

ORDINANCE #67787
Board Bill No. 376

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 East Terminal Agency Agreement AL-446 with a term ending December 31, 2010 (the "Agreement") at Lambert-St. Louis International Airport® (the "Airport") between the City and Airport Terminal Services Inc, a Missouri corporation (the "Agent"), granting to the Agent the right, license, and privilege to act as the City's agent in the management of gate assignments and scheduling within the Premises (as defined in Section 201 of the Agreement), and the right to provide certain other services to users of the Airport subject to the terms, covenants, and conditions of the Agreement; the Agreement, which was approved by the City's Airport Commission and the City's Board of Estimate and Apportionment and is attached hereto as **ATTACHMENT "1"** and is incorporated herein, requires the Agent to provide certain services and to make certain payments to the City for the rights and privileges therein granted by the City; directing that the Agreement be in compliance with all applicable minority and women business enterprise requirements and in compliance with all applicable federal, state, and local laws, ordinances, regulations, court decisions, and executive orders relating to equal employment opportunity; and containing a severability clause; and an emergency clause.

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

SECTION ONE. The Director of Airports and the Comptroller of the City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City the East Terminal Agency Agreement AL-446 with a term ending December 31, 2010 (the "Agreement") at Lambert-St. Louis International Airport® (the "Airport") between the City and Airport Terminal Services Inc, a Missouri corporation (the "Agent"), granting to the Agent the right, license, and privilege to act as the City's agent in the management of gate assignments and scheduling within the Premises (as defined in Section 201 of the Agreement), and the right to provide certain other services to users of the Airport subject to the terms, covenants, and conditions of the Agreement; the Agreement, which was approved by the City's Airport Commission and the City's Board of Estimate and Apportionment is to read in words and figures as substantially set out in **ATTACHMENT "1"** which is attached hereto and made a part hereof.

SECTION TWO. This Agreement shall be in compliance with all applicable minority and women business enterprise requirements and in compliance with all applicable federal, state, and local laws, ordinances, regulations, court decisions, and executive orders relating to equal employment opportunity.

SECTION THREE. The sections, conditions, and 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 the court of competent jurisdiction, such holding shall not invalidate the remaining sections, conditions, or provisions of this Ordinance.

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

ATTACHMENT "1"

LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT®



**AIRPORT TERMINAL SERVICES
EAST TERMINAL AGENCY AGREEMENT
NO. AL-446**

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AIRPORT NUMBER AL-446

**LAMBERT ST. LOUIS INTERNATIONAL AIRPORT®
AGENCY AGREEMENT
EAST TERMINAL**

THIS AGENCY AGREEMENT, made and entered into as of the day of , 2008 ("**Agreement**"), by and between the CITY OF ST. LOUIS, a municipal corporation of the State of Missouri ("**City**") and Airport Terminal Services, Inc. ("**Agent**") a corporation organized and existing under the laws of the State of Missouri.

WITNESSETH, That:

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

WHEREAS, City requires an Agent to provide services to users of the Airport.

WHEREAS, City has determined that it is in the public interest for the following objectives to be met in the provision of services to users of the East Terminal:

- provide a first class, full management and service operation, that meets Airport user needs and adds value to other

Airport and airline services, operated by well trained, efficient, courteous and pleasant staff;

- provide a high level of service at prices that are attractive to airport users;
- be responsive to the policy of the FAA and City goals for Minority and Woman-owned Business Enterprise (“M/WBE”) participation.

WHEREAS, City has advertised and received competitive Bids for the right to manage and operate as the East Terminal Agent at the Airport, and by this process City has determined that Agent is a qualified operator of this service and has submitted a Bid deemed advantageous to the public and City;

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

ARTICLE I DEFINITIONS

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

"Agent" as stated in the preamble hereof.

"Agreement" shall mean this document and any subsequent amendments thereto, duly approved by City and Agent.

"Aircraft Parking Positions" means the areas on the aircraft parking apron adjacent to Gates D-32, D-34, D-36, E-29, E-31, and E-33, as designated by City and shown on the attached Exhibit “A”.

"Airport" as stated in the preamble hereof. “City” and “Airport” are used interchangeably throughout this Agreement.

"Airport Commission" means the now existing Airport Commission of the City created by §18.08.030 of the Revised Code of the City of St. Louis, or such officer, board or commission who or which hereafter may be legally given the powers and duties given to the Airport Commission in existence on the date hereof.

"Airport Director" or **"Director"** means the Airport Director of the City or the person performing the functions of that office, as authorized or designated by the City’s Mayor, or that person authorized by the Airport Director to act for or on behalf of the Airport Director with respect to any particular matter under this Agreement.

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

"City" as stated in the preamble hereof. “City” and “Airport” are used interchangeably throughout this Agreement.

"City Gates" means the holdrooms and associated passenger loading bridges at Gates D-32, D-34, D-36, E-29, E-31, and E-33.

"Common Use Space" means the designated tug drives within the baggage make-up area, and the baggage claim area and related facilities and appurtenances of the East Terminal that Agent uses on a common basis with other tenants assigned to that space, as depicted on Exhibit B.

"Contract Year" means each of the three twelve-month periods of this Agreement, commencing on the first day of the term of the Agreement, as specified in Section 401, and two option years if applicable.

"Environmental Laws" means all applicable federal, state, and local statutes, ordinances, regulations, rules, laws, permits, permit conditions, and orders relating to the generation, use, storage, transportation, or disposal of Hazardous Materials, including, without limitation, the Clean Air Act, 42 U.S.C. §7401 et seq.; the Clean Water Act, 33 U.S.C. §1251 et seq., and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 et seq.; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. §1401 et seq.; the Noise Control Act, 42 U.S.C. §4901 et seq.; the Occupational Safety and Health Act,

29 U.S.C. §651 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., as amended by the Hazardous and Solid Waste, Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right to Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Hazardous Material Transportation Act, 49 U.S.C. §9601 et seq.; the Toxic Substance Control Act, 15 U.S.C. §2601 et seq.; the Atomic Energy Act, 42 U.S.C. §2011 et seq.; and the Nuclear Waste Policy Act of 1982, U.S.C. §1010 et seq.

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

"Event of Default" means an Event of Default as defined in Section 1101.

"Fiscal Year" or **"FY"** refers to the City's fiscal year and means the twelve-month period commencing July 1 and extending through June 30 of the following calendar year, or such other fiscal year as the City may establish by ordinance.

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

"Federal Inspection Service Area" refers to the area used to process passengers whose flight originates in a foreign country and who have not been cleared at another port.

"Gross Revenue" shall mean the gross receipts from all sales made and services performed for cash or credit resulting from this Agreement, regardless of the point of origin or delivery of the order, whether performed by Agent, its subcontractors, subsidiaries, associated companies or otherwise, regardless of when or whether paid or not. The following may be excluded or deducted, as the case may be, from Gross Revenues:

- federal, state, county and municipal sales taxes or other sales taxes separately stated and collected from customers;
- fees collected for City (see Sections 506. Facility Use Fee, 507. Collection of Fees, and 509. Fuel Flowage Fee);
- cash or credit refunds given to customers for services purchased at the Airport;
- the value of any supplies or equipment exchanged or transferred from or to other locations of Agent's business not made for the purpose of avoiding a sale at the Airport;
- receipts in the form of refunds from or the value of merchandise, supplies or equipment returned to shippers, suppliers or manufacturers; the sale or trade-in value of any equipment or fixtures approved for removal by the Airport Director and owned by Agent.

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

"Minimum Guarantee" shall mean Agent's minimum annual fee.

"Notice" means a communication between the parties to this Agreement performed in accordance with the requirements of Section 1301 of this Agreement.

"Percentage Fee" shall mean the product of (i) Gross Revenue multiplied by (ii) the percentage as set out in Article V.

"Premises" shall mean a location or locations described in Section 201 that has or have been designated by City for the sale of Agent's services, conduct of business and for other uses herein specifically provided for.

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

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

"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.

"Term" means the effective period of this Agreement, as delineated in Section 401, including the two options years, if applicable.

"Transient Air Carrier" means any air carrier operating at Lambert-St. Louis International Airport without entering into an Airport Use and Lease Agreement or an Airport Operating Agreement and Terminal Building Space Permit with the City.

"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 Agent to use the Premises as described on **Exhibit "A"** as "City Provided Premises" and "Common Use Space", and to lease the Premises as described on Exhibit "A" as "Agent Leased Premises" attached hereto and made a part hereof. The rights granted in Section 301 hereof may be exercised only on the Premises.

Agent accepts the Premises **"AS IS"** with no warranties or representations of any kind, expressed or implied, either oral or written, made by the City or any of its agents or representatives.

City may relocate, add, substitute or delete portions of the Premises at its sole option as may be required in the opinion of the Director. Such changes will be made at the sole expense of Agent and City will not be liable or responsible for any loss whatsoever including without limitation any inconvenience or loss by Agent of work time, profit or business resulting from such changes, including actual, incidental, consequential, or special damages. If space changes are made consistent with the provisions of this Agreement, revised exhibits may be substituted for those herein without the necessity for amendment of this Agreement; which substitution may be made by Notice to Agent from the City.

