account, including the City's enforcement and collection of all such payments through all reasonable and ordinary legal means of enforcement.

(b) Application of Earnings and Payroll Tax Revenue. The City hereby agrees, subject to annual appropriation, to disburse to the Developer from the 501 North Broadway Earnings and Payroll Tax Reimbursement Account, the Earnings and Payroll Tax Revenue and any taxes, fees or assessments subsequently enacted and imposed in substitution therefor that are generated during the Term, in accordance with the terms and provisions of this Agreement in order to reimburse the Developer for the cost of the development of the Project.

(c) Maximum Reimbursement. Notwithstanding anything set forth herein to the contrary, in no event shall the Earnings and Payroll Tax Revenue reimbursed to the Developer for each Semi-Annual Calculation Period described below exceed the amount on deposit in the 501 North Broadway Earnings and Payroll Tax Reimbursement Account at the end of such Semi-Annual Calculation Period, nor shall the aggregate total of all Semi-Annual Calculation period payments exceed the lesser of (i) \$14,858,000 or (ii) the total amount of Project costs, excluding costs of property acquisition, certified pursuant to Section 3.

(d) Semi-Annual Calculation Period. Within thirty (30) days after the end of each Semi-Annual Calculation Period during the Term, the Developer shall deliver to the City a written certification stating the Earnings Tax Revenue and the Payroll Tax Revenue paid by the Developer and its parent, subsidiaries and/or affiliates during such Semi-Annual Calculation Period attributable to employees of the Developer or its parent, subsidiaries and/or affiliates employed and physically located in the City (with reasonable supporting documentation), in form and content attached as Exhibit C (each a "Periodic Calculation Certificate").

(e) Within thirty (30) days after the Developer provides each certification described in (d) above, the City

shall cause an amount equal to the Earnings and Payroll Tax Revenue to be deposited into the 501 North Broadway Earnings and Payroll Tax Reimbursement Account and disbursed to the Developer. In the event that the amount of any disbursement is less than the amount stated to be due in the Periodic Calculation Certificate for the applicable Semi-Annual Calculation Period, the City shall provide with such disbursement an explanation of the discrepancy. Notwithstanding anything to the contrary contained herein, no payment pursuant to this paragraph shall be made until the City verifies that the Developer acquired the Project and has expended funds, in addition to the Acquisition Costs, for the renovation of the Project and/or construction of improvements in the Development Area in an amount equal to at least \$5,000,000.

5. Maintenance of Development Area. Developer shall maintain or cause to be maintained all buildings and improvements in the Development Area which it owns or leases in a reasonably good state of repair and attractiveness, and shall maintain reasonable property and liability insurance.

6. Annual Appropriation.

(a) The City's obligation to appropriate the Earnings and Payroll Tax Revenue for deposit into the 501 North Broadway Earnings and Payroll Tax Reimbursement Account and to appropriate the funds on deposit from time to time in the 501 North Broadway Earnings and Payroll Tax Reimbursement Account shall not be construed to be a debt of the City within the meaning of Article VI, Section 26(a) of the Missouri Constitution or any other applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general credit, tax revenues, funds or money of the City. With regard to the obligation to pay the Earnings and Payroll Tax Revenue, the parties believe that this is a current expense of the City in each applicable fiscal year.

(b) During the Term, the City covenants and agrees that with respect to each fiscal year of the City, the applicable City official at any time charged with the responsibility of formulating budget proposals will be directed to include in the budget proposal submitted to the City Board, a request for an appropriation equal to the Earnings and Payroll Tax Revenue received in such fiscal year for deposit into the 501 North Broadway Earnings and Payroll Tax Reimbursement Account.

(c) The City is obligated only to make the payments set forth in this Agreement as may lawfully be made from funds budgeted and appropriated or otherwise legally available to make the required payments during each respective fiscal year. The obligations of the City to make the payments hereunder constitute a current expense of the City, are from year to year and do not constitute a mandatory payment obligation of the City in any fiscal year beyond the then current fiscal year of the City in which such appropriation has been made.

(d) The City reasonably believes that legally available funds in an amount sufficient to fully repay the obligations undertaken herein can be obtained. Notwithstanding the foregoing, the decision whether or not to budget or appropriate funds for any subsequent fiscal year is solely within the discretion of the then-current governing body of the City.

7. Non-Appropriation. In the event that the City adopts a budget for a fiscal year, which budget does not include an appropriation equal to the Earnings and Payroll Tax Revenue expected to be received in such fiscal year for deposit into the 501 North Broadway Earning and Payroll Tax Reimbursement Account, the same shall constitute an "Event of Non-appropriation." Should an Event of Non-appropriation occur, the City shall immediately notify each nationally recognized rating agency which then maintains a rating on any of the City's bonds, notes or other securities of the Event of Non-appropriation. If the City fails to give notice in accordance with the provisions of this section within thirty (30) days following the occurrence of an Event of Non-appropriation, then the Developer shall have the right, in addition to all other remedies available at law or in equity, to give such notice on the City's behalf.

8. Federal Work Authorization Program. Simultaneously with the execution of this Agreement, the Developer shall provide the City with an affidavit and documentation meeting the requirements of Section 285.530, RSMo.

9. Indemnification. The Developer agrees to indemnify, defend and hold the City, its elected and appointed officials, employees, agents and independent contractors (the "City Indemnitees"), harmless from and against any and all suits, claims, damages, liabilities, costs and/or expenses arising from the EEZ Application, the Project, the Ordinance, this Agreement or the transactions contemplated thereby (collectively, "Losses"). The Developer shall, to the fullest extent permitted by law, indemnify and hold harmless the City, and the mayor, aldermen, officers and employees, agents and independent contractors thereof, from and against any and all Losses arising out of or in connection with the breach of any of the representations and warranties in subsection (a) of this Section 8. Notwithstanding anything set forth herein to the contrary, in no event shall the Developer be required to indemnify any City Indemnitee for any Losses caused by the gross negligence or willful misconduct of a City Indemnitee.

10. Non-Compliance. In the event of any violation or breach of any covenant, agreement, restriction, or regulation

contained in this Agreement or in the EEZ Application, as may be amended from time to time, by the City or Developer or their successors or assigns as the case may be, the nonbreaching party shall give written notice of such violation or breach and the breaching party shall have thirty (30) calendar days after receipt of such notice to cure such breach; provided, however, that in the event that said breach cannot be cured within thirty (30) calendar days and the breaching party shall have undertaken the curing of said breach within thirty (30) calendar days and shall diligently pursue the same, then the failure to cure said breach within thirty (30) calendar days shall not be a violation or breach hereof; provided, however, that no such period to cure any default hereunder shall extend beyond December 31, 2014. Except as provided herein, in the event any breach or violation remains uncured after thirty (30) calendar days from the date of notice, the breaching party, for itself and its successors and assigns, agrees that the nonbreaching party has the right and power to institute and prosecute any proceeding at law or in equity to enforce any covenant or agreement contained herein or in the EEZ Application and for damages resulting therefrom. The parties, their successors and assigns, further agree that the other party shall have the right and power to institute and prosecute proceedings to enjoin the threatened or attempted violation of any covenant, agreement, restriction or regulation contained herein or in the EEZ Application. Such legal proceedings, if against the Developer, shall not affect the allocation of the Earnings and Property Tax Revenue described herein or any other property in the Development Area which has been or is being developed or used in accordance with the provision of this Agreement. The breaching party at all times shall have the right to appeal to the courts from any adverse decision so rendered.

11. Miscellaneous Provisions.

(a) Conflict of Interest. No member of the City Board, or of any branch of the City's government that has any power of review or approval of any of the Developer's undertakings shall participate in any decisions relating thereto which affect such person's personal interests or the interests of any corporation or partnership in which he is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the City Board the nature of such interest and seek a determination with respect to such interest by the City Board and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed.

(b) Hazardous Substances. The Developer agrees that it will comply with all laws, orders and regulations of any governmental authority regarding Hazardous Materials which are applicable to its use of the Development Area. Hazardous Materials includes Hazardous Materials and Substances as defined by 42 USC section 9601, et seq including any amendments thereto (CERCLA), any Hazardous Chemical as defined in 24 CFR 1910.1450, any substance, waste or other material considered hazardous, dangerous, or toxic under any of the Environmental Requirements, etc.

(c) Nondiscrimination. The Developer agrees that, as an independent covenant running with the land forever, there shall be no discrimination upon the basis of race, creed, color, national origin, sex, age, marital status or physical handicap in the sale, lease, rental, occupancy or use of any of the facilities under its control in the Development Area or any portion thereof and said covenant may be enforced by the City or the United States of America or any of their respective agencies. The Developer further agrees that a provision containing the covenants in this Section 10(c) shall be included in all agreements pertaining to the lease or conveyance or transfer (by any means) of all or a portion of the Project and any of the facilities under its control in the Development Area.

(d) Fair Employment. Without limiting any of the foregoing the Developer voluntarily agrees to adhere to the Equal Opportunity and Nondiscrimination Guidelines set forth in the EEZ Application and attached hereto and incorporated herein as Exhibit D. By execution of this Agreement, the Developer certifies and agrees that it is under no contractual or other disability which would prevent it from complying with its policy set forth in Exhibit D.

(e) Employment of City Officials or Employees. In the acquisition, construction, development, rehabilitation and/or operation of the Project, Developer shall not knowingly employ or contract with any person who is a member of the City Board, or is employed by the City in an administrative capacity, by which is meant those who have selection, hiring or supervisory or operational responsibility for the work to be performed pursuant to this Agreement.

(f) Cooperation. The City agrees to cooperate with Developer in carrying out the EEZ Application with due diligence and will perform each and every act required of it under the EEZ Application.

(g) Personal Liability. No official or employee of the City or of the Developer shall be personally liable to the other party or any successor in interest or assign of the other party, in the event to any default or breach by such party or successor or assign on any obligation under the terms of this Agreement.

(h) Notices and Demands. A notice, demand or other communication under this Agreement by either party to the other party shall be sufficiently given or delivered if dispatched by registered or certified mail, return receipt requested, or delivered personally:

- (i) in the case of the City, to:

City Hall  
1200 Market Street  
St. Louis, Missouri 63103  
Attention: Mayor, Room 200  
Attention: Comptroller, Room 311

with a copy to:

St. Louis Development Corporation  
1015 Locust Street, Suite 1200  
St. Louis, Missouri 63103  
Attention: Executive Director

- (ii) in the case of the Developer, to:

Stifel Bank & Trust  
501 North Broadway  
St. Louis, MO 63103  
Attention: President

with a copy to:

Bryan Cave LLP  
211 North Broadway, Suite 3600  
St. Louis, Missouri 63102  
Attention: Linda M. Martinez

or to such other address or person as either party may designate in writing to the other party. Notice shall be deemed given on the date of personal delivery and on the date of receipt marked on the return card for registered or certified mail.

(i) Entire Agreement; Amendments. This Agreement, inclusive of the Ordinances incorporated herein, constitutes the entire agreement between the parties and there are no other agreements or representations other than those contained in this Agreement. This Agreement may not be amended, modified or waived orally, but only by a writing signed by the party against whom enforcement of such amendment, modification or waiver is sought.

(j) Term. Except as otherwise provided herein, this Agreement shall remain in full force and effect for the Term.

(k) Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the parties named herein and their respective heirs, administrators, executors, personal representatives, successors and assigns. Without limiting the generality of the foregoing, upon written notice to the City, this Agreement or any part hereof or interest herein may be assigned by the Developer at any time to any entity, corporation, individual, joint venture, or partnership before completion of the Project, however if the assignment is to any party which is not an affiliate of or related to the Developer, such assignment may be made only with the prior written consent of the City acting through its Board of Estimate and Apportionment. After completion of the Project and upon written notice to the City, this Agreement or any part hereof or interest herein may be assigned by the Developer at any time to any entity, corporation, individual, joint venture, or partnership whether or not the assignee is an affiliate of or related to the Developer.

(l) Choice of Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Missouri.

(m) Severability. If any one or more of the provisions of this Agreement, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable by final non-appealable order of a court of competent jurisdiction, such provision shall be judicially modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other applications of any such provision shall not be affected thereby; provided, however, that if, in the Developer's sole judgment, the invalidity or unenforceability of such provision, or the terms of such provision as modified in accordance with this Section, materially diminish the likelihood that the Developer will be reimbursed up to the reimbursement limit set forth in Section 4(c), the Developer shall have the right to

terminate this Agreement and be relieved of any further obligations hereunder.

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

(o) Payment of Fees. Simultaneously with the execution of this Agreement the Developer shall reimburse the City, the St. Louis Development Corporation ("SLDC") and the Comptroller for all outside consultant and attorneys' fees incurred in connection with this Agreement and the documents and transactions contemplated hereby. Additionally, simultaneously with the semi-annual delivery of the certification referenced in Section 4(d), the Developer shall pay to each of SLDC and the Comptroller, an annual fee equal to five-tenths of one percent (0.5%) of the payment it expects to receive pursuant to Section 4(e). If such annual payments are not made, the Comptroller may withhold the amount of the payments due from the payment to be made to the Developer pursuant to Section 4(e) and apply such amounts to the payments due under this paragraph.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be duly executed in their respective names and have caused their respective seals to be hereunto affixed and attested as of the date first above written.

**CITY OF ST. LOUIS, MISSOURI**

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Comptroller

[SEAL]

Attest:

\_\_\_\_\_  
Register

Approved as to Form:

\_\_\_\_\_  
City Counselor

**STIFEL BANK & TRUST**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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

On this \_\_\_\_ day of \_\_\_\_\_, 2011, before me appeared Francis G. Slay, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the City of St. Louis, Missouri, that the seal affixed to the foregoing instrument is the seal of said City, and that said instrument was signed and sealed on behalf of said City by authority granted him by law; and said Mayor acknowledged said instrument to be the free act and deed of said City.

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

My term expires \_\_\_\_\_ .

(Seal)

-----  
Notary Public

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

On this \_\_\_\_ day of \_\_\_\_\_, 2011, before me appeared Darlene Green, to me personally known, who, being by me duly sworn, did say that she is the Comptroller of the City of St. Louis, Missouri, that the seal affixed to the foregoing instrument is the seal of said City, and that said instrument was signed and sealed on behalf of said City by authority granted her by law; and said Darlene Green acknowledged said instrument to be the free act and deed of said City.

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

My term expires \_\_\_\_\_ .

(Seal)

-----  
Notary Public

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

On this \_\_\_\_ day of \_\_\_\_\_, 2011, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is the \_\_\_\_\_ of Stifel Bank & Trust, the Company, and that said instrument was signed and sealed on behalf of said company by authority of its Board of Directors; and said office acknowledged said instrument to be the free act and deed of said company.

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

My term expires \_\_\_\_\_ .

(Seal)

-----  
Notary Public

**EXHIBIT A to Development Agreement**

**501 North Broadway Development Area**

**Site Address**     501 - 525 N BROADWAY  
**Zip Code**        63102  
**Legal description:** C.B. 0119 & 118 6TH ST  
                          1.284 ACRES  
                          CONNORS ADDN  
                          WHOLE BLOCK & N PARCEL IN CB 118  
**Parcel Number:** 01190000110

**EXHIBIT B to Development Agreement**

Certification of Project Costs

TO:     City of St. Louis, Missouri ("City")  
          1200 Market Street  
          St. Louis, Missouri 63103

Attention: Mayor, Room 200

CC: City of St. Louis, Missouri  
1200 Market Street  
St. Louis, Missouri 63103  
Attention: Comptroller, Room 311

St. Louis Development Corporation  
1015 Locust Street, Suite 1200  
St. Louis, Missouri 63103  
Attention: Executive Director

Re: Stifel Bank & Trust (“Developer”)

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement dated \_\_\_\_\_, 2011 (the “Agreement”) between the City and the Developer. In connection with the Agreement, the undersigned hereby states and certifies that:

- 1. In connection with acquiring and developing the Project Site, Developer incurred Project Costs in the aggregate amount of \$\_\_\_\_\_, including \$\_\_\_\_\_ in property acquisition costs.
- 2. These Project Costs have been paid by the Developer and/or one or more of its subsidiaries or affiliates. Attached is evidence that all such Project Costs have been incurred and paid by the Developer.
- 3. Pursuant to Section 3 of the Agreement, the total Project Costs are not less than \$34,858,000.

Dated this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

[STIFEL BANK & TRUST]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT C to Development Agreement**

**OFFICE OF THE COMPTROLLER, City of St. Louis**

**Periodic Calculation Certificate (Confidential)\***

Development Area:	501 North Broadway Development Area
Type of Project:	Commercial Office Building
Semi-Annual Period:	_____
FED ID Number:	_____
State ID Number:	_____

Name of Developer: Stifel Bank & Trust (including its parent and any and all subsidiaries and/or affiliates of Stifel Bank & Trust or its parent located within the 501 North Broadway Development Area)

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

Home Office: \_\_\_\_\_  
\_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_

The undersigned hereby certifies on behalf of Developer that:

- A. Earnings tax paid to City during semi-annual period: \_\_\_\_\_  
*(Business Return Form 234 and W-11)*
- B. Earnings Tax withholding to City during semi-annual period: (Form W-10)
- C. Payroll tax paid to City during semi-annual period: \_\_\_\_\_  
*(Form P-10)*
- D. Sum of A + B + C: \_\_\_\_\_
- E. D minus \$Base Earnings and Payroll Tax Calculation
- F. Semi-annual period 1/1–6/30 plus Semi-annual period 7/1–12/31 \_\_\_\_\_
- G. Maximum Annual Reimbursement: The amount listed in F \_\_\_\_\_

H. The amount set forth in item G of this Certificate will not, when added to the amount of aggregate disbursements to Developer from the 501 North Broadway Earnings and Payroll Tax Reimbursement Account, exceed the cost of development and operation of the Project.

Executed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

STIFEL BANK & TRUST

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

\* This information will not be part of any public record.  
\*\* INFORMATION IS REQUIRED FOR THIS SPECIFIC LOCATION ONLY. DO NOT COMBINE WITH ANY OTHER LOCATION

**EXHIBIT D to Development Agreement**

**Equal Opportunity and Non-Discrimination Guidelines**

In any contract for work in connection with the Project related to any of the property in the Development Area, the Developer (which term shall include the Developer, any transferees, lessees, designees, successors and assigns thereof, any entity formed to implement the project of which the Developer(s) is affiliated, including without limitation any entity related to the Developer by one of the relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended), its contractors and subcontractors shall comply with all federal, state and local laws, ordinances or regulations governing equal opportunity and nondiscrimination (the "Laws"). Moreover, the Developer shall contractually require its contractors and subcontractors to comply with the Laws.

The Developer(s) and its contractor will not contract or subcontract with any party known to have been found in violation of any of the Laws.

The Developer(s) agrees for itself and its contractors, subcontractors, successors and assigns, that there shall be covenants to ensure that there shall be no discrimination on the part of the Developer(s), its contractors, subcontractors, successors or assigns upon the basis of race, color, creed, national origin, sex, marital status, age, sexual orientation or physical handicap in the sale, lease, rental, use or occupancy of any property, or any improvements constructed or to be constructed in the Development Area or any part thereof, and those covenants shall run with the land and shall be enforceable by the LCRA, the City, and the United States of America, as their interests may appear in the project.

The Developer(s) shall fully comply with Executive Order #28 dated July 24, 1997, as has been extended, relating to minority and

women-owned business participation in City contracts.

Developer(s) shall fully comply (and ensure compliance by “anchor tenants”) with the provisions of St. Louis City Ordinance #60275 (First Source Jobs Policy) which is codified at Chapter 3.90 of the Revised Ordinances of the City of St. Louis.

**Approved: November 9, 2011**

**ORDINANCE #69036**  
**Board Bill No. 141**

An ordinance recommended and approved by the Airport Commission, the Comptroller and the Board of Estimate and Apportionment, making certain findings with respect to the transfer of up to Thirteen Million Seven Hundred Twenty-Seven Thousand Seven Hundred Sixty-Nine Dollars (\$13,727,769) of excess moneys that The City of St. Louis (the “City”), the owner and operator of Lambert-St. Louis International Airport ( “the “Airport”), intends to transfer from the Debt Service Stabilization Fund (the “DSSF”) to the Airport Revenue Fund (the “Revenue Fund”) in accordance with Section 516.B of the Lambert-St. Louis International Airport® Indenture of Trust between the City, as Grantor, and UMB Bank, N.A., as Trustee, dated as of October 15, 1984, as amended and restated as of July 1, 2009, as amended and supplemented (the “Indenture”); authorizing a transfer in an amount not to exceed Thirteen Million Seven Hundred Twenty-Seven Thousand Seven Hundred Sixty-Nine Dollars (\$13,727,769) from the DSSF into the Revenue Fund to be used to make funds available to mitigate rates on an annual basis during the term of the Airport Use and Lease Agreement commencing July 1, 2011; containing a severability clause; and containing an emergency clause.

**WHEREAS**, The City of St. Louis, Missouri (the “City”) is the owner of Lambert-St. Louis International Airport® (the “Airport”), which is operated for the City by the City’s Airport Authority, a department of the City;

**WHEREAS**, the City has entered into a five year Airport Use and Lease Agreement with various airlines for the use of the Airport commencing July 1, 2011 (the “AUA”);

**WHEREAS**, implementation of the AUA contemplates that the City use a portion of the Debt Service Stabilization Fund (the “DSSF”) under the Lambert-St. Louis International Airport Indenture of Trust between the City, as Grantor, and UMB Bank, N.A., as Trustee, dated October 15, 1984, as amended and restated as of July 1, 2009, as amended and supplemented, (the “Indenture”) in order to mitigate rates on an annual basis during the term of the AUA and that, in each fiscal year in which the City determines to mitigate rates, the City will withdraw an amount not to exceed Thirteen Million Seven Hundred Twenty-Seven Thousand Seven Hundred Sixty-Nine Dollars (\$13,727,769) from the DSSF and deposit such amount in the Airport Revenue Fund (the “Revenue Fund”), with the expectation that such amount will, pursuant to the flow of funds specified in the Indenture, be re-deposited in the DSSF prior to the end of such fiscal year;

**WHEREAS**, pursuant to Section 516.B of the Indenture, the City may withdraw and use amounts on deposit in the DSSF for emergency debt service needs with respect to indebtedness issued for Airport purposes and for Airport operational emergencies;

**WHEREAS**, the Airport Commission, the Comptroller and the Board of Estimate and Apportionment have determined that the need to mitigate rates in connection with the AUA in order to maintain and enhance airline operating levels at the Airport constitutes an Airport operating emergency within the meaning of Section 516.B(2) of the Indenture, that the transfer of funds from the DSSF to the Revenue Fund as set forth herein is an appropriate and desirable use of such funds and is essential for the operation of the Airport and that such use is consistent with the requirements of the Indenture;

**WHEREAS**, there is a balance in excess of Thirteen Million Seven Hundred Twenty-Seven Thousand Seven Hundred Sixty-Nine Dollars (\$13,727,769) available for transfer from the DSSF into the Revenue Fund established in the Indenture;

**WHEREAS**, it is in the best interest of the City and the operation of the Airport to authorize the transfer of funds from the DSSF into the Revenue Fund in an amount not to exceed Thirteen Million Seven Hundred Twenty-Seven Thousand Seven Hundred Sixty-Nine Dollars (\$13,727,769); and

**WHEREAS**, this Ordinance, authorizing the transfer of funds in an amount not to exceed Thirteen Million Seven Hundred Twenty-Seven Thousand Seven Hundred Sixty-Nine Dollars (\$13,727,769), as set out herein, is recommended and approved by the City’s Airport Commission, the Comptroller and the City’s Board of Estimate and Apportionment.

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

**SECTION ONE.** The Board of Aldermen for The City of St. Louis, Missouri (the “City”) hereby adopts and incorporates

herein the foregoing recitals as findings.

**SECTION TWO.** There is hereby authorized a transfer of funds in an amount not to exceed Thirteen Million Seven Hundred Twenty-Seven Thousand Seven Hundred Sixty-Nine Dollars (\$13,727,769) from the Airport Debt Service Stabilization Fund into the Airport Revenue Fund of the Lambert-St. Louis International Indenture of Trust between the City, as Grantor, and UMB Bank, N.A., as Trustee, dated as of October 15, 1984, as amended and restated as of July 1, 2009, as amended and supplemented, during the fiscal year beginning July 1, 2011 for the purpose of making funds available to mitigate rates on an annual basis during the term of the City's Airport Use and Lease Agreement commencing July 1, 2011.

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

**SECTION FIVE.** This being an ordinance making an appropriation for current expenses of the City government, it is hereby declared to be an emergency measure as defined in Article IV, Section 20 of the Charter of the City and shall become effective immediately upon its approval by the Mayor of the City.

**Approved: November 18, 2011**

**ORDINANCE #69037**  
**Board Bill No. 169**

An Ordinance recommended by the City of St. Louis Planning Commission pertaining to the procedures for the initiation of change and the requirements of the notice of proposed change in the Zoning Code; repealing portions of Section Twenty-Four of Ordinance 59979, codified as §§26.92.010, 26.92.020, 26.92.030 and 26.92.040 of the City of St. Louis Revised Code, and enacting in lieu, thereof, new sections pertaining to the same subject matters; and containing a severability and emergency clause.

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

**SECTION ONE.** Portions of Section Twenty-Four of Ordinance 59979, currently codified as §§26.92.010, 26.92.020, 26.92.030, and 26.92.040 of the City of St. Louis Revised Code, are hereby repealed.

**SECTION TWO.** Enacted in lieu of a part of Section Twenty-Four of Ordinance 59979, currently codified as §26.92.010, is the following new section:

**26.92.10 Initiation of change.**

Any amendment or change in the boundaries or regulations herein shall be initiated in the following manner:

- A. By motion of the **Planning Commission**; or
- B. By the filing of a petition with the City Zoning Administrator, by the owner or owners of the property within the district.

**SECTION THREE.** Enacted in lieu of a part of Section Twenty-Four of Ordinance 59979, currently codified as §26.92.020, is the following new section:

**26.92.020 Petition procedure.**

The said petition shall be in writing on a form supplied by the Zoning Administrator and shall contain a complete description of the property involved and shall set forth fully the grounds of such petition and contain a recital of all the facts relied on by the petitioner. A fee of fifty dollars (\$50.00) shall be paid to the City upon the filing of a petition, and under no conditions shall said filing fee or any part thereof be returned in the event of unfavorable findings or recommendations on said petition by the Commission. After a study and investigation and within forty-five (45) days of filing the petition, the **Planning Commission** shall report to the petitioner its findings and recommendations. Where the **Planning Commission** recommends modification in the

requested change, amendment or supplement, said petitioner may incorporate the recommended modification in the petition and forward it to the **Planning Commission** for further study and said Commission shall report to the petitioner its findings and recommendations.

**SECTION FOUR** Enacted in lieu of a of part Section Twenty-Four of Ordinance 59979, currently codified as § 26.92.030, is the following new section:

**26.92.030 Action by Board of Aldermen.**

Upon receipt of the recommendation of the Commission or the expiration of forty-five (45) days from the date of first filing said petition, the amendment, change or supplement in the form of a proposed ordinance may be introduced in the Board of Aldermen. Upon introduction in the Board of Aldermen in the form of an ordinance, the **Planning Commission** shall forward to said Board its findings and recommendations. Any amendment, supplement or change in the form of an ordinance pursuant to the provisions of this chapter shall be introduced into the Board of Aldermen within one (1) year from the date of the **Planning Commission** findings and recommendations. The Board of Aldermen, after public notice and hearing as provided in Section 26.92.040, may amend, supplement or change the boundaries or regulations herein or subsequently established.

**SECTION FIVE.** Enacted in lieu of a part of Section Twenty-Four of Ordinance 59979, currently codified as §26.92.040, is the following new section:

**26.92.040 Notice of proposed change.**

A. When any bill that has as its purpose the making of a **change in the boundary** of a **zoning** district map is introduced in the Board of Aldermen, the committee to which it is referred for consideration shall require the Clerk of said Board to:

1. Have a placard containing the words "Proposed change in zoning ordinance in this block" printed in large type, **placed in a conspicuous place on or in the immediate vicinity of the property and block** in which a change in zoning district boundaries is proposed at least fifteen (15) days prior to any public hearing held by the Committee having jurisdiction thereof. Such placard shall also have prominently displayed such relevant facts and information pertaining to the proposed change, a designation by street address of the property(s) to be changed and the date when those interested may appear before the committee and be heard. **The bill proposing such zoning change shall also be attached to the placard beneath the relevant facts and information.**

2. Have notice of the public hearing on the bill and the proposed changes published in the official **paper** of the **City of St. Louis** or a **paper of general circulation**, at least fifteen (15) days prior to said hearing.

B. **When a bill proposing an amendment to the provisions of the zoning code is introduced in the Board of Aldermen, the committee to which it is referred for consideration shall require that notice of the public hearing and the proposed changes be published in the official paper of the City of St. Louis or a paper of general circulation.**

**SECTION SIX. Severability Clause.**

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**SECTION SEVEN. Emergency Clause.**

This Ordinance being deemed necessary for the immediate preservation of the public health, safety and welfare, is hereby declared an emergency measure and shall become effective immediately upon its approval by the Mayor.

**Approved: November 18, 2011**

**ORDINANCE #69038  
Board Bill No. 183**

An ordinance recommended and approved by the Airport Commission and the Board of Estimate and Apportionment, ratifying and adopting the actions of the Mayor and the Comptroller of the City of St. Louis (the "City"), the owner and operator of Lambert-St. Louis International Airport® (the "Airport"), in accepting and executing on behalf of the City a certain grant agreement

offered by the United States of America (the "Grant Agreement"), acting through the Federal Aviation Administration of the United States Department of Transportation, the Grant Agreement being for Project Number 3-29-0085-130-2011, dated September 6, 2011, for a maximum federal obligation of Seven Million Three Hundred Eighteen Thousand One Hundred Twelve Dollars (\$7,318,112), which is filed in the Office of the City Register [Comptroller Document No. 63218], for the reimbursement of direct costs associated with the reconstruction of Taxiway Delta (from Taxiway Kilo to Taxiway Juliet) - Phase 2, and Taxiway Echo (from Taxiway Lima to Taxiway Juliet) - Phase 2; and containing an emergency clause.