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

ARTICLE III RIGHTS

Section 301. Rights. City hereby grants to Agent, subject to all the terms, covenants and conditions of this Agreement, the exclusive right, license and privilege to act as the City's Agent in management of gate assignment and scheduling within the Premises, and providing all services to Transient Air Carriers within the Premises, and the non-exclusive right to provide services to scheduled, non-scheduled, and charter carriers holding an Airport Use and Lease Agreement or and Airport Operating Agreement and Terminal Building Space Permit as requested by carrier within the Premises, and on a limited basis, with advance authorization of the Director, at certain other locations on the Airport. Notwithstanding the foregoing, carriers with an Airport Use and Lease Agreement or an Airport Operating Agreement and Terminal Building Space Permit have the option of contracting for services with the Agent for all

or a portion of services, contracting with a third party operator (with an agreement approved by the City) for all or a portion of services, or self-handling for all or a portion of services. Agent is not granted the right to offer for sale any other services or products on the Premises.

Section 302. Limitation of Rights. No other services or products, other than those specifically mentioned in Section 301 shall be offered for sale by Agent. Agent will cease and desist from any further sale thereof immediately and not later than upon receipt of written Notice from the Director.

This Agreement grants no real or implied rights to any privileges on the Airport other than in the Premises as expressly provided for herein.

**ARTICLE IV
TERM**

Section 401. Term. The initial Term of this Agreement shall be for a period of three (3) years commencing on January 1, 2008 and expiring on December 31, 2010 unless sooner terminated in accordance with other provisions of this Agreement.

City, in its sole and absolute discretion, may renew this Agreement upon all the same terms and conditions for two (2) additional one (1) year terms. The renewal term(s) shall be exercised by written Notice to Agent not later than six (6) months prior to the last day of the initial or subsequent renewal term.

Section 402. Holding Over. If Agent holds over after the expiration or early termination of this Agreement, the resulting tenancy shall be for an indefinite period of time on a month-to-month basis, during which tenancy the parties to this Agreement shall continue to adhere to all covenants, conditions and provisions of this Agreement. Acceptance by the City of payment of fees and payments after expiration or early termination of this Agreement shall be deemed to be payment on account, and shall not operate to waive or modify any provision of this Section.

Section 403. Surrender of Possession. No notice to quit possession at the expiration date of the Term of this Agreement, or at the earlier Termination hereof, shall be necessary. Agent warrants, 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, and in accordance with Article VII, will restore to original condition, reasonable wear and tear, acts of God, and other casualties excepted, and City shall have the right to take possession of the Premises with or without due process of law.

**ARTICLE V
FEES AND PAYMENT**

Section 501. General. Agent, for and in consideration of the rights and privileges granted herein, agrees to pay the fees set forth in this Agreement, without demand during the Term of this Agreement.

Section 502. Agency Fees. Agent agrees to pay, for each Contract Year, a sum equal to the greater of the Minimum Guarantee or the Gross Revenue Percentage Fee (Gross Revenue multiplied by the Percentage set out below).

<u>Year</u>	<u>Minimum Guarantee</u>	<u>Percentage</u>
1	\$115,000	10%
2	\$115,000	10%
3	\$115,000	10%
Option Year 4	\$118,000	10%
Option Year 5	\$118,000	10%

Section 503. Payment of Agency Fees. Payments shall consist of (a) an amount equal to 1/12th of the Minimum Guarantee, to be paid in advance on or before the first day of each month and (b) an amount equal to that portion of the Percentage Fee for the preceding month that is in excess of 1/12th the Minimum Guarantee, to be paid on or before the 15th day of the second and each succeeding month.

Section 504. Rent Payment. Agent shall pay in advance to City the then-current Non-Signatory Rental Rate for all Agent Leased Space as shown on Exhibit "A". All payments shall be paid on or before the first day of each month of the term of this Agreement.

Rental Rates will be subject to revision each Fiscal Year with an effective date of July 1.

Section 505. Agency Fees Reports.

- A. Agent shall submit to City by the 15th day of the second and each succeeding month of the Term hereof, two copies of an accurate statement of Gross Revenue for the preceding month and simultaneously therewith will pay to City an amount equal to the aforesaid percent of Gross Revenue which exceeds 1/12 of the Minimum Guarantee. This statement must separately state Gross Revenue for services, be certified as accurate by an officer of Agent and be in such form and of such content as required by the Director. The final statement of Gross Revenue will be due by the 15th day of the month following expiration of this Agreement. City reserves the right to use these statements of Gross Revenue as a source of information to bidders in a future solicitation for bids for the services contemplated herein.
- B. Agent shall submit an audited report of Gross Revenue within ninety (90) days following the conclusion of each Contract Year. These audited reports must be prepared and certified by an independent Certified Public Accountant. The audited reports shall at a minimum certify the accuracy of (i) reported total accumulated Gross Revenue, (ii) the calculation of the total amount payable to City based upon accumulated Gross Revenue for the Contract Year and the Percentage Fee, and (iii) the aggregate amount attributable to M/WBE participants, if any. The audited reports shall also include a schedule showing the total of actual payments to City during the Contract Year and shall state an opinion as to the correctness of the computation of Gross Revenue without exception.

If through such audited report, it is established that additional fees are due City, Agent shall pay such additional fees to City not later than fifteen (15) days after completion of such statement and receipt of written notice from the Director. If it is established that Agent has overpaid City, then such overpayment from Agent shall be credited to the fees next thereafter due from Agent or paid to Agent after the last Contract Year.

- C. Within thirty (30) days after the close of each Contract Year, Agent shall provide City with an estimate of projected monthly Gross Revenue for the subsequent Contract Year (except the last Contract Year).
- D. Agent shall keep such records (copies of subcontracts, paid invoices, documentation of correspondence) as are necessary for the Airport Authority to determine compliance with the M/WBE participation requirement. Agent shall provide the Airport Authority with reasonable access to records and documents. Airport Authority reserves the right to investigate, monitor and/or review records for compliance. The Agent shall submit monthly M/WBE activity reports to the Airport Authority.

Section 506. Facility Use Fee. Agent shall collect and remit to City a “**Facility Use Fee**” from each aircraft operator of scheduled, non-scheduled, charter or other passenger aircraft serviced by Agent. Such Facility Use Fee shall be the greater of 1) a rate per enplaned and deplaned passenger, which is equal to, or less than, the average number of monthly enplaned and deplaned passengers, handled by Agent, divided by the average monthly expense to City for providing and maintaining the Premises, as computed by City plus fifteen percent (15%) or 2) a minimum of \$2 00.00 per aircraft. The minimum per aircraft rate shall not apply to those aircraft operators operating passenger aircraft with standard passenger seating of fifty (50) or less.

The Facility Use Fee for the period January 1, 2008 through June 30, 2008 is \$2.50 for each enplaned and deplaned passenger. After June 30, 2008 the Facility Use Fee will be subject to revision each Fiscal Year with an effective date of July 1. Notwithstanding the foregoing, the Airport Director, at his/her sole discretion, may revise the Facility Use Fee as deemed necessary. The City will provide Notice to Agent 30 days prior to such revision.

The Facility Use Fee will be paid monthly on or before the 20th day of the second and each succeeding month of the Term hereof, in an amount equal to the actual number of enplaned and deplaned passengers multiplied by the rate per enplaned and deplaned passengers or, if applicable, the minimum amount per aircraft type, for the preceding month. The payment thereon for the final month of the Term hereof will be submitted on the 20th day of the next succeeding month.

If so notified by the Director in writing, Agent will withhold collection of certain fees, including the Facility Use Fee, from aircraft operators as designated by the Director, or, Director may designate such funds be paid by City.

Section 507. Collection of Fees. Agent will collect and remit to City the following fees from each aircraft operator of scheduled, non-scheduled, charter or other passenger aircraft serviced by Agent:

- A. Landing Fee;
- B. Aircraft Parking Fee;
- C. Federal Inspection Service Area Fee;
- D. Fuel Flowage Fee;
- E. Other fees established from time to time by City.

All fees listed above will be collected from those aircraft operators who are not listed on the most current list issued by City, of aircraft operators having an agreement with City for use of the Airport and from aircraft operators which City has designated to be on a cash basis. Agent shall not be responsible for the collection of the fees listed above for services handled by third party or self handled by an airline.

Agent may retain fifteen percent (15%) of the fees collected under this Section 507. Agent will remit the balance of the fees to the City on or before the 15th day of the second and each succeeding month of the Term hereof. The payment thereon for the final month of the Term hereof will be submitted on the 15th day of the next succeeding month. If Agent fails to collect the fees from these categories of aircraft operators, then Agent will pay the fees from its own resources.

Section 508. Per Turn Gate Fee. Agent will collect a “**Per Turn Gate Fee**” of \$200.00 from each aircraft operator of scheduled, non-scheduled, charter or other passenger aircraft arriving at the designated City Gates, and handled by a party other than Agent. The Per Turn Gate Fee shall be deemed and considered Gross Revenue.

Section 509. Fuel Flowage Fee. The “**Fuel Flowage Fee**”, collected by the Agent and remitted to City, will be for each gallon of aviation fuel, as measured by an acceptable metering system, delivered into the aircraft of aircraft operators who are not listed on the most current list issued by City, of aircraft operators having an agreement with City for use of the Airport.

Section 510. Unpaid Fees. All unpaid fee payments due City hereunder are subject to a service charge of one and one-half percent (1½%) per month if same is not paid and received by City on or before the 15th day of the month in which said payments are due, and Agent agrees that it will pay and discharge all costs and expenses including attorneys’ fees, court costs and litigation expenses or other related costs incurred, or expended by City in collection of said delinquent amounts due including services charges.