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

**SECTION ONE.** The actions of the Mayor and the Comptroller of the City of St. Louis (the "City"), the owner and operator of Lambert-St. Louis International Airport® (the "Airport"), in accepting and executing on behalf of the City a grant agreement offered by the United States of America (the "Grant Agreement"), acting through the Federal Aviation Administration of the United States Department of Transportation, the Grant Agreement being for Project Number 3-29-0085-130-2011, dated September 6, 2011, for a maximum federal obligation of Seven Million Three Hundred Eighteen Thousand One Hundred Twelve Dollars (\$7,318,112), which is filed in the Office of the City Register [Comptroller Document No. 63218], for the reimbursement of direct costs associated with the reconstruction of Taxiway Delta (from Taxiway Kilo to Taxiway Juliet) - Phase 2, and Taxiway Echo (from Taxiway Lima to Taxiway Juliet) - Phase 2, is hereby ratified and approved.

**SECTION TWO.** All terms, conditions, statements, warranties, representations, covenants, agreements, and assurances contained in the project application and the incorporated materials referred to in the Grant Agreement are hereby ratified and approved and made a part hereof.

**SECTION THREE.** This being an ordinance providing for a Public Work and Improvement Program, it is hereby declared to be an emergency measure as defined in Article IV, Section 20 of the City Charter, and shall become effective immediately upon approval of the Mayor of the City.

**Approved: November 18, 2011**

**ORDINANCE #69039  
Board Bill No. 184**

An Ordinance recommended and approved by the Board of Estimate and Apportionment authorizing and directing the Director of Airports and the Comptroller for the City of St. Louis (the "City") to enter into and execute on behalf of the City the Fuel System Lease and Use Agreement with a twenty year term (AL-442) between the City and STL Fuel Company LLC, a State of Delaware corporation (the "Lessee") at Lambert-St. Louis International Airport® (the "Lease Agreement"), granting to the Lessee, subject to and in accordance with the terms, covenants, and conditions of the Lease Agreement, certain rights and privileges in connection with the occupancy and use of the Leased Premises, which is defined and more fully described in Section 301 of the Lease Agreement that was approved by the Airport Commission and the City's Board of Estimate and Apportionment and is attached hereto as ATTACHMENT A and made a part hereof; containing a severability clause; and containing an emergency clause.

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

**SECTION ONE.** The Director of Airports and the Comptroller for the City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City the Fuel System Lease and Use Agreement with a twenty year term (AL-442) between the City and STL Fuel Company LLC, a State of Delaware corporation (the "Lessee") at Lambert-St. Louis International Airport (the "Lease Agreement"), granting to the Lessee, subject to and in accordance with the terms, covenants, and conditions of the Lease Agreement, certain rights and privileges in connection with the occupancy and use of the Leased Premises, which is defined and more fully described in Section 301 of the Lease Agreement that was approved by the Airport Commission and the City's Board of Estimate and Apportionment and is to read in words and figures substantially as set out in ATTACHMENT A, which is attached hereto and made a part hereof.

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

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

**Attachment A**  
**Is on file in the Register's Office.**

**Approved: November 18, 2011**

**ORDINANCE #69040**  
**Board Bill No. 185**

An Ordinance recommended and approved by the Board of Estimate and Apportionment authorizing and directing the Director of Airports and the Comptroller of the City of St. Louis (the "City") to enter into and execute on behalf of the City the Lambert-St. Louis International Airport® ("Airport") Luggage Cart Rental Concession Agreement AL-148 (the "Agreement"), between the City and Flight Services & Systems, Inc., d/b/a EZCART (the "Concessionaire"), granting to the Concessionaire the exclusive right, license, obligation, and privilege to design, construct, operate, manage, and maintain a Luggage Cart Rental Concession at the Airport within the premises as described in the Agreement, subject to and in accordance with the terms, covenants, and conditions of the Agreement, which was approved by the Airport Commission and is attached hereto as **ATTACHMENT "1"** and made a part hereof; containing a severability clause; and containing an emergency clause.

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

**SECTION ONE.** The Director of Airports and the Comptroller for the City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City the Lambert-St. Louis International Airport® ("Airport") Luggage Cart Rental Concession Agreement AL-148 (the "Agreement"), between the City and Flight Services & Systems, Inc., d/b/a EZCART, a corporation organized and existing under the laws of the State of Ohio (the "Concessionaire"), granting to the Concessionaire the exclusive right, license, obligation, and privilege to design, construct, operate, manage, and maintain a Luggage Cart Rental Concession at the Airport within the premises as described in the Agreement, subject to and in accordance with the terms, covenants, and conditions of the Agreement, which was approved by the Airport Commission and is to read in words and figures substantially as set out in **ATTACHMENT "1"**, which is attached hereto and made a part hereof.

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

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

**ATTACHMENT "1"**



LAMBERT - ST. LOUIS  
INTERNATIONAL AIRPORT®

**FLIGHT SERVICES & SYSTEMS, INC.**  
**d/b/a EZCART**

**LUGGAGE CART RENTAL**

**CONCESSION AGREEMENT**

**AL#-148**

TABLE OF CONTENTS

INTRODUCTION ..... Page 2

ARTICLE I DEFINITIONS ..... Page 3

ARTICLE II PREMISES ..... Page 6

ARTICLE III CONCESSION RIGHTS ..... Page 8

ARTICLE IV CONCESSION TERM ..... Page 9

ARTICLE V FEES AND RENTALS ..... Page 10

ARTICLE VI CONCESSIONAIRE’S OPERATIONS ..... Page 13

ARTICLE VII IMPROVEMENTS AND ALTERATIONS ..... Page 20

ARTICLE VIII USE OF PREMISES ..... Page 23

ARTICLE IX INSURANCE, DAMAGE AND INDEMNIFICATION ..... Page 26

ARTICLE X ASSIGNMENT AND SUBCONTRACTING ..... Page 35

ARTICLE XI TERMINATION OF AGREEMENT IN ENTIRETY ..... Page 36

ARTICLE XII AIRPORT CONCESSION DISADVANTAGED  
BUSINESS ENTERPRISE (ACDBE) PARTICIPATION ..... Page 38

ARTICLE XIII LIQUIDATED DAMAGES ..... Page 39

ARTICLE XIV COMPLIANCE WITH ENVIRONMENTAL LAWS ..... Page 40

ARTICLE XV MISCELLANEOUS PROVISIONS ..... Page 43

SIGNATURES ..... Page 52

EXHIBIT "A" PREMISES ..... 4 Pages

EXHIBIT "A-1" OFFICE SPACE ..... 1 Page

EXHIBIT "B" LIVING WAGE BULLETIN ..... 1 Page

**AIRPORT NUMBER AL#-148**

LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®  
 CONCESSION AGREEMENT  
 (Luggage Cart Rental)

THIS AGREEMENT, made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2011, (“**Agreement**”) by and between the **CITY OF ST. LOUIS (“City”)**, a municipal corporation of the State of Missouri and **FLIGHT SERVICES & SYSTEMS, INC., d/b/a EZCART (“Concessionaire”)**, a corporation organized and existing under the laws of the State of Ohio.

WITNESSETH, THAT:

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

WHEREAS, a Luggage Cart Rental Concession at the Airport is desirable for proper accommodation of the public;

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

- Provide a first-class, full-service Luggage Cart Rental Concession that meets Airport user needs and adds value to other Airport and airline services;
- Provide a high level of service at prices that are attractive to airport users and competitive with prices found in comparable U.S. Airports;
- Provide a Luggage Cart Rental Concession that is operated by well trained, efficient, courteous, and pleasant staff;
- Be responsive to the Federal Aviation Administration (“**FAA**”) and City goals for Airport Concession Disadvantaged Business Enterprise (“**ACDBE**”) participation in concessions; and

WHEREAS, the City has advertised and received bids for the right to manage and operate a Luggage Cart Rental Concession at the Airport, and by this process the City has determined that the Concessionaire is a qualified and responsive bidder and has submitted the highest and best bid.

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

**ARTICLE I  
DEFINITIONS**

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

**“Agreement”** shall mean this concession contract for a Luggage Cart Rental Concession and any amendments thereto, duly approved by the City.

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

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

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

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

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

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

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

**“Commencement Date”** shall mean December 1, 2011 (see Article IV).

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

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

**“Concession Fee”** shall mean the percentage of Concessionaire’s Gross Receipts over and above \$9,000.00 per month that is payable to the City (see Article V, Section 502).

**“Contract Year”** shall mean a period of twelve (12) consecutive calendar months commencing on the Commencement Date and each 12-month period thereafter (see Article IV).

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

**“Environmental Laws”** mean all applicable federal, state, and local statutes, ordinances, regulations, rules, laws, permits, permit conditions, and orders relating to the generation, emission, discharge, release, use, storage, transportation, or disposal of pollutants, contaminants, Hazardous Materials, wastes, hazardous substances, or chemicals or the preservation or regulation of the environment or natural resources including, without limitation, the Clean Air Act, 42 U.S.C. §7401 et seq.; the Clean Water Act, 33 U.S.C. §1251 et seq., and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 et seq.; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. §1401 et seq.; the Noise Control Act, 42 U.S.C. §4901 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §651 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., as amended by the Hazardous and Solid Waste, Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Hazardous Material Transportation Act, 49 U.S.C. §5101 et seq.; the Endangered Species Act, 16 U.S.C. §1531 et seq.; the National Environmental Policy Act, 42 U.S.C. §4321 et seq.; the Toxic Substance Control Act, 15 U.S.C.

§2601 et seq.; the Atomic Energy Act, 42 U.S.C. §2011 et seq.; and the Nuclear Waste Policy Act of 1982, U.S.C. §10101 et seq., as such statutes and laws may be amended from time to time, all regulations, rules, executive orders, policies and instructions pertaining to and lawfully promulgated pursuant to such statute or law as they now exist or may be amended from time to time.

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

**“Existing Equipment”** shall mean Luggage Carts, Luggage Cart Dispensing Units, and related installations provided, constructed, or installed by the previous luggage cart rental concessionaire and owned by the City and existing within the Premises as of the Commencement Date.

**“Federal Aviation Administration”** or **“FAA”** means the Federal Aviation Administration created under the Federal Aviation Act of 1958, as amended, or any successor agency thereto.

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

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

- federal, state, county and municipal sales taxes or other sales taxes separately stated and collected from customers;
- cash or credit refunds given to customers for unperformed services purchased at the Airport; or
- receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers.

**“Hazardous Materials”** means friable asbestos or asbestos-containing materials, polychlorinated biphenyls (**“PCB’s”**), petroleum, or crude oil or any fraction or derivative thereof, natural gas, source material, special nuclear material, byproducts, pesticides, hazardous waste, toxic substance, or any material defined or treated as hazardous substance, regulated special waste, pollutant or contaminant (or comparable term under any of the Environmental Laws).

**“Improvements”** shall mean, without limitation, all construction, installations, modifications, equipment, and fixtures built, installed or erected by the Concessionaire, and forming a part of and which are permanently affixed or attached to any portion of Airport real property or improvements within the Premises, excluding New Equipment or Removable Fixtures.

**“Luggage Cart”** shall mean a mobile hand cart, trolley or similar device used by passengers to transport luggage, baggage and other items.

**“Luggage Cart Dispensing Units”** shall mean unit or units wherein luggage carts are parked or stored and dispensed for use by a passenger for a rental fee including luggage cart racks, revenue control equipment, and related installations.

**“Metropolitan”** shall mean the greater metropolitan St. Louis area.

**“New Equipment”** shall mean Luggage Carts, Luggage Cart Dispensing Units, and related installations placed or constructed by the Concessionaire within the Premises.

**“Notice”** shall mean a communication between the parties to this Agreement performed in accordance with the requirements of Article XV, Section 1501 herein.

**“Premises”** shall mean a location or locations described in Article II that have been designated by the City for the sale of Concessionaire’s services, and for other uses provided specifically herein, together with all Existing Equipment and all improvements existing as of the Commencement Date.”

**“Remediation Costs”** means any reasonable losses, expenses, or costs incurred by the City in connection with environmental remediation: (i) required by the appropriate governmental agency responsible for enforcing applicable Environmental Laws or

Environmental Permits, and/or (ii) attributable to Hazardous Materials left on City property in excess of applicable remediation standards derived by the U.S. Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, the Missouri Department of Natural Resources or other governmental health agency as appropriate for commercial property, safe for occupational exposure or Airport use or which are in violation of Environmental Laws or Environmental Permits, and caused by, or arising out of Concessionaire's operations or activities at the Premises or the Concessionaire's use of the City's property. Remediation Costs include reasonable investigation and evaluation costs, costs to implement institutional controls or restrictive covenants, sampling and analysis costs, reporting costs, planning and design costs, consultant and contractor costs, labor costs, equipment costs, construction costs, access costs, disposal costs, transportation costs, reasonable administrative costs, reasonable attorneys' fees and other legal fees and litigation expenses, permit fees and costs, monitoring costs, oversight and inspection costs, claims, demands, causes of action, suits, judgments, damages, compensation, debts, costs, expenses, losses, penalties, fines, stipulated penalties, punitive damages, and other similar liabilities caused by or arising out of Airline's handling, use, storage, release, disposal, generation, emission or discharge of Hazardous Materials at the Airport including the Premises.

**"Removable Fixtures"** shall mean all furnishings, equipment, personal property, and fixtures installed or placed by the Concessionaire within the Premises that are not permanently affixed to any wall, floor or ceiling within the Premises, excluding Existing Equipment and any New Equipment.

**"Rules and Regulations"** means those lawful, reasonable, and not unjustly discriminatory rules and regulations, including ordinances and operating directives, promulgated by the Airport Director, the Airport Commission, or the City from time to time for the orderly operation of the Airport.

**"Transportation Security Administration"** or **"TSA"** means the Transportation Security Administration created under the Aviation and Transportation Security Act of 2001, as amended, or any successor agency thereto.

## ARTICLE II PREMISES

Section 201. PREMISES. City hereby permits the Concessionaire to install, maintain, manage and operate at the Premises including the Airport's Terminals and Concourses in accordance with rights granted under Article III, as described in **Exhibit "A"** entitled **"Premises"** and **Exhibit "A-1"** entitled **"Office Space"**, which are attached hereto and made a part hereof. The rights granted in Article III hereof must only be exercised within the Premises.