Section 511. Performance and Payment Bond. Agent agrees to furnish a bond, or other form of security, in a form acceptable to City in the principal amount of \$150,000.00. Such bond, or other form of security, shall remain in full force and effect throughout the term of this Agreement and shall extend sixty (60) days following the termination or early termination of this Agreement. In the event that said bond should expire prior to the expiration of this Agreement, Agent covenants and agrees to provide City a renewal bond sixty (60) days prior to the expiration date of the expiring bond. Such bond will guarantee the payment of all Fees and performance of all other terms, covenants and conditions of this Agreement. The bond will be in the form of a standard commercial guaranty bond running to City, written by a surety company authorized to do business in Missouri and (1) having a "Best" key rating of not less than A and with a "Best" Financial Size Category of not less than Class VIII and (2) shown on the most recent U.S. Treasury Circular No. 570 as having an "underwriting limitation" of at least the amount of the penal sum of the bond. The bond will be kept in full force and effect during the Term hereof. City may agree to another form of security deposit which will provide equal protection of City's interest. If City cashes the bond or other form of security, Agent agrees to furnish a replacement bond or other form of security in the same principal amount within fifteen (15) days.

Section 512. Prompt Payment of Taxes and Fees. Agent warrants, covenants and agrees to pay promptly all lawful general taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to acquire and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport, and further warrants, covenants and agrees not to permit any of said taxes, payments, assessments, fees and charges to become delinquent.

Section 513. Accounting Records. Agent will during the Term hereof make available in the St. Louis area true, accurate, complete and auditable records of all business conducted by it at the Airport. Agent will make same records available in the St. Louis area for one year following the expiration or early Termination of this Agreement. These records will be accessible during usual business hours to City or its duly appointed agents or auditors.

Section 514. Additional Fees and Charges. Agent shall pay additional fees and charges under the following conditions:

- A. If City has paid any sum or sums or has incurred any obligation or expense for which Agent has agreed to pay or reimburse City; or

- B. If City is required or elects to pay any sum or sums or incur any obligations or expense because of the failure, neglect or refusal of Agent to perform or fulfill any of the terms, covenants or conditions of this Agreement and City has provided Agent with thirty (30) days written notification of such failure, neglect or refusal and Agent has failed to cure or commence and diligently pursue cure of such failure, neglect or refusal within such thirty (30) day period.

Such payments will 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 and charges thereafter due hereunder. Each and every part of such payment will be recoverable by City in the same manner and with like remedies as if it were originally a part of the basic fees and charges as set forth herein.

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

Section 515. Notice, Place and Manner of Payment. Payments shall be made at the Office of the Director at the address as set forth in Section 1301 below, or at such other place in the City of St. Louis, Missouri as City may hereafter notify Agent in writing and shall be made in legal tender of the United States.

ARTICLE VI AGENT'S OPERATIONS

Section 601. Standards of Service. Agent warrants, covenants and agrees to meet City's objectives as set out in the preamble hereof. Agent shall furnish a first-class, full service operation serving the needs of users of the Airport, and offer high quality, prompt and efficient services that are adequate to meet all reasonable demands thereof at the Airport on a fair, equal and nondiscriminatory basis to all categories of users and in a manner that will reflect credit upon Agent and City. Agent shall provide quality services and products and shall equip, organize, put into service and manage efficiently the East Terminal operation.

Section 602. Hours of Operation. The minimum hours of operation for serving air carriers and the public shall be 24 hours, every day. Agent may not change the hours of operation without written application to and the written approval of the Director. The Director may require Agent to change its hours of operation to reflect changing operational circumstances at the Airport.

Section 603. Pricing. Agent will charge fair, reasonable and nondiscriminatory prices on a basis substantially similar to the prices charged for similar services at other major Airports.

Section 604. Promotion and Marketing. Agent covenants that it shall take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it hereunder. Agent shall not divert or cause or allow any business to be diverted from the Airport by referral or any other method.

Section 605. Personnel.

- A. Agent shall require its employees to wear appropriate uniforms and badges to indicate the fact and nature of their employment.

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

- B. Agent shall provide staff in adequate numbers to provide a high level of service.

- C. Agent shall fully comply with all Federal Aviation Administration ("FAA") regulations including security requirements, airport rules and regulations and airport security plan. Agent's 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").

Agent shall not do or permit its agents, employees, and its contractors or suppliers while such contractors or suppliers are providing services to Agent, to do anything at the Agent that would be in conflict with or violate the requirements of any federal, state, or local law, regulation or security directive regarding airport security, as they may be amended from time to time, or the Airport Security Program.

Agent shall be responsible for obtaining and coordinating any security badging, vehicle decals, and/or any other actions required to ensure that Agent's agents, employees, contractors, or suppliers are in compliance with the City's security plan, and any federal, state, or local law, regulation and security directive regarding airport security, as they may be amended from time to time. Agent shall be responsible for all costs associated with obtaining such badge and/or access privileges.

Agent understands and agrees that fines and/or penalties may be assessed against the City by the Transportation Security Administration for Agent's noncompliance with the provisions of applicable Transportation Security Administration or other applicable law or regulation and hereby warrants and agrees to promptly (within 30 days of Notice by the City) reimburse the City for said fines and/or penalties.

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

Section 607. Required Services. Agent will be prepared to provide services and sales to companies operating aircraft at the Airport which are necessary for the operation of such aircraft. The services will include but are not limited to:

- A. Gate Scheduling and Use;
- B. Terminal Security;
- C. Aircraft ground handling;
- D. Aircraft fueling;
- E. Transportation of passengers between the building and aircraft;
- F. Aircraft deicing;
- G. Removal of wastes from aircraft;
- H. Baggage handling between the building and aircraft;
- I. Interlining of baggage;
- J. Ticketing of passengers;
- K. Limited aircraft maintenance;
- L. Skycap services.

Prior to commencement of this Agreement, Agent will submit in writing to City its schedule of fees and charges for provided services and obtain written approval of the Director. If at any time during the Term of this Agreement Agent wants to change the fees and charges for provided services, Agent will obtain written approval of the Director, which shall not be unreasonably withheld, prior to implementation of those changes.

Agent shall provide no services nor sell any products, other than those listed above, to airline passengers or the general public without the prior written approval of the Director

Section 608. Equipment. Agent will have under its control sufficient equipment to provide the services required in Section 607 to all sizes of commercial aircraft in use by airlines carrying passengers and in sufficient quantity to provide those services to the number of aircraft for which Agent has been assigned parking positions. Agent will submit within sixty (60) days of the start of each contract year a list of all equipment under its control.

Section 609. Aircraft Parking Positions. Agent is hereby permitted the preferential use of the Aircraft Parking Positions shown on Exhibit "A" attached hereto and made a part hereof only for the provision of the services required by Section 607 above. The Aircraft Parking Positions may be changed, at any time, by the Director sending Notice to Agent.

Upon prior written notice to Agent, Director may direct Agent to temporarily release all or part of the Aircraft Parking Positions to City. Director may also direct Agent to accommodate one or more aircraft in the Aircraft Parking Positions on a temporary basis.

Agent will not charge any aircraft operator for the right to park in the Aircraft Parking Positions.

Section 610. Passenger Loading Bridges and Baggage Conveyor System/Carousel. City hereby permits Agent, in conjunction with other service providers authorized by City, use of both the outbound baggage conveyor system, the baggage conveyor system/carousel associated with the Federal Inspection Services Area, and five City owned passenger loading bridges at Gates D32, D34, E29, E31 and E33, to provide services required by Section 607 above. Agent will submit within sixty (60) days of the start of each Contract Year a maintenance schedule for the City's passenger loading bridges for that contract year. Agent will report to the Airport at the close of each contract year of any repair and maintenance completed on the City's passenger loading bridges and the costs expended for that repair and maintenance. Agent will pay all costs of operating, repairing and maintaining the City's passenger loading bridges. Security requirements at the City's passenger loading bridges will be the responsibility of Agent.

Section 611. Fueling. Agent has the non-exclusive right to fuel aircraft within the confines of the Aircraft Parking Positions and the non-exclusive right to fuel aircraft, with advance authorization of the Director, at certain other locations on the Airport, with the exception of aircraft owned and operated by a signatory airline. If requested, Agent must fuel aircraft of signatory airline(s) at the Aircraft Parking Positions or, with advance authorization of the Director, at certain other locations on the Airport. Whenever possible, Agent will use City's in-pavement hydrant system. Agent will pay to City's fueling system operator a mutually agreed upon through-put fee. Agent may add this through-put fee to its charges to airlines using its fueling services. Agent may add a reasonable fee for its own services in fueling aircraft. Prior to the commencement of this Agreement, agent will submit, in writing, to City its schedule of fees and charges for fueling services and obtain written approval of the Director. If at any time during the Term of this Agreement Agent wants to change the fees and charges for fueling services, Agent will submit, in writing, to City any changes to those fees and charges, and obtain the written approval of the Director, prior to implementation of changes.

Section 612. Use of the Federal Inspection Service Area. Agent may be allowed use of the Federal Inspection Service Area for only those purposes authorized by the Director in writing.

Section 613. Handling Agreements. Agent will enter into handling agreements with all air carriers (including charter carriers) who serve the East Terminal on a frequent, regular, or scheduled basis regardless of the duration of the service. Agent shall submit to the Director a copy of all handling agreements within ten (10) days of entering into the agreement. The Director reserves the right to have Agent cancel the handling agreements which the Airport finds unacceptable. Such cancellation shall be based on reasonable cause and given with reasonable notice.

City may also direct Agent in writing not to provide services to any air carrier, by name, which has not performed satisfactorily its obligations to City. Such direction shall be based on reasonable cause and given with reasonable notice. Agent may cease providing services to any air carrier which has not performed satisfactorily its payment obligations to Agent, with prior written approval from City.

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

Section 615. Transition Period. During any future transition of the East Terminal Agency Agreement to another agent, if applicable, Agent does hereby warrant, represent and agree to use its best efforts to assure a smooth transition. Agent agrees to closely coordinate the planning and execution of the transition with the Director.

Section 616. Operation.

- A. Agent shall be responsible for all aspects of the management and operation of the services required by this Agreement. Further, Agent will provide and is responsible for all employees and necessary components of the operation, including, without limitation, inventory, fixtures, equipment and supplies.
- B. City shall not be responsible for any goods, merchandise or equipment used, maintained or stored at the facility, nor will it be responsible for damage to such goods or merchandise resulting from flood, fire, explosion, vandalism or any other causes outside the direct control of City.

Section 617. Communication.

- A. Agent's local manager shall schedule quarterly or monthly meetings with the appropriate representative of the Airport Properties Department to discuss activity level and any other relevant issues which may affect Agent's operation at the Airport. Agent shall also be available for meetings at other times as necessary.

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

Section 618. Interference to Air Navigation. Agent warrants and agrees that no obstruction to air navigation, as such are defined from time to time by application of the criteria of Part 77 of the Federal Aviation Regulations or subsequent and additional regulations of the Federal Aviation Administration, will be constructed or permitted to remain on the Premises. Any obstructions will be immediately removed by Agent at its expense. Agent warrants and agrees not to increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight of the control tower and its operations. Agent further warrants and agrees not to install any structures, objects, machinery or equipment that would interfere with operation of navigation aides or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport.

ARTICLE VII TENANT IMPROVEMENTS

Section 701. Alterations and Improvements by Agent.

Agent may construct and install, at Agent's sole expense, such improvements in its Premises as Agent deems to be necessary for its operations. The plans and specifications, location, and construction schedule for such improvements, including any substantial alteration or addition thereto, must be submitted to and approved by the City in writing prior to the commencement of any and all such construction or installation. Agent shall comply with the requirements of all applicable laws and building codes and the City's Rules and Regulations governing tenant construction, alterations, and improvements. No reduction or abatement of Rents, Fees, and Charges shall be allowed for any interference with Agent's operations by such construction. Agent warrants, represents, stipulates and agrees that all such alterations and improvements by Agent shall be subject to the following:

- A. The City shall have the right to refuse approval of such plans and specifications if the external appearance of such alteration or improvement of facilities in publicly-viewed areas does not meet the City's requirements for substantial uniformity of appearance of facilities on the Airport, or, if the type or time of construction of such alteration or improvement, or the location thereof does not meet the City's requirements for safe use of the Airport and appurtenances by other authorized persons. The City may, at its own cost, inspect any such alterations or improvements.
- B. All improvements made to Agent's Premises and permanent additions or alterations thereto made by Agent, except those financed by the City, shall be and remain the property of Agent until expiration of the term of this Agreement. Upon expiration or early termination of this Agreement, said additions and alterations shall become the property of the City; provided, however, that any trade fixtures, signs, equipment, and other movable personal property of Agent shall remain the property of Agent.
- C. Agent shall promptly pay all lawful claims made against the City and discharge all liens filed or which exist against the Premises, any other portion of the Airport, or Agent's trade fixtures or trade equipment arising out of or in connection with the failure to make payment for work done or materials provided by Agent, its contractors, subcontractors, or materialmen. Agent shall have the right to contest the amount or validity of any such claim or lien without being in default hereunder; provided, however, that while contesting the amount and validity of any such claims or liens Agent shall provide the City, at the City's request, with a performance bond in an amount equal to the amount of the claim or lien. Agent shall give timely Notice to the City of all such claims and liens.
- D. Agent shall use, and shall cause each of its officers, directors, employees, agents, contractors, and suppliers to use, the highest degree of care when entering upon any property owned by the City in connection with the work. Agent shall comply, and shall cause each of its officers, directors, employees, agents, contractors, and suppliers to comply, with any and all instructions and requirements for the use of City-owned property.
- E. In any contract relating to the construction or installation of improvements in the Premises, Agent shall require each of its contractors and suppliers to:
1. carry a policy of Builders Risk Insurance in accordance with Section 901(B)(5); and
 2. furnish performance and payment bonds in the full amount of any contract in a form acceptable to the City.

Payment bonds shall comply with the coverage requirements and conditions of Section 107.170 of the Missouri Revised Statutes, as amended. Copies of the bonds shall be given to the City for approval before work begins. Any sum or sums derived from said performance and payment bonds shall be used for the completion of said construction and the payment of laborers and material suppliers, as the case may be.

3. Upon the completion of the improvements hereunder, Agent shall submit to the City a copy of its acceptance letter certifying completion, a certified copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Agent, and a certified set of "as built" drawings.

Section 702. Nondisturbance of Airport Tenants and Operations. Any work by Agent and its contractors shall be conducted in an orderly and proper manner, and shall not otherwise disturb, create a hazard, or interfere with other projects on, or the operations of, the Airport. Agent shall promptly comply, and shall cause its contractors to comply, with any reasonable request from the City to correct its conduct or that of its contractors. If Agent or its contractors fails to comply with the provisions of this Section, the City shall have the right to stop any or all work being performed, until such compliance is achieved, without terminating this Agreement.

ARTICLE VIII USE OF PREMISES

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

Section 802. Compliance with Environmental Laws.

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

A. Environmental Permits.

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

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

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

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

- C. Environmental Remediation. Agent shall undertake all necessary steps required under applicable Environmental Laws and

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

- D. Access for Environmental Inspection. Upon reasonable notification to Agent, the City shall have reasonable access to the Premises to inspect the same in order to confirm that Agent is using the Premises in accordance with all applicable Environmental Laws and Environmental Permits. Agent shall cooperate fully with any such inspections provided that such inspections shall not unreasonably interfere with Agent's operations. If the City’s inspection results in any type of written report, the City shall provide Agent a reasonable opportunity to timely review and comment on a draft of the report. Agent shall provide to City for its review and comment copies of: any and all notices of alleged non-compliance issued by governmental agencies responsible for enforcing Environmental Laws or Environmental Permits; draft official submittals (proposed final drafts) prepared by, or on behalf of, Agent responding to such alleged non-compliance; and any and all consent orders or administrative determinations, whether preliminary or final, issued by such governmental agencies. The City agrees to maintain the confidentiality of the documents produced in accordance with this Subsection to the extent consistent with the City’s legal obligations.
- E. Corrective Action by City. If Agent fails to comply with any applicable Environmental Laws or Environmental Permits governing its activities at the Airport, or if Agent fails to conduct necessary Remediation Work in a timely manner as required under this Section, the City, as required by applicable Environmental Laws and Environmental Permits, in addition to the rights and remedies described elsewhere herein and any other rights and remedies otherwise available to the City, may enter the Premises and take all reasonable and necessary actions to conduct Remediation Work to remove Hazardous Materials or other contaminants and insure such compliance with such Environmental Laws and Environmental Permits. All Remediation Costs incurred by the City shall be paid or reimbursed by Agent. Remediation Work, if necessary, shall be performed in accordance with the provisions of Subsection 1002(C), but only after first having provided Notice to Agent of such failure to comply, and 30 days within which Agent may demonstrate why no such alleged failure is present, or to timely remedy such alleged failure that may be present. If Agent’s compliance reasonably requires more than 30 days to complete, the City may enter the Premises and take such reasonable and necessary measures to achieve compliance only upon Agent’s failing to timely begin curing such noncompliance within such 30 day period and to continue diligently working to achieve compliance thereafter.
- F. Review of Environmental Documents. At the reasonable request of the City, Agent shall make available for inspection and copying, at reasonable times, any and all non-privileged documents and materials Agent has prepared pursuant to any applicable Environmental Laws or Environmental Permits, or submitted to any governmental agency, which documents and materials relate to environmental issues, Environmental Laws or Environmental Permits and which pertain to the Airport or the Premises, and which would be discoverable in litigation.
- G. Cumulative Remedies. All remedies of the City as provided herein with regard to environmental pollution, contamination, damage, or any actual or threatened violations of any Environmental Laws or Environmental Permits are deemed to be cumulative in nature. The City's right to indemnification as provided under this Section shall survive the expiration or early termination of this Agreement.

Section 803. Repairs and Maintenance. Agent shall, throughout the Term, at its own cost, keep repair and maintain the Premises, with the exception of the following which shall be the City’s responsibility:

- A. The structural components of the building.

- B. The mechanical, electrical HVAC and utility system to, but not within, the Premises, except where the utility systems are owned or controlled by the utility companies.
- C. The washing of the exterior of windows in the Terminal building.
- D. The maintenance and repair of both the outbound baggage conveyor system and the baggage conveyor system/carousel associated with the Federal Inspection Services Area.