Subject to the needs and availability as determined by the City, the City shall provide, as part of the Premises, "Office Space" located within Terminal 1 and more fully described in Exhibit "A-1" entitled "Office Space", which is attached hereto and incorporated herein, at no additional charge or rental fee (see Section 502 entitled "Concession Fee Payments" and Section 503 entitled "Payment"). Concessionaire shall be responsible for the maintenance and housekeeping of the Office Space (see Section 806 entitled "Use Of Office Space"). Concessionaire is permitted to use the Office Space only in support of its Luggage Cart Rental Concession at the Airport. Any other use of the Office Space is prohibited and may result in the City charging the standard Airport square foot rental rates for the Office Space and/or seeking other remedies at law or in equity.

The Director shall have the right to add, substitute, relocate or delete portions of the Premises upon reasonable notice to the Concessionaire. The City will not be liable or responsible for any loss whatsoever, including without limitation, any inconvenience or loss by the Concessionaire of work time, profit or business, actual, incidental, consequential or special damages resulting from these changes to the Premises. If Premises are increased, reduced or changed as provided for herein, revised exhibits may be substituted for those herein without the necessity to amend this Agreement, which substitution shall be made by Notice to Concessionaire from the City.

Except as described in Article VI, Section 605, the Concessionaire accepts the Premises, including all Existing Equipment, **"AS IS"** with no warranties or representations of any kind, expressed or implied, either oral or written, made by the City or any of its agents or representatives. The City without limitation expressly disclaims and negates as to the Premises any implied or expressed warranty for a particular purpose and any expressed or implied warranty with respect to the Premises or any portion thereof.

Section 202. RESERVATIONS. The grant of lease hereunder is subject to the following reservations and conditions:

- A. Concessionaire shall not exercise the rights granted by this Agreement to Concessionaire in such a way as to interfere with or adversely affect the use, operation, maintenance, expansion or development of the Airport, or with the operation of other tenants or users of the Airport.
- B. The City reserves for the use and benefit of the public, a free and unrestricted right of flight for the passage of

aircraft in the airspace above the surface of the Premises, together with the right to cause or allow in said airspace such noise, vibration, fumes, dust, fuel particles, illuminations, interference with television, radio or any other type of transmission and other effects as may be caused in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on or about the Airport.

- C. The City reserves the right to grant utility and maintenance rights-of-way to itself and other over, under, through, across or on the Premises provided that such use will not substantially or materially interfere with Concessionaire's use of the Premises, and provided further that such reservation or grant of rights shall not directly result in additional cost or expense to Concessionaire.
- D. The City reserves the right (but shall not be obligated to Concessionaire) to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Concessionaire in this regard.
- E. The City reserves the right to further develop or improve the landing area and all publicly-owned air navigation facilities of the Airport as City in its sole and absolute discretion as it sees fit, regardless of the desires or views of the Concessionaire, and without interference or hindrance of any kind.
- F. The City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Concessionaire from erecting, or permitting to be erected, any building or other structure on the Premises or the Airport which sole and absolute opinion of the City would limit the usefulness of the Airport, adversely effects the operations of the Airport or constitute a hazard to aircraft or air navigation.
- G. During the time of war or national emergency the City shall have the right to enter into an agreement with the Government of the United States of America ("**U.S. Government**") for use of part of all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the Airport including the Premises and the rights granted herein. If any such agreement is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the agreement with the U.S. Government, shall be suspended immediately upon receipt written notice from the City.
- H. This Agreement shall become subordinate to provisions of any existing or future agreement between the City and the United States of America or any agency thereof relative to the operation, expansion, improvement, development, or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the operation, expansion, improvement, development or maintenance of the Airport.
- I. The City reserves all gas, oil and mineral rights in and under the soil; provided, however, that the City, in the exercise of such rights, shall not substantially or materially interfere with the surface of the soil or with Concessionaire's use of improvements thereon.

Section 203. ACCESS. Subject to the terms, covenants and conditions of this Agreement hereof, Concessionaire has the right of free access, ingress to and egress from the Premises for Concessionaire's employees, agents, guests, patrons, licensees and invitees.

### ARTICLE III CONCESSION RIGHTS

Section 301. RIGHTS. City hereby grants to Concessionaire the **exclusive right**, license and privilege, *to the extent allowed by law*, and Concessionaire hereby assumes the obligation, to design, construct, operate, manage and maintain a Luggage Cart Rental Concession, within the Premises, subject to and in accordance with all the terms, covenants, warranties, provisions, and conditions of this Agreement (see Article VI entitled "Concessionaire's Operations").

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

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

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

#### ARTICLE IV CONCESSION TERM

Section 401. TERM. The term of this Agreement shall consist of **Five (5) Contract Years** as written below:

**Commencement Date:** December 1, 2011

**Expiration Date:** November 30, 2016

The City or Concessionaire may terminate this Agreement without cause by giving **ninety (90) days** notice to the other party with no liability to the terminating party and such termination shall be deemed a no fault cancellation.

Section 402. SURRENDER OF POSSESSION. No notice to quit possession at the expiration date of the term of this Agreement shall be necessary. Concessionaire covenants and agrees that at the expiration date of the term of this Agreement, or at the earlier termination hereof, it will peaceably surrender possession of the Premises, in as good condition as that existing at the time of Concessionaire's initial entry upon the Premises under this Agreement, reasonable wear and tear, acts of God, and other casualties excepted, and the City shall have the right to take possession of the Premises with or without due process of law (see Section 201 entitled "Premises" and Section 708 entitled "Title to Improvements, Equipment and Removable Fixtures").

Section 403. HOLDOVER PROVISION. If Concessionaire shall, with the prior written approval of the Director, holdover after the expiration of the term of this Agreement, the resulting tenancy shall, unless otherwise mutually agreed, be a tenant at will on a month-to-month basis. During such month-to-month tenancy, Concessionaire shall pay to City the same Concession Fee as stated for Contract Year 5 set forth herein, unless different fees shall be agreed upon in writing by the Director on behalf of the City and the Concessionaire, and shall be bound by all terms, covenants and conditions of this Agreement.

#### ARTICLE V FEES AND RENTALS

Section 501. GENERAL. Concessionaire, for and in consideration of the rights and privileges granted herein, agrees to pay the Concession Fees and other fees and charges as set forth in this Agreement including, without limitation, in Sections 502, 503, 505, 507, 509, 510, Section 701.B(5), the utilities described in Section 804 and the liquidated damages described in Article XIII, *without demand*, during the term of this Agreement.

Section 502. CONCESSION FEE PAYMENTS. The Concession Fee shall be waived during Contract Year 1 (the first twelve (12) months) of the Agreement.

For Contract Year 2 through Contract Year 5, the Concessionaire agrees to pay to the City a monthly Concession Fee on all Gross Receipts earned over and above \$9,000.00 per month.

<u>Contract Year</u>	<u>"Concession Fee Percentage"</u>
1	N/A %
2	30 %
3	30 %
4	30 %
5	30 %

Section 503. PAYMENT. For Contract Year 2 through Contract Year 5, payments for each month of each Contract Year shall consist of an amount equal to the portion of the Concession Fee Percentage applied to the Gross Receipts for the previous month, to be paid on or before the 15th day of the second and each succeeding month during the term of this Agreement (see Section 505 entitled "Unpaid Fees" and Article XIII entitled "Liquidated Damages" for the amount of any applicable service charge or liquidated damages.)

Section 504. REPORTS.

- A. Statement of Gross Receipts. Concessionaire shall submit to the City, by the fifteenth (15th) day of the second and each succeeding month of each Contract Year hereof, two (2) copies of an accurate statement of Gross Receipts certified by an officer of the Concessionaire.
- B. Final Statement of Gross Receipts. The final statement of Gross Receipts shall be due fifteen (15) days following expiration of this Agreement. The City reserves the right to use the statement of Gross Receipts, Final Statement of Gross Receipts, and other reports provided by Concessionaire under this Agreement as a source of information to bidders in a future Solicitation For Bid (SFB) or Request for Proposals (RFP) for this Concession.
- C. Certified Audited Report of Gross Receipts. Concessionaire shall submit an audited report of Gross Receipts within 120 days following the conclusion of each Contract Year. This audit report must be prepared by an independent Certified Public Accountant. The audit report shall, at a minimum, certify the accuracy of: 1) reported total accumulated Gross Receipts; and 2) the aggregate amount of goods and services attributable to ACDBE participants. The audit report shall also include a schedule showing the total of actual payments to the City during the Contract Year and shall state an opinion as to the correctness of Gross Receipts without exception. Delivery of an audit report containing a qualified opinion, an adverse opinion or a disclaimer of opinion as defined in the Statement on Auditing Standards, or as same may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be deemed to be a default pursuant to Article XI herein.
- D. Annual Audit Overpayment/Underpayment. In the event the annual audit indicates there was an underpayment of any rents, fees, charges, or other payments due and payable to the City, Concessionaire shall immediately pay the amount of the underpayment to the City. In the event of an overpayment, Concessionaire shall, upon City verification, deduct the amount of the overpayment from the next scheduled Concession Fee Payment. If an overpayment occurs during the last Contract Year, the City will pay the amount of the overpayment to Concessionaire within thirty (30) days of receipt of the final audit report.
- E. Waiver of Audited Report of Gross Receipts Requirement. At the written request of the Concessionaire, the City will waive the annual Certified Audited Report of Gross Receipts requirement under Section 504.C of this Agreement, if, during the previous Contract Year, Concessionaire was not required to pay the Concession Fee to the City as set forth in Section 502 and 503. The City will review Concessionaire's payment history prior to approving the waiver request.
- F. Quarterly ACDBE Activity Reports. Concessionaire shall be required to submit to the City by the 20th day following each calendar quarter (April 20th, July 20th, October 20th, and January 20th) two (2) copies of an accurate statement of ACDBE utilization. Concessionaire shall document, in a manner satisfactory to the Director, the specifics of all Gross Receipts attributable to ACDBEs in addition to purchases from certified ACDBEs. This statement shall be certified as accurate by an officer of the Concessionaire. Concessionaire shall submit quarterly ACDBE activity reports to the City in a form approved by the Director.
- G. ACDBE Documentation. Concessionaire shall keep, and make available to the City, such records (copies of subcontracts, paid invoices, documentation or correspondence) as are necessary for the City to determine compliance with the ACDBE participation requirement. The City reserves the right to investigate, monitor and/or review records for compliance.

Section 505. UNPAID FEES. All unpaid fee payments due the City hereunder shall bear a service charge of 1½% per month if same is not paid and received by the City on or before the fifteenth (15th) day of the month in which said payments are due; and Concessionaire agrees that it shall pay and discharge all costs and expenses including attorney fees and litigation cost incurred or expended by the City in collection of said delinquent amounts due, including service charges.

Section 506. PERFORMANCE AND PAYMENT BOND. Concessionaire agrees to furnish a Performance and Payment Bond or other security in a form acceptable to City in the principal amount equal to **Five Thousand Dollars (\$5,000)** prior to execution of this Agreement. Such bond or other form of security agreed to by the City, shall remain in full force and effect throughout the term of this Agreement **and shall extend at least 180 days following the expiration or early termination of this Agreement.** In the event that said bond should expire prior to expiration or early termination of this Agreement, Concessionaire warrants, covenants and agrees to provide City a renewal bond sixty (60) days prior to the expiring bond's expiration date. Such bond shall guarantee the payment of all fees and performance of all other terms, covenants and conditions of this Agreement. The Performance and

Payment Bond shall be in the form of standard commercial guaranty bond running to City, written by a surety company authorized to do business in Missouri: having a "Best" key rating of not less than A and with a "Best" Financial Size Category of not less than Class VIII; and shown on the most recent U.S. Treasury Circular No. 570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The bond shall be kept in full force and effect during the term hereof, **and shall extend at least 180 days following the expiration or early termination of this Agreement.** City may agree to another form of deposit which shall provide equal protection of City's interest. If City cashes the bond or other form of deposit agreed to by the City, Concessionaire agrees to furnish a replacement Performance and Payment Bond or other form of deposit in the same principal amount within fifteen (15) days.

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

Section 508. ACCOUNTING RECORDS AND REPORTS. During the term hereof Concessionaire shall make available in the St. Louis area true, accurate, complete and auditable records of all business it conducts at the Airport. Concessionaire shall make same records available in the St. Louis area for three (3) years following the expiration or early termination of this Agreement. These records shall be accessible during usual business hours to the City or its duly appointed agents or auditors. Concessionaire is not required to maintain its records in the St. Louis area, as provided above, if it agrees to pay for all costs associated with conducting audits performed by the City, or its duly appointed agents or auditors, at the Concessionaire's place of records.

Section 509. RIGHT TO AUDIT. City, or its duly appointed agents or auditors, reserves the right to audit Concessionaire, its subcontractors (or others doing business under this Agreement) books, records and receipts at any time for the purpose of verifying the Gross Receipts hereunder. If by the results of the audit(s) it is established that additional fees are due the City, the Concessionaire shall pay such fees to the City not later than fifteen (15) days after completion of such audit and written notice by the Director. If the results of the audit(s) reveal a discrepancy of more than five percent (5%) between Gross Receipts reported by Concessionaire and Gross Receipts determined by the audit, the cost of the audit shall be borne by Concessionaire.

Section 510. ADDITIONAL FEES, CHARGES AND RENTALS. Concessionaire shall pay additional fees, charges and rentals under the following conditions:

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

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

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

Section 511. NOTICE, PLACE AND MANNER OF PAYMENT. Payments to the City required by this Agreement shall be made at the office of the Director at the address as set forth in Section 1501 below, or at such other place or by whatever payment method that the City may determine as the City may hereafter notify Concessionaire, and shall be made in legal tender of the United States of America.

## ARTICLE VI CONCESSIONAIRE'S OPERATIONS

Section 601. STANDARDS OF SERVICE.

- A. The Concessionaire warrants, represents, covenants and agrees to meet the City's objectives as set out in the

preamble hereof.