Agent will perform the following functions as part of its responsibilities in the repair and maintenance of the Premises. The following list includes, but is not limited to:

- A. Perform custodial services daily.
- B. Perform all needed maintenance and repair of the equipment and fixtures provided by Agent.
- C. Perform all needed maintenance and repair of the City's passenger loading bridges.
- D. Keep Premises free from all fire and other hazards to persons and property, and furnish and maintain adequate portable fire protection equipment.
- E. Repair all damage to the Premises and the Airport when such damage results from the careless or negligent acts of Agent or Agent's employees or agents.
- F. Provide for complete, sanitary handling and disposal of all trash, garbage and refuse (liquid or solid). Agent may not dispose of any such items in the public areas. This may require the use of special devices including, but not limited to, special containers, compactors and disposal systems. Agent agrees to promptly provide and install same and to abide by these requirements. Agent will inform the Airport Properties Department of its methods of handling and disposal of trash, garbage and refuse.
- G. Confine all handling and holding of Agent's property to the Premises.
- H. Keep all papers and debris picked up daily from the Premises.
- I. Keep Premises free of all pests and provide pest control services as needed.
- J. No storage will be permitted on the exterior areas of the Premises unless such storage is approved in writing by City.

Agent will report to the City at the close of each Contract Year, any repair or maintenance completed on the Premises and the costs expended for that repair and maintenance. City shall be the sole and absolute judge of the adequacy of the maintenance performed by Agent, and may upon written notice, require specific maintenance work be completed at Agent's cost.

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

Section 804. Right to Enter, Inspect and Make Repairs. City and its authorized officers, employees, agents, contractors, subcontractors and other representative shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Agent's operations as is reasonably practicable) to enter upon and in the Premises for the following purposes:

- A. To inspect such Premises to determine whether Agent has complied and is complying with the terms, covenants and conditions of this Agreement.
- B. To perform any work therein that may be necessary by reason of Agent's failure to make any repairs or perform any work or maintenance required of Agent under this Agreement; provided, however, that except in cases of emergency, City shall give Agent notice of such failure, and shall not perform such work unless Agent has failed to do so within thirty (30) days

after receipt of such notice. Agent shall pay all reasonable costs and expenses related to such work plus a charge of fifteen percent (15%) for overhead to City immediately upon demand thereof.

- 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 such inspections, tests, surveys, environmental inspections, mitigations, studies and assessments as the City in its sole discretion may deem necessary to make.

Section 805. Utilities. City will provide and pay for heated and chilled air to, but not into the Premises. City shall provide and Agent shall pay for electricity at a cost based upon metered usage. The rate will be the rate charged to other users of similar service. The charge for non-metered areas will be based on a per square foot proportion for the area served by each meter involved. Agent shall provide and pay for other utilities it requires.

City shall not be liable to Agent for any losses or damages of any kind whatsoever for the interruption of any utility service, or for any delay in the supplying or furnishing of any utility service.

Section 806. Security Plan and Facilities. Agent hereby acknowledges that the City is required by the Transportation Security Administration's ("TSA") regulation 1542 to adopt and put into use facilities and procedures designed to prevent and deter persons and vehicles from unauthorized access to Airfield Operations Areas ("AOA"). The City has met said requirements by developing a master security plan for the Airport, and Agent covenants and agrees to be fully bound by and immediately responsive to the requirements of the plan in connection with Agent's exercise of the privileges granted to Agent hereunder. Agent will, within thirty (30) days of the City's request, reimburse the City for all fines or penalties imposed upon City by the TSA resulting from Agent's negligence or failure to act in relation to TSA regulation 1542 or any other applicable airport security regulations.

ARTICLE IX INSURANCE, DAMAGE, AND INDEMNIFICATION

Section 901. Insurance.

- A. General. Agent at all times during the term hereof, shall cause St. Charles County, Missouri, St. Clair County, Illinois, St. Louis County, Missouri, the City, their officers, agents and employees and Agent to be insured **on an occurrence basis** against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities or omissions of Agent, its officers, agents, and employees pursuant to this Agreement both on the Premises and the Airport.
- B. Risks and Minimum Limits of Coverage. Agent shall procure and maintain the following policies of insurance:
 1. Commercial General Liability in an amount not less than \$50 million;
 2. Automobile Liability Insurance in an amount not less than \$5 million combined single limit per occurrence (for automobiles used by Agent in the course of its performance hereunder, including Agent's non-owned and hired autos). In addition, Agent shall carry excess coverage in the amount of \$25 million to Agent automobile liability insurance.
 3. Workers' Compensation and Employer's Liability Insurance in accordance with Missouri laws and regulations. With respect to Workers' Compensation Insurance, if Agent elects to be self-insured, Agent shall comply with the applicable requirements of law. Agent shall require that all its subcontractors or licensees similarly provide such coverage (or qualify as a self-insured) for their respective employees. City, its officers, employees, or agents shall not be liable or responsible for any claims or actions occasioned by Agent's failure to comply with the provisions of this Subparagraph and that the indemnification provisions hereof shall apply to this Section. It is expressly agreed that the employees of Agent are not employees of the City for any purpose, and that employees of the City are not employees of Agent.
 4. Contents Insurance. Agent shall be solely responsible for obtaining insurance policies that provide coverage for losses of Agent owned property. The City shall not be required to provide such insurance coverage or be responsible for payment of Agent's cost for such insurance.

5. Builders Risk Insurance. During any period of construction or reconstruction for which Agent contracts, Agent shall carry, or shall require its contractor or contractors to carry, a policy of Builders Risk Insurance in an amount sufficient to insure the value of the work. The City shall be named Loss Payee on Builders Risk coverage to the extent of the City's interest therein (except to the extent coverage relates to Agent's equipment and personal property). Agent may elect to self-insure for individual projects with a total cost of \$50,000 or less.
 6. Other Property Coverage. Agent shall provide an "All Risk" insurance policy providing protection from direct loss arising out of any fortuitous cause other than those perils or causes specifically excluded by norm and which covers Agent's improvements to the Premises, trade fixtures, and equipment. The City shall be named Loss Payee on such coverage to the extent of the City's interest therein (except to the extent coverage relates to Agent's equipment and personal property).
- C. Issuers of Policies. The issuer of each policy required herein shall be a financially sound insurance company authorized to issue insurance policies in the State of Missouri. Acceptable insurers include insurance companies with an "A.M. Best Company" rating of at least an "A," or other insurers or insurance syndicates of similar recognized responsibility.
1. Form of Policies. The insurance may be in one or more policies of insurance.
 2. Non-waiver. Nothing the City does or fails to do shall relieve Agent from its duties to provide the required coverage hereunder, and the City's actions or inactions shall not be construed as waiving the City's rights hereunder.
 3. Insured Parties. Each policy by endorsement, except those for Workers' Compensation 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 Agent's indemnification obligations hereunder. Inclusion as an "additional insured" is not intended to, and shall not, make the City a partner or joint venturer with Agent in its operations.
 4. Deductibles. Agent shall assume and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for the same against the City, its officers, agents, or employees; provided, however, that nothing herein stated shall diminish Agent's rights or increase Agent's obligations in respect to its undertakings or hold harmless defense and indemnification set forth in Section 904 hereof.
 5. Cancellation. Each policy shall expressly state that it may not be cancelled, materially modified or nonrenewed unless 30 days advance Notice is given in writing to the City by the insurance company, or authorized representative of Agent.
 6. Subrogation. Each policy shall contain an endorsement by which the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents, or employees.
 7. Endorsement of Primary Insurance. Each policy hereunder except Workers' Compensation shall be primary insurance to any other insurance available to the Additional Insured and Loss Payee with respect to claims arising hereunder.
 8. Liability for Premium. Agent shall be solely responsible for payment of all insurance premiums required pursuant to this Agreement, and the City shall not be obligated to pay any premiums; provided, however, that if Agent fails to obtain the insurance as required herein or make premium payments, the City may, without further notification, effect such insurance or make such payments on Agent's behalf and, after Notice to Agent, the City may recover the cost of those payments with the installment of Rents, Fees, and Charges next due, plus 15% administrative charge, from Agent.
 9. Proof of Insurance. Within thirty (30) days of the Effective Date of this Agreement and at any time during the term hereof, Agent shall furnish the City with certificates of insurance. At least 5 days prior to the expiration of any such policy, Agent shall submit to the City a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Agent shall, within 15 days after the date of such notice from the insurer of such cancellation or reduction in coverage, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon reasonable

notification by the City to Agent, the City shall have the right to examine Agent's insurance policies.

- D. Maintenance of Coverage. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that Agent, continuously and without interruption, maintain in force the required insurance coverages set forth above.
- E. City Right to Review and Adjust Coverage Limits. The City reserves the right at reasonable intervals during the term of this Agreement to cause the insurance requirements of this Article to be reviewed, at its sole cost, by an independent insurance consultant experienced in insurance for public airports, taking into consideration changes in statutory law, court decisions, or the claims history of the airline industry as well as that of Agent, and, based on the written recommendations of such consultant, and in consultation with Agent, to reasonably adjust the insurance coverages and limits required herein but not more often than every 24 months.

Section 902. Agent Actions Affecting Insurance.

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

Section 903. Damage to Premises.

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

advance Notice, to delete the affected Premises from this Agreement, but this Agreement shall remain in effect with respect to the remainder of said Premises, unless such damaged or destroyed premises prevent Agent from operating at the Airport.

3. If the City elects not to reconstruct or replace affected Premises, the City shall meet and consult with Agent on ways to permanently provide Agent with adequate replacement space for affected Premises. Agent shall have the right, upon giving the City 30 days advance Notice, to delete the affected Premises from this Agreement, but this Agreement shall remain in full force and effect with respect to the remainder of said Premises, unless the loss of such premises prevents Agent from operating at the Airport.