- B. The Concessionaire shall furnish a first-class Luggage Cart Rental Concession serving the needs of all Airport users.
- C. Concessionaire must ensure that unattended Luggage Carts, located throughout the Airport Premises, including but not limited to Terminal 1, Terminal 2, all Concourses, all levels of the Short Term Parking Garage, Terminal 1 and Terminal 2 Metrolink platforms, Terminal 1 and Terminal 2 Loading Docks and the upper and lower drives, islands and sidewalks of Terminal 1 and Terminal 2, be retrieved and returned to Luggage Cart Dispensing Units on an on-going basis during its hours of operation, but not less than the hours of operation for retrieving and returning Luggage Carts stated in Section 602.
- D. Concessionaire shall not stage or allow Luggage Carts to gather or collect on the upper and lower drives, islands and sidewalks of Terminal 1 and Terminal 2.
- E. Concessionaire shall ensure that each customer receives prompt, efficient and courteous service. In conjunction with this requirement, Concessionaire shall ensure that adequate staff is available at each location to provide such service during normal and peak operating hours and during any special or emergency circumstances. In addition, each Luggage Cart Dispensing Unit shall list a 24-hour phone contact number for those customers needing assistance with transactions after hours.
- F. Concessionaire must ensure that requests for luggage cart assistance be responded to immediately, but not later than thirty (30) minutes from the time of the call for assistance.
- G. Concessionaire shall use reasonable efforts to not disrupt the flow of passenger traffic when retrieving and returning carts to the Luggage Cart Dispensing Units located throughout the Airport.
- H. Concessionaire shall ensure all revenue control equipment accepts all major, nationally recognized credit cards and other acceptable legal tender.
- I. Deliveries of supplies, cash and coin to the Premises shall be made at such times, by such routes/modes and at such locations as the City may reasonably approve.
- J. Premises shall be kept clean, neat, business-like and in an orderly condition at all times and Concessionaire shall provide for timely disposal of trash and debris at locations designated by the City.
- K. Concessionaire shall assure that its agents and employees do not engage in solicitation or pressure sales tactics for products offered on or about the Airport.
- L. Concessionaire's operations shall fully comply with all FAA regulations including security requirements; Airport rules and regulations; and Airport security plan. Employees shall be suitably badged in accordance with Airport security procedures and regulations and shall fully comply with the Transportation Security Administration's ("TSA") regulation 1542 regarding conduct and access to the Airfield Operations Area ("AOA").
- M. Concessionaire shall promptly respond to any luggage cart needs or requests in the Federal Inspection Service (FIS)/Customs area.
- N. Concessionaire shall inspect, maintain in excellent condition and repair as needed all Luggage Carts.
- O. Concessionaire shall inspect, maintain in excellent condition and repair as needed all Luggage Cart Dispensing Units. Concessionaire shall place appropriate, professional signage on any Luggage Cart Dispensing Units that are out of service.
- P. Concessionaire shall ensure all Luggage Carts are cleaned and sanitized no less than one (1) time per calendar quarter (April, July, October and January) per Contract Year.
- Q. Concessionaire shall ensure all Luggage Cart Dispensing Units are cleaned and dusted no less than one (1) time per week.

- R. Concessionaire shall ensure any and all broken Luggage Carts are taken out of the cart rotation and removed from public view for repair or disposal. Maintenance of Luggage Carts shall not be in the public view.
- S. Luggage Carts shall not be intended for use on escalators. Any vertical circulation of Luggage Carts shall be via elevators. Concessionaire shall place signage on the Luggage Carts informing the users that Luggage Carts are not intended for use on escalators.
- T. Concessionaire shall take all necessary action to protect the passenger/public safety and the Airport's facilities from loose Luggage Carts.
- U. Concessionaire shall ensure that any new Luggage Carts are equipped with bumpers that protects the walls and other surfaces of the Airport, wheels that are made of resilient non-marking material, the center of gravity on the Luggage Carts shall be such that tipping is avoided under various load conditions and the basket design shall preclude the transporting of children and shall be fitted with the appropriate warning signs. The surface of the basket, if applicable, shall be smooth with no sharp edges.
- V. If applicable, Concessionaire shall maintain in excellent condition all luggage cart collection vehicle(s).
- W. If applicable, Concessionaire shall store its luggage cart collection vehicle(s) out of the public's view.

Section 602. HOURS OF OPERATION. The minimum hours of operation for retrieving and returning Luggage Carts to the Luggage Cart Dispensing Units are as follows: 4:30 AM – 7:30 AM, 12:30 PM – 2:30 PM and 5:30 PM – 8:30 PM, seven (7) days per week. Concessionaire may not change the hours of operation without written application to, and the written approval of, the Director. The Director may require Concessionaire to change its hours of operation to reflect changing operational circumstances at the Airport.

Luggage Cart Rental Equipment, including but not limited to Luggage Carts and Luggage Cart Dispensing Units, shall be consistently maintained in good repair, operational, and available for public use 24 hours daily.

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

Section 604. PERSONNEL.

- A. Concessionaire shall maintain a sufficient number of trained personnel on duty to ensure that Concessionaire's customers receive prompt and efficient service at all times.
- B. Concessionaire shall require its employees (except managerial and supervisory employees) to wear appropriate uniforms and/or Airport-issued ID badges to indicate the fact and nature of their employment.
- C. Concessionaire shall employ only properly trained, efficient, pleasant, neat, clean and courteous personnel, each of whom shall be proficient in the duties to be performed in the operation of this Concession.
- D. Concessionaire shall provide proper training of all employees including on-going customer service training and for the certification and/or licensing of employees in all areas of service as their duties might legally require.
- E. Concessionaire's employees shall be trained to have sufficient knowledge of the Airport to be able to give clear and accurate directions to the public.
- F. Concessionaire agrees that it will be responsible for ensuring that its employees abide by all applicable laws, rules and regulations. Concessionaire shall prohibit and restrain its agents, servants and employees from loud, noisy, boisterous or otherwise objectionable behavior. Upon objection from the Director concerning the conduct or appearance of any such persons, Concessionaire shall immediately take all steps necessary to remove the cause of the objection.
- G. Concessionaire, at its cost, acknowledges and agrees that it shall conduct employee background checks of each

of its personnel if required by the FAA, TSA and/or the Airport. Concessionaire recognizes and agrees that security requirements may change and Concessionaire agrees that it shall comply with all such changes throughout the term of this Agreement.

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

- H. The Airport will provide the Concessionaire with access to one (1) parking space at no charge; access to additional parking spaces will be at the sole cost and expense of the Concessionaire. Lambert-St. Louis International Airport® is a smoke-free facility. Smoking is permitted only in designated smoking areas.

Section 605. ONSET OF SERVICE. There are currently eight (8) existing Luggage Cart Dispensing Units in the locations listed below.

- Terminal 1-Baggage Carousel 5 (1 Dispensing Units)
- Terminal 1-Baggage Carousel 3 (1 Dispensing Units)
- Terminal 1-Baggage Carousel 1 (1 Dispensing Units)
- Terminal 1-Parking Garage-Yellow Level (1 Dispensing Units)
- Terminal 2-Federal Inspection Service Area (Customs) (2 Dispensing Units)
- Terminal 2-Baggage Claim (2 Dispensing Units)

The eight (8) existing Luggage Cart Dispensing Units are not equipped with revenue control equipment. All revenue control equipment shall be purchased and installed at the Concessionaire's *sole expense*.

There are approximately 70 Luggage Carts in service in Terminal 1 and 60 Luggage Carts in service in Terminal 2. There are approximately 175 Luggage Carts in storage along with a very limited supply of Luggage Cart parts.

The Concessionaire is permitted to utilize the Existing Equipment including the Luggage Cart Dispensing Units, Luggage Carts and Luggage Cart parts.

At the onset of the Agreement, the City and the Concessionaire will jointly identify up to eight (8) locations where the existing and/or new Luggage Cart Dispensing Units will be located. As necessary, up to eight (8) **existing** Luggage Cart Dispensing Units shall be removed, relocated and installed at the City's *sole expense* to locations approved by the Director.

The Concessionaire, at its *sole cost and expense*, is permitted to install and utilize New Equipment, including Luggage Cart Dispensing Units, Luggage Carts, and Luggage Cart parts on the Premises at locations approved by the Director. If the Concessionaire elects to install and utilize New Equipment, the City, at its *sole expense*, will remove and dispose of all Existing Equipment including the Luggage Cart Dispensing Units, Luggage Carts and Luggage Cart parts.

Additional Luggage Cart Dispensing Units, revenue control equipment, Luggage Carts and Luggage Cart parts may be purchased and installed at the Concessionaire's sole expense, subject to the review and written approval of the Airport Director.

Other than as noted above, the successful bidder shall receive the Premises, including all Existing Equipment, "**AS IS**" as stated and provided for in Section 201 entitled "Premises". Concessionaire shall be solely liable and responsible for all costs and expenses pertaining to the design, construction, acquisition, installation, replacement, relocation and maintenance of the Improvements, New Equipment, Removable Fixtures and equipment as is necessary to provide service pursuant to this Agreement.

At the time of Bid, Concessionaire submitted a transition plan and development schedule, subject to the approval of the Director, for the efficient transition of service from the City, the current service provider. Concessionaire shall be responsible to coordinate the execution of the transition, in accordance with the approved transition plan and replacement schedule, with the City to assure a smooth transition of service with the minimum amount of disruption of service to the traveling public and other Airport users.

Section 606. PRICING.

- A. Concessionaire shall charge fair, reasonable and nondiscriminatory prices that are attractive to the public and substantially similar to the prices charged at Comparable Locations. For purposes of this Agreement, the term

“**Comparable Location**” shall mean US airports comparable to Lambert- St. Louis International Airport® in size and total passenger enplanements.

- B. Concessionaire submitted at the time of Bid a complete list of all services proposed to be offered and fees for said services in conjunction with paragraph (A) of this Section 606. The Director reserves the right to independently compare Concessionaire’s prices to Comparable Locations and require Concessionaire to reduce prices based upon its comparison.
- C. If Concessionaire is a franchisee or retail outlet of an entity with a national pricing structure identical for all franchisees or outlets, the comparable price shall be determined in accordance with such pricing structure.
- D. Concessionaire shall not increase any prices without prior written approval of the Director and no more than one (1) time per Contract Year with appropriate price comparison.
- E. Concessionaire is permitted, but not required, to offer discounted prices to employees of the City and other Airport employees. Before implementing a discount policy, Concessionaire shall first provide thirty (30) days advance written notice to the Director. The notice shall provide the details surrounding the discount policy (e.g., who it covers, how much is the discount, and etc.). The Director shall not unreasonably withhold approval to implement the policy. In addition, discounts may be changed, modified or discontinued with a thirty (30) day notice to the Director.

Section 607. MANAGER. Concessionaire shall at all times retain one (1) or more qualified, competent and experienced manager(s) who is thoroughly trained to provide and teach excellent customer service and who shall manage and supervise the operations and facilities and represent and act for Concessionaire. The manager(s) shall ordinarily be available during regular business hours. The manager or a responsible subordinate shall be available at all times for emergency situations as they arise.

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

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

Section 610. TRANSITION PERIOD. If applicable, during any future transition of the Luggage Cart concession to another concessionaire, the incumbent Concessionaire hereby warrants, represents, covenants and agrees that Concessionaire shall use its best efforts to assure a smooth transition and agrees to closely coordinate the planning and execution of the transition with the Director.

Section 611. OPERATION.

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

Section 612. COMMUNICATION.

- A. Concessionaire’s local manager shall be available for monthly or quarterly meetings (at the City’s discretion) with the appropriate representative of the Airport Properties Department to discuss sales and operations; and the DBE Program Office to discuss ACDBE participation; and any other relevant issues which may affect Concessionaire’s operation at the Airport. Concessionaire shall also be available for meetings at other times as necessary.

- B. Concessionaire shall be responsible for notifying the Airport Properties Department of any problem that reduces service or sales levels or in any way impairs Concessionaire's operation. The Airport will make every reasonable effort to assist in eliminating such problems.

Section 613. CUSTOMER COMPLAINTS. Concessionaire shall establish procedures for handling all customer complaints. Concessionaire shall respond in writing to every written complaint within seven (7) calendar days of the complaint and shall make good faith efforts to explain, resolve or rectify the cause of the complaint. Concessionaire shall provide the Director with a copy of each such complaint and its written response thereto.

Section 614. DELIVERIES. Concessionaire shall monitor the movement of deliveries to avoid conflict with other functions and Airport users and shall coordinate its use of the receiving dock with other users. All deliveries to or pick-ups from the Airport terminal buildings by Concessionaire or its agents will be through the Terminal 1 delivery dock at the west end of the lower level or the Terminal 2 delivery dock at the east end of the lower level. All deliveries are the responsibility of Concessionaire and not the City.

Section 615. ENTERTAINMENT SYSTEM/WIRELESS DATA. Concessionaire shall comply with all Airport Rules and Regulations concerning the use and operation of entertainment and wireless systems.

## ARTICLE VII IMPROVEMENTS AND ALTERATIONS

Section 701. CONSTRUCTION BY CONCESSIONAIRE.

- A. Except as described in Article VI, Section 605, Concessionaire takes the Premises "AS IS" as provided for in Article II hereof, and agrees, at Concessionaire's sole cost and expense, to design, erect, construct, equip and furnish all necessary New Improvements, Removable Fixtures and equipment and make related facility changes as needed to operate a Luggage Cart Rental Concession, pursuant to this Agreement, in accordance with plans prepared by Concessionaire and approved by the Director subject to the requirements of this Article VII.
- B. Concessionaire agrees that all such work shall be completed according to the Tenant Design Standards, which are filed of record in the Office of the Director of Airports.
1. Concessionaire shall submit a signed Tenant Construction or Alteration Application ("TCA") including complete construction drawings and specifications, as required by Section 702, to the Airport Properties Department. If construction or refurbishment is proposed in Bid, TCA shall be submitted not more than thirty (30) days following full execution of the Agreement by City.
  2. Concessionaire shall submit a St. Louis County building permit number not more than thirty (30) days following submission of the TCA to the Airport Properties Department. (A building permit number is required before the TCA can be approved.)
  3. Concessionaire shall submit the contractor's liability insurance certificates, performance, and payment Bonds, required by Sections 703 and 704, to the Airport Properties Department not more than forty-five (45) days following the TCA approval by the Airport Properties Department prior to beginning of work.
  4. Concessionaire shall complete all construction and open all Premises fully fixture and operational no later than 180 days after full execution of the Agreement by the City, subject to the provisions of Article XIII.
  5. Failure to open and operate in accordance with this Section 701 may result in Concessionaire being assessed liquidated damages in the amount of **Five Hundred Dollars (\$500) per week** for each week beyond the 180 days after full execution by the City.
  6. Concessionaire shall submit a certificate of completion and a certified copy of a St. Louis County occupancy permit to the Airport Properties Department, as required by Section 706 hereof.

In the event Concessionaire encounters material believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, or specifically identified with method of removal, handling or protection, Concessionaire shall immediately stop work in the affected area and report the condition to the Director in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the Director and Concessionaire if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered

harmless, by written agreement of the Director and Concessionaire. Concessionaire shall not be required to perform, without their consent, any work related to asbestos or PCB.

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

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

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

Section 705. MECHANICS' AND MATERIALMEN'S LIENS. Concessionaire agrees not to permit any mechanics' or materialmen's or any other lien or encumbrance to be attached or foreclosed upon the Premises or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

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

Section 707. SIGNS.

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

Section 708. TITLE TO IMPROVEMENTS, EQUIPMENT AND REMOVABLE FIXTURES. All Improvements constructed or placed in the Premises by Concessionaire, excluding all Removable Fixtures and all New Equipment, as well as all modifications, alterations and enlargements thereof shall become part of the Premises with title vesting to the City upon expiration or earlier termination of this Agreement. This vesting of title is subject to Concessionaire's obligation to operate, repair, maintain and replace, and its right of possession, use and occupancy during the term and in accordance with this Agreement. The City reserves the right

and Concessionaire agrees that the Director may require the Concessionaire to promptly and timely restore the Premises to their original condition at the time Concessionaire took possession of the Premises. Concessionaire agrees to bear all costs of such removals and restorations (see Article IV, Section 402 entitled "Surrender of Possession").

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

Title to any New Equipment placed, constructed or installed within the Premises by the Concessionaire shall remain at all times with the Concessionaire. The Concessionaire acknowledges and agrees that the Concessionaire shall promptly and timely remove any or all New Equipment at the expiration or early termination of this Agreement. Concessionaire agrees to bear all costs of such removals and restorations (see Article IV, Section 402 entitled "Surrender of Possession").

### **ARTICLE VIII USE OF PREMISES**

Section 801. COMPLIANCE WITH LAWS AND REGULATIONS. Concessionaire shall comply with all Rules and Regulations which the Director may establish from time to time. In addition, Concessionaire shall comply with all statutes, laws, ordinances, orders, judgments, decrees, permits, regulations, environmental plans and programs, Environmental Permits, Environmental Laws, directions and requirements of all federal, state, City, local and other governmental authorities, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways.

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

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

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

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

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

Section 803. RIGHT TO ENTER, INSPECT AND MAKE REPAIRS. The City and its authorized officers, agents, employees, contractors, subcontractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as

little interruption of Concessionaire's operations as is practicable) to enter upon and in the Premises for the following purposes:

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

Section 804. UTILITIES.

- A. Electrical Fee. The City shall provide electricity to all the Luggage Cart Dispensing Units and the Office Space, at **no cost or fee** to the Concessionaire.
- B. Electrical Service & Supply. If electrical service outlets are not available where needed, the City shall be responsible for bringing electrical service to the Luggage Cart Dispensing Units. Concessionaire shall be responsible for bringing electrical service to the Office Space, if electrical service outlets are not available where needed.
- C. Other Utilities. Concessionaire shall provide and pay for all other utilities (including telephone and other third party service) it requires, including but not limited to deposits; installation costs; costs of upgrading or relocating utility service; connection charges; telephone and/or data lines it requires; meter deposits; and all service charges for telephone and other utility services metered directly to the Premises, regardless of whether or not such utility services are furnished by the City or a utility service company.
- D. Fire Detection & Suppression Equipment. If required by building codes or other regulations, Concessionaire shall pay for the cost of installation of fire detection and suppression distribution equipment in the Premises. Concessionaire shall pay for the connection of fire detection equipment up to City provided z-tie boxes. Concessionaire shall pay for the connection of fire suppression equipment up to City provided sprinkler mains and tamper switches.

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

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

Section 806. USE OF OFFICE SPACE. Subject to the needs and availability as determined by the City, the City shall provide, as part of the Premises, "Office Space" located within Terminal 1 and more fully described in Exhibit "A-1" entitled "Office Space", at no additional charge or rental fee (see Section 502 entitled "Concession Fee Payments" and Section 503 entitled "Payment"). Concessionaire is permitted to use the Office Space only in support of its Luggage Cart Rental Concession at the Airport. Any other use of the Office Space is prohibited and may result in the City charging the standard Airport square foot rental rates for the Office Space and/or the City seeking other remedies at law or in equity.

The City shall maintain and keep in good repair the structures associated with the Office Space, as well as all associated common areas, including common utility lines and systems.

Concessionaire shall, throughout the term of this Agreement, at its own cost and without any expense to the City, maintain and keep in good repair the interior and exterior, non-structure portions of the Office Space, including all tenant Improvements, utility systems (up to the common distribution points for each utility system), all doors and windows, locks and keys, floor coverings, ceilings, and any other structures erected within the Office Space.

Concessionaire shall, at its sole cost and expense, take such measures as may be necessary to keep the Office Space secure; the City shall have no obligation or responsibility to keep the Office Space secure.

Concessionaire warrants, covenants and agrees, without cost or expense to the City during the term hereof, to perform the following:

1. Housekeeping of the Office Space. Perform all custodial services; remove from the Office Space all trash and refuse, and dispose of it in a manner approved by the City.
2. Maintenance Standards. Maintenance and repairs shall be in quality and class equal to or better than the original work to preserve the Office Space in good order and condition, based on a standard of care reflecting prudent property management. Concessionaire shall repair all damage to the Office Space caused by Concessionaire or its employees, contractors, subcontractors, agents, and invitees; this requirement includes immediate replacement of broken windows, doors and locks with like materials.

Section 807. INTERFERENCE WITH AIRPORT UTILITIES. Concessionaire shall not interfere with the Airport's utilities systems including but not limited to drainage or sewage systems, plumbing, heating, cooling and air condition systems, electrical systems, communications systems, domestic hot or cold water, gas, fire suppressions systems, fire alarm systems, and fire hydrants on the Airport, without prior notification to, and written approval from the Director.

## ARTICLE IX INSURANCE, DAMAGE, AND INDEMNIFICATION

Section 901. INSURANCE.

- A. General. Concessionaire at all times during the term hereof, shall cause St. Charles County, Missouri; St. Clair County, Illinois; St. Louis County, Missouri; the City; their officers, agents and employees to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities or omissions of Concessionaire, its officers, agents, and employees pursuant to this Agreement both on the Premises and the Airport.
- B. Risks and Minimum Limits of Coverage. Concessionaire shall procure and maintain the following policies of insurance:
  - 1) Commercial General Liability in an amount not less than Two Million Dollars (\$2,000,000). Such coverage shall be single limit liability with no annual aggregate.
  - 2) Automobile Liability in an amount not less than Two Million Dollars (\$2,000,000) (Liability-any vehicles including hired and non-owned).
  - 3) Workers' Compensation and Employer's Liability Insurance, in accordance with Missouri laws and regulations. With respect to Workers' Compensation Insurance, if Concessionaire elects to be self-insured, Concessionaire shall comply with the applicable requirements of law. Concessionaire shall require that all its subcontractors or licensees similarly provide such coverage (or qualify as a self-insured) for their respective employees. City, its officers, employees, or agents shall not be liable

or responsible for any claims or actions occasioned by Concessionaire's failure to comply with the provisions of this subparagraph and that the indemnification provisions hereof shall apply to this section. It is expressly agreed that the employees of Concessionaire are not employees of the City for any purpose, and that employees of the City are not employees of Concessionaire.

- 4) Contents Insurance. Concessionaire shall be solely responsible for obtaining insurance policies that provide coverage for losses of Concessionaire-owned property. The City shall not be required to provide such insurance coverage or be responsible for payment of Concessionaire's cost for such insurance.
- 5) Builders Risk Insurance. During any period of construction or reconstruction for which Concessionaire contracts, Concessionaire shall carry, or shall require its contractor or contractors to carry, a policy of Builders Risk Insurance in an amount sufficient to insure the value of the work. The City shall be named Loss Payee on Builders Risk coverage to the extent of the City's interest therein (except to the extent coverage relates to Concessionaire's equipment and personal property). Concessionaire may elect to self-insure for individual projects with a total cost of Fifty Thousand Dollars (\$50,000) or less.
- 6) Other Property Coverage. Concessionaire shall provide an "All Risk" insurance policy providing protection from direct loss arising out of any fortuitous cause other than those perils or causes specifically excluded by norm and which covers Concessionaire's Improvements to the Premises, trade fixtures, and New Equipment. The City shall be named Loss Payee on such coverage to the extent of the City's interest therein (except to the extent coverage relates to Concessionaire's equipment and personal property).

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

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

**The "Certificate Holder" portion should read exactly: "City of St. Louis, Lambert-St. Louis International Airport, P.O. Box 10212, St. Louis, Missouri 63145."**

- 4) Deductibles. Concessionaire shall assume and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for the same against the City, its officers, agents, or employees; provided, however, that nothing herein stated shall diminish Concessionaire's rights or increase Concessionaire's obligations in respect to its undertakings or hold harmless defense and indemnification set forth in Section 904 hereof.
- 5) Cancellation. Each policy shall expressly state that it may not be cancelled, materially modified or non-renewed unless a thirty (30) day advance notice is given in writing to the City by the insurance company, or authorized representative of Concessionaire.
- 6) Subrogation. Each policy shall contain an endorsement by which the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents, or employees.

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

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

Section 903. DAMAGE TO PREMISES.

- A. Minor Damage. If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is partially damaged by fire or other casualty, but said circumstances do not render the Premises untenable as determined by the City, the same shall be repaired to usable condition with due diligence by the City as provided in this Section.
- B. Substantial Damage. If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is so extensively damaged by fire, or other casualty, as to render any portion of said Premises untenable but capable of being repaired, as determined by the City, the same shall be repaired to usable condition with due diligence by the City as provided in this section. In such case, the fees payable hereunder with respect to affected Premises shall be paid up to the time of such damage and shall thereafter be abated ratably in the proportion that the untenable area bears to the total Premises of the same category or type of space. Such abatement in fees will continue until the affected Premises are restored adequately for Concessionaire's use. The City shall use its best efforts to provide alternate facilities to continue Concessionaire's operation while

repair, reconstruction, or replacement is being completed, at a rental rate not to exceed that provided herein for comparable space, provided that Concessionaire's rental costs shall not increase as a result of any such alternate facilities unless Concessionaire requests additional space and/or space replacement of a classification at higher rental rates concurrent with such reassignment to alternate facilities.

C. Total Damage.

- 1) If any part of the Premises, or adjacent facilities directly and substantially affecting the use of the Premises, is damaged by fire or other casualty, and is so extensively damaged as to render any portion of said Premises incapable of being repaired, as determined by the City, the City shall notify Concessionaire as soon as practicable under the circumstances after the date of such damage of its decision whether to reconstruct or replace said space. However, the City shall be under no obligation to replace or reconstruct such premises. The fees payable hereunder with respect to affected Premises shall be paid up to the time of such damage and thereafter shall cease until such time as replacement or reconstructed space shall be available for use by Concessionaire.
- 2) If the City elects to reconstruct or replace affected Premises, the City shall use its best efforts to provide alternate facilities to continue Concessionaire's operation while repair, reconstruction, or replacement is being completed, at a rental rate not to exceed that provided herein for comparable space. However, if such damaged space shall not have been replaced or reconstructed, or the City is not diligently pursuing such replacement or reconstruction, within six (6) months after the date of such damage or destruction, Concessionaire shall have the right, upon giving the City a thirty (30) day advance notice, to delete the affected Premises from this Agreement, but this Agreement shall remain in effect with respect to the remainder of said Premises, unless such damaged or destroyed premises prevent Concessionaire from operating its Luggage Cart Rental Concession at the Airport.
- 3) If the City elects not to reconstruct or replace affected Premises, the City shall meet and consult with Concessionaire on ways to permanently provide Concessionaire with adequate replacement space for affected Premises. Concessionaire shall have the right, upon giving the City a thirty (30) day advance notice, to delete the affected Premises from this Agreement, but this Agreement shall remain in full force and effect with respect to the remainder of said Premises, unless the loss of such premises prevents Concessionaire from operating its Luggage Cart Rental Concession at the Airport.

D. Scope of Restoration of Premises.

- 1) The City's obligations to repair, reconstruct, or replace affected Premises under the provisions of this section shall in any event be limited to using due diligence and best efforts to restore affected Premises to substantially the same condition that existed prior to any such damage and shall further be limited by the provisions of Sections 903 A-C. If the City elects to repair, reconstruct, or replace affected premises as provided in this section, then Concessionaire shall proceed with due diligence and at its sole cost and expense to repair, reconstruct, or replace its signs, fixtures, furnishings, New Equipment, Improvements and other items provided or installed by Concessionaire in or about the Premises in a manner and in a condition at least equal to that which existed prior to said damage or destruction.
- 2) In lieu of the City's repair, reconstruction, or replacement of the affected Premises, as provided in this section, if Concessionaire requests to perform said function with respect to damage under Sections 903 A and B, the City may, in its sole discretion, allow Concessionaire to do so. Any such work by Concessionaire must be done in accordance with the requirements of Article VII. The City shall reimburse Concessionaire for the cost of such work performed by Concessionaire. Concessionaire shall be considered to be doing such work on its own behalf and not as an agent or contractor of the City.

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

Section 904. INDEMNIFICATION.

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

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

- B. Concessionaire shall defend, indemnify, pay, and hold harmless the Indemnified Parties from and against all applicable taxes and assessments for which the City may become liable and which by law may be levied or assessed on the Leased Premises, or which arise out of the operations of Concessionaire or by reason of Concessionaire's occupancy of its Leased Premises except for any taxes or assessments based on the gross or net income or gross or net receipts of the City that are not allocable to Concession-related receipts. However, Concessionaire may, at its own risk, cost, and expense, and at no cost to the City, contest, by appropriate judicial or administrative proceedings, the applicability or the legal or constitutional validity of any such tax or assessment, and the City will, to the extent permitted by law, execute such documents as are necessary to permit Concessionaire to contest or appeal the same. Concessionaire shall be responsible for obtaining bills for all of said taxes and assessments directly from the taxing authority and shall promptly deliver to the City, upon request by the City, copies of receipts of payment. If the City receives any tax billings falling within the scope of this paragraph, it will forward said billings to Concessionaire. Concessionaire shall, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not.
- C. Concessionaire shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature associated therewith in any way arising from or based in whole or substantial part upon claim or allegation of a violation of any federal, state, or local laws, statutes, resolutions, regulations, ordinance, or court order affecting the Airport, by Concessionaire, its agents, employees, contractors, or suppliers, in conjunction with Concessionaire's use and/or occupancy of the Leased Premises or its operations at the Airport. Concessionaire will, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not. Concessionaire shall include the substance of this Subsection (C) in every sublease, contract or other agreement which Concessionaire may enter into related to its activities at the Airport, and any such sublease, contract or other agreement shall specifically provide that the City is a third-party beneficiary of this and related provisions. This provision does not constitute a waiver of any other condition of this Agreement prohibiting or limiting assignments, subletting or subcontracting.
- D. Concessionaire shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature arising from or based in whole or part upon the presence in, or the release into, the environment or the Airport of any Hazardous Materials to the extent caused by, or resulting from, the acts or omissions of Concessionaire or its agents, employees, contractors, invitees, licensees, or suppliers at the Airport whether resulting from negligent conduct or otherwise.
- E. If a prohibited incursion into the air operations area occurs, or if the Airfield Operations Area or sterile area security is breached, by or due to the negligence or willful act or omission of any of Concessionaire's employees,

agents, contractors, or suppliers, and such incursion or breach results in a civil penalty action against the City, Concessionaire shall assume the defense of any such action and be responsible for any civil penalty or settlement amount required to be paid by the City as a result of such incursion or breach. The City shall notify Concessionaire of any allegation, investigation, or proposed or actual civil penalty sought for such incursion or breach. Civil penalties and settlement and associated expenses reimbursable under this paragraph include but are not limited to those paid or incurred as a result of violation of FAA or TSA regulations or security directives.