D. Scope of Restoration of Premises.

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 Subsections 903(A)-(C). If the City elects to repair, reconstruct, or replace affected premises as provided in this Section, City shall notify Agent and Agent shall proceed with due diligence and at its sole cost and expense to repair, reconstruct, or replace its signs, fixtures, furnishings, equipment, and other items provided or installed by Agent in or about the Premises in a manner and in a condition at least equal to that which existed prior to said damage or destruction.

In lieu of the City's repair, reconstruction, or replacement of the affected premises, as provided in this Section, if Agent requests to perform said function with respect to damage under Sections 903(A) and (B), the City may, in its sole discretion, allow Agent to do so. Any such work by Agent must be done in accordance with the requirements of Article VII. The City shall reimburse Agent for the cost of such work performed by Agent. Agent shall be considered to be doing such work on its own behalf and not as an agent or contractor of the City.

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

Section 904. Indemnification.

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

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

- B. Agent shall defend, indemnify, pay, and hold harmless the Indemnified Parties from and against all applicable taxes and assessments for which the City may become liable and which by law may be levied or assessed on the Premises, or which arise out of the operations of Agent or by reason of Agent's occupancy of its Premises except for any taxes or assessments based on the gross or net income or gross or net receipts of the City that are not allocable to Agent-related receipts.

However, Agent may, at its own risk, cost, and expense, and at no cost to the City, contest, by appropriate judicial or administrative proceedings, the applicability or the legal or constitutional validity of any such tax or assessment, and the City will, to the extent permitted by law, execute such documents as are necessary to permit Agent to contest or appeal the same. Agent shall be responsible for obtaining bills for all of said taxes and assessments directly from the taxing authority and shall promptly deliver to the City, upon request by the City, copies of receipts of payment. If the City receives any tax billings falling within the scope of this paragraph, it will forward said billings to Agent. Agent shall, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not.

- C. Agent shall defend, indemnify, and hold harmless the Indemnified Parties from and against any claim, suit, demand, action, liability, loss, damage, judgment, or fine, and all costs and expenses of whatever kind or nature associated therewith in any way arising from or based in whole or substantial part upon claim or allegation of a violation of any federal, state, or local laws, statutes, resolutions, regulations, ordinance, or court order affecting the Airport, by Agent, its agents, employees, contractors, or suppliers, in conjunction with Agent's use and/or occupancy of the Premises or its operations at the Airport. Agent will, at its own cost and expense, defend all such claims, demands and suits, whether frivolous or not. Agent shall include the substance of this Subsection (C) in every sublease, contract or other agreement which Agent may enter into related to its activities at the Airport, and any such sublease, contract or other agreement shall specifically provide that the City is a third-party beneficiary of this and related provisions. This provision does not constitute a waiver of any other condition of this Agreement prohibiting or limiting assignments, subletting or subcontracting.
- D. If a prohibited incursion into the air operations area occurs, or if the Airfield Operations Area or sterile area security is breached, by or due to the negligence or willful act or omission of any of Agent's employees, agents, contractors, or suppliers, and such incursion or breach results in a civil penalty action against the City, Agent shall assume the defense of any such action and be responsible for any civil penalty or settlement amount required to be paid by the City as a result of such incursion or breach. The City shall notify Agent of any allegation, investigation, or proposed or actual civil penalty sought for such incursion or breach. Civil penalties and settlement and associated expenses reimbursable under this paragraph include but are not limited to those paid or incurred as a result of violation of FAA or TSA regulations or security directives.
- E. Agent's obligation to defend and indemnify past officers, employees, and agents of the City shall apply to such persons only for claims, suits, demands, actions, liability, loss, damages, judgments, or fines arising from events, occurrences, and circumstances during which said officers, employees, and agents held their office or position with the City.
- F. The City shall promptly notify Agent of each claim, action, proceeding, or suit in respect of which indemnity may be sought by the City against Agent hereunder, setting forth the particulars of such claim, action, proceeding or suit; shall furnish Agent with a copy of all judicial filings and legal process and any correspondence received by the City related thereto; and shall tender the defense of same to Agent.
- G. The duty to defend, indemnify, hold harmless, and reimburse shall apply to any claim, demands, or suits made against the City for which Agent is responsible pursuant to this Section. Provided, however, that upon the filing by anyone of a claim with the City for damages arising out of incidents for which Agent herein agrees to indemnify and hold the City harmless, the City shall promptly notify Agent of such claim and, if Agent does not settle or compromise such claim, then Agent shall undertake the legal defense of such claim both on behalf of Agent and on behalf of the City, at Agent's expense; provided, however, that Agent shall immediately notify City if a conflict between the interests of Agent and City arises during the course of such representation. Agent shall use counsel reasonably acceptable to the City Counselor of the City or his or her designee, after consultation with the 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 Agent in accordance with this Section. Any final judgment rendered against the City for any cause for which Agent is liable hereunder shall be conclusive against Agent as to amount upon the expiration of the time for appeal therefrom. Nothing in this Article shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim of legal liability against the City. This Section shall not be construed as a waiver of the City's sovereign or other immunity.
- H. The City, at its own expense except as otherwise provided herein, shall be invited to attend and participate in all meetings (including those related to settlement) and to appear and participate in all judicial proceedings and to the extent of its interests, approve, in writing, the terms of any settlement related to any claim, action, proceeding or suit set forth in this Section.

- I. Notwithstanding the provisions of this Section, Agent shall have no obligation to defend, indemnify, or hold harmless the City for any consequential damages or for any amounts to be paid in connection with losses, liabilities, penalties, damages of whatever nature, causes of action, suits, claims, demands, injunctive relief, judgments, awards and settlements if the City is conclusively determined to be more than 50% liable due to contributory negligence.
- J. This Section shall survive the expiration or early termination of this Agreement. Agent understands and agrees that any insurance protection furnished by Agent pursuant to Section 901 shall in no way limit Agent's responsibility to indemnify and hold harmless the City under the provisions of this Agreement.

Section 905. City Not Liable.

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

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

**ARTICLE X
ASSIGNMENT AND SUBCONTRACTING**

Section 1001. Assignment. Agent shall not assign this Agreement.

Section 1002. Subletting. Agent shall not sublease the Premises or any portion thereof, without the prior written consent of the Director.

Section 1003. Subcontracting. The Agent shall not subcontract this Agreement or any portion of the Premises or services included in this Agreement without the prior written consent of the Director.

At least sixty (60) days prior to any contemplated subcontracting of this Agreement or any portion of the Premises or services contemplated herein, the Agent must submit in writing a request to the Director. This request must include a copy of the proposed or agreement. Any subcontract or agreement must have the prior written approval of the Director. Any such subcontract or agreement must require at a minimum: (1) strict compliance with all provisions of this Agreement, (2) a provision that the subcontractor or agent will use the Premises solely for the purposes identified in this Agreement, (3) a provision providing that all terms of subcontract or agreement are subject to and subordinate to the provisions of this Agreement, and (4) a provision that the term of the subcontract or agreement shall expire immediately at the expiration of this Agreement. No subcontract or any other agreement shall be effective as it pertains to the City until such time as the Director receives a fully executed copy of the subcontract or agreement as provided for above.

**ARTICLE XI
TERMINATION OF AGREEMENT IN ENTIRETY**

Section 1101. Events of Default.

Each of the following constitutes an "Event of Default" under this Agreement:

- A. Agent fails to punctually pay when due any Fees or payments or any other sum required to be paid hereunder, or fails to

- comply with its reporting requirements to the City, and such failure continues for a period of 15 days after Notice of non-payment or non-remittance has been given to Agent by the City.
- B. Agent fails to keep, perform and observe any promise, covenant or other provision of this Agreement for a period of 30 days after Notice specifying such failure by the City; provided, however, that any such failure which can be cured, but which cannot with due diligence be cured within such 30 day period, shall not give rise to the City's right to terminate this Agreement if corrective action is instituted by Agent within such 30 day period and diligently pursued until the failure is corrected.
- C. Any representation or warranty of a material fact made by Agent herein or in any certificate or statement furnished to the City pursuant to or in connection herewith proves untrue in any material respect as of the date of issuance or making thereof, and such materiality is then continuing.
- D. Agent discontinues its business at the Airport for a period of 30 consecutive days or, after exhausting or abandoning any further appeals, Agent is prevented for a period of 30 consecutive days by action of any governmental agency other than the City from conducting its business at the Airport.
- E. Agent fails to meet and maintain the Performance and Payment Bond requirements in accordance with Section 511.
- F. Agent fails to maintain the minimum required insurance coverage as required by Section 901 for a period of 30 days after Notice specifying such failure by the City, provided that the City shall have the right to immediately suspend Agent's right to operate at the Airport until Agent has obtained the minimum required insurance coverage.
- G. Agent fails to maintain true and accurate books, records, and accounts resulting in an underpayment of Fees and payments by Agent to the City, and such underpayment continues for a period of 6 months.
- H. Agent becomes insolvent (as such term is defined under Section 101 of the Federal Bankruptcy Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), or any successor statute thereto); or fails to pay its debts generally as they mature; or takes the benefit of any present or future federal or state insolvency statute; or makes a general assignment for the benefit of creditors.
- I. Agent files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Bankruptcy Code or under any other law or statute of the United States or of any state thereof, or under any law or statute of another country; or consents to the appointment of a receiver, trustee, custodian, liquidator, or other similar official, of all or substantially all of its property; or an order for relief is entered by or against Agent under any chapter of the Bankruptcy Code.
- J. Agent is adjudged a debtor or bankrupt and/or an order is made approving a petition filed by any of Agent's creditors or stockholders seeking Agent's liquidation or reorganization under the Bankruptcy Code or under any other law or statute of the United States or any state thereof, and such order or decree is not stayed or vacated within 60 days of its issuance.
- K. A petition under any chapter of the Bankruptcy Code or an action under any federal or state insolvency law or statute, or an action under any insolvency law or statute of another country is filed against Agent and is not dismissed or stayed within 60 days after the filing thereof.
- L. By or pursuant to, or under authority of any legislative act, resolution, or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, custodian, liquidator, or other similar official takes possession or control of all or substantially all of the property of Agent and such possession or control continues in effect for a period of 60 days.
- M. Agent becomes a corporation in dissolution.
- N. The letting, license, or other interest of or rights of Agent hereunder is transferred to, passed to, or devolved upon, by operation of law or otherwise, any other person, firm, corporation, or other entity, by, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation, or other proceedings or occurrence described in subparagraphs (H) through (M) of this Section.

- O. Agent enters into an assignment or sublease which is not approved by the City in accordance with the provisions of Article X, and, if a sublease, it is not terminated within 10 days after Notice from the City.

Section 1102. Termination by the City.

- A. Whenever an Event of Default has occurred, the City may at its option, immediately and without further notification of such Event of Default:
1. Terminate this Agreement and/or Agent's rights granted hereby, but without discharging any of Agent's obligations hereunder and, at the City's further option, exclude Agent from its Premises. If Agent uses, occupies, or fails to surrender or remove its property from its Premises, or any portion thereof, without the consent of the City after this Agreement has been terminated or expires, Agent may be deemed a tenant at sufferance during the period of such use or failure and, in such event, Agent shall pay Fees and payments established by the City for Nonsignatory Airlines during such period. In such event, the City shall have, in addition to whatever other rights are available to the City, the right to all remedies provided under applicable laws, and reasonable costs, disbursements, and attorney fees including consequential damages incurred as a result of the holdover.
- B. In the event of an Event of Default, the City may exercise any and all of the rights provided to it in this Section irrespective of any subsequent cure by Agent, unless otherwise mutually agreed by Agent and the City.
- C. The remedies set forth in this Article shall be in addition to all other remedies which are or may be available to the City at law or in equity to enforce the performance and observance of any obligation, agreement or covenant of Agent hereunder, including collection of amounts due.
- D. All rights and remedies given to the City herein and all rights and remedies granted to the City by law shall be cumulative and concurrent. No termination of this Agreement or the taking or recovering of the Premises shall deprive the City of any of the City's remedies or actions against Agent for Fees and payments or for damages or for the breach of any covenant herein contained, nor shall the bringing of any action for Fees and payments or breach of covenant, the resort to any other remedy herein provided for the recovery of Fees and payments, or any delay in exercising such rights, be construed as a waiver of the right to obtain possession of the Premises.
- E. In no event shall this Agreement or any rights or privileges hereunder be an asset of Agent under any bankruptcy, insolvency, or reorganization proceedings.

Section 1103. Agent's Right to Terminate. Agent, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1104(B) hereof, for the following causes:

- A. if a court of competent jurisdiction issues an injunction or restraining order against City preventing or restraining the use of the Airport for airport purposes in its entirety or substantial entirety.
- B. if City shall have abandoned the Airport for a period of at least thirty (30) 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. in the event of destruction of all or a material portion of the Airport or the Airport facilities, or in the event that an agency or instrumentality of the United States Government or any state or local government shall occupy the Airport or a substantial part thereof, or in the event of military mobilization or public emergency wherein there is a curtailment, either by executive decree or legislative action, of normal civilian traffic at the Airport or of the use of motor vehicles or airplanes by the general public, or a limitation of the supply of automobiles or of automobile fuel, supplies, or parts for general public use, and any of said events shall result in material interference with Agent's normal business operations or substantial diminution of Agent's gross revenue from the operation at the Airport, continuing for a period in excess of sixty (60) days.
- D. if City shall have failed in the performance of any term, covenant or condition within the control of City and herein required by this Agreement to be performed by City.

Section 1104. Procedures for Termination. The procedure for termination will depend upon whether the basis for termination is non-payment or all other reasons.

- A. Termination for Non-Payment. The City shall have right to terminate this Agreement for non-payment upon not less than ten (10) days prior written notice by the City to the Agent specifying the date upon which such termination shall take effect. Such termination shall be effective upon the termination date unless the Agent makes full payment of all amounts owed to the City within said ten (10) days.
- B. Termination for Other than Non-Payment. Either party shall have the right to terminate this Agreement for a cause other than non-payment upon not less than thirty (30) days prior written notice specifying the date upon which such termination shall take effect, and the cause for which this Agreement is being terminated. Such termination shall be effective upon the termination date unless the cause of default is cured within the thirty (30) day period, or if such cause of default by its nature cannot be cured within such thirty (30) day period, and the party at default commences to correct such default within said thirty (30) days and corrects the same as promptly as is reasonably practicable, the termination shall not take effect.

In the event that suit shall be instituted by City upon the default of payment of fees and charges as provided herein, then Agent agrees also to pay reasonable attorneys' fees, court costs, and expenses.

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

ARTICLE XII
MINORITY BUSINESS ENTERPRISE AND
WOMEN BUSINESS ENTERPRISE PARTICIPATION

Section 1201. Minority Business Enterprise (MBE) And Women Business Enterprise (WBE) Participation.

Agent accepts the policy of the City of St. Louis Airport Authority to ensure the maximum utilization of minority and women business enterprises in contracting and the provisions of goods and services. The provisions of this policy and the following stipulations apply to this Agreement and all contracts awarded by the City and its departments, and shall be liberally construed for the accomplishments of its policies and purposes:

- A. Goal: A goal of 25% MBE and 5% WBE utilization has been established in connection with this agreement. If an award of this Agreement is made and the M/WBE participation is less than the goal, the Agent shall continue good faith efforts throughout the Term of this Agreement to increase M/WBE participation and to meet the goal. This goal is based on the sale of goods to or performance of services for the Agent as a percentage of total annual sales of goods to or performance of services for the Agent at the East Terminal of Lambert-St. Louis International Airport. This goal remains in effect throughout the Term of the Agreement. Credit toward the M/WBE goal will only be given for the use of M/WBE's certified by processes acceptable to the Director. Agent submitted at time of bid a M/WBE utilization plan which 1) identified certified M/WBE's and the anticipated participation of each, as a percentage of total annual goods and services to be purchased and 2) the cumulative annual percentage of M/WBE utilization Agent offers in the performance of this Agreement. This M/WBE utilization plan must be approved in writing by the Director before it is implemented. Agent is obligated to meet the greater of the minimum M/WBE participation goal or the amount of participation detailed in its M/WBE utilization plan as approved by the Director.
- B. Obligation: The Agent agrees to take all reasonable steps necessary to ensure that Ms/WBEs have maximum opportunity to participate in contracts and subcontracts under this Agreement. The Agent shall not discriminate on the basis of race, color, national origin, or sex in the award of contracts and subcontracts under this Agreement.
- C. Eligibility: Agent should contact the Airport Authority's DBE Program Office to obtain a list of eligible M/WBEs and to determine the eligibility of the M/WBE firms it intends to utilize in this Agreement.
- D. Counting M/WBE Participation Toward Goal: M/WBE participation towards the attainment of the goal will be credited on the basis of the total purchase price of goods and services obtained by Agent as reflected on the MBE/WBE utilization plan. Such counting must be consistent with the M/WBE program guidelines.
- E. Post Award Compliance: If the Agreement is awarded on less than full M/WBE goal participation, such award will not relieve Agent of the responsibility to continue good faith efforts to maximize participation of M/WBEs during the Term of the Agreement.

- F. Substitution of M/WBE Firms After Award: The Agent shall conform to the scheduled amount of M/WBE participation. When a listed M/WBE is unwilling or unable to supply the goods or services in the M/WBE utilization plan, Agent shall immediately notify the Airport Authority’s DBE Program Office. A M/WBE firm may not be removed from the project without the prior written consent of the DBE Program Office.
- G. Good Faith Efforts: When the M/WBE goal is not met, Agent shall document and submit justification utilizing the form titled "Agent's Good Faith Efforts Report" and provide a statement as to why the goal could not be met.
- H. Record Keeping Requirement: The Agent shall keep such records (copies of subcontracts, paid invoices, documentation of correspondence) as are necessary for the Airport Authority to determine compliance with the M/WBE obligations. The Airport reserves the right to investigate, monitor and/or review records for compliance.
- I. Reporting Requirement: The Agent shall submit monthly reports on M/WBE involvement to the Airport.
- J. Applicability of Provisions to M/WBE Agent: These provisions are applicable to all contractors including M/WBE contractors. A bid submitted by a M/WBE contractor is not automatically presumed to be meeting the prescribed goal. If the M/WBE contractor intends to subcontract any portion of the contract, the M/WBE contractor shall comply with provisions regarding contractor and subcontractor relationships.

**ARTICLE XIII
MISCELLANEOUS PROVISIONS**

Section 1301. Communications and Notices.

- A. Except as otherwise expressly provided in this Agreement, all communications, including notifications, requests, authorizations, approvals, demands, and consents provided for hereunder shall be in writing.