- F. Concessionaire's obligation to defend and indemnify past officers, employees, and agents of the City shall apply to such persons only for claims, suits, demands, actions, liability, loss, damages, judgments, or fines arising from events, occurrences, and circumstances during which said officers, employees, and agents held their office or position with the City.
- G. The City shall promptly notify Concessionaire of each claim, action, proceeding, or suit in respect of which indemnity may be sought by the City against Concessionaire hereunder, setting forth the particulars of such claim, action, proceeding or suit; shall furnish Concessionaire with a copy of all judicial filings and legal process and any correspondence received by the City related thereto; and shall tender the defense of same to Concessionaire.
- H. The duty to defend, indemnify, hold harmless, and reimburse shall apply to any claim, demands, or suits made against the City for which Concessionaire is responsible pursuant to this Section. Provided, however, that upon the filing by anyone of a claim with the City for damages arising out of incidents for which Concessionaire herein agrees to indemnify and hold the City harmless, the City shall promptly notify Concessionaire of such claim and, if Concessionaire does not settle or compromise such claim, then Concessionaire shall undertake the legal defense of such claim both on behalf of Concessionaire and on behalf of the City, at Concessionaire's expense; provided, however, that Concessionaire shall immediately notify City if a conflict between the interests of Concessionaire and City arises during the course of such representation. Concessionaire shall use counsel reasonably acceptable to the City Counselor of the City or his or her designee, after consultation with the Airport Director, in carrying out its obligations hereunder.

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

- I. The City, at its own expense except as otherwise provided herein, shall be invited to attend and participate in all meetings (including those related to settlement) and to appear and participate in all judicial proceedings and to the extent of its interests, approve, in writing, the terms of any settlement related to any claim, action, proceeding or suit set forth in this Section.
- J. Notwithstanding the provisions of this Section, Concessionaire shall have no obligation to defend, indemnify, or hold harmless the City for any consequential damages or for any amounts to be paid in connection with losses, liabilities, penalties, damages of whatever nature, causes of action, suits, claims, demands, injunctive relief, judgments, awards and settlements because, and to the extent, of the negligence or willful misconduct of the City, but only if the City is conclusively determined to be more than ten percent (10%) liable due to contributory negligence.
- K. This Section shall survive the expiration or early termination of this Agreement. Concessionaire understands and agrees that any insurance protection furnished by Concessionaire pursuant to Section 901 shall in no way limit Concessionaire's responsibility to indemnify and hold harmless the City under the provisions of this Agreement.

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

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

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

**ARTICLE X  
ASSIGNMENT AND SUBCONTRACTING**

Section 1001. ASSIGNMENT AND SUBCONTRACTING.

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

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

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

**ARTICLE XI  
TERMINATION OF AGREEMENT IN ENTIRETY**

Section 1101. CITY'S RIGHT TO TERMINATE. The City, acting by and through its Director, may declare this Agreement

terminated in its entirety, in the manner provided in Section 1103 hereof, upon the happening of any one or more of the following events. By example, but not by way of limitation, the following acts or omissions shall constitute a material breach thereby justifying the termination of this Agreement in its entirety.

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

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

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

Section 1102. CONCESSIONAIRE'S RIGHT TO TERMINATE. Concessionaire, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1103 hereof for the following causes:

- A. If a court of competent jurisdiction issues an injunction or restraining order against the City preventing or restraining the use of the Airport for Airport purposes in its entirety or in substantial entirety.

- B. If the City shall have abandoned the Airport for a period of at least sixty (60) days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers.
- C. If the City shall have failed in the performance of any specific covenant constituting a material breach within the control of the City and required by this Agreement to be performed by the City.

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

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

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

Section 1201. COMPLIANCE.

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

Concessionaire submitted at the time of the Bid, evidence that it completed the applicable Good Faith Efforts procedure specified in the SFB for a Luggage Cart Rental Concession.

- B. If Good Faith Efforts resulted in the fulfillment of the ACDBE goal, Concessionaire will not be required to perform additional Good Faith Efforts, except in the event that Concessionaire's ACDBE participation fails to continue to meet the goal or comply with the applicable federal regulations. In the event Concessionaire's ACDBE participation fails to continue to meet the goal or comply with applicable federal regulations, Concessionaire will be required to perform the Good Faith Efforts procedure specified in the applicable federal regulations for the type of participation sought within three months following the loss of ACDBE participation and continue at intervals of not less than twelve (12) months, or until the ACDBE goal is reached by Concessionaire.
- C. If Good Faith Efforts did not result in fulfillment of the ACDBE goal, Concessionaire must again complete the Good Faith Efforts procedure specified in the applicable federal regulations for the type of participation sought within three (3) months following commencement of the term of this Agreement and continue at intervals of not less than twelve (12) months, or until the ACDBE goal is reached by Concessionaire.
- D. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23. Concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, creed, color, religion, sex, national origin or ancestry in connection with the award or performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. Concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract that it enters and cause those businesses to similarly include the statements in further agreements.
- E. Concessionaire shall operate its Luggage Cart Rental Concession in compliance with all other requirements imposed by or pursuant to 49 CFR Part 23, as applicable, and as said regulations may be amended or new regulations promulgated. Concessionaire shall also comply with any City of St. Louis executive orders,

resolutions or ordinances enacted, now or in the future, to implement the foregoing federal regulations, as applicable. In the event of breach of any of the above covenants, the City shall have the right to terminate this Agreement.

### ARTICLE XIII LIQUIDATED DAMAGES

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

BREACH OR DEFAULT	SECOND DEFAULT	THIRD BREACH
A. Unapproved equipment or placement of equipment in areas not authorized by City.	\$100.00	\$150.00
B. Late monthly reporting of Gross Receipts in breach of Article V.	\$10.00 per day	\$15.00 per day
C. Failure to deliver on time required items such as reports, schedules, manuals or other materials as specified in this Agreement.	\$50.00	\$75.00
D. Other non-monetary defaults that disrupt operations, traffic in terminal or customer service.	\$100.00	\$150.00
E. Inoperable equipment or equipment not repaired within fifteen (15) days of notice to Concessionaire.	\$200.00	\$300.00
F. Late annual financial reporting in breach of Article V.	\$10.00 per day	\$15.00 per day

### ARTICLE XIV COMPLIANCE WITH ENVIRONMENTAL LAWS

Section 1401. COMPLIANCE WITH ENVIRONMENTAL LAWS. Concessionaire warrants and covenants that in conducting any activities or business on Airport property, including any activities directly related or incidental to its use and occupancy of Premises, Concessionaire shall comply with any and all applicable Environmental Laws including any plans, monitoring, recordkeeping or programs prepared in conformance with Environmental Laws. Concessionaire further covenants and warrants as follows:

- A. Environmental Permits.
1. Concessionaire shall obtain and maintain any and all Environmental Permits required by applicable Environmental Laws to conduct the activities in which Concessionaire engages on the Premises.
  2. Concessionaire shall comply with any requirement imposed by an Environmental Permit obtained by the City that is or are applicable to Concessionaire or Concessionaire's activities on the Premises, including any plans, monitoring, recordkeeping or programs prepared in conformance with such Environmental Permits or Environmental Laws; provided however, that the City shall adequately notify Concessionaire of such Environmental Permit and associated requirements, including all

applicable deadlines for compliances.

3. The City and Concessionaire shall cooperate to ensure compliance with the terms and conditions of any Environmental Permit, Environmental Law and any associated requirements to ensure safety and to minimize cost of compliance.
- B. Duty to Notify City. In the event of any release or threatened release of Hazardous Materials caused, handled, or owned by Concessionaire, its employees, agents, contractors, suppliers, guests or invitees, and which is required by applicable Environmental Laws Environmental Permits, Rules and Regulations, or any plan or program prepared in response to Environmental Laws, or Environmental Permits to be reported by Concessionaire, whether as a result of negligent conduct or otherwise, at, on, about, or under the Premises, or in the event any written claim, demand, complaint or action is made of taken against Concessionaire that pertains to Concessionaire's failure or alleged failure to comply with Environmental Laws or Environmental Permits at the Premises or which pertains to the release of Hazardous Materials by Concessionaire at the Premises or the Airport, Concessionaire shall notify the City as soon as reasonably practical of all known facts pertinent to such release, threatened release, claim, demand, complain, action, or notice, and shall provide the City with copies of any and all such claims, demands, complaints, notices, or actions so made. If Concessionaire is required, by any Environmental Laws, Environmental Permits, or governmental agency, to file any written notice or report of a release or threatened release of Hazardous Materials on or under the Premises, Concessionaire shall simultaneously provide a copy of such notice or report to the City.
- C. Environmental Remediation. Concessionaire shall promptly and timely undertake all necessary steps required under applicable Environmental Laws and Environmental Permits to remedy and remove at its cost any Hazardous Material, or environmental condition or damage to the extent caused by, or resulting from, the activities, conduct, or presence of Concessionaire of its agents, employees, contractors, independent contractors, lessees, invitees, licenses, or suppliers at the Premises or Airport, whether resulting from negligent conduct or otherwise ("**Remediation Work**"). Such Remediation Work shall be consistent with remediation standards established by or derived from the appropriated government agency responsible for enforcing Environmental Laws of Environmental Permits. Such Remediation Work shall be performed at Concessionaire's expense. Except in the event of an emergency, such Remediation Work shall be performed after Concessionaire, taking into consideration the circumstances, timely and promptly submits to the City a written plan for completing such Remediation Work and receives the prior approval of the City through Notice; provided, however, that the City's approval shall not be unreasonably withheld or delayed (see Section 402 entitled "Surrender Of Possession"). The City expressly reserves the right to review and approve any proposed: remedial investigations, remedial work plans, interim and final remedies, institutional controls, including environmental covenants, or other associated documents prior to submittal to the relevant governmental agencies responsible for enforcing Environmental Laws or Environmental Permits and be consistent with the commercial use of the Airport, as determined by the governmental agency responsible for enforcing Environmental Laws and Environmental Permits or for establishing cleanup levels. Neither Remediation Work or an ongoing remediation, including any testing or monitoring, nor the use of institutional controls, shall either unreasonably or materially impair or interfere with the City's current and/or future use and enjoyment of its property including the Premises, or that of current and future tenants. The City shall have the right to conduct a reasonable review and inspect all such Remediation Work at any time using consultants and representative of its choice.
- D. Access for Environmental Inspection. Upon reasonable notification to Concessionaire, the City shall have reasonable access to the Premises to inspect the same in order to confirm that Concessionaire is using the Premises in accordance with this Section 1401. Concessionaire shall cooperate fully with any such inspections provided that such inspections shall not unreasonably interfere with Concessionaire's operations. If the City's inspection results in any type of written report, the City shall provide Concessionaire a reasonable opportunity to timely review and comment on a draft of the report. Concessionaire shall provide to the City for its review and comment copies of: any and all notices of alleged non-compliance issued by governmental agencies responsible for enforcing Environmental Laws or Environmental Permits; non-privileged draft official submittals (proposed final drafts) prepared by, or on behalf of, Concessionaire responding to such alleged non-compliance; and any and all consent orders or administrative determinations, whether preliminary or finals, issued by such governmental agencies. The City agrees to maintain the confidentiality of the documents produced in accordance with the Subsection to the extent consistent with the City's legal obligations.
- E. Corrective Action by City. If Concessionaire fails to comply with any applicable Environmental Laws or Environmental Permits governing its activities on the Premises, or if Concessionaire fails to conduct necessary

Remediation Work in a timely manner as required under the terms of this Agreement, the City, as required by applicable Environmental Laws and Environmental Permits, in addition to the rights and remedies described elsewhere herein and any other rights and remedies otherwise available to the City, may enter the Premises and take all reasonable and necessary actions to conduct Remediation Work to remove Hazardous Materials or other contaminants and insure such compliance with such Environmental Laws and Environmental Permits. All Remediation Costs incurred by the City shall be timely paid or reimbursed by Concessionaire within thirty (30) calendar days of the City's written notice. Remediation Work, if necessary, shall be performed in accordance with the provisions of Section 1401.C, but only after first having provided notice to Concessionaire of such failure to comply, and thirty (30) days within which Concessionaire may demonstrate why no such alleged failure is present, or to timely remedy such alleged failure that may be present. If Concessionaire's compliance reasonably requires more than thirty (30) calendar days to complete, the City may enter the Premises and take such reasonable and necessary measures to achieve compliance only upon the Concessionaire's failing to timely begin curing such noncompliance within such thirty (30) day period and to continue diligently working to achieve compliance thereafter.

- F. Review of Environmental Documents. At the reasonable request of the City, Concessionaire shall make available for inspection and copying, at reasonable times, any and all non-privileged documents and materials Concessionaire has prepared pursuant to any applicable Environmental Laws or Environmental Permits, or submitted to any governmental agency, which documents and materials relate to environmental issues, Environmental Laws or Environmental Permits and which pertains to the Premises, and which would be discoverable in litigation.
- G. Cumulative Remedies. All remedies of the City as provided herein with regard to environmental pollution, contamination, damage, or any actual or threatened violations of any Environmental Laws or Environmental Permits are deemed to be cumulative in nature. The City's right to indemnification as provided for in this Article XIV shall survive the expiration or early termination of this Agreement.
- H. Pollution Control. In addition to all other requirements of this Agreement, Concessionaire, at its cost, shall manage all its operations at the Premises in compliance with all applicable Environmental Laws, Environmental Permits, and with applicable best management practices outlined and delineated in the Airport's Storm Water Pollution Prevention Plan and Storm Water Management Plan, which shall be provided to Concessionaire at Concessionaire's written request.
- I. Environmental Covenants. So long as they do not materially impact Concessionaire's day-to-day operations at the Premises, Concessionaire will not object to and, if requested by the City, will subordinate any rights it has under this Agreement to an environmental covenant or environmental land use restriction which (i) restricts the use of groundwater underlying the Premises; (ii) limits the use of the Premises to nonresidential uses; and/or (iii) reasonably restricts access to soil underlying the Premises.

#### **ARTICLE XV MISCELLANEOUS PROVISIONS**

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

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

With a copy to:

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

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

EZCART  
c/o Flight Services & Systems, Inc.  
Robert P. Weitzel, President  
6100 Rockside Woods Blvd  
Suite 355  
Independence, OH 44131

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

Section 1502. NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM.

- A. Concessionaire hereto understands and agrees that City in operation and use of Lambert-St. Louis International Airport® will not on the grounds of race, creed, color, religion, sex, age, national origin, ancestry or disability, discriminate or Agreement discrimination against any person or group of persons in a manner prohibited by 49 C.F.R. Part 21. Concessionaire agrees that in performing under this Agreement, neither it nor its personal representatives, successors in interest, and assigns, and anyone under its control will permit discrimination against any employee, worker, or applicant for employment because of race, creed, color, religion, sex, age, national origin, ancestry or disability. Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, age, national origin, ancestry or disability. Such action must include, but shall not be limited to action to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training including apprenticeship.
- B. Concessionaire agrees that in performing under this Agreement, neither it nor anyone under its control will permit discrimination against any employee, worker, or applicant for employment because of race, creed, color, religion, sex, age, national origin, ancestry, or disability. Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, age, national origin, ancestry or disability. Such action must include, but shall not be limited to action to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. Concessionaire will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of Concessionaire state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, age, national origin, ancestry or disability. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". Concessionaire shall not make inquiry in connection with prospective employment, which expresses directly or indirectly any limitation, specification, or discrimination because of race, creed, color, religion, sex, age, national origin, ancestry or disability.
- D. Concessionaire agrees that should it be determined by Concessionaire or City that it will be unable to conform to its approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, it will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency ("CREA") within ten (10) days of such determination, as to the steps to be taken by Concessionaire to achieve the provisions of it program.
- E. Concessionaire will permit reasonable access by City to such persons, reports, and records as are necessary for the purpose of ascertaining compliance with fair employment practices.
- F. Concessionaire further agrees that these clauses (B through E) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Concessionaire in all contracts or agreements it enters into with suppliers of materials or services, contractors and subcontractors, and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.

- G. Whenever Concessionaire is sued by a subcontractor, vendor, individual, group, or association as a result of non-compliance with the clauses (A through F) of these provisions relating to fair employment practices, Concessionaire shall notify the City Counselor in writing of such suit or threatened suit within ten (10) days.
- H. In event of Concessionaire's noncompliance with nondiscrimination clauses of this Agreement, or to furnish information or permit its books, records and account to be inspected within twenty (20) days from date requested, this Agreement may be canceled, terminated or suspended, in whole or in part, and Concessionaire may be declared ineligible for further City contracts for a period of one (1) year by option of City, provided, further, if this Agreement is canceled, terminated or suspended for failure to comply with fair employment practices, Concessionaire shall have no claims for any damages or loss of any kind whatsoever against City.
- I. Concessionaire will establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment and City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.
- J. Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, sex, religion, age or disability be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Concessionaire assures that it will require that its covered suborganizations provide assurances to the Lessor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.
- K. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulation, 49 CFR Part 23. Concessionaire hereby agrees that its Premises shall be posted to such effect as required by such regulation. The Concessionaire or contractor agrees that it will not discriminate against any business owner because of owner's race, creed, color, religion, national origin, ancestry, sex, age or disability in connection with the performance of any concession agreement, management contract, or subcontract, purchase or lease agreement or other agreement covered by 49 CFR 23.
- L. The Concessionaire or contractor agrees to include the above statement in any subsequent concession agreement or contract covered by 49 CFR 23 that it enters into, and causes those businesses to similarly include the statement in further agreements.
- M. Concessionaire shall comply with all applicable nondiscriminatory requirements that may be imposed pursuant to the Federal Aviation Act of 1958, as amended; Title VI of the Civil Rights Act of 1964, as amended; 49 C.F.R. Parts 21, 23, and 26, as said regulations may be amended; and state and local laws.

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

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

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

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

Section 1507. OPERATIONS AND MAINTENANCE OF THE AIRPORT. The City shall at all times operate the Airport properly and in a sound and economical manner; and the City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept with the appurtenances in good repair, working order and condition, and shall from

time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 1523. AMERICANS WITH DISABILITIES ACT (“ADA”). Concessionaire shall be responsible for compliance with the federal ADA, plus any federal, state, or local laws or regulations and City Ordinances pertaining to the disabled individual having access to Concessionaire’s services.

Section 1524. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement. The parties agree that time shall be of the essence in the performance of each and every obligation and condition of this Agreement.

Section 1525. ACKNOWLEDGEMENT OF TERMS AND CONDITIONS. The parties affirm each has full knowledge of the terms, covenants, conditions and requirements contained in this Agreement. As such, the terms of this Agreement shall be fairly construed and the usual rule of construction, if applicable, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed in the interpretation of this Agreement or any amendments, modifications or exhibits thereto.

Section 1526. SECURITY PLAN AND FACILITIES. Concessionaire hereby acknowledges that the City is required by the TSA regulation 1542 to adopt and put into use facilities and procedures designed to prevent and deter persons and vehicles from unauthorized access to the AOA. The City has met said requirements by developing a master security plan for the Airport, and Concessionaire covenants and agrees to be fully bound by and immediately responsive to the requirements of the plan in connection with Concessionaire’s exercise of the privileges granted to Concessionaire hereunder. Concessionaire will, within thirty (30) days of the City’s request, reimburse the City for all fines or penalties imposed upon City by the TSA or the FAA resulting from Concessionaire’s negligence or failure to act in relation to TSA regulation 1542 or any other applicable Airport security regulations.

Section 1527. ENVIRONMENTAL NOISE. Concessionaire shall promptly notify the Director of any change in the nature of the Concessionaire’s operations on the Premises that will materially and/or substantially change the Concessionaire’s or City’s potential obligations or liabilities under the environmental laws; or the commencement by any governmental entity of a formal administrative proceeding before an administrative law judge or a civil or criminal action before a judicial tribunal alleging a violation of any environmental law in connection with Concessionaire’s operations on the Premises.

Section 1528. LIVING WAGE COMPLIANCE PROVISIONS. This Agreement is subject to the St. Louis Living Wage Ordinance No. 65597 (“**Ordinance**”) and the “**Regulations**” associated therewith, as may be amended from time to time. Copies of Ordinance and Regulations may be obtained by contacting Assistant Airport Director, M/W/DBE Certification and Compliance Office, P. O. Box 10212, St. Louis, Missouri, 63145-0212 and are incorporated herein by reference. The Ordinance and Regulations require the following compliance measures, and Concessionaire hereby warrants, represents, stipulates and agrees to comply with these measures (unless expressly exempt as provided for in the Ordinance and Regulations):

- A. Minimum Compensation: Concessionaire hereby agrees to pay an initial hourly wage to each employee performing services related to this Agreement in an amount no less than the amount stated on the attached Living Wage Bulletin (**Exhibit “B”**), which is incorporated herein. The initial rate shall be adjusted each year no later than April 1, and Concessionaire hereby agrees to adjust the initial hourly rate to the adjusted rate specified in the Living Wage Bulletin at the time the Living Wage Bulletin is issued.
- B. Notification: Concessionaire shall provide the Living Wage Bulletin to all employees, together with a “Notice of Coverage”, in English, Spanish and other languages spoken by a significant number of Concessionaire’s employees within thirty (30) days of Agreement execution for existing employees and within thirty (30) days of employment for new employees.
- C. Posting: Concessionaire shall post the Living Wage Bulletin, together with a “Notice of Coverage”, in English,



\_\_\_\_\_  
 City Counselor  
 City of St. Louis

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Comptroller  
 City of St. Louis

\_\_\_\_\_  
 Date

ATTESTED TO BY:

\_\_\_\_\_  
 Register, City of St. Louis

\_\_\_\_\_  
 Date

**EXHIBIT "A"**

**PREMISES  
 (To follow)**

**EXHIBIT "A-1"**

**Office Space  
 (To follow)**

**EXHIBIT "B"**

**LIVING WAGE BULLETIN**

---

**ST. LOUIS LIVING WAGE ORDINANCE**

---

**LIVING WAGE ADJUSTMENT BULLETIN**

---

**NOTICE OF ST. LOUIS LIVING WAGE RATES  
 EFFECTIVE APRIL 1, 2011**

In accordance with Ordinance No. 65597, the St. Louis Living Wage Ordinance ("Ordinance") and the Regulations associated therewith, the City Compliance Official for the City of St. Louis has determined that the following living wage rates are now in effect for employees of covered contracts:

- 1) Where health benefits as defined in the Ordinance are provided to the employee, the living wage rate is **\$11.58** per hour (130% of the federal poverty level income guideline for a family of three); and
- 2) Where health benefits as defined in the Ordinance are **not** provided to the employee, the living wage rate is **\$15.08** per hour (130% of the federal poverty level income guideline for a family of three, plus fringe benefit rates as defined in the Ordinance).
- 3) Wages required under Chapter 6.20 of the Revised Code of the City of St. Louis: **\$3.50** per hour.

These rates are based upon federal poverty level income guidelines as defined in the Ordinance and these rates are effective as of **April 1, 2011**. These rates will be further adjusted periodically when the federal poverty level income guideline is adjusted by the U.S. Department of Health and Human Services or pursuant to Chapter 6.20 of the Revised Code of the City of St. Louis.

The Ordinance applies to employers who are covered by the Ordinance as defined in the Ordinance, where the contract or grant is entered into or renewed after the effective date of the Ordinance, which is November 3, 2002. A copy of the Ordinance may be viewed online at <http://www.mwdbe.org/livingwage> or obtained from:

City Compliance Official  
 Lambert-St. Louis International Airport  
 Certification and Compliance Office  
 P.O. Box 10212  
 St. Louis, Mo 63145  
 C314) 426-8111

Dated: January 31, 2011

**Approved: November 18, 2011**

**ORDINANCE #69041**  
**Board Bill No. 174**

An ordinance authorizing and directing the Mayor and the Comptroller of the City of St. Louis to enter into a Second Memorandum of Agreement (“Second Memorandum”) on behalf of the City of St. Louis between the City of St. Louis (“City”) and the Bi-State Development Agency of the Missouri-Illinois Metropolitan District (“Agency”); authorizing the issuance of City of St. Louis Department of Streets’ permits, which provide the Agency mooring privileges on the improved wharf for one (1) year periods, commencing on the 1st day of January 2012 and ending on the 31st day of December 2015, with mutual options for three, one (1) year extensions; authorizing the execution of documents necessary to comply with the intent of this Ordinance; and containing a severability clause.

**WHEREAS**, since 2001, the Agency has operated the M/V Becky Thatcher and the M/V Tom Sawyer for year-round cruise operations (collectively the “Riverboats”) pursuant to a lease agreement dated August 7, 1986 (the “Lease Agreement”), which was originally entered into between the James B. Eads Corporation and the City, providing for mooring privileges upon that portion of the wharf of the City located three hundred feet (300’) starting at a point approximately one thousand four hundred feet (1,400’) north of the Poplar Street Bridge (approximately Station 1+20.68 on the Floodwall) and to extend three hundred feet (300’) northward (the “Riverboat Mooring Site”); and

**WHEREAS**, on June 29, 2005, the Department of Streets issued to the Agency a permit for temporary mooring (“Dock Barge Permit”) on the wharf for a dock barge (“Dock Barge”), adjacent to the Riverboat Mooring Site, for the purpose of support of the Riverboats used for year-round cruise operations, in addition to an office, restrooms, additional seating and other facilities for the Agency’s St. Louis Riverfront activities, starting at a point approximately one thousand three hundred feet (1,300’) north of the Poplar Street Bridge and to extend northward one hundred feet (100’) (“Dock Barge Mooring Site”); and

**WHEREAS**, on June 29, 2005, the Department of Streets issued to the Agency a permit for temporary mooring (“Heliport Permit”) on the wharf of the heliport barge (“Heliport Barge”) to be used for the operation of scenic helicopter tours and public use on that portion of the wharf, beginning at a point parallel with fifty feet (50’) north of the north leg of the Gateway Arch and to extend northward two hundred feet (200’) (the “Heliport Site”); and

**WHEREAS**, on May 15, 2006, the City and the Agency entered into a Memorandum of Agreement (“MOA”), authorizing the Agency to temporarily place a Heliport Barge on the Heliport Site and a Dock Barge on the Dock Barge Mooring Site ; and

**WHEREAS**, on February 16, 2007, the MOA was amended by way of the Amendment to Memorandum of Agreement (“First Amendment”), which adjusted the operating hours at the Heliport Site, allowed for scenic tours to start March 1, annually and amended the notice section; and

**WHEREAS**, on April 14, 2008, the MOA was amended a second time by way of the Second Amendment to Memorandum of Agreement (“Second Amendment”), which extended the renewal provisions for the Dock Barge Permit and the Heliport Permit for a term or terms ending on September 30, 2010; and

**WHEREAS**, on September 30, 2010, the MOA was amended a third time by way of the Third Amendment to Memorandum of Agreement (“Third Amendment”), which extended the renewal provisions for the Dock Barge Permit and the Heliport Permit for a term or terms ending on August 6, 2011, and allowed for scenic tours to continue until November 30, annually; and

**WHEREAS**, the original term of the Lease Agreement extended until August 6, 1991, with additional five-year options arising in 1996, 2001 and 2006 (which have been exercised), and terminated on August 6, 2011; and

**WHEREAS**, on July 21, 2011, the Department of Streets issued permits for temporary mooring of the Riverboats, Dock Barge and Heliport Barge effective August 1, 2011, through December 31, 2011; and

**WHEREAS**, the U.S. Department of the Interior, acting by and through the National Park Service (“NPS”) is currently engaged in the development of a long-term plan for the Jefferson National Expansion Memorial Park (“Park”) including but not limited to the implementation of the Jefferson National Expansion Memorial Final General Management Plan/ Environmental Impact Statement (“Plan”); and

**WHEREAS**, the Plan called for an international design competition to connect and unify the streetscapes, roadways, and riverscape of the Park that are adjacent to portions of downtown St. Louis, the Mississippi River, and the riverfront in the State of Illinois facing the Gateway Arch; and

**WHEREAS**, it is not yet certain whether implementation of the Plan will include the City's development of the wharf ("Riverfront Plan") in such a manner that requires use of the Riverboat Mooring Site, the Dock Barge Mooring Site, or the Heliport Site for purposes other than the Agency's uses; and

**WHEREAS**, the City wishes to continue to temporarily allow the Agency to locate the Riverboats on the Riverboat Mooring Site, the Dock Barge on the Dock Barge Mooring Site, and the Heliport Barge on the Heliport Site pursuant to temporary annual permits subject to the terms and conditions of this Second Memorandum (collectively, the Riverboat Mooring Site, the Dock Barge Mooring Site and the Heliport Site are the "Agency Mooring Sites"); and

**WHEREAS**, the Port Commission of the City of St. Louis and the Board of Public Service of the City of St. Louis approved the Second Memorandum on September 13, 2011, and September 20, 2011, respectively; and

**WHEREAS**, pursuant to Ordinance 56707, as codified in Section 21.20.030 of the Revised Code of the City of St. Louis, the Department of Streets has the authority to issue temporary permits for time periods of up to one calendar year for portions of the City wharf and, pursuant to said authority, shall continue to issue the Riverboat Permit, Dock Barge Permit and Heliport Permit (collectively "Agency Permits") for time periods of up to one calendar year until December 31, 2015; and

**WHEREAS**, the Board of Aldermen finds that the provisions of the Second Memorandum, attached as Exhibit 1 hereto (including its attached Exhibits A, B, and C), and incorporated herein by reference as if fully set out, are in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with public purposes.

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

**SECTION ONE.** Findings. The Board of Aldermen hereby adopts the foregoing recitals as findings.

**SECTION TWO.** Authorization of Documents. The City is hereby authorized to enter into the Second Memorandum between the City and the Agency, in substantially the form attached hereto as Exhibit 1 (including its attached Exhibits A, B, and C) and hereby made a part of this Ordinance, with such changes therein as shall be approved by the Mayor and Comptroller, upon the advice of the City Counselor of the City of St. Louis executing such documents, such officers signatures thereon being conclusive evidence of their approval thereof.

**SECTION THREE.** Further Authority. The City shall, and the officers, aldermen, officials, agents and employees of the City are hereby authorized and directed to take such further action, and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, and to carry out, comply with and perform the duties of the City with respect to the Second Memorandum.

**SECTION FOUR.** Severability. If any provision of this Ordinance shall be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because of conflicts with any provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

**Approved: November 28, 2011**