If to the City, to: Airport Director
 Lambert-St. Louis International Airport®
 10701 Lambert International Boulevard
 St. Louis, Missouri 63145

If to Agent, to: Ms. Sally Leible
 President
 Airport Terminal Services, Inc.
 111 Westport Plaza Drive, Suite 400
 St. Louis, MO 63146

or to such other person or address as either the City or Agent may hereafter designate by Notice to the other in accordance with Section 1301(B).

- B. All Notices required by this Agreement shall be mailed via certified mail return-receipt requested, via overnight mail with receipt, or personally delivered to the City and Agent at the addresses set forth in Section 1301(A), with copy to:

If to the City: Office of the City Counselor
 Airport Legal Department
 10701 Lambert International Boulevard
 St. Louis, Missouri 63145

If to Agent: Ms. Sally Leible
 President
 Airport Terminal Services, Inc.
 111 Westport Plaza Drive, Suite 400
 St. Louis, MO 63146

or to such other person or address as either the City or Agent may hereafter designate by Notice.

Except as otherwise expressly provided hereunder, any such Notice shall be deemed to have been given or made: (i) if sent by certified mail, five (5) days after being deposited in the mails, postage prepaid and properly addressed; (ii) if via overnight mail, the next business day; and (iii) if delivered by personal service, when delivered to the addressee.

Section 1302. Conditions of Default. This Agreement shall be considered in default when Agent fails to fulfill any of the terms, covenants and conditions of this Agreement, and such default shall be considered a material breach of this Agreement for which the City at its option may terminate this Agreement as provided for in ARTICLE XI herein.

Section 1303. NonDiscrimination.

- A. Agent for itself, its personal representatives, successors in interest, and assigns, agrees that no person on the grounds of race, creed, color, national origin, sex, age, or disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in (i) the use of the Airport; or (ii) the construction of any improvements on, over, or under the Airport, and the furnishing of services thereon.
- B. Agent shall comply with all applicable nondiscriminatory requirements that may be imposed pursuant to the Federal Aviation Act of 1958, as amended; 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 1304. No Personal Liability.

- A. The City shall not be liable for any acts or omissions of any Agent, airline or any condition resulting from the operations or activities of tenants or their representatives.
- B. No director, officer, employee, or agent of the City or Agent shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach hereof or because of its or their execution of this Agreement. Any administrative complaint brought against the City relating to any aspect of this Agreement shall be brought against the City and not against named individual respondents.

Section 1305. Force Majeure.

- A. Neither party hereto shall be liable to the other for any failure, delay, or interruption in performing its obligations hereunder due to acts, events or conditions beyond its control, including acts of God, weather conditions, shortages of energy or materials, embargoes, riots, rebellions, sabotage, acts of a public enemy, war, terrorism, insurrection, strikes, boycotts, picketing, slow-downs, work stoppages or other labor actions affecting the rights or obligations of the City or Airline hereunder, their respective contractors or subcontractors, except to the extent that such failure, delay or interruption directly or indirectly results from failure on the part of the City or Airline to use reasonable care to prevent, or make reasonable efforts to cure, such failure, delay or interruption; provided, however, that, except as herein specifically provided, nothing in this Section is intended or shall be construed to abate, postpone or in any respect diminish Airline's obligations to make any payments due to the City pursuant to this Agreement.
- B. The City shall be under no obligation to supply any service if and to the extent and during any period that the supplying of any such service or the use of any component necessary therefor shall be prohibited or rationed by any law, ordinance, rule, regulation, requirement, order or directive of any federal, state, county or municipal government having jurisdiction.

Section 1306. Successors and Assigns. The terms, conditions, and covenants of this Agreement shall inure to the benefit of, and be binding upon, the parties hereto and upon their permitted successors, assigns and sublessees, if any. This provision shall not constitute a waiver of any conditions regarding assignment or subletting contained in this Agreement.

Section 1307. Quiet Enjoyment. Upon payment of all amounts due hereunder and performance of the covenants and agreements on the part of Agent to be performed hereunder, the City shall not act or fail to act, except as otherwise provided by this Agreement, in a manner that will prevent Agent from peaceably having and, in accordance with the terms hereof, enjoying the Premises and all rights, licenses, services, and privileges of the Airport and its appurtenances and facilities granted herein.

Section 1308. Operation and Maintenance of Airport. City shall at all times operate the Airport properly and in a sound and economical manner; and 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 1309. Title to Site. The Premises from the date hereof until the expiration or early termination of this Agreement shall be owned in fee simple title by City or in such lesser estate as in the opinion of City Counselor is sufficient to permit the letting thereof by City as herein provided for the full Term provided in this Agreement.

Section 1310. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any applicable agreements heretofore made between 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 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 1311. Modifications for Granting FAA Funds. In the event that the Federal Aviation Administration requires, as a condition precedent to granting funds for improvements, development, or the expansion of the Airport, modifications or changes to this Agreement, or determines this Agreement to be inconsistent with City's grant assurances, current or future, Agent agrees to either (i) consent to such reasonable amendments, modifications or changes to this Agreement as may be reasonably required for City to maintain and/or obtain said Federal Aviation Administration funds, or as required by the Federal Aviation Administration, or (ii) consent to a cancellation of this Agreement upon not less than sixty (60) days written notice.

Section 1312. Governing Law. This Agreement is made and entered into in the State of Missouri, and Missouri law shall govern and apply to this Agreement. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall be brought only in a federal or state court in the City of St. Louis, Missouri. Agent and the City hereby admit and consent to the jurisdiction and venue of such courts. The provisions of this section shall survive the expiration or termination of this Agreement.

Section 1313. Headings. The headings of the Articles and Sections of this Agreement are inserted only as a matter of convenience and for 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 1314. Amendments. Except as otherwise expressly provided herein, this Agreement may not be changed, modified, discharged, or extended except by written amendment duly executed by the parties.

Section 1315. Required Approvals.

- A. Whenever in this Agreement any approval is required, such decision shall be promptly rendered and shall not be unreasonably withheld or conditioned. No disapproval shall be valid if such disapproval constitutes an anticompetitive act as described by a federal agency having jurisdiction over such matters.
- B. Unless otherwise required by state or local law, wherever in this Agreement the approval, authorization, consent, certification, determination, waiver, or any other action of the City is required, it may be performed by the Airport Director, unless otherwise provided herein. In taking such actions, the Airport Director shall act reasonably, and take into consideration the best interest of the traveling public and the operations of the Airport.
- C. In all instances in this Agreement where consent or approval of one party is required for an action by the other party, such consent shall be in writing unless otherwise agreed by the parties.

Section 1316. No Waiver. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor shall any custom or practice that may evolve between the parties in the administration of the terms of this Agreement be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement.

Section 1317. Invalid Provisions. If any covenant, condition, or provision in this Agreement is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, or conclusively determined to be inconsistent with federal law or FAA grant assurances, such covenant, condition, or provision shall be deemed amended to conform to applicable laws so as to be valid or

enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the City or Agent in its respective rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

Section 1318. Americans with Disabilities Act (ADA). Agent shall be responsible for compliance with the Federal ADA, plus any State laws and City Ordinances pertaining to the disabled individual having access to Agent's services.

Section 1319. Not a Lease. This Agreement is not a lease and the right to use the Premises is entirely dependent upon the rights and privileges expressly granted hereunder, and Agent will in no instance be deemed to have acquired any possessory rights against City or the Premises or be deemed to be a tenant of City.

Section 1320. Advertising. Agent shall have no right to use the trademarks, symbols, trade names or name of the Airport or Premises, either directly or indirectly, in connection with any production, promotion service or publication without the prior written consent of the Director.

Section 1321. Conflicts Between Tenants. In the event of a conflict between Agent and any other tenant, licensee, concessionaire or agent, as to the respective rights of the others, the Director shall review the applicable agreements and by reasonable interpretation thereof determine the rights of each party, and Agent agrees to be bound by such decision. All determinations by the Director are final and binding.

Section 1322. Prevailing Wage. Agent shall 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 in accordance with and subject to the provisions of the Revised Code of The City of St. Louis, Chapter 6.20.

Section 1323. Timing. The parties expressly agree that time is of the essence in this Agreement. Failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall relieve the other party, without liability, of any obligation to accept such performance.

Section 1324. Acknowledgment of Terms and Conditions. The parties affirm each has full knowledge of the terms, covenants, conditions and requirements contained in this Agreement. As such, the terms of this Agreement shall be fairly construed and the usual rule, of construction, if applicable, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed, in the interpretation of this Agreement of any amendments, modifications or exhibits thereto.

Section 1325. Previous Agreements. It is expressly understood by the parties hereto that the provisions of this Agreement shall in no way affect or impair the terms, covenants, conditions or obligations of any other existing or prior agreement between City and Agent.

Section 1326. Entire Agreement. This Agreement, including the attached exhibits, embodies the entire agreement between the City and Agent relating to the subject matter hereof, and supersedes all prior agreements and understandings, written or oral, express or implied, between the City and Agent relating thereto.

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

Pursuant to Ordinance _____, approved _____, 200_ .

The foregoing Agreement was approved by the Airport Commission at its meeting on , , .

Commission Chairman Date
and Director of Airports

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

Secretary, Board of Estimate & Apportionment Date

APPROVED AS TO FORM BY:

COUNTERSIGNED BY:

City Counselor Date
City of St. Louis

Comptroller, Date
City of St. Louis

ATTESTED TO BY:

Register, Date
City of St. Louis

AGENT NAME

ATTEST:

Secretary Date

Title: _____

Date: _____